

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

<p>Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer Plaintiffs versus United States, US Department of Justice, USPS, USPS OIG, USPS BoG, US CIGIE, Department of State, Department of State OIG, USCIS, DHS OIG, and SSA Defendants</p>	<p>Civil No. 3-23CV2875 - S Affirmation Supporting Count 1 and 2 Against USPS and USPS OIG</p>
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Affirmation Supporting Count 1 and 2

Against USPS and USPS OIG

USPS Count 1

Promised Refund Never Received

The basis for the claim against USPS is that I was promised a refund to my credit card for \$26.35 but the refund never posted to my credit card.

39 USC Postal Services authorizes USPS to offer services such as 'click-n-ship' and 'guaranteed delivery' which, under certain circumstances, requires USPS to refund the cost of the service to the originating credit card. Those circumstances occurred according to USPS but USPS never followed through with the actual refund to my credit card.

While this court does, it seems, have jurisdiction under 39 USC to order USPS to

actually refund \$26.35 to my credit card¹, out of an abundance of caution, the relief I am seeking is a credit for future services of \$26.35 which is authorized in [Marbury v. Madison \(1803\)](#) and APA [5 USC § 702](#). The restrictions on 'sovereign immunity' are discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 1 to 4 and won't be repeated here.

While USPS' failure to make the promised credit to my credit card justifies the claim against USPS, more details are required to support the ancillary claims against USPS OIG and USPS Board of Governors (BoG) as well as (later and separately) CIGIE and DoJ.

Delivery Time Falsified to be On Time When Actually Late

On 09 Apr 2021 I purchased an Overnight Express, Guaranteed Delivery 'click-n-ship' shipping label to return my passport from the Thai Embassy in D.C. to my home in Irving, TX (see ECF 18-3 USPS Receipt for \$26.35) which I sent via email to the Thai Embassy as the pending trip to Thailand required the passport and visa be returned promptly (to complete other arrangements).

The Thai Embassy returned my passport with the package accepted by USPS at

¹ While USATXN incorrectly claims 'sovereign immunity' citing *Dolan v. Postal Service*, 546 U.S. 481 (2006), it appears that USATXN did not actually read this decision as it clearly states that 'sovereign immunity' does not apply in this case. In *Dolan*, the court held that 'sovereign immunity' had been waived under the FTCA due to specificity of section 2680(b) which permitted tort claims including, according to the court, negligent acts claims such as careless driving and, apparently, inappropriate placement of delivered packages.

Dolan did declare that tort claims for late delivery would not be supported by the FTCA exemption for 'sovereign immunity' as 'losses of the type for which immunity is retained under section 2680(b) are at least to some degree avoidable or compensable through postal registration and insurance.'

I did indeed purchase the insurance described in *Dolan* through 'guaranteed delivery' providing minimal compensation (\$26.35) for minimal inconvenience in this case.

8:46PM on 13 April 2021 with guaranteed delivery by 12PM on 15 April 2021.

However, the package did not arrive at the Irving Post Office until 11:18 AM 15 April 2021 and was 'out for delivery' at 11:29 AM. It was scanned as delivered at 11:35 while the driver was almost certainly still at the Post Office, a common practice for improper 'Stop the Clock' scans (as will be discussed later) as can be seen in ECF 18-4.

That morning I was home waiting for delivery so that I could complete the arrangements for the trip and I got an email from USPS saying the envelope had been delivered at 11:35AM. I went out and looked for the envelope, but couldn't find it. I called the Post Office as I was concerned that my passport had been delivered to the wrong address (not being familiar with improper 'Stop the Clock' scans) and was told not worry as there were equipment / truck problems and the driver was running late. That made no sense to me at the time as I was not familiar with improper 'stop the clock' scans where delivery times are falsified by scanning the package as delivered while still at the Post Office.

I took pictures of the porch area and checked again at 12PM with my wife and we still could not find the envelope / package. Needless to say I was concerned that my passport was lost (a very serious matter) and we would have to cancel our trip.

I checked again at 12:30PM and found the envelope in our mail box. I was relieved and was able to complete the arrangements for our trip. The delay was a minor inconvenience but the terms of the 'guaranteed delivery' only supported minor compensation, \$26.35.

Refund Failed Due to Falsified Records and Broken Business Processes

That afternoon I made an online request for a refund (refund request number 6006595) which was denied in minutes as the package was falsely reported as delivered on time. Two weeks later I was permitted to appeal that arbitrary denial and on 5 May 2021 the status of the refund was changed to 'Dispute Paid', see ECF 18-8.

However, the credit card which I used for the online 'click-n-ship' never posted the refund (I check each credit card statement each month confirming all charges and credits).

