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

BRIEF FOR THE PLAINTIFF–APPELLANT

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Oral Argument

MARCH 11, 2025
7:00 P.M.
AMES COURTROOM
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QUESTIONS PRESENTED

I. Whether the United States Postal Service's racially motivated withholding of mail and intentional infliction of emotional distress constitute a "loss, miscarriage, or negligent transmission" of mail, such that the postal exception to the Federal Tort Claims Act bars Appellant's claims.

II. Whether two postal workers who jointly deprived Appellant of her mail because of her race are immune from civil liability under 42 U.S.C. § 1985(3) because either (1) federal actors are not covered by the statute's reference to "two or more persons" who "conspire," or (2) the two postal workers, under the intracorporate-conspiracy doctrine, constitute one "person" incapable of forming a conspiracy.

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INTRODUCTION

For the past four years, two postal employees have perpetrated a racist conspiracy against Sylvia Pierce without repercussion. Congress has made clear that such wrongs should not go unaddressed. It has offered victims like Pierce two private rights of action to seek relief in the federal courts: The Federal Tort Claims Act (FTCA) and the Ku Klux Klan Act (Klan Act). The district court's order undermines both of these remedies. It reads a narrow FTCA exception so broadly as to immunize intentional racial discrimination, conjures a categorical exemption for federal actors in the Klan Act, and imports an antitrust doctrine to bar Pierce's civil rights claims. This cannot be correct. Pierce now urges this Court to reverse this order and allow her claims to proceed.

OPINIONS AND ORDERS

The order of the district court granting Defendants-Appellees' motion to dismiss is reproduced on page 9 of the Joint Appendix. This Court's procedural order certifying Pierce's appeal is reproduced on page 11 of the Joint Appendix.

STATEMENT OF JURISDICTION

Pierce timely appeals the dismissal of her claims by the United States District Court for the District Court of Ames. The district court had subject matter jurisdiction over Pierce's tort claims against the United States and the United States Postal Service under 28 U.S.C. § 1346(b) and 39 U.S.C. § 409(a), respectively. The district court also had

subject matter jurisdiction over Pierce's claims against the postal workers under 28 U.S.C. §§ 1331, 1343.

RELEVANT PROVISIONS

This case involves 28 U.S.C. §§ 1346(b), 2680; 42 U.S.C. § 1985(3). Relevant sections of each are reproduced in the Appendix.

STATEMENT OF THE CASE

Facts

Appellant Sylvia Pierce is one of the only Black property owners to have ever lived in her neighborhood. JA-2. For the past five years, she has owned a triple-decker residence in Ames City. *Id.* Pierce lives on the first floor, and she rents out her two upper floors to tenants. *Id.* Until 2021, the United States Postal Service (USPS) delivered Pierce's mail to her residence without incident. JA-3.

This changed when Dino Meyer and Haley Gardner, two new postal workers, were assigned to her neighborhood. JA-3. Meyer and Gardner had initially included Pierce's residence in their delivery routes. *Id.* But almost immediately thereafter, they stopped delivering any mail to Pierce and her tenants. *Id.* Initially, it was unclear why. Other similar residences owned by white individuals continued to receive their mail. But Pierce received nothing. *Id.*

Two weeks later, the reason became clear. Pierce approached Meyer while he was delivering mail in the neighborhood, and she asked why her residence had stopped receiving mail. *Id.* In response, Meyer

"flipped off" Pierce and told her to "get out of the neighborhood" if she ever wanted to get her mail again. *Id.* A week after that, Pierce approached Gardner to ask the same question. *Id.* Gardner gave a similar response, telling her to join "people like" her in a "different part of town." *Id.*

Pierce read through the lines: Meyer and Gardner were refusing to deliver her mail because she is Black. JA-4. Pierce then filed a complaint at the Ames City Post Office. *Id.* There, she learned that Meyer and Gardner were intentionally withholding her mail, marking it as "undeliverable," and then returning it to the sender. *Id.*

Pierce sought the help of the Ames City Post Office manager. *Id.* The manager admitted that Meyer and Gardner had placed an "embargo" on Pierce's mail. *Id.* But he offered no explanation as to why. *Id.* Nor did he indicate that he would order Meyer and Gardner to cease their "embargo." *Id.* Instead, the manager offered only to "ask Meyer and Gardner to reconsider." *Id.* Nevertheless, he predicted that the USPS "would likely not deliver any mail to her residence." *Id.*

Several years have passed, and nothing has changed. JA-3–4. In the meantime, Pierce has continuously filed complaints with the USPS to no avail. *Id.* She has also lost a tenant, who refused to renew his lease due to the USPS's "embargo." *Id.* To this day, not a single piece of mail is delivered to her address. *Id.*

District Court Proceedings

Pierce filed suit against the USPS, Meyer, and Gardner in the United States District Court for the District of Ames. JA-2. Count One, brought against the USPS under the FTCA, 28 U.S.C. § 2671, alleges liability for nuisance, tortious interference with prospective business relations, conversion, and intentional infliction of emotional distress. JA-5. Count Two, brought against Meyer and Gardner under 42 U.S.C. § 1985(3), alleges that the two conspired with one another to deprive Pierce of the equal protection of the law on the basis of her race. *Id.* The defendants moved to dismiss the claims. JA-7.

In a one-paragraph order, the district court dismissed Count One, holding that the FTCA claims were barred by 28 U.S.C. § 2680(b), the postal exception to the FTCA. JA-9. The district court also dismissed Count Two on the grounds that (1) federal actors cannot be held liable under § 1985(3), or, in the alternative, (2) the intracorporate-conspiracy doctrine bars the claims. JA-9. Pierce now appeals the dismissal of both counts. JA-10.

SUMMARY OF THE ARGUMENT

First, the district court erred in dismissing Pierce's FTCA claims against the USPS under the postal exception because her claims do not arise out of the "loss, miscarriage, or negligent transmission" of mail. Pierce's claims do not arise out of a "loss" of mail, because the USPS knew exactly where her mail was. Pierce's claims do not arise out of a

"miscarriage" of mail, because the USPS deliberately refused to carry it at all. And Pierce's claims do not arise out of a "negligent transmission" of mail, because the USPS's choice to withhold Pierce's mail was intentional. Further, the structure and history of the FTCA confirm that the postal exception cannot conceivably immunize a campaign to withhold mail on the basis of race. Even if the postal exception were to apply, the district court still erred in dismissing Pierce's claims that arise from activity entirely unrelated to the mail.

Second, the district court erred in dismissing Pierce's § 1985(3) claims against Meyer and Gardner, holding that (1) federal actors are categorically immune from § 1985(3) liability, and (2) the claims were barred by the intracorporate-conspiracy doctrine. Federal actors are not immune from § 1985(3) claims. The statute's plain text applies to any combination of "two or more persons" who "conspire" to deprive individuals of the equal protection of the law. Supreme Court precedent confirms this interpretation of § 1985(3). Nor are Pierce's claims barred by the intracorporate-conspiracy doctrine, which treats agents of the same corporation as "one person" incapable of forming a conspiracy. The doctrine is a legal fiction fashioned in the mid-twentieth century in order to advance the purposes of the Sherman Antitrust Act. It would be improper to retroactively apply the doctrine to § 1985(3), which was written in 1871. Doing so would also undermine § 1985(3)'s purpose.

Even if the doctrine were to apply to § 1985(3), Pierce's claims fall within several of its exceptions.

