

No. 15-746

In the Supreme Court of the United States

TAB BONIDY, ET AL., PETITIONERS

v.

UNITED STATES POSTAL SERVICE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

DONALD B. VERRILLI, JR.

*Solicitor General
Counsel of Record*

BENJAMIN C. MIZER

*Principal Deputy Assistant
Attorney General*

MICHAEL S. RAAB

DANIEL TENNY

Attorneys

*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Whether the Second Amendment precludes the United States Postal Service (USPS) from prohibiting the possession of firearms on a USPS-owned parking lot that exclusively serves an adjacent post-office building.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument.....	9
Conclusion	21

TABLE OF AUTHORITIES

Cases:

<i>Adderly v. Florida</i> , 385 U.S. 39 (1966).....	11
<i>Clark v. Jeter</i> , 486 U.S. 456 (1988).....	13
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	5, 9, 20, 21
<i>Heller v. District of Columbia</i> , 670 F.3d 1244 (D.C. Cir. 2011).....	13
<i>Kolbe v. Hagan</i> , No. 14-1945, 2014 WL 425829 (4th Cir. Feb. 4, 2016).....	20, 21
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010)	6, 9
<i>Peterson v. Martinez</i> , 707 F.3d 1197 (10th Cir. 2013).....	5, 18
<i>United States v. Doroson</i> , 350 Fed. Appx. 874 (5th Cir. 2009), cert. denied, 559 U.S. 983 (2010).....	19
<i>United States v. Kokinda</i> , 497 U.S. 720 (1990)	2, 12, 14

Constitution, regulations and rules:

U.S. Const.:

Amend. I.....	2, 12
Amend. II.....	<i>passim</i>

39 C.F.R.:

Section 232.1	1, 11
Section 232.1(a).....	2

IV

Regulations and rules—Continued:	Page
Section 232.1(b).....	2
Section 232.1(c).....	2
Section 232.1(d).....	2
Section 232.1(e)-(j).....	2
Section 232.1(h)(1).....	2
Section 232.1(k).....	2
Section 232.1(l).....	2
Section 232.1(p).....	2
Sup. Ct. R. 14.1(a).....	10
Miscellaneous:	
<i>Avon, Co Official Website</i> , http://www.avon.org/ (last visited Feb. 10, 2016)	3
37 Fed. Reg. 24,346 (Nov. 16, 1972).....	1

In the Supreme Court of the United States

No. 15-746

TAB BONIDY, ET AL., PETITIONERS

v.

UNITED STATES POSTAL SERVICE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-49a) is reported at 790 F.3d 1121. The opinion of the district court (Pet. App. 52a-67a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 26, 2015. A petition for rehearing was denied on September 9, 2015 (Pet. App. 70a-71a). The petition for a writ of certiorari was filed on December 8, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. A United States Postal Service (USPS) regulation first promulgated in 1972 governs conduct on USPS property. 39 C.F.R. 232.1 (USPS Property Regulation); see 37 Fed. Reg. 24,346 (Nov. 17, 1972). The USPS Property Regulation “applies to all real

property under the charge and control of the Postal Service * * * and to all persons entering in or on such property.” 39 C.F.R. 232.1(a). The regulation, *inter alia*, authorizes the inspection of containers and vehicles, 39 C.F.R. § 232.1(b); prohibits littering, damaging property, intoxication, smoking, disorderly or noisy conduct, gambling, commercial solicitation and advertising, and political campaigning, 39 C.F.R. § 232.1(c) and (e)-(j); and establishes rules for vehicular and pedestrian traffic, 39 C.F.R. § 232.1(d) and (k). See *United States v. Kokinda*, 497 U.S. 720 (1990) (upholding prohibition on soliciting contributions, 39 C.F.R. § 232.1(h)(1), against First Amendment challenge). Violations of the USPS Property Regulation are punishable by a fine, imprisonment up to thirty days, or both. 39 C.F.R. § 232.1(p).

