No. 25-64

IN THE

Supreme Court of the United States

IRON BAR HOLDINGS, LLC,

Petitioner,

v.

BRADLY H. CAPE, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION

LEE MICKUS
EVANS FEARS SCHUTTERT MCNULTY MICKUS
1805 Shea Center Drive
Suite 120
Littleton, CO 80129

RYAN A. SEMERAD
Counsel of Record
FULLER & SEMERAD, LLC
242 South Grant Street
Casper, WY 82601
(307) 265-3455
semerad@thefullerlawyers.com

Counsel for Respondents

September 17, 2025

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTION PRESENTED

The Unlawful Inclosures of Public Lands Act of 1885 (UIA) prohibits anyone from making an "inclosure" of or otherwise obstructing or preventing "free passage" to the public lands of the United States. 43 U.S.C. §§ 1061, 1063. In some western states, squares of public and private lands are interspersed in a checkerboard pattern. Many public-land squares on these checkerboards are accessible only by "corner crossing"—*i.e.*, stepping from one public-land square to the next one across the public-private corner without touching the private-land squares.

The question presented is:

Whether the UIA prohibits a checkerboard landowner from asserting a state-law right to prevent corner crossing to access otherwise inaccessible neighboring public lands, arrogating to the landowner exclusive use of these public lands.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATEMENT OF THE CASE 4

A. Legal Background 4

B. Facts and Procedural History 8

REASONS FOR DENYING THE PETITION 16

I. The Decision Below Is Correct, Does Not Implicate Any Split, And Aligns With This Court's Precedent 17

A. The Tenth Circuit Correctly Applied The UIA's Text And Precedent 17

B. The Decision Below Is Fully Consistent With *Leo Sheep* 22

II. Iron Bar's Other Arguments For Review Fail 25

A. The Decision Is Narrow And Breaks No New Ground 25

B. Iron Bar's Misplaced Reliance On A Presumption Against Preemption Further Counsels Against Review 28

C. Iron Bar's Takings Claim Is Not Presented And Lacks Merit 29

CONCLUSION 32

TABLE OF AUTHORITIES

CASES Page(s)

Buford v. Houtz,
133 U.S. 320 (1890)..... 7, 20, 24

Camfield v. United States,
167 U.S. 518
(1897).....1-3, 5-7, 14-16, 18-21, 23, 24, 29-31

Cedar Point Nursery v. Hassid,
594 U.S. 139 (2021)..... 3, 30

Golconda Cattle Co. v. United States,
214 F. 903 (9th Cir. 1914)..... 22

Hill v. Kemp,
478 F.3d 1236 (10th Cir. 2007)..... 28

Izumi Seimitsu Kogyu Kabushiki Kaisha v. U.S. Philips Corp.,
510 U.S. 27 (1993)..... 30

Kansas v. Garcia,
589 U.S. 191 (2020)..... 29

Lawrence v. United States,
488 U.S. 980 (1988) (No. 88-837)..... 2, 14, 25

Leo Sheep Co. v. United States,
440 U.S. 668 (1979)..... 2, 15, 16, 22-24, 27

Light v. United States,
220 U.S. 523 (1911)..... 4

Loper Bright Enters. v. Raimondo,
603 U.S. 369 (2024)..... 26

Lucas v. S.C. Coastal Council,
505 U.S. 1003 (1992)..... 30

TABLE OF AUTHORITIES—Continued

Page(s)

Mackay v. Uinta Dev. Co.,
219 F. 116
(8th Cir. 1914)....7, 13, 14, 16, 19, 21, 22, 25, 31

McKelvey v. United States,
260 U.S. 353 (1922)..... 3, 7

Murphy v. NCAA,
584 U.S. 453 (2018)..... 29

N.Y.S. Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,
514 U.S. 645 (1995)..... 29

Pavlock v. Holcomb,
35 F.4th 581 (7th Cir. 2022)..... 31

Stoddard v. United States,
214 F 566 (8th Cir. 1914)..... 22

Stop the Beach Renourishment, Inc. v. Florida Dep't of Environ. Prot.,
560 U.S. 702 (2010)..... 31

United States v. Douglas-Willan Sartoris,
22 P. 92 (Wyo. 1889) 19-20

United States v. Trinidad Coal & Coking Co.,
137 U.S. 160 (1890)..... 4

United States ex rel. Bergen v. Lawrence,
848 F.2d 1502 (10th Cir.).. 14, 15, 22, 24, 26, 31

Utah Power & Light Co. v. United States,
243 U.S. 389 (1917)..... 5

Wood v. Allen,
558 U.S. 290 (2010)..... 30

TABLE OF AUTHORITIES—Continued

Page(s)