STANDARD OF REVIEW

This Court reviews the district court's order granting the motion to dismiss de novo. *See, e.g.*, *Konan v. USPS*, 96 F.4th 799, 802 (5th Cir. 2024). This Court "must accept as true" all of Pierce's factual allegations and draw all reasonable inferences in Pierce's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–679 (2009).

ARGUMENT

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

The FTCA waives the federal government's sovereign immunity in "sweeping language." *Dolan v. USPS*, 546 U.S. 481, 492 (2006) (quoting *United States v. Yellow Cab Co.*, 340 U.S. 543, 547 (1951)). It also includes thirteen specific exceptions designed to retain immunity for governmental functions "that might otherwise be disrupted by FTCA lawsuits." *Molzof v. United States*, 502 U.S. 301, 312 (1992). This case concerns the postal exception, which narrowly exempts claims "arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. § 2680(b).

The postal exception does not bar Pierce's FTCA claims. The USPS's intentional withholding of her mail is neither a "loss," "miscarriage," nor "negligent transmission" of mail. Therefore, this

Court should reverse the dismissal of these claims and remand for further proceedings. But even if the postal exception were to apply, this Court must at least reverse and remand with respect to her claims that arise from activities unrelated to the mail.

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

The USPS did not lose, miscarry, or negligently transmit Pierce's mail, so the postal exception does not prevent the district court from hearing her claims.

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

Under the postal exception, a claim arises out of the "loss" of mail only when the government (1) unintentionally parts with the mail *and* (2) is unable to locate or recover it. Neither is true of the USPS's racially motivated withholding of Pierce's mail.

a. "Loss" requires an unintentional parting with mail.

The ordinary meaning of "loss" only encompasses unintentional conduct. Dictionaries contemporaneous with the 1946 enactment of the postal exception defined "loss" as "the unintentional parting with something of value." *See, e.g.*, *Webster's New International Dictionary of the English Language* 1460 (2d ed. 1942) [hereinafter *Webster's*]. Similarly, "lose" meant "to part with (something of value), esp. in an *accidental* or *unforeseen* manner." *Id*. (emphasis added). And "lost

property" referred to "property" that has been "*involuntarily* parted with . . . *not* including property which [has been] intentionally concealed." *Lost Property*, *Black's Law Dictionary* (3d ed. 1933) (emphasis added). Each of these definitions illustrate "the plain meaning of loss—no one intentionally loses something." *Konan*, 96 F.4th at 802.

The Supreme Court's interpretation of "loss" confirms this. In *Dolan v. USPS*, 546 U.S. 481 (2006), the Supreme Court explained that "mail is 'lost' if it is destroyed or misplaced." *Id.* at 487. The Fifth Circuit understood this language in *Dolan* to connote "that the loss is *unintentional*." *Konan*, 96 F.4th at 802 (emphasis in original). The Second Circuit recognized the same nearly three decades before *Dolan*: "The language of the [postal] exception itself indicates that it was not aimed to encompass intentional acts." *Birnbaum v. United States*, 588 F.2d 319, 328 (2d Cir. 1978).

In this case, Meyer and Gardner "*intentionally* withheld and refused to deliver" Pierce's mail. JA-3 (emphasis added). This alone demonstrates that her claims do not arise out of the "loss" of mail.

b. "Loss" also requires an inability to locate or recover mail.

The plain meaning of "loss" also naturally requires an inability to locate or recover an item. An item is "lost" if one "is ignorant of its whereabouts or cannot recover it by an ordinarily diligent search." *Lost*, *Black's Law Dictionary* (3d ed. 1933). Therefore, there is no "loss" of mail

when the USPS knows its whereabouts and can feasibly recover it.

The Supreme Court's definition of lost mail in *Dolan* as "destroyed or misplaced" affirms this. 546 U.S. at 487. "Loss," in terms of destruction, means that an item is "ruined," and therefore has "gone out of one's possession." *See Webster's* 1460. "Loss," in terms of misplacement, means that an item is "of unknown whereabouts." *See* 2 *The New Century Dictionary* 980 (1946). The inability to "find or recover" mail is precisely what makes it "lost." *Lost Property*, *Black's Law Dictionary* (3d ed. 1933).

No federal circuit has ever held that mail can be "lost" when the USPS knows its whereabouts or could feasibly recover it. For example, in *Levasseur v. USPS*, 543 F.3d 23 (1st Cir. 2008), the First Circuit held that the postal exception applies to a government employee's "theft or concealment of mail" because the "mail . . . is thereby 'lost' from the postal system." *Id.* at 24. Similarly, in a duo of Second Circuit cases, the applicability of the postal exception turned on whether the mail was recoverable. *See C.D. of NYC, Inc. v. USPS*, 157 Fed. Appx. 428, 429 (2005) (reconciling the cases on this basis). In the first case, *Marine Insurance Co. v. United States*, 378 F.2d 812 (1967), the Second Circuit held that packages were "lost" because they were stolen from the postal system and "never recovered." *Id.* at 813. The second case, *Birnbaum*, held there was no "'loss' from the postal system" because mail was briefly

photocopied, returned, and ultimately delivered. 588 F.2d at 328 n.20. These cases reinforce that there is no "loss" of mail when the USPS can locate or recover it.

In this case, the USPS knew the whereabouts of Pierce's mail and could have feasibly recovered it. Meyer and Gardner withheld Pierce's mail at the post office, "mark[ed] all mail sent to her address as 'undeliverable' and return[ed] it to the sender." JA-4. Therefore, the mail was never "'lost' from the postal system." *Levasseur*, 543 F.3d at 24.

c. "Loss" must be read from the government's perspective, not the plaintiff's.

The only way to interpret "loss" as covering an intentional withholding of mail would be to read the term from the plaintiff's perspective, meaning the plaintiff suffered a loss of mail. Under this reading, a "loss" would occur *any* time the plaintiff is deprived of mail, no matter what the USPS does with it. But that would make the exception so broad that it would swallow the rule. Even egregious intentional wrongs would be immunized, provided the plaintiff is deprived of mail. Instead, this Court should interpret "loss" from the government's perspective, meaning a claim only arises out of the "loss" of mail when the *government* loses the mail.

The terms "miscarriage" and "negligent transmission" make clear that the postal exception should be read from the government's perspective. "Miscarriage" and "negligent transmission" connote actions

taken by the government, rather than injuries suffered by the plaintiff. *See Dolan*, 546 U.S. at 486 (discussing the phrase "negligent transmission" as connoting "negligent acts committed *by the Postal Service*" (emphasis added)). Because only the government, not the plaintiff, carries and transmits the mail, "loss" should be interpreted as the government losing the mail.

The Supreme Court's opinion in *Dolan* also forecloses an interpretation of "loss" from the plaintiff's perspective. In *Dolan*, the Court defined "negligent transmission" to cover "negligence causing mail to be lost." *Id.* at 486. But, if "loss" already covered any situation in which the plaintiff is deprived of mail, the Court would not have needed to clarify that "negligent transmission" covers negligent deprivations of mail—all deprivations, caused by negligence or not, would already be covered by "loss."

Reading "loss" from the plaintiff's perspective would likewise render "miscarriage" superfluous. A "miscarriage" requires "misdelivery" to the wrong address, *Birnbaum*, 588 F.2d at 328, which would necessarily result in a loss of mail to the plaintiff. Therefore, reading "loss" from the plaintiff's perspective would transform "miscarriage" into "mere surplusage." *Smith v. United States,* 508 U.S. 223, 231 (1993).

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

A claim arises out of the "miscarriage" of mail only when the government (1) attempts to deliver the mail to its listed address, *and* (2) unintentionally delivers it to the wrong destination. Because Meyer and Gardner never attempted to deliver Pierce her mail and instead intentionally returned it to its sender, there was no "miscarriage."

a. "Miscarriage" requires an attempted carriage.