One provision of the USPS Property Regulation governs “[w]eapons and explosives.” 39 C.F.R. § 232.1(l). It provides that “no person while on postal property may carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, or store the same on postal property, except for official purposes.” *Ibid.* In a declaration submitted in the district court in this case, Keith Milke, the Inspector in Charge of Security and Crime Prevention for the USPS, explained the rationale for that prohibition. See C.A. App. A84-A101. He detailed past instances of unlawful uses of firearms on postal property, *id.* at A88-A89; explained that “[t]he prohibition on firearms on postal property is a critical component of the Postal Service’s risk-management and violence-prevention strategies,” *id.* at A88; and stated that in his professional judgment “[a]ny change to that policy would require a major reassessment of security re-

sources, likely requiring significant additional security personnel and equipment to maintain adequate levels of security,” a “difficult if not impossible task” given “the current fiscal realities facing the Postal Service,” *id.* at A94-A95. He also explained that “Postal Service employees do not have the resources to quickly and appropriately verify whether customers or employees are properly authorized to possess firearms” (*i.e.*, because they have state-issued carry permits), so “a uniform policy prohibiting all weapons on postal property helps ensure the efficient allocation of resources.” *Id.* at A98.

2. A United States post office is located in Avon, Colorado, a small municipality located near Beaver Creek Resort, a major ski resort. See Pet. App. 54a; see generally *Avon, CO Official Website*, <http://www.avon.org/> (last visited Feb. 10, 2016). The Avon post office does not provide delivery service to residents. Pet. App. 4a. Instead, the USPS provides free post-office boxes to people who live in the area. *Ibid.* The post-office boxes are located inside the post-office building, in an area that is accessible to the public at all times. *Ibid.* The parking lot adjacent to the building is owned by the USPS and is also accessible at all times to members of the public transacting postal business. *Id.* at 3a-4a. A number of city-owned public-parking areas are located nearby, including three parking lots and five spaces on the street in front of the post office, although parking may be unavailable on rare occasions due to snow accumulation. *Id.* at 4a, 54a; see C.A. App. A762-A763; see also p. 17 n.2, *infra*.

Tab Bonidy has a Colorado-issued license to carry a concealed handgun, and he regularly does so. Pet.

App. 4a. His attorney sent a letter to the USPS asking whether Bonidy would be prosecuted if he brought his firearm into the Avon post-office building or stored it in his vehicle in the parking lot. *Ibid.* In light of the USPS Property Regulation’s general prohibition on firearms and explosives on USPS property, the USPS’s General Counsel responded that “the regulations governing Conduct on Postal Property prevent [Bonidy] from carrying firearms, openly or concealed, onto any real property under the charge and control of the Postal Service.” *Id.* at 4a-5a (quoting letter; brackets in original). According to Bonidy, because of the firearm prohibition, he usually arranges for an employee to pick up his mail at the post office. *Id.* at 4a, 55a.

3. Bonidy and the National Association for Gun Rights, both petitioners here, filed suit against the USPS and USPS officials in the United States District Court for the District of Colorado. Petitioners sought a declaratory judgment that enforcing the firearm prohibition of the USPS Property Regulation against Bonidy would violate the Second Amendment, as well as an injunction against any such enforcement. Pet. App. 53a-54a. On cross-motions for summary judgment, the district court upheld the regulation as applied to the post-office building, but concluded that the regulation was unconstitutional as applied to the adjacent parking lot. *Id.* at 52a-66a.

The district court first determined that Tenth Circuit precedent holding that “the scope of the Second Amendment does not include a right to carry a concealed firearm outside the home” foreclosed petitioners’ contention that Bonidy had a right to carry a concealed firearm on his person, either in the post-

office building or in the parking lot. Pet. App. 57a (citing *Peterson v. Martinez*, 707 F.3d 1197, 1201 (10th Cir. 2013)).