Yee v. City of Escondido,
503 U.S. 519 (1993) 30

Youakim v. Miller,
425 U.S. 231 (1976) 28

CONSTITUTION

U.S. Const. art. IV, § 3, cl. 2 4

U.S. Const. amend. V 29

STATUTES

43U.S.C. § 315 7

43U.S.C. § 315e 7

Public Lands Act of 1885,
43 U.S.C. §§ 1061
et seq. 1-4, 6, 7, 13-26, 28-31

§ 1061 ..... 1, 6, 16, 17, 19, 20, 27

§ 1063 ..... 1, 6, 17, 19, 27

43 U.S.C. § 1701(a)(8) 7

RULES

Sup. Ct. R. 10(a) 16

Sup. Ct. R. 10(c) 25

Sup. Ct. R. 14.1(a) 3, 29, 30

OTHER AUTHORITIES

BEN PASSIKOFF, THE WRITING ON THE WALL:
REDISCOVERING NEW YORK CITY'S "GHOST
SIGNS" (2017) 8

TABLE OF AUTHORITIES—Continued

Page(s)

Inclosure, BLACK'S LAW DICTIONARY (1819)..... 18

Inclosure, WEBSTER'S PRACTICAL DICTIONARY OF THE ENGLISH LANGUAGE (1884) 17, 18

Jeffrey M. Schmitt, *A Historical Reassessment of Congress's 'Power to Dispose of' the Public Lands*, 42 HARV. ENVIRON. L. REV. 453 (2018)..... 4

MARK E. MILLER, BIG NOSE GEORGE: HIS TROUBLESOME TRAIL (High Plains Press 2021)..... 8

Michael Allen, *The Hunters, the Landowner and the Ladder That Triggered a Wyoming Showdown*, THE WALL STREET JOURNAL (Nov. 10, 2022) 9

Noah Zahn, *Lawmakers Advance Bill Supporting Legality of Corner Crossing*, WYOMING TRIBUNE-EAGLE (Aug. 21, 2025)..... 28

Purpresture, WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1739 (1909)..... 21

State of Wyoming, Working Bill Draft 26LSO-0118 v0.5 (Aug. 19, 2025), *available at* https://www.wyoleg.gov/Legislation/committeeBills/2026 28

INTRODUCTION

Some public lands in a few western states are interspersed with private lands in alternating, square-mile sections. This public-private mosaic forms a checkerboard pattern. Just like in a game of checkers, many checkerboarded public-land sections are only accessible by "corner crossing"—that is, by stepping from one public-land section to another over the corner where those two sections meet.

Petitioner Iron Bar Holdings, LLC, owns some checkerboarded land in Wyoming. It claims that its property rights include the right to prevent anyone from corner crossing. If it could enforce such a right, Iron Bar would possess the incidental right to control entry to and use of the checkerboarded public lands next door. Practically, while it only owns *some*, Iron Bar would control *every* square on the checkerboard.

But Congress passed the Unlawful Inclosures of Public Lands Act of 1885 (UIA), 43 U.S.C. §§ 1061 *et seq.*, to prevent *anyone* from completely extinguishing access to and thus making a privately controlled inclosure of *any public land* "by whatever means." *Camfield v. United States*, 167 U.S. 518, 525 (1897).

The UIA declares unlawful "[a]ll inclosures of any public lands in any State or Territory of the United States[.]" 43 U.S.C. § 1061. Asserting a right to exclusive use of public land "is likewise declared unlawful, and prohibited." *Ibid.* So too is preventing or obstructing "peaceabl[e] ent[ry] upon" or "free passage or transit over or through the public lands[.]" 43 U.S.C. § 1063.

In the decision below, the Tenth Circuit applied the UIA's text to bar Iron Bar's claim because "its effect is to inclose public lands by completely preventing access for a lawful purpose." Pet. App. 38a. The court

supported its application of the UIA with this Court's on-point decision in *Camfield*, which held that the UIA limits a checkerboard landowner's state-law property rights when exercised to inclose the public-land sections next door. *See Camfield*, 167 U.S. at 525–26. Even where a checkerboard landowner exercises bread-and-butter property rights—like building a fence on her land—those rights must yield where they conflict with the UIA by obstructing or preventing entry to public land. *Ibid.*

With no circuit split to speak of, Iron Bar seeks review because it asserts the Tenth Circuit's application of the UIA conflicts with this Court's decision in *Leo Sheep Co. v. United States*, 440 U.S. 668 (1979). That's wrong.

As the Tenth Circuit explained, *Leo Sheep* doesn't apply to Iron Bar's claims. *Leo Sheep* addressed whether the federal government had a right to build a road on checkerboarded private land to improve public access to adjacent checkerboarded public land. On that question, this Court said the UIA played no role.

But Iron Bar raises a categorically different question: whether checkerboard landowners can affirmatively extinguish all access to neighboring checkerboarded public land. As to that question, the UIA and *Camfield*—a statute and a decision unchanged by *Leo Sheep*—control. Indeed, in 1988, this Court denied a petition for certiorari to the Tenth Circuit that invoked *Leo Sheep* in the same flawed way. *See Lawrence v. United States*, 488 U.S. 980 (1988) (No. 88-837).