These claims arise out of a non-carriage, not a miscarriage. By definition, "miscarriage" requires an attempt at carriage. At the time the exception was adopted, "miscarriage" was defined as "[f]ailure (of something *sent*) to arrive" and the "[f]ailure to *carry* properly." *Webster's* 1460 (emphasis added). The terms "sent" and "carry" within the definition of "miscarriage" thus require an attempt to deliver to the "designated addressees." *Konan,* 96 F.4th at 803.

Any interpretation that reads the "carriage" requirement out of "miscarriage" would confuse the prefixes "mis" and "non." "Mis" refers to circumstances where there has been an actual attempt that suffers a defect. "Mispayment," for example, refers to "payments" that are made "wrongly or mistakenly." *Webster's* 1541. By contrast, "non" refers to cases where no attempt is made at all: "Nonpayment" refers to a complete "failure to pay." *Id.* at 1634. Similarly, "misdelivery" is defined as delivery "to a person not authorized by the owner," whereas

"nondelivery" refers to a "failure" or "refusal" to deliver generally. *Nondelivery*, *Black's Law Dictionary* (3d ed. 1933). Therefore, "there can be no 'miscarriage' where there is no attempt at carriage." *Konan*, 96 F.4th at 803.

"Miscarriage" also demands a "carriage" every time it is mentioned in the U.S. Code. Outside of the postal exception, "miscarriage" either refers to the sudden loss of pregnancy, *see, e.g.*, 45 U.S.C. § 351(k)(2) ("pregnancy, miscarriage, or the birth of a child"), or an error within a judicial proceeding, *see, e.g.*, 18 U.S.C. § 3161(h)(7)(B)(i) ("a miscarriage of justice"). In both contexts, "a carriage *precedes* the 'miscarriage,'" whether it is a pregnancy or the beginning of a judicial proceeding, *Konan*, 96 F.4th at 803 (emphasis in original). Therefore, an attempted carriage of mail must occur for a claim to arise out of a "miscarriage."

In this case, Pierce's claim arises out of a non-carriage rather than a "miscarriage." Meyer and Gardner never attempted a "carriage" of Pierce's mail. Instead, they marked it as "undeliverable." JA-4. While there were other "carriages" of Pierce's mail, such as the initial carriage from the sender to the post office, her claim does not arise out of those carriages. Nor does her claim arise out of the return of her mail to the original sender. Rather, Pierce's injury was caused by Meyer and Gardner's refusal to carry her mail at all.

b. "Miscarriage" must be unintentional.

The text of the postal exception limits the term "miscarriage" to unintentional deliveries of mail to the wrong address. The provision locates "miscarriage" immediately after "loss" and directly before "negligent transmission." § 2680(b). "Negligent transmission," by definition, must be unintentional, *see Dolan*, 546 U.S. at 486, and "loss" is similarly limited to unintentional conduct, *see supra* Section I.A.1.a. Had Congress intended for "miscarriage" to include intentional conduct, it would not have situated "miscarriage" between two words referring only to unintentional errors. *See Dolan*, 546 U.S. at 486–87 ("[A] word is known by the company it keeps.").

A majority of the federal circuits to consider whether the postal exception includes intentional conduct agree that "miscarriage" is limited to unintentional action. *See, e.g., Konan*, 96 F.4th at 803 (collecting cases); *see also Raila v. United States*, 355 F.3d 118, 121 (2d Cir. 2004). Circuit cases that could be read to imply otherwise did not treat the issue in depth. *See, e.g.*, *Levasseur*, 543 F.3d at 24 (holding that a claim arose out of a "loss" rather than a "miscarriage"); *Pittman v. United States Postal Serv.*, No. 24-1088, 2024 WL 4274707, at *2 (7th Cir. 2024) (applying the postal exception, but not distinguishing between "loss, miscarriage, or negligent transmission."). And the only federal circuit case that has expressly held a claim to arise out of a "miscarriage" involved a mistake rather than intentionally wrongful

conduct. *Najbar v. United States*, 649 F.3d 868, 869 (8th Cir. 2011) (erroneously stamping a letter to indicate that the intended recipient was "deceased" before returning to sender).

Further, immunizing intentionally wrongful miscarriages would lead to unjustifiably disparate outcomes. For example, a plaintiff could bring a conversion claim under the FTCA if a mailman intentionally shredded her mail, as that intentional conduct would not constitute a "loss, miscarriage, or negligent transmission." 28 U.S.C. § 2680(b). But that same mailman could evade liability—and deprive the plaintiff of her mail just the same—by sending it to a vacant household instead, as that would constitute a "miscarriage."

Here, Meyer and Gardner flatly refused to deliver Pierce's mail. JA-3. A four-year "embargo" during which no mail ever reached Pierce cannot possibly constitute a "miscarriage."

3. Pierce's claims do not arise out of the "negligent transmission" of mail.

Pierce alleges her claims arose when the government "*intentionally* withheld and refused to deliver" her mail. JA-4 (emphasis added). "Negligent transmission," however, encompasses only unintentional conduct. *See Dolan*, 546 U.S. at 486. Therefore, her claims do not arise out of the "negligent transmission" of mail.

4. The FTCA's structure and history counsel against immunizing the racially motivated withholding of mail.

The Supreme Court has cautioned lower courts against "unduly generous interpretations of the exceptions" to the FTCA, which "run the risk of defeating the central purpose of the statute." *Kosak v. United States*, 465 U.S. 848, 853 n.9 (1984). The narrow scope of the postal exception, when compared with the breadth of other FTCA exceptions, counsels against an interpretation so broad as to immunize the racially motivated withholding of mail. Congress's limited purpose behind the postal exception also disfavors such an interpretation.

a. The structure of the FTCA confirms that the postal exception is limited in scope.

Most of the FTCA's exceptions are remarkably broad. For example, 28 U.S.C. § 2680(k) retains sovereign immunity for "[a]ny claim arising in a foreign country." Congress similarly opted to retain immunity for all claims arising out of "combatant activities" in wartime, § 2680(j), all claims resulting from any quarantines imposed by the United States, § 2680(f), and all claims "arising from the activities of the Tennessee Valley Authority." § 2680(l).

By contrast, the postal exception is among the narrowest of the FTCA's exceptions, barring claims in only three enumerated circumstances. *See* § 2680(b). Indeed, the "specificity" of the postal exception suggests that "Congress intended [it] to be less encompassing"

than other exceptions. *Kosak*, 465 U.S. at 855. The Supreme Court reaffirmed this structural inference in *Dolan* after observing that "[o]ther FTCA exceptions paint with a far broader brush." *Dolan*, 546 U.S. at 489. Congress's choice not to use "similarly sweeping language" in the postal exception demonstrates its intent to "immunize only a subset of postal wrongdoing." *Id.* at 490.

Construing the postal exception to immunize withholding mail on the basis of race is irreconcilable with the Supreme Court's narrow reading of the exception in *Kosak* and *Dolan*. Such an interpretation would cover far more than a mere "subset of postal wrongdoing," *id.*, immunizing a host of malicious conduct that the narrow exemption was never designed to cover.

b. The postal exception was only intended to bar FTCA claims for injuries that insurance and registration already covered.