The district court then held that petitioner has no right to carry his firearm openly within the post-office building. The court observed that in *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court had identified “many circumstances in which restrictions on the freedom to carry firearms are presumptively valid—including the exclusion of firearms from government buildings.” Pet. App. 58a (citing *Heller*, 554 U.S. at 626-627 n.26). The district court concluded that the Avon post-office building, which “is used for a governmental purpose by significant numbers of people, with no means of securing their safety,” was such “a sensitive place,” and therefore that the regulation “is presumed to be valid as applied to the building.” *Ibid.* Because petitioners had “failed to rebut that presumption of validity,” the court held that petitioners were not entitled to relief with respect to open carrying within the post-office building. *Ibid.*

The district court concluded, however, that the post office’s parking lot was not a “sensitive place” in the relevant sense because no “core government function is * * * performed” there. Pet. App. 60a-61a. The court therefore held that the USPS bore the burden of establishing that the firearms prohibition was substantially related to an important governmental objective. *Id.* at 61a. Although the court agreed that the USPS’s “objective in preserving and promoting public safety in the Avon Post Office parking lot is important,” *ibid.*, it held that “[t]he fit between [the prohibition] and the USPS’ public safety objective is unreasonable,” *id.* at 64a. The court suggested that as

a narrower acceptable alternative, the local postmaster could “issue a permit for a person with a concealed carry permit to use the parking lot with the gun in a locked vehicle concealed in a glove compartment or console.” *Id.* at 65a.

4. The court of appeals affirmed in part and reversed in part, holding that the USPS Property Regulation is constitutional as applied to both the building and the parking lot. Pet. App. 1a-18a.

a. The court of appeals first affirmed the district court’s holding that under the Tenth Circuit’s decision in *Peterson*, the USPS Property Regulation is constitutional as applied to concealed carrying in either the post-office building or the parking lot. Pet. App. 6a.

Relying on guidance in both *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the court of appeals further held that “the Second Amendment right to carry firearms does not apply to federal buildings, such as post offices.” Pet. App. 9a. It accordingly affirmed “the District Court’s ruling that [the firearms provision of the USPS Property Regulation] is constitutional as to the postal building itself.” *Ibid.*

b. Turning to petitioners’ claim that the Second Amendment authorizes Bonidy to carry a firearm openly in the parking lot, the court of appeals held that, “on the facts of this case, * * * the parking lot should be considered as a single unit with the postal building itself to which it is attached and which it exclusively serves.” Pet. App. 9a. The court noted that there is “a dropbox for the post office in the parking lot, meaning that postal transactions take place in the parking lot,” and thus determined that *Heller*’s guidance about governmental buildings “applies with the same force to the parking lot as to the building

itself.” *Ibid.* The court held that the application of the USPS Property Regulation to the parking lot was constitutional on that basis.

The court of appeals, however, went on to “offer an equal and alternative basis for [its] holding.” Pet. App. 9a. For the purpose of that “alternative holding,” the court “assume[d] that the right to bear arms recognized in *Heller* in the home would also apply, although with less force, outside the home,” *ibid.* (emphasis omitted), and that “the parking lot is not itself considered part of a ‘governmental building’” within the meaning of the *Heller* and *McDonald* guidance, *id.* at 10a. The court concluded that, under those assumptions, the restriction would be evaluated under intermediate scrutiny, *id.* at 10a-11a, and that it satisfies immediate scrutiny.

