

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

<p>Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer</p> <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">versus</p> <p>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</p> <p style="text-align: center;">Defendants</p>	<p>Civil No. 3-23CV2875 - S</p> <p>Verified¹ Brief of Mr. Carr</p> <p>Supporting Count 1 and 2</p> <p>Against USPS, USPS OIG, and USPS BoG</p>
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**Brief of Mr. Carr Supporting Count 1 and 2
Against USPS, USPS OIG, USPS BoG**

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¹ The Verification of this document is at the end of this document.

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Introduction

This verified affirmation will present the legal arguments which demonstrate that both Count 1 and Count 2 have valid claims to be considered by the court. The basic form of a claim is to demonstrate that the defendants had a duty to perform certain acts, that they did not perform the required acts, that the plaintiffs were damaged by their failure to act, and that the court can remedy the problem through valid orders. Each element of the above will be discussed for each count to address the standard challenge of ‘failure to state a claim’ which means that one or more of the above elements is not alleged (the traditional form) or affirmed in this case as this is a verified complaint and brief.

As all of the defendants are government agencies, another standard challenge is sovereign immunity which really means that government agencies can only be ordered to perform actions which are authorized by Congress with special focus on the disbursement of government funds (the power of the purse) which the constitution specifically reserves for Congress.

There is also the extension of sovereign immunity which is executive discretion which says that when Congress gives conflicting or ambiguous statutes then it is up to the senior executive to decide what is the best course (and the courts shouldn’t micro-manage decisions in areas where the executives are assumed to have the best knowledge and experience, that is what they were hired for).

The statutes and case law for sovereign immunity and executive discretion are discussed in ECF 67-3 a verified brief on that topic.

USPS Count 1

This 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.

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 because of a ‘guaranteed delivery’ package that was delivered a few minutes late but the refund never posted to my credit card. However, instead of insisting on the promised refund, this suit asks for a credit for future services with USPS.

Sovereign Immunity Does Not Apply to USPS

Dolan Clearly Permits Refunds for ‘Guaranteed Delivery’ Failures

The court in ECF 61 stated:

the Postal Reorganization Act (PRA) establishes the USPS as “an independent establishment of the executive branch” that “enjoys federal sovereign immunity absent a waiver.” [Hale v. U.S.](#), [2023](#) WL 1795359, at *1 (5th Cir. Feb. 7, 2023 (internal quotation marks omitted) (quoting [Dolan v. U.S. Postal Serv.](#), 546 U.S. 481, 483–84 (2006))).

but the quoted [Dolan v. Postal Service](#), 546 U.S. 481 (2006) goes on to say:

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. ...

(allowing indemnity claims for loss or damage of "insured, collect on delivery (COD), registered with postal insurance, or Express Mail"); [39 CFR § 111.1](#) (2005)... The same was true when Congress enacted the [FTCA](#) in 1946. ... See 39 USC § 245 (1940 ed. and Supp. V) ("For the greater security of valuable mail matter the Postmaster General may establish a uniform system of registration, and as a part of such system he may provide rules under which the senders or owners of any registered matter shall be indemnified for loss, rifling, or damage thereof in the mails ..."). As [Kosak](#) explains, one purpose of the [FTCA](#) exceptions was to avoid "extending the coverage of the Act to suits for which adequate remedies were already available," ... an objective consistent with retaining immunity as to claims of mail damage or delay covered by postal registration and insurance.

In the 1940 edition of 39 USC § 245, USPS was authorized to establish a system where senders can be indemnified for certain losses. This system is now embodied in [39 CFR § 111.1](#) which incorporates the Domestic Mail Manual by reference with 604 9.2.3:

A full refund (100 percent) may be made when: ...

* Fees are paid for Certified Mail services, USPS Tracking, or USPS Signature Services, and the article fails to receive the extra service for which the fee is paid.

Indeed we did purchase such a service through ‘Guaranteed Delivery’ (ECF 18-3) and, after an administrative appeal, the refund of \$26.35 was approved with ‘Dispute Paid’ (ECF 18-8). As explained in [Dolan](#) we can seek a refund for services which we paid for and were not provided and ‘for which adequate remedies were already available’ under [39 CFR § 111.1](#).

However, while USPS approved our refund with ‘Dispute Paid’, it appears USPS never actually credited our account with this payment.

Indeed, this court could order USPS to determine if the payment was ever made. If not, the court could order USPS to make the payment as USPS has already authorized the payment but not completed the process specified in [39 CFR § 111.1](#).