The postal exception's legislative history reveals its limited purpose of barring FTCA claims for injuries otherwise addressable by insurance and registration. When the postal exception was proposed, the Counsel for the Comptroller General justified it to Congress by observing that, even without an FTCA claim, "[p]rotection may be secured by insurance and registration" against injuries arising from the "loss, miscarriage, or negligent transmission" of mail. *General Tort Bill: Hearing Before the Subcomm. of the H. Comm. on Claims*, 72d Cong. 17

(1932). Further, Judge Alexander Holtzoff, a "major figure[] in the development of the [Federal] Tort Claims Act," *Kosak*, 465 U.S. at 856, also testified that non-FTCA remedies were already available: "Every person who sends a piece of postal matter can protect himself by registering it." *Hearings on S. 2690 Before a Subcomm. of the Senate Comm. on the Judiciary*, 76th Cong. 38 (1940).

The Supreme Court adopted this as a limiting principle in *Dolan*. It noted that the postal exception retains immunity for injuries that "are at least to some degree avoidable or compensable through postal registration and insurance." 546 U.S. at 482.

Here, the complete withholding of Pierce's mail is neither compensable nor avoidable through these services. Registration and insurance must be sought for each individual piece of mail. *See* United States Postal Service, *Mailing Standards: Domestic Mail Manual* 503, 609.1.1 (outlining registration and insurance offerings). Because Pierce is not receiving any mail whatsoever, she cannot possibly know what mail there is to insure or register.

Moreover, in *Kosak*, the Supreme Court identified three primary objectives advanced by the FTCA's exceptions: (1) shielding activities central to governance from "disrupt[ion] by the threat of damages suits"; (2) mitigating "excessive or fraudulent claims"; and (3) limiting FTCA litigation over injuries "for which adequate remedies were already

available." *Kosak*, 465 U.S. at 856.

None of these objectives are advanced by barring Pierce's claims. First, withholding mail on account of racial prejudice is not a "governmental activit[y]" that the postal exception seeks to protect from "disrupt[ion]." *See Kosak*, 465 U.S. at 856; *see also Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886) ("[H]ostility to [a person's] race . . . in the eye of the law, is not justified."). Second, claims similar to Pierce's do not threaten to flood the courts. *See infra* Section I.B.3. Third, there are no adequate remedies apart from litigation. Those envisioned by the drafters of the postal exception—insurance and registration of mail—afford no relief to Pierce. And Pierce's own efforts to appeal to the USPS were similarly unavailing. *See* JA-4.

B. Arguments in favor of applying the postal exception are without merit.

Interpreting the postal exception to exclude all intentional wrongdoing would not render any of the terms "loss," "miscarriage," or "negligent transmission" superfluous. Nor would holding in favor of Pierce inundate the courts with postal-related FTCA claims, as evidenced by the aftermaths of *Konan* and *Dolan*. And if any doubt remains as to whether the postal exception applies here, the Supreme Court has specifically instructed lower courts not to favor the retention of sovereign immunity when interpreting the postal exception's scope.

1. Interpreting the postal exception to encompass only unintentional action would not render any of its terms superfluous.

"Loss" and "miscarriage," when limited to unintentional conduct, still cover situations not otherwise captured by "negligent transmission." For example, a postman could secure his parcels in accordance with the relevant standard of care—perhaps by locking his vehicle when he walks up to a house to deliver mail—yet still have his truck broken into, leading to the "loss" of a package. Or the USPS address system could be well-designed and secured yet still be breached and corrupted, leading to the "miscarriage" of mail to the wrong address. Therefore, this Court need not interpret "loss" and "miscarriage" to encompass intentional conduct in order to give them independent effect.

2. Allowing Pierce's claims to proceed would not flood the courts with postal-related FTCA claims.

In recent litigation, the United States has argued that allowing claims similar to Pierce's to proceed would overwhelm the courts. In a March 2024 case, *Konan v. USPS*, the Fifth Circuit refused to dismiss an FTCA claim involving near-identical allegations of a racially motivated withholding of mail. 96 F.4th at 800–01. The United States subsequently petitioned for a writ of certiorari, arguing that *Konan* would "substantially interfere" with the USPS's ability to function. *See* Petition for Writ of Certiorari, *Konan*, 96 F.4th 799 (No. 23-10179).

Nearly a year later, *Konan* has not "open[ed] the floodgates of

litigation." *Contra id.* at 22 (quoting *Watkins v. United States*, No. 02-C-8188, 2003 WL 1906176, at *5 (N.D. Ill. Apr. 17, 2003)). Rather, a mere three opinions in the Fifth Circuit have even cited the postal exception. *See Duran v. U.S. Att'y Gen.*, No. 3:24-CV-1518, 2024 WL 3843576, at *3 (N.D. Tex. July 16, 2024); *Nguyen v. United States*, No. 24-1117, 2024 WL 3457617, at *1 n.3 (E.D. La. July 18, 2024); *Freeman v. United States*, No. 24-CV-703, 2024 WL 5319129, at *5 (N.D. Tex. Dec. 19, 2024). None cited *Konan*. And, contrary to the government's fears, none involved blatant attempts to circumvent the postal exception with unsubstantiated claims of "intentional conduct." All three opinions dismissed the claims.

Likewise, the aftermath of the Supreme Court's 2006 opinion in *Dolan* makes clear that the post-*Konan* flood will never arrive. The United States sounded the same alarms in *Dolan*, arguing that the postal exception must be construed broadly to avoid inundating the courts. Brief for the Respondents, *Dolan*, 546 U.S. 481 (2006) (No. 04-848), 2005 WL 2250501, at *38. But in the nineteen years since the *Dolan* Court disagreed with the United States, only about 240 federal court opinions have cited *Dolan* and the postal exception.[1] That amounts to about one case per month nationwide.

Further, any potential FTCA litigant must overcome multiple

[1] This sentence is based on a Westlaw search on February 17, 2025, of all federal cases that cite both *Dolan* and 28 U.S.C. § 2680(b).

hurdles to state a claim. The FTCA's administrative exhaustion requirement will continue to weed out frivolous and premature claims, *see* 28 U.S.C. § 2675(a), as will the federal pleading standards, *see Iqbal*, 556 U.S. at 677–78. Additionally, the hundreds of dollars in filing fees will make few mail-related FTCA claims worth the cost. Just like in *Dolan*, "ordinary protections against frivolous litigation must suffice here." 546 U.S. at 491.

Even if this Court remains concerned about an increase in litigation, it can resolve the present dispute on narrow grounds. It may simply hold that when the USPS places a years-long "embargo" on mail delivery because of a person's race, that does not constitute "loss," "miscarriage," or "negligent transmission," under the postal exception.

3. It would be improper to favor the retention of sovereign immunity when interpreting the postal exception.

In some contexts, the Supreme Court has employed a general rule that sovereign immunity waivers "will be strictly construed . . . in favor of the sovereign," *Lane v. Peña*, 518 U.S. 187, 192 (1996). However, in *Dolan*, the Supreme Court stated that lower courts should not adopt this rule for the postal exception. 546 U.S. at 491–92. The Court explained that applying the rule to the FTCA would lead to "unduly generous interpretations of the exceptions" that would risk "defeating the central purpose" of the FTCA. *Id.* (quoting *Kosak*, 465 U.S., at 853, n.9).

Applying the postal exception to this case would represent exactly the kind of "unduly generous interpretation" that the Court sought to avoid. *Id.*

C. This Court must at least reverse in part with respect to damages that undeniably arise from activities unrelated to the mail.