Over fifty years of credit card use, I have been promised hundreds of credit card refunds and there have been dozens of cases where the refund doesn't get to my credit card. In that case, I contact the merchant and ask for the transaction ID where they paid my bank. In every other case the merchant gets back to me and says there was a problem initiating the refund at their end and they then issue a credit which does post to my credit card.

With USPS when I asked for a transaction ID for the refund, I received assurances that the refund was paid, but no one could give me any details such as the credit card transaction ID (see ECF 18-9). From my numerous phone calls to USPS I concluded that while 'Accounting Services' approved the refund on 5 May 2021 (incorrectly recorded as 'dispute paid') they then referred the matter to Customer Service who were unable to make the refund due to the delay and the fact that

USPS records still indicated that the package was delivered on time.

Ancillary Relief Sought From USPS

As I suffered a loss (albeit minimal) from the widespread falsified delivery times and refund processing by USPS, ancillary relief is sought to reduce future falsified delivery times and incorrectly denied refunds. There are also several suggestions for measures which could provide redress for past and future harmed postal customers as well as offsetting the cost of the measures through penalties for USPS management who benefited from illegally increased bonuses, but the actual implementation of this remediation should be left to DoJ and USPS OIG coordinating with USPS.

Count 2, USPS OIG and USPS BoG

Ancillary Relief is sought from USPS OIG and USPS BoG because had they fulfilled their statutory and constitutional duties then I would have received the authorized refund and this matter would not be before the court. The relief sought is orders to USPS OIG and USPS BoG that they take those actions to prevent such damages in the future, particularly [5a USC IG Act 1978](#) section 4 (reporting of federal crimes) as it relates to [18 USC § 1001](#), the federal crime of falsification of government records.

Obviously Sovereign Immunity does not apply to these orders to obey statutes as in [Marbury v. Madison \(1803\)](#) and APA [5 USC § 702](#). The limitations on 'sovereign immunity' are discussed at length in my Response of 18 Mar 2024 (ECF 18) pages

1 to 4

USPS OIG has long known that USPS has serious problems with falsified delivery times and other customer complaints related to delivery and tracking problems (e.g. refund for late deliveries with guaranteed delivery times) but rather than reporting federal crimes to the DoJ (as required by statute) and aggressively pursuing corrections, USPS OIG only made suggestions to USPS management which USPS management chose not to implement (never allocated resources for the corrections). This is not surprising as USPS employees and management benefited from the falsified records with better retention, promotions, and, for management, bonuses. These problems are discussed more thoroughly in my Response of 18 Mar 2024 (ECF 18) pages 47 to 49.

I asked the USPS IG to report federal crimes to DoJ (as required by statute) in the hopes that the DoJ would insist that USPS management rein in the rampant falsified records, but the USPS IG answered indirectly that the OIG had decided not to prosecute the widespread federal crimes (see ECF 10-1). This is clearly outside of USPS IG executive discretion. The decision to prosecute is exclusively reserved to DoJ, presumably so that DoJ can use the threat of prosecution to efficiently insure future compliance with the law. Committing federal crimes and violating the constitution is never within executive discretion as discussed in My Response of 18 Mar 2024 (ECF 18) pages 4 to 6.

As USPS IG was clearly violating statutory mandates to report federal crimes to the DoJ, I asked that the USPS IG 'supervisor', the USPS BoG in this case, direct the USPS IG to report federal crimes to the DoJ (see ECF 10-2), but they referred

my request to CIGIE where the USPS IG was a significant leader (see ECF 10-3). This was not surprising as USPS BoG also benefits from the reported superior (but false) quality measurements and (fraudulent) profitability from the widespread falsified records. The apparent illegal orders by USPS BoG are discussed in my Response of 18 Mar 2024 (ECF 18) pages 8 to 12.

Conclusion

The claims against USPS, USPS OIG, and USPS BoG are well founded and the court is asked to direct DoJ, USPS OIG, USPS, and USPS BoG to coordinate the corrections to these widespread and long term problems. I should also be given a credit for future services as requested though, admittedly, I am actually more interested in good governance than in the \$26.35.

Mr. Carr hereby affirms under penalty of perjury in both the United States and Thailand that as an individual:

1. I have reviewed the above affirmation and believe all of the statements to be true to the best of my knowledge.
2. I have reviewed the associated documents and exhibits and believe them to be true and accurate copies with the exception of the documents identified as being redacted. The redacted documents have only been altered to remove sensitive personal information or other redactable information (as cited in the redaction) according to normal redaction procedures.

I hereby reaffirm that the above is true to the best of my knowledge under penalty of perjury in both the United States and Thailand.

/s Brian P. Carr

Brian P. Carr
1201 Brady Dr

Irving, TX 75061

Date: 21 May 2024

Location: Irving, Texas