The [FTCA](#) Supports Simple Tort Claim Against USPS

As an alternative, the court could order USPS to make the payment under [28 USC Chapter 171](#) ([FTCA tort claims](#)) as this is not actually a claim for late delivery which was resolved when USPS authorized the payment, but instead a failure to pay an amount due, a simple tort claim which the [FTCA](#) does support as there is no exception for accounting and payment failures.

Credit for Future Services Not Protected By Sovereign Immunity

In this case, the court is asked to order USPS to provide a credit for future services. This is, apparently, a novel legal theory, which I would like to develop fully. There are, in fact, substantial differences between a cash payment (which infringes on Congressional control of the purse) and a credit for future services (which is dependent on Congressional authorization of the services). Indeed there is a separate brief discussing this novel legal theory as ECF 67-3.

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 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 for myself and other postal customers. 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

Statutes Clearly Require USPS OIG and USPS BoG to Correct Problems

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 [5 USC § 404](#) (d) (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 ECF 67-3.

Falsified Delivery Times is A Longstanding Problem

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.

USPS Has Extraordinary Falsified Record Problems

In 2017 USPS OIG issued an audit report ([DR-AR-18-001](#), ECF 18-7) where extensive problems were found. It stated:

[USPS OIG] analyze[d] ... 25.5 million scans and found that ... about 1.9 million scans (7 percent) were improper stop-the-clock scans that occurred at delivery units instead of at the delivery location.

This might be unclear to non-USPS personnel, so to clarify, the 'stop-the-clock scans' are the scanning of a package's bar code to record the final delivery time to the customer. The 'delivery units' means the Post Office where the delivery person received the packages to deliver. The delivery location is the customer's location or address. To restate:

USPS OIG found 1.9 customer delivery times recorded at the Post Office rather than the customer's delivery address.

To be clear, delivery scans can be made in the truck as long as the customer's address / house is in sight or even an easy walking distance away. However, it is never acceptable to scan as delivered a package while still at the Post Office and none of these 1.9 million packages were scanned at the customer's address.

Falsifying Delivery Times is a Federal Crime

[18 USC § 1001](#) states:

- (a) ..., whoever, in any matter within ... the executive... branch of the Government of the United States, knowingly and willfully -
 - (1) falsifies, conceals, or covers up ... a material fact; ...
- shall be fined under this title, imprisoned not more than 5 years or, ...

However, USPS OIG found 1.9 million falsified delivery times out of 25.5 million.

Finding this many falsified records certainly qualifies as extraordinary when the usage of delivery times is considered.

It is a well known fact that cumulative delivery times in USPS are used for retention, promotion, and even bonuses for USPS personnel. It is also a well known fact that these cumulative delivery times are used in computing quality measurements for Congress and the public. Falsifying such important records certainly qualifies as a crime.

USPS IG Does Not Report Crimes As Mandated By Statute

[5 USC § 404](#) states:

- (d) ... each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

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 ECF 67-3.

USPS BoG Does Not Require Statutory Compliance

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) and no action was taken. 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 magnitude of the falsified tracking records seems incredible until it is considered that these delivery times are used to measure individual employees' performance for retention and promotion purposes. Further, for management, bonuses as well as retention and promotion can depend on these quality metrics as well as profitability. The profitability of each section and division is improved by fraudulently rejecting claims for refunds and this improved profitability benefits management at all levels. It appears that with USPS they are retaining and promoting employees and managers based on their ability to falsify performance metrics and defraud postal customers rather than their ability to actually perform.

USPS OIG Provides Immunity to Widespread Federal Crimes

The recent focus in USPS on improving profitability should have been coupled with a focus on improved accuracy and less falsified records to avoid an explosion in falsified records.

When I reported the falsified USPS delivery record which caused him damages in an approved minor refund which was never paid through additional falsified documents (but did provide us with standing in this matter), the USPS OIG refused to report the matter to DoJ as the USPS OIG had decided that these delivery related crimes should not be prosecuted but instead were consistently referred back to local USPS management. No action or investigation were ever taken by USPS OIG (see Complaint, Doc 11-1, para 53-55)

Clearly USPS local management does not wish to restrict this criminal behavior which increases their bonuses and improves their careers. Apparently local management's response is to make token disciplinary actions with a 'wink and a nod' to encourage the continuance of the criminal behavior to their own benefit.