Even if this Court were to hold that some of Pierce's claims are barred, the district court still erred in dismissing *all* of Pierce's tort claims under the postal exception. At the very least, the nuisance and intentional infliction of emotional distress—first by Meyers when he "flipped off" Pierce and shouted at her to "get out of the neighborhood," and second by Gardner when he told Pierce that she needed to join "'people like' her in a 'different part of town'"—cannot be construed as a "loss," "miscarriage," or "negligent transmission" of mail. JA-3. If this Court affirms the district court on the other questions, it still must reverse and remand with respect to damages arising from these incidents.

* * *

The district court's dismissal of Pierce's claims under the postal exception was erroneous. There was no "loss." The USPS knew where the mail was. There was no "miscarriage." The USPS refused to carry the mail for years. There was no "negligent transmission." This was intentional, and it was motivated out of racist animosity toward Pierce.

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

In addition to her FTCA claims, Pierce sued Meyer and Gardner under 42 U.S.C. § 1985(3). JA-5. This provision was originally enacted as part of the Ku Klux Klan Act of 1871 ("Klan Act"). It provides a cause of action in federal court against "two or more persons [who] conspire . . . for the purpose of depriving any person of the equal protection of the laws." 42 U.S.C. § 1985(3). Thus, litigants have a civil remedy under § 1985(3) if they fall prey to a conspiracy fueled by racial animus. *See Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971).

The district court erroneously dismissed Pierce's claims, holding that (1) federal actors cannot be sued under § 1985(3), and (2) the intracorporate-conspiracy doctrine bars the claims. JA-9. This Court should reverse the dismissal of these claims and remand for further proceedings.

A. Federal actors are subject to § 1985(3).

The district court erred in holding § 1985(3) inapplicable to federal actors. An exemption for federal actors would flout the statute's text, contradict Supreme Court precedent, and contravene the Klan Act's purpose.

1. The text of § 1985(3) covers federal actors.

By its plain text, § 1985(3) covers conspiracies among federal actors. The statute applies to "two or more persons" who "conspire,"

without any qualification as to who is participating in the conspiracy. 42 U.S.C. § 1985(3). When interpreting Reconstruction-era civil rights statutes, the Supreme Court has been careful to "accord (them) a sweep as broad as (their) language." *Griffin*, 403 U.S. at 97 (quoting *United States v. Price*, 383 U.S. 787, 801 (1996) (internal quotation marks omitted)). Further, it is undisputed that § 1985(3) applies to both state and private actors, *id.* at 104–05, and nothing in the text justifies a special immunity for federal actors. Nor is there a coherent rationale "for holding that federal officers are not 'persons' under § 1985(3)." *Hobson v. Wilson*, 737 F.2d 6 (D.C. Cir. 1984) *overruled in part on other grounds by Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993) (quoting *Moriani v. Hunter*, 462 F.Supp. 353, 356 (S.D.N.Y. 1978)).

The 42nd Congress knew how to tailor provisions of the Klan Act to exempt federal actors, but it did not do so with § 1985(3). For instance, Congress expressly limited another provision of the Act—§ 1983—to cover only those who act under "color of [state law]." Thus, where Congress intended to limit the Klan Act's reach, it "said so in unmistakable terms." *Collins v. Hardyman*, 341 U.S. 651, 664 (1961) (Burton, J., dissenting). The omission of a similar limit within § 1985(3) is therefore "an important indication of congressional intent to speak . . . of *all* deprivations of 'equal protection.'" *Griffin*, 403 U.S. at 97

(emphasis added).

Further, a comparison of the respective provisions granting jurisdiction for claims under § 1983 and § 1985 confirms that § 1985(3) is not limited to state actors. The provision supplying federal question jurisdiction for § 1983 claims is cabined to "redress[ing] the deprivation, under color of any State law." 28 U.S.C. § 1343(a)(3). On the other hand, the provision for claims under § 1985 encompasses "*any* act done in furtherance of *any* conspiracy." § 1341(a)(1) (emphasis added).

2. Exempting federal actors from § 1985(3) is irreconcilable with Supreme Court precedent.

Federal circuit courts, by a 7-1 margin, have concluded that barring § 1985(3) claims against federal actors would contradict Supreme Court precedent. *See Davis v. Samuels*, 962 F.3d 105, 114 n.9 (3d Cir. 2020) (collecting cases); *see also Federer v. Gephardt*, 363 F.3d 754, 758–59 (8th Cir. 2004). The only circuit to hold otherwise inexplicably failed to consider *Griffin* v. *Breckenridge*, 403 U.S. 88 (1971), a key Supreme Court precedent. *See Mack v. Alexander*, 575 F.2d 488 (5th Cir. 1978).

In *Griffin*, the Supreme Court held that § 1985(3) applies not only to state actors, but also to conspiracies among private individuals. 403 U.S. at 104–05. The *Griffin* Court interpreted the lack of any "color of law" requirement in § 1985(3) to mean that the provision covers "all deprivations of 'equal protection of the laws' . . . *whatever their source*."

Id. at 97 (emphasis added). *Griffin* also meticulously parsed § 1985(3)'s text and spelled out the specific elements "a complaint must allege" in order to state a claim—none of which limit the persons who can be sued under § 1985(3). *See id.* at 102–03. At bottom, *Griffin* renders "untenable" the argument that § 1985(3) does not apply to federal actors. *Davis*, 962 F.3d at 114.

Further, the Supreme Court's opinion in *Ziglar v. Abbasi*, 582 U.S. 120 (2017), treated § 1985(3)'s application to federal actors as a foregone conclusion. *Ziglar* involved a § 1985(3) claim against federal prison wardens and high-ranking Department of Justice officials. *Id.* at 126. Had the Court understood § 1985(3) to exempt federal actors, it could have swiftly dismissed the claims. Instead, it proceeded to a qualified immunity analysis without ever contemplating such an exemption. *Id.* at 150–56. The unavoidable inference is that the Court has already "assumed § 1985(3) applies to federal officers." *Cantú v. Moody*, 933 F.3d 414, 419 (5th Cir. 2019) (citing *Ziglar*, 582 U.S. at 149–55).

Griffin is "likely dispositive Supreme Court precedent" on whether § 1985(3) applies against federal actors. *Davis*, 962 F.3d at 114. But if *Griffin* left any doubt, *Ziglar* resolved it.

3. The district court presumably relied on a case that was wrongly decided and has been roundly rejected.

In the instant case, the district court neither explained its decision nor cited any authority in holding that federal actors are exempt from § 1985(3). *See* JA-9. It presumably relied upon *Mack v. Alexander*, 575 F.2d 488 (5th Cir. 1978), which was cited in the Appellees' motion to dismiss. *See* JA-7. But *Mack* was wrongly decided, and it has since been roundly rejected. *See, e.g.*, *Iqbal v. Hasty*, 490 F.3d 143, 176 n.13 (2d Cir. 2007), *rev'd on other grounds sub nom. Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Even the Fifth Circuit, which decided *Mack*, admitted that *Mack* "has not 'aged well.'" *See Konan*, 96 F.4th at 805 (quoting *Cantú*, 933 F.3d at 419). To this day, the Fifth Circuit stands alone in exempting federal actors under § 1985(3). *See Davis*, 962 F.3d at 114 n.9.

Mack is a clearly erroneous precedent. In holding federal officials exempt from § 1985(3), *Mack* offered no analysis. *See* 575 F.2d at 489. Instead, it cited a single case, *Walker v. Blackwell*, 360 F.2d 66 (5th Cir. 1966), to support the proposition that § 1985(3) only covers those operating under "color of state law." *See Mack*, 575 F.2d at 489.