The court of appeals noted that in a variety of constitutional contexts, “[t]he government * * * has more flexibility to regulate when it is acting as a proprietor (such as when it manages a post office) than when it is acting as a sovereign (such as when it regulates private activity unconnected to a government service).” Pet. App. 11a; see *id.* at 11a-12a. The court explained that “[t]he USPS is an enormous, complex business,” and that the USPS Property Regulation “is directly relevant to the USPS’s business objectives, which include providing a safe environment for its patrons and employees.” *Id.* at 12a-13a. The court therefore held that the regulation “is substantially related to the USPS’s important interest in creating a safe environment for its patrons and employees.” *Id.* at 13a. The court found support for that conclusion in “the fact that the regulation applies only to a very limited spatial area (that is, USPS facilities) and af-

fects private citizens only insofar as they are doing business with the USPS on USPS property.” *Ibid.*

The court of appeals cautioned, however, that “administrative convenience and economic cost-saving are not, by themselves, conclusive justifications for burdening a constitutional right under intermediate scrutiny.” Pet. App. 13a. But the court also explained that “[t]o require the USPS to tailor a separate gun policy for each of its properties or indeed for its many diverse customers would present an impossible burden not required by the intermediate scrutiny test.” *Id.* at 14a. In the court’s view, the USPS, “as a federal business, may create and enforce a single, national rule regarding carrying firearms onto postal property,” because “an alternative system involving piecemeal exceptions and individual waivers would be wasteful and administratively unworkable, and would raise entirely new problems related to fairness, official discretion, and equal administration of the laws.” *Id.* at 15a. The court therefore held that “[i]t suffices that the regulation as a whole is substantially related to the USPS’s important interest in patron and employee safety.” *Id.* at 16a.

c. Judge Tymkovich concurred in part and dissented in part. Pet. App. 18a-49a. He “agree[d] with the majority that under intermediate scrutiny the Postal Service’s regulation is valid as applied to gun possession inside the post office, particularly given the Supreme Court’s dicta in [*Heller*].” *Id.* at 18a-19a (emphasis omitted). But he concluded that the regulation failed intermediate scrutiny as applied to “lawful concealed carriers who wish to store their firearms in their car in a federal parking lot that poses no unique security or criminality concerns.” *Id.* at 38a-39a, 41a.

Judge Tymkovich inferred from circuit precedent that the government may restrict firearm possession by a class of individuals “when [the class’s] characteristics demonstrate a heightened risk of firearm misuse,” but he did not find that concealed-carry-permit holders in post-office parking lots present such a risk. *Id.* at 40a. He acknowledged that “much of [his] reasoning applies to some degree to the [post-office] building itself,” but he believed that “*Heller*’s binding dicta” provided a “key distinction” between the building and the parking lot, *id.* at 43a, and further stated that the USPS has heightened safety and security interests inside the building, see *id.* at 44a.

ARGUMENT

The court of appeals correctly held that the USPS Property Regulation, which generally prohibits firearms on USPS property, does not violate the Second Amendment. That decision does not conflict with any decision of this Court or another court of appeals. Accordingly, further review is not warranted.

1. The court of appeals correctly held that the application of the USPS Property Regulation’s general prohibition on firearms on postal property to the Avon post office and its parking lot does not violate the Second Amendment.

a. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court held that the Second Amendment encompasses a right to possess a usable handgun in the home for self-defense. The Court made clear, however, that its holding did not “cast doubt on * * * laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” *Id.* at 626. The plurality opinion in *McDonald v. City of*

Chicago, 561 U.S. 742 (2010), repeated that guidance. *Id.* at 786 (opinion of Alito, J.).

In the decision below, the court of appeals correctly applied the guidance in *Heller* and *McDonald* to the USPS Property Regulation. Post-office buildings are self-evidently “government buildings,” and thus, at minimum, the application of the USPS Property Regulation to post-office buildings is presumptively valid. Pet. App. 9a (citation omitted); accord *id.* at 18a-19a (Tymkovich, J., concurring in part and dissenting in part). In the courts below, petitioners did not identify any consideration that would overcome that presumption here, and the court of appeals therefore correctly upheld the USPS Property Regulation as applied to the building. Petitioners do not contest that aspect of the decision below at this stage. See Pet. i (second question presented limited to “storing [a] handgun inside a locked vehicle parked in a rural post office parking lot”); see also Pet. 30 (limiting argument to the “prohibition on Bonidy safely storing his handgun in his locked vehicle in the Avon Post Office parking lot”).¹