When USPS OIG audits and investigations demonstrate widespread criminal falsification of government documents through improper 'stop the clock scans' (see Doc 18-7) they widely report the problem along with recommendations for how USPS management could substantially reduce the improper scans but USPS management never allocates the resources to correct the problem. This is not surprising as the practice improves USPS managers' careers and bonuses.

USPS BoG is Likely Source of Immunity for Widespread Federal Crimes

When congress created the USPS OIG they tried to provide the USPS with more independence by having USPS IG report to the USPS BoG. However, Congress did not give USPS OIG or USPS BoG the authority to commit or encourage federal crimes (e.g. falsifying government records) with impunity.

It appears that the USPS BoG has successfully prevented the involvement of DoJ with these problems through illegal orders. The USPS BoG has fallen into the trap of gaining immediate apparent success through illegal orders and falsified documents. As stated previously, illegal orders almost always are verbal only informal guidance to preserve the option of deniability in the event the illegal orders are found out.

I suspect that the illegal order took the form of a guarantee from any candidate for USPS IG position to not involve the DoJ in any delivery or tracking problems (as 'it is not necessary and only complicates the matter for local management'). It came with a clear understanding that the IG would be fired if the DoJ was ever involved in USPS delivery and tracking problems. Of course this is purely speculation.

While the illegal order would not explicitly require the IG to take illegal actions, [5 USC § 404](#) explicitly requires the IG to expeditiously report to the AG (a.k.a. DoJ) all likely federal crimes. Given the importance of delivery times within USPS, every one of 1.9 million improper 'stop the clock' scans in their [2017 audit](#) should have been reported to the DoJ.

USPS management never made the USPS OIG recommended changes to reduce such improper 'stop the clock' scans. Further, it is argued that the DoJ on notice of such crimes should have insisted that USPS reduce the falsified records with the resulting decline in reported profitability and quality measures. This, apparently, is what the USPS BoG feared.

The verbal illegal order likely did not directly threaten to terminate the USPS IG for reporting improper 'stop the clock' scans to DoJ, it simply demanded that the USPS IG and OIG insure that the DoJ did not get involved in USPS delivery affairs. This is the sort of ambiguity common for actual illegal orders as it can not be clearly shown that it violated [5 USC § 2302\(b\)\(9\)\(D\)](#) as they did not require the prohibited 'explicit violations of federal statutes', they simply threatened termination for the IG if the DoJ got involved. Of course, the USPS IG could only hope to keep DoJ out of these matters by disregarding the clear intention of Congress that the DoJ be the sole decider of prosecution for federal crimes.

The USPS OIG defense of this unlawful refusal to report federal crimes to the DoJ in their reply on 7 June 2022 in (ECF 10-1) states:

When employee conduct does not meet the threshold for prosecution, we typically refer such matters to Postal Service management officials for their determination of possible administrative action

I did not ask that anyone be prosecuted for these comparatively minor federal crimes and had explicitly suggested that USPS OIG could easily meet the requirements of the [5 USC § 404](#) by just copying the DoJ on any complaints of falsified delivery records before it forwarded the complaint to local USPS management. For example, in ECF 10-2 I wrote to the USPS BoG:

I am actually requesting that they be referred to the Attorney General and Justice Department where an unbiased determination of the appropriate remedy can be made. It would be absurd to suggest that every USPS employee who ever did a[n improper] 'Stop the Clock' scan be put in jail. However, the senior management who encouraged and supported the practice might be candidates for dismissal and even fines to the degree that they profited from their illegal criminal actions.

The ancillary relief of this court insisting the USPS OIG, USPS BoG, CIGIE, and DoJ all work together to prevent future violations of federal criminal statutes and provide relief to injured parties is actually a quite reasonable and well justified response to extraordinary numbers of federal crimes of falsified records and fraudulent accounting for the disbursement of federal funds.

FOIA Requested Records Not Provided

In order to properly document the falsification of delivery times and incorrect refund processing, I had submitted FOIA requests to USPS and USPS IG as described in the anticipated amended complaint section 'USPS FOIA Requests Pending'.

The court has authority to order DoS to produce those records and we are seeking such relief, see 5 USC § 552(a)(4)(B) which states:

(B) On complaint, the district court of the United States ... has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

The records sought will clarify and substantiate the falsification of delivery times as well as aid in determining the number of other individuals so impacted and whether this count is a good candidate for becoming a class action suit.

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 minor credit of \$26.35.

Verification of Document

I 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: 28. Jul. 2025
Location: Irving, Texas

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