But *Mack*'s reliance on *Walker* has two glaring defects. First, *Walker* never held § 1985(3) to have a "color of state law" requirement. *Walker* involved claims against a federal official under "§§ 1983–1985" that were dismissed by the district court. 360 F.2d at 67. On appeal, the

Walker court simply *observed* that the district court dismissed the § 1985 claim because of a "color of state law requirement." *Id.* *Walker* never endorsed this holding, nor did it ever reference the § 1985 claim beyond this observation. *See id.* at 67–69. Instead, *Walker* only held that the complaints against a federal official "could not be maintained under 42 U.S.C. § *1983*." *See id.* (emphasis added).

Second, even if *Walker* had held that § 1985(3) has a "color of state law" requirement, that holding would have been completely abrogated five years later by the Supreme Court's decision in *Griffin*. *See* 403 U.S. at 104–05. *Mack* does not even cite *Griffin*, let alone assess whether *Walker* remained a relevant authority. *See* 575 F.2d at 489–90. Unsurprisingly, "[o]ther circuits have criticized [*Mack*] for failing to grapple with Supreme Court precedent." *Cantú*, 933 F.3d at 419 (citing *Hasty*, 490 F.3d at 176 n.13; *Ogden v. United States*, 758 F.2d 1168, 1175 n.3 (7th Cir. 1985)).

4. Congress intended § 1985(3) to apply to federal actors.

There was a longstanding tradition of suing federal actors in federal court at the time of the Klan Act's passage. At the Founding, public officials—including letter carriers—were subject to civil liability at common law for their wrongs. *See, e.g. Whitfield v. Lord Le Despencer*, (1778), 2 Cowp. 753 (KB) (Lord Mansfield) ("[T]he post-master [is liable] for any fault of his own."). This remained true of federal postal workers

at the time of the Klan Act's passage in 1871. *See* Joseph Story, Commentaries on the Law of Agency § 319(b), at 382 (Edmund H. Bennett, ed., 6th ed. 1863) (discussing liability of deputy postmasters "for any injuries sustained" as a result of their misconduct). And, before *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), federal courts permitted plaintiffs to bring federal common-law claims against postal workers. *See, e.g.*, *Wilson v. Pearson*, 13 F. 386 (C.C.S.D.N.Y. 1882) (permitting conversion claim against postmaster for wrongfully detaining letters).

Congress legislated against this backdrop when it drafted the Klan Act. Because haling federal actors into federal court was so commonplace, it is unsurprising that Congress's debates focused on those who were *newly liable* in federal court under the Klan Act—namely, the Ku Klux Klan itself and "local authorities" supporting the Klan. *See Wilson v. Garcia*, 471 U.S. 261, 276 (1985). Had Congress intended for § 1985(3) to deviate from the well-established liability of federal actors in federal court, one can "presume that Congress would have specifically so provided." *Cf. Pierson v. Ray*, 386 U.S. 547, 554–45 (1967) (presuming Congress did not intend the Klan Act to alter well-established common-law principles about public officials' liability, absent a clear statement).

B. The intracorporate-conspiracy doctrine does not bar Pierce's § 1985(3) claims.

The intracorporate-conspiracy doctrine originated in a different context to solve a different problem that does not exist here. This doctrine holds that "an agreement . . . among agents of the same legal entity, when the agents act in their official capacities, is not an unlawful conspiracy." *Ziglar*, 582 U.S. at 153. The intracorporate-conspiracy doctrine originated in mid-twentieth century case law to address a problem unique to the Sherman Antitrust Act. *See Conspiracy*, *Black's Law Dictionary* (12th ed. 2024) (dating the origins of the term "intracorporate conspiracy" to the year 1960).

But since the 1960s, several circuits have decoupled the doctrine from the Sherman Act, instead articulating it as a general principle of corporate personhood. These courts have reasoned that agents of the same corporation act as "one person," and thus the corporation cannot "conspire with itself" when its agents act in concert. *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036–37 (11th Cir. 2000). Relying on this rationale, some circuits have extended the intracorporate-conspiracy doctrine beyond the antitrust context to § 1985(3) conspiracies. *See, e.g.*, *Dombrowski v. Dowling*, 459 F.2d 190, 196 (7th Cir. 1972). As a result, these courts hold that corporate agents who collectively engage in invidious racial discrimination are immune from § 1985(3) liability. *See id.*

The district court erred by following these circuits and applying the intracorporate-conspiracy doctrine to Pierce's § 1985(3) claims. First, the intracorporate-conspiracy doctrine was unknown to the common law when the Klan Act was adopted in 1871, and it should not be retroactively applied. Second, applying the doctrine to § 1985(3) would run contrary to the Klan Act's purpose. Third, even if the intracorporate-conspiracy doctrine were applicable, Pierce's claims would fall within several of its exceptions.

1. The Klan Act of 1871 does not invite courts to retroactively import twentieth-century antitrust doctrines.

The intracorporate-conspiracy doctrine was entirely foreign to the common law when § 1985(3) was enacted in 1871. Instead, it emerged in mid-twentieth century case law in order to advance the purposes of the Sherman Act. The district court therefore erred in applying the intracorporate-conspiracy doctrine to Pierce's § 1985(3) claims, as courts may not "freely invest old statutory terms with new meanings." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019).

a. The intracorporate-conspiracy doctrine was unknown to the common law when § 1985(3) was enacted.

In the nineteenth and early twentieth centuries, state courts regularly recognized conspiracies among corporate agents in both civil suits and criminal proceedings. They did so without any mention of an

intracorporate-conspiracy exception. *See, e.g.*, *Buffalo Lubricating Oil Co. v. Standard Oil Co.*, 12 N.E. 825, 825–26 (N.Y. 1887) (permitting suit against multiple agents of the same corporation for conspiracy to harm plaintiff's business); *Standard Oil Co. v. State*, 100 S.W. 705, 717 (Tenn. 1907) (affirming criminal conspiracy conviction of a corporation and its own employee). Importantly, state courts also recognized civil conspiracies among government agents that mirror the conspiracy claims in this case. *See, e.g.*, *Page v. Cushing*, 38 Me. 523, 525–28 (1854) (affirming civil judgment against several members of a prosecutor's office for conspiring against the plaintiff).

In the rare cases where litigants attempted to argue that agents of the same corporation could not form a conspiracy, courts steadfastly rejected this novelty. For instance, an Ohio court considered it "immaterial" to a conspiracy allegation that "one of the defendants was a corporation and the others were its members." *Moores & Co. v. Bricklayers' Union*, 10 Ohio Dec. Reprint 665 (Ohio. Super. Ct. 1889). The Tennessee Supreme Court reached the same conclusion, declining to treat employees as "mere tools and instrumentalities of their employers" who lack "minds" of their own to form a conspiracy. *Standard Oil Co*, 100 S.W. at 717.

Other nineteenth-century legal sources similarly reveal no evidence of an intracorporate-conspiracy doctrine. The term

"intracorporate conspiracy" was absent from the first edition of *Black's Law Dictionary* in 1891, *see Conspiracy*, *Black's Law Dictionary* (1st ed. 1891), and it remained absent until the eighth edition in 2004, *see Conspiracy*, *Black's Law Dictionary* (8th ed. 2004). Nineteenth-century legal treatises were similarly silent on the doctrine. *See, e.g.*, Nathan Dane, 7 *A General Abridgement and Digest of American Law* 2–9 (1824) (detailing conspiracy law with no mention of an intracorporate-conspiracy exception); Joel Prentiss Bishop, 1 *Commentaries on the Criminal Law* §§ 417–424 (1872) (same).