The court of appeals also held that, “on the facts of this case,” the parking lot is properly “considered as a single unit with the postal building itself” for the purpose of applying *Heller*’s guidance. Pet. App. 9a. The court explained that the parking lot is physically “attached” to the building; that it “exclusively serves” the building; and that “postal transactions take place in the parking lot” because a drop-box is located there. *Ibid.* Accordingly, the court concluded that the

¹ Petitioners have therefore forfeited any further challenge to the application of the USPS Property Regulation to the post-office building itself. See Sup. Ct. R. 14.1(a).

application of the USPS Property Regulation to the parking lot is also presumptively valid under the *Heller* and *McDonald* guidance and that petitioners had not rebutted that presumption.

That analysis was sound. Government-owned parking lots that are adjacent to governmental buildings and that exclusively serve those buildings should be treated the same as the buildings under the Second Amendment. The guidance of *Heller* and *McDonald* recognizes that when the government acts as a proprietor managing its own agencies and business operations, it has a heightened interest in maintaining safety and security on the premises, just like any private property owner or business, many of which restrict or prohibit firearm possession. Cf. *Adderly v. Florida*, 385 U.S. 39, 47 (1966) (“The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.”). That basic proprietary interest applies to parking lots that exclusively serve adjacent governmental buildings just as much as to the interiors of the buildings themselves.

Post offices provide an apt example. Patrons depend on the USPS to maintain safety and security during their entire visit to the post office and its parking lot and to ensure the orderly administration of postal business. That is why the USPS has enacted a comprehensive set of rules for USPS property to address safety threats and to facilitate orderly administration, governing such matters as the inspection of containers and vehicles, animals, signage, commercial and political activities, and intoxication. 39 C.F.R. § 232.1. The safety, security, and administrative interests that justify those rules, including the re-

striction on firearm possession, apply with equal force to USPS parking lots and USPS buildings. Cf. *United States v. Kokinda*, 497 U.S. 720 (1990) (upholding prohibition on soliciting contributions on postal property under First Amendment).

Petitioners do not appear to contend that application of the USPS Property Regulation to *any* post-office parking lot violates the Second Amendment. Rather, they argue that the particular characteristics of the Avon post office—that it is located near a rural area and that it does not offer delivery services—changes the constitutional analysis with respect to the parking lot. See Pet. 35 (contrasting “a post office parking lot in mid-town Manhattan” with “a small-town, low-use post office parking lot high in the Rocky Mountains of Colorado”) (internal quotation marks and citations omitted). Petitioners would therefore presumably have the courts develop a reticulated constitutional doctrine to distinguish among the “sensitive places” the Court referred to in *Heller* and *McDonald*. That doctrine would, for example, differentiate among government-owned parking lots based on the nature of the adjacent governmental buildings—schools, police stations, courthouses, and so on—as well as on the parking lot’s geographic location and the particular menu of government services offered in the building. Indeed, petitioners apparently believe that the government should adopt rules that distinguish among different members of the public, allowing only those with valid, non-expired state-issued firearms licenses to bring them onto government parking lots.

Nothing in this Court’s Second Amendment decisions or other constitutional precedents supports such

a complex set of constitutional rules for the management of government property. Rather, the conclusion of the court of appeals—that the Second Amendment does not distinguish between the Avon post-office building and its adjacent parking lot—was sensible and administrable, and it comported with the longstanding authority of the government to manage its own property.

b. In any event, the court of appeals correctly held in the alternative that application of the USPS Property Regulation to the Avon post-office parking lot satisfies intermediate scrutiny, even without the benefit of any presumption of constitutionality. Pet. App. 9a-17a.

i. Some courts of appeals have applied intermediate scrutiny to adjudicate Second Amendment challenges to firearms restrictions, asking whether the challenged restrictions are “substantially related to an important governmental objective.” *Heller v. District of Columbia*, 670 F.3d 1244, 1258 (D.C. Cir. 2011) (quoting *Clark v. Jeter*, 486 U.S. 456, 461 (1988)). Assuming that intermediate scrutiny applies here, the USPS Property Regulation satisfies that standard in light of the substantial relationship of the rule to safety and security concerns on postal property and the USPS’s interest in a single uniform rule to govern United States post offices.