Iron Bar's other points are weaker still.

Iron Bar accuses the Tenth Circuit of addressing preemption incorrectly. Pet. 2–3, 20–26. But it didn't. Following this Court's lead, the Tenth Circuit recog-

nized that state laws apply to "public land areas" except where they are "inconsistent with" applicable federal laws. Pet. App. 44a (quoting *McKelvey v. United States*, 260 U.S. 353, 359 (1922)). Thus, it concluded that "the UIA supplants conflicting state law since a 'different rule would place the public domain of the United States completely at the mercy of state legislation.'" *Ibid.* (quoting *Camfield*, 167 U.S. at 525–26).

Iron Bar also suggests that the UIA—or, sometimes, the Tenth Circuit's decision—effected an unconstitutional taking. Pet. 26–27. That contention is not "fairly included" within Iron Bar's question presented, which asks only whether the UIA preempts some property right to prevent corner crossing and, thus, inclose public land. Pet. i; Sup. Ct. R. 14.1(a). Nor did Iron Bar assert a takings claim in this lawsuit—an action it brought against hunters, not the government.

That said, Iron Bar's takings theory has no merit. Applying a preexisting limit on a landowner's rights, or abating a nuisance, is not a taking. *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160 (2021). Congress enacted the UIA in 1885. Iron Bar bought checkerboarded property in 2005. Its rights have always been subject to the limits imposed by the UIA. The Tenth Circuit's straightforward application of those limits is no taking.

To counsel's knowledge, other than Iron Bar, no other checkerboard landowner in Wyoming has pressed a trespass suit for corner crossing. Likewise, other than the failed prosecution Iron Bar urged against respondents here, corner crossers have only been prosecuted for criminal trespass one other time (producing no conviction). In short, corner crossing seldom produces real-world disputes and never meritorious litigation.

The decision below is cabined to circumstances where corner crossing is the only way to access checkerboarded public land *and* the corner crosser only passes through the airspace above public and private land situated around the relevant section corners, never touching nor damaging the private land. Still, Iron Bar complains that this narrow decision effectively legalized trespassing across the country, destroying billions of dollars in property value. The hyperbole is misplaced. All the Tenth Circuit held was checkerboard landowners cannot fully eliminate access to neighboring public lands. And because multiple circuits have jurisdiction over checkerboarded land, this Court can await further percolation in the lower courts to see if Iron Bar's policy concerns actually come to pass.

The Tenth Circuit faithfully and correctly applied the UIA and related caselaw to Iron Bar's claims. The petition should be denied.

STATEMENT OF THE CASE

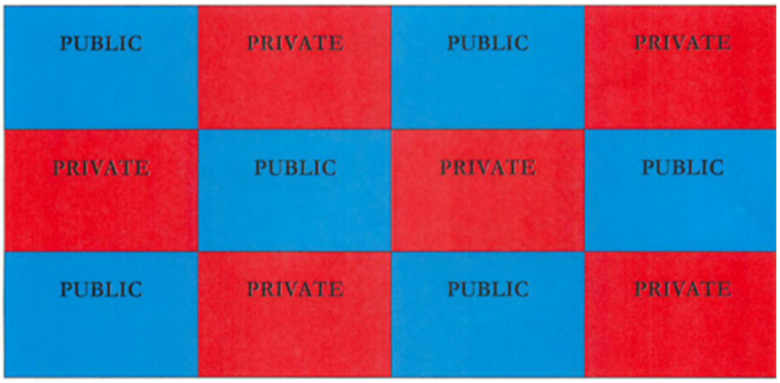
A. Legal Background

From the Founding through the present, the nation's public lands have been "held in trust" for the benefit of "all the people." *United States v. Trinidad Coal & Coking Co.*, 137 U.S. 160, 170 (1890); *see also* Jeffrey M. Schmitt, *A Historical Reassessment of Congress's 'Power to Dispose of' the Public Lands*, 42 HARV. ENVIRON. L. REV. 453, 517–18 (2018). And the Constitution grants Congress plenary power to manage that trust. *See Light v. United States*, 220 U.S. 523, 536–37 (1911) (citing U.S. CONST., art. IV, § 3, cl. 2).

While state laws apply in public lands situated within each state's territorial boundaries, they do not "extend to any matter that is not consistent with full

power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them." *Utah Power & Light Co. v. United States*, 243 U.S. 389, 404 (1917). To this end, state laws "may not . . . invest others with any right whatever in" federal public lands. *Ibid.*

Some federal public lands are situated in checkerboard patterns. Congress checkerboarded these lands as part of a "land-grant scheme" to spur construction of the transcontinental railroad. Pet. App. 7a. In a 20-mile corridor extending north and south from the railroad's route, Congress granted the railroad companies the odd-numbered sections of land while retaining the even-numbered sections