Predictably, the Klan Act's legislative history lacks any suggestion that Congress knew of an intracorporate-conspiracy doctrine. Members of Congress never "address[ed] the meaning and scope of the term 'conspire,'" nor articulated any principles that resemble the intracorporate-conspiracy doctrine. *See* Geoff Lundeen Carter, *Agreements within Government Entities and Conspiracies under § 1985(3)—A New Exception to the Intracorporate Conspiracy Doctrine?*, 63 U. Chi. L. Rev. 1139, 1157 (1996).

Ultimately, there is no compelling evidence that the intracorporate-conspiracy doctrine was well-established in 1871. As such, neither Congress nor the public would have understood "conspiracy" in § 1985(3) to exempt liability for intracorporate conspiracies.

b. Courts invented the intracorporate-conspiracy doctrine to address a problem specific to the Sherman Antitrust Act.

The intracorporate-conspiracy doctrine originated in a 1952 decision from the Fifth Circuit in *Nelson Radio & Supply Co. v. Motorola, Inc.*, 200 F.2d 911, 914 (5th Cir. 1952). There, Nelson Radio alleged that Motorola and its sales managers had "conspir[ed] in restraint of trade" in violation of § 1 of the Sherman Antitrust Act. *Id.* at 912–13 (quoting 15 U.S.C. § 1). But the alleged "conspiracy" was merely an effort by Motorola's sales managers to arrange a run-of-the-mill exclusivity agreement, whereby Nelson Radio would only buy certain products from Motorola. *See id.* at 912–13.

As the court put it, treating this innocuous corporate activity as a "conspiracy" would transform all sales managers who do "their day to day jobs" into "conspirators" under § 1. *Id.* at 914. This would expand § 1's reach well beyond its purpose, which is to "prohibit [anticompetitive] collaboration by *independent* business entities." Note, *"Conspiring Entities" Under Section 1 of the Sherman Act*, 95 Harv. L. Rev. 661, 663 (1982) (emphasis added). *Nelson Radio* avoided this conflict by holding that "no conspiracy could possibly exist" under § 1 if all the "conspirators" were agents of the same corporation. 200 F.2d at 914.

The Supreme Court endorsed this limited use of the intracorporate-conspiracy doctrine in *Copperweld Corp v. Independence*

Tube Corp., 467 U.S. 752, 776 (1984). *Copperweld* confirmed that *Nelson Radio*'s holding was grounded in the Sherman Act, citing it for the proposition that "officers or employees of the same firm do not provide the plurality of actors imperative for a § 1 conspiracy." *Id.* at 769 & n.15 (citing *Nelson Radio*, 200 F.2d at 914).

c. The Klan Act does not permit courts to import the intracorporate conspiracy doctrine.

Unlike the Klan Act, the Sherman Act uniquely permits courts to fashion new doctrines in order to advance the statute's purpose of promoting fair competition. Many understand the Sherman Act to have "generate[d] a dynamic common law" to advance its purpose. William N. Eskridge & John Ferejohn, *Super-Statutes*, 50 Duke L.J. 1215, 1231–37 (2001). Even devout textualists have recognized "[t]he changing content" of the Sherman Act over time. *See, e.g.*, *Bus. Elec. Corp. v. Sharp Elec. Corp.*, 485 U.S. 717, 731–32 (1988) (Scalia, J.).

The Klan Act, by contrast, does not authorize federal courts to modify its scope in a common-law fashion. Rather, "private rights of action to enforce federal law must be created by Congress," and the "judicial task is to interpret the statute Congress has passed." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Therefore, this Court should not import the judicially invented intracorporate-conspiracy doctrine to change the metes and bounds of § 1985(3)'s cause of action.

2. Applying the intracorporate-conspiracy doctrine to dismiss Pierce's claims would contravene § 1985(3)'s purpose.

The Klan Act's purposes are at odds with the intracorporate-conspiracy doctrine. There is also no justification for the further step of immunizing government conspiracies under § 1985(3). Predictably, federal circuits that have applied the intracorporate-conspiracy doctrine to § 1985(3) have faced doctrinal difficulties.

a. The justifications for the intracorporate-conspiracy doctrine in the Sherman Act context are inapplicable here.

Unlike the Sherman Act, § 1985(3)'s objectives are not advanced by superimposing the intracorporate-conspiracy doctrine onto its text. Without the intracorporate-conspiracy doctrine, the Sherman Act is overinclusive: Its "conspiracy" language sweeps in innocuous intracorporate activity that it never intended to combat. *See Nelson Radio*, 200 F.2d at 914. The intracorporate-conspiracy doctrine ameliorates this mismatch by immunizing such activity from § 1 conspiracy liability.

By contrast, there is no need to apply the intracorporate-conspiracy doctrine to the Klan Act. The Klan Act's purpose was to "combat animosity against [Black people] and their supporters." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 345–46 (1993) (O'Connor, J., dissenting). Section 1985(3) achieves this by covering only conspirators fueled by "invidiously discriminatory animus," *Griffin*, 403

U.S. at 102, which cannot possibly sweep in any innocuous activity. Thus, applying the intracorporate-conspiracy doctrine would only immunize invidious discrimination, which is exactly the conduct that § 1985(3) targets.

Further, § 1985(3)'s goal of penalizing "group danger" would be undermined by the intracorporate-conspiracy doctrine. Like most conspiracy statutes, § 1985(3) targets the heightened threat to public safety wrought by group activity. *Brever v. Rockwell Intern. Corp.*, 40 F.3d 1119, 1127 (10th Cir. 1994). However, the "group danger" posed by racial discrimination is the same whether or not the perpetrators happen to work at the same company. *See Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 603 (5th Cir. 1981). As then-Judge Breyer explained, it makes no difference to the victim whether the invidious discrimination comes from the "individual conduct of one enterprise" or the "joint conduct of several." *Stathos v. Bowden*, 728 F.2d 15, 21 (1st Cir. 1984). Thus, viewing "the corporation as a single legal actor becomes a fiction without a purpose." *Dussouy*, 660 F.2d at 603.

In light of this, the Third and Tenth Circuits have correctly declined to extend the doctrine to § 1985(3), finding that "no function [is] served by immunizing [racial discrimination] once a business is incorporated." *See Novotny v. Great Am. Fed. Sav. & Loan Ass'n*, 584 F.2d 1235, 1257 (3d Cir. 1978), *vacated on other grounds*, 442 U.S. 366

(1979); *Brever*, 40 F.3d at 1127.

b. There is even less reason to immunize conspiracies under § 1985(3) when they are perpetrated by the government.

Extending the intracorporate-conspiracy doctrine to government entities, in addition to corporations, would be especially unwarranted. The intracorporate-conspiracy doctrine's only objective is to protect legitimate business purposes. *See supra* Section II.B.1.b. But under "the law as it now exists," invidious "[r]acial discrimination can never further any 'business purpose' of a governmental entity." *Rebel Van Lines v. City of Compton*, 663 F.Supp. 786, 792–93 (C.D. Cal. 1987). Thus, applying the intracorporate-conspiracy doctrine to § 1985(3) would protect no legitimate government activity. Instead, it would serve only to immunize "official policies of discrimination" and individual government actors who are fueled by racial animus. *See id.*

Additionally, the intracorporate-conspiracy doctrine would upend the pre-existing framework of immunity for federal actors. Currently, qualified immunity only shields federal actors when their conduct "does not violate clearly established statutory or constitutional rights." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). By contrast, applying the intracorporate-conspiracy doctrine would dramatically expand these protections, immunizing conspirators who work for the same governmental entity *even if* they violate clearly established rights. If

applied to this case, the doctrine would indefinitely immunize Meyer and Gardner from § 1985(3) liability, no matter how brazenly they violate Pierce's clearly established rights.

c. Federal circuits that have applied the intracorporate-conspiracy doctrine to § 1985(3) have encountered doctrinal difficulties.