Petitioners do not contest that the USPS’s interest in a safe, secure, and orderly environment on post-office grounds ranks as important for intermediate-scrutiny purposes. As Justice Kennedy has explained with respect to postal property, “the Government * * * has a significant interest in protecting the integrity of the purposes to which it has dedicated the

property, that is, facilitating its customers' postal transactions." *Kokinda*, 497 U.S. at 739 (concurring in the judgment); see *id.* at 728 (opinion of O'Connor, J.).

The USPS Property Regulation is substantially related to that important interest. The regulation bars armed individuals from entering onto post-office areas, which are designed exclusively to facilitate postal business. As Inspector Milke explained in a declaration submitted as part of the summary-judgment record, individuals have unlawfully used firearms on postal property in the past, creating a serious safety threat. C.A. App. A88-A89. For that reason, he explained, "[t]he prohibition on firearms on postal property is a critical component of the Postal Service's risk-management and violence-prevention strategies." *Id.* at A88. Without that prohibition, USPS personnel would have to assume in any dispute or confrontation with a patron that the patron is capable of resorting to deadly force at any moment and would therefore need to implement additional security measures to counter the potential threat. As Inspector Milke explained, "[a]ny change to [the current] policy would require a major reassessment of security resources, likely requiring significant additional security personnel and equipment to maintain adequate levels of security," a "difficult if not impossible" task given "the current fiscal realities facing the Postal Service." *Id.* at A94-A95.

Moreover, the USPS is an extraordinarily complex business and therefore has a particularized interest in a single, uniform rule that does not distinguish among different post offices, different geographic areas, or different classes of patrons, such as those who hold

state-issued concealed-carry permits and those who do not. See Pet. App. 11a-12a. As the court of appeals recognized, providing “piecemeal exceptions and individual waivers would be wasteful and administratively unworkable.” *Id.* at 15a. That echoed Inspector Milke’s determination that “Postal Service employees do not have the resources to quickly and appropriately verify whether customers or employees are properly authorized to possess firearms” and therefore that “a uniform policy prohibiting all weapons on postal property helps ensure the efficient allocation of resources.” C.A. App. A98. Although the court of appeals concluded that an interest in administrative convenience alone would not meet the government’s intermediate-scrutiny burden, the fact that the USPS’s core mission is to operate a large national business that millions of people depend on is undoubtedly relevant to the sort of safety and security rules that it may permissibly implement.

Petitioners concede (Pet. 32-33), as they must, that “the government, like any proprietor, has the right to manage its property” and that “government ownership of the property may weigh in favor of finding that the asserted government interest is important.” They argue (Pet. 33) only that “government ownership of the property alone cannot establish that the asserted interest is important or *ipso facto* prove that the challenged restriction is substantially related to that interest.” But the court of appeals did not “treat[] government ownership of the property as dispositive” (Pet. 34) in its intermediate-scrutiny analysis. Rather, it held only that, as petitioners evidently agree, “the fact that the government is acting in a proprietary capacity, analogous to that of a person managing a

private business, is * * * *relevant* to [the] constitutional analysis.” Pet. App. 11a (emphasis added).

ii. In advancing the important governmental interests in safety, security, and the orderly administration of postal business, the USPS Property Regulation does not restrict the freedom of citizens to possess and carry firearms to any significant degree. The regulation does not intrude on citizens’ freedom to possess firearms within the home or to carry them in public generally. It restricts only their ability to carry firearms on a particular type of government property that is dedicated exclusively to postal business. As the court of appeals recognized, “the regulation applies only to a very limited spatial area” and “affects private citizens only insofar as they are doing business with the USPS on USPS property.” Pet. App. 13a. Particularly given the regulation’s narrow scope, the court of appeals did not err in holding that it satisfies intermediate scrutiny.

Petitioners contend (Pet. 30-31) that the court of appeals should have applied a form of strict scrutiny to evaluate the USPS Property Regulation because “[t]he combined effect of the Avon Post Office’s failure to provide home mail delivery and [the regulation’s] prohibition[] means that, in order to receive communications by mail, Bonidy must relinquish his Second Amendment right to carry a handgun for self-defense.” But all legitimate restrictions on the carrying of firearms in a particular place, including those that this Court identified as presumptively lawful in *Heller*, will necessarily mean that a person will not be able to carry a firearm at a particular time and place, including during activities of substantial personal importance—for example, when picking up his child

from a public school or appearing at a judicial hearing. Petitioners have pointed to nothing in *Heller*, *McDonald*, or any other decision of this Court supporting the view that courts should apply a higher level of scrutiny merely because a challenged restriction prohibits a person from carrying a weapon during an activity of particular significance. And petitioners' assertion that the USPS Property Regulation requires Bonidy "to choose between two fundamental rights" (Pet. 31) merely begs the question whether he has a Second Amendment right to carry a firearm onto USPS property that is used for USPS business.

Moreover, petitioners' claim of a significant burden is particularly unpersuasive on the record here. The record shows that there are "several city-owned public parking options nearby," including not only "five spots on the street in front of the post office" but also "three parking lots." Pet. App. 4a. The ultimate burden on Bonidy's freedom to transport a firearm in his vehicle essentially amounts to requiring him to walk a little further from a parking space to the post office—a burden no different from the burden faced by citizens who patronize urban post offices with no parking lots. That minor burden could not support a special heightened standard of scrutiny or override the important USPS interests that are substantially served by the firearms prohibition.²

² Although it is possible that on a particular day public parking would not be available near the Avon post office due to snow accumulation, the Road and Bridge Superintendent for Avon submitted a declaration stating that "[i]n [his] experience, it is rare for on-street parking and parking in the public parking lots in Avon to be unavailable because of snow accumulation"—typically only "once every several months in particular locations." C.A.

iii. Petitioners accuse (Pet. 23-31) the court below (and other courts of appeals) of “applying a watered-down form of intermediate scrutiny that strongly resembles the judge-empowering interest-balancing test rejected by this Court in *Heller*.” Pet. 29 (internal quotation marks and citation omitted). That is not a fair characterization of the court of appeals’ thorough analysis. The court carefully examined the USPS’s interests and the USPS Property Regulation’s limited burden on carrying a firearm, and it reached a sensible conclusion in light of the record evidence.³

2. The decision below does not conflict with the decision of any other court of appeals. No court of appeals has held unconstitutional the USPS Property Regulation’s firearms provision or any other federal law barring firearm possession in governmental build-

App. A762-A763. At most, then, a few times a year Bonidy might be unable to park in the public spaces and would have to either enter the Avon parking lot unarmed (assuming snow accumulation has not also prevented parking there) or wait a day to pick up his mail. That does not amount to a substantial burden.

³ The court of appeals’ analysis of the right to bring a weapon into the post-office building and onto the parking lot applied only to *open* carrying, because the Tenth Circuit had previously held in *Peterson v. Martinez*, 707 F.3d 1197 (2013), that the Second Amendment does not encompass a right to carry concealed weapons in public. But nothing in the court’s analysis turned on any factor that would be different for concealed firearms. For that reason, the court’s holding with respect to open carrying would provide a sufficient basis to affirm the judgment below in full without reaching the question whether the Second Amendment encompasses a general right to carry a concealed firearm in public. If this Court were to grant review, however, the USPS could defend the judgment below in part on the ground that the Second Amendment does not encompass a right to carry a concealed firearm in public.

ings or parking lots. To the contrary, the only other court of appeals to consider a Second Amendment challenge to the USPS Property Regulation has upheld it, holding that it is valid “under any applicable level of scrutiny.” *United States v. Dorosan*, 350 Fed. Appx. 874, 876 (5th Cir. 2009) (application of regulation to postal employee), cert. denied, 559 U.S. 983 (2010).

a. Petitioners contend (Pet. 15-23) that the decision below “exacerbates [a] conflict among the circuits” arising from *Heller*’s identification of certain “presumptively lawful” restrictions on firearms. Pet. 15 (capitalization altered). As an initial matter, even if such a conflict existed, this case would not present an adequate opportunity to address it. Although the court of appeals first upheld the USPS Property Regulation’s application to the post office and its parking lot as a presumptively valid restriction under the *Heller* and *McDonald* guidance, see Pet. App. 9a, the court went on to “offer an equal and alternative basis for our holding upholding [the USPS Property Regulation] as it applies to the parking lot”: that the regulation satisfies intermediate scrutiny without the benefit of any presumption, *ibid.*; see *id.* at 9a-17a. See pp. 7-8, 13-18, *supra*. Accordingly, even if this Court were to disagree with the court of appeals’ determination that the post-office parking lot falls under the *Heller* and *McDonald* guidance for presumptively lawful restrictions on firearms, petitioners could not succeed on their challenge.

In any event, no relevant conflict exists. Petitioners assert that the courts of appeals have developed differing methodologies for analyzing provisions that this Court specifically described in *Heller* as “pre-

sumptively lawful,” 554 U.S. at 626-627 n.26, with some courts upholding such provisions with little additional analysis and others entertaining as-applied challenges. But petitioners identify no court of appeals that has invalidated such a measure, on its face or as applied. Nor have petitioners pointed to any circuit that has held that the presumptively lawful restrictions listed in *Heller* are not subject to as-applied challenges.

b. Petitioners do not contend that any other aspect of the court of appeals’ reasoning deviates from the approach taken in other circuits. Although petitioners propose a strict-scrutiny standard in the circumstances of this case, they do not assert that their position has been adopted by any court of appeals, candidly noting that “the lower courts generally choose intermediate scrutiny.” Pet. 25.

After the petition for a writ of certiorari was filed in this case, the Fourth Circuit issued a divided decision holding that strict scrutiny applies to Maryland’s prohibition on certain semi-automatic weapons and larger-capacity detachable magazines and remanding for the district court to apply strict scrutiny in the first instance. See *Kolbe v. Hogan*, No. 14-1945, 2016 WL 425829, at *1, *10-*15 (Feb. 4, 2016). The Fourth Circuit’s determination that strict scrutiny applies to the Maryland law, which is subject to further review, rested on its determination that the law’s “ban on semi-automatic rifles and larger-capacity magazines burdens the availability and use of a class of arms for self-defense in the home, where the protection afforded by the Second Amendment is at its greatest,” and for that reason “implicates the ‘core’ of the Second Amendment: ‘the right of law-abiding, responsible

citizens to use arms in defense of hearth and home.’” *Id.* at *11 (quoting *Heller*, 554 U.S. at 634-635); see *id.* at *13. The court reiterated its understanding that less severe restrictions on firearm possession are subject to intermediate scrutiny. See *id.* at *10-*11. There is no indication that the Fourth Circuit or any other circuit would apply strict scrutiny to evaluate the USPS Property Regulation.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
BENJAMIN C. MIZER
*Principal Deputy Assistant
Attorney General*
MICHAEL S. RAAB
DANIEL TENNY
Attorneys

FEBRUARY 2016