Federal circuits that have imported the intracorporate-conspiracy doctrine into the Klan Act have offered little justification for doing so. Over a century after the Klan Act was passed, the Seventh Circuit became the first to apply the intracorporate-conspiracy doctrine to § 1985(3). *See Dombrowski v. Dowling*, 459 F.2d 190, 196 (7th Cir. 1972). Whereas *Nelson Radio* explained how adopting the doctrine would advance the Sherman Act, 200 F.2d at 914, *Dombrowski* offered no analysis specific to § 1985(3)'s structure or purpose. *Dombrowski*, 459 F.2d at 196.

Instead, *Dombrowski* framed the doctrine as if it were a generally applicable principle of conspiracy law, unmoored from the Sherman Act. *Id.* at 196. But the sole authority *Dombrowski* cited for this proposition, *Morrison v. California*, 291 U.S. 82, 92 (1934), did not even discuss corporate conspiracy. *See id.* at 92; *Dombrowski*, 459 F.2d at 196. Nevertheless, *Dombroski* applied the doctrine to § 1985(3) on the basis that "a discriminatory business decision reflects the collective judgment of two or more executives of the same firm." *Dombrowski*, 459 F.2d at

196. This, being a mere tautology, should not form the basis of a sweeping immunity for individuals who conspire to violate the civil rights of victims like Pierce.

Over the next two decades, four circuits imported the intracorporate-conspiracy doctrine to the Klan Act by citing either *Nelson Radio* or *Dombrowski* without much explanation. *See*, *Doherty v. American Motors Corp.*, 728 F.2d 334, 340–41 (6th Cir. 1984) (collecting cases); *Buschi v. Kirven*, 775 F.2d 1240, 1251 (4th Cir. 1985).

This rote reliance on precedent has resulted in substantial doctrinal difficulties. Applying the intracorporate-conspiracy doctrine to § 1985(3), for example, would immunize a "corporation formed for the purpose of depriving citizens of their civil rights," such as the Ku Klux Klan itself. *See Johnson v. Hills & Dales Gen. Hosp.*, 40 F.3d 837, 840 (6th Cir. 1994). To avoid this absurdity, some circuits that apply the intracorporate-conspiracy doctrine to § 1985(3) have created an arbitrary carveout for such organizations, with no principled justification. *See id.*; *see also Dombrowski,* 459 F.2d at 196; *Travis v. Gary Community Mental Health Ctr., Inc.*, 921 F.2d 108, 110 (7th Cir. 1990). The need for this carveout is not a mere shortcoming of applying the doctrine—it is a testament to the incoherence of importing it into the civil rights context.

A more coherent approach would not apply the intracorporate-

conspiracy doctrine to § 1985(3) at all. Therefore, this Court should reverse the district court's order applying the doctrine.

3. Pierce's § 1985(3) claims fall within several of the intracorporate-conspiracy doctrine's exceptions.

Even if this Court were to join federal circuits that have applied the intracorporate-conspiracy doctrine to § 1985(3), no circuit has applied the doctrine without limit. *See Dickerson v. Alachua County Comm'n*, 200 F.3d 761, 768 n.9 (11th Cir. 2000) (collecting cases). Because Pierce's claims fall within several of the doctrine's exceptions, they should not be barred.

First, the intracorporate-conspiracy doctrine does not apply to § 1985(3) claims when the underlying conduct constitutes a federal crime. *See, e.g.*, *McAndrew*, 206 F.3d at 1035–36. This exception arises out of the well-established principle that the intracorporate-conspiracy doctrine does not immunize criminal conspiracies. *See, e.g.*, *United States v. Ames Sintering Co.*, 927 F.2d 232, 236 (6th Cir. 1990). If corporate agents are capable of forming a criminal conspiracy, there is no reason that should change in the § 1985(3) context when the underlying conduct is exactly the same.

Here, Meyer and Gardner allegedly engaged in conduct that constitutes a federal crime. It is a federal crime to "knowingly and willfully obstruct[] . . . the passage of the mail." 18 U.S.C. § 1701. Meyer and Gardner are alleged to have done exactly that by intentionally

withholding Pierce's mail on account of racial animus. *Cf. United States v. Marshall*, 753 F.3d 341, 344 (2014) (Souter, J., by designation) (affirming postal worker's federal conviction for intentionally discarding mail as "undeliverable" simply because he thought it was "a waste of energy" to deliver it).

Second, the intracorporate-conspiracy doctrine does not apply to non-executive, individual conduct that does not constitute a collective, "corporate" decision. *See Webb v. County of El Dorado*, No. 2:15-cv-01189, 2016 WL 4001922, at *1, *6–8 (E.D. Cal. July 25, 2016) (citing *Stathos*, 728 F.2d at 20–21). The logic of the intracorporate-conspiracy doctrine is that certain officers act on behalf of a corporation, and "[a] corporation cannot conspire with itself." *Nelson Radio*, 200 F.2d at 914. Therefore, in order for the "conspirators" to act on behalf of the corporation, their conduct must reflect some degree of executive decision-making such that it is a "corporate" decision. *See Webb*, 2016 WL 4001922, at *8.

Here, Meyer and Gardner's actions do not reflect a collective "corporate" decision. Meyer and Gardner are new postal workers, not executives. *See* JA-3. Nor is there anything in the record to suggest that their withholding of Pierce's mail, derogatory comments, or obscenities reflect an executive decision on behalf of USPS. *See id.*

Third, *Dombrowski* itself limited the reach of the intracorporate-

conspiracy doctrine to "a single act of discrimination by a single business entity." *Dombrowski*, 459 F.2d at 196. The Eighth Circuit has embraced this exception, recognizing that "continuing violations" of § 1985(3)'s protections against invidious discrimination do not warrant immunity. *See Cross v. Gen. Motors Corp.*, 721 F.2d 1152, 1156 (8th Cir. 1983).

Here, Meyer and Gardner did not perform a *single* act of discrimination, but instead caused "continuing violations" of Pierce's rights. Because Meyer and Gardner withheld her mail over the span of several years, this exception applies. *Cf. Rackin v. University of Pennsylvania*, 386 F.Supp. 992, 1005–06 (E.D. Pa. 1974) (applying exception where female professor suffered "many continuing instances of discrimination and harassing treatment").

Any one of these exceptions would be sufficient to prevent the application of the intracorporate-conspiracy doctrine to Pierce's § 1985(3) claims. Because they all apply, this Court should reverse the district court's dismissal of her claims.

* * *

The district court's interpretation of § 1985(3) was doubly mistaken. It discovered an exception for federal actors with no basis in the text, and it relied upon a twentieth-century antitrust doctrine to immunize the government's own racial discrimination. As the Supreme Court once remarked in holding government actors liable under the

Klan Act: "How 'uniquely amiss' it would be . . . if the government itself . . . 'the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment . . .' were permitted to disavow liability for the injury it has begotten." *Owen v. City of Independence, Mo.*, 445 U.S. 622, 651 (1980) (quoting *Adickes v. Kress & Co.*, 398 U.S. 144, 190 (1970) (opinion of Brennan, J.)).

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's order granting the motion to dismiss and remand for further proceedings.

February 17, 2025

Respectfully submitted,

The Charles Fried Memorial Team

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/s/ Paneez Oliai

/s/ Coy Ozias

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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..[1]

(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.[2]

(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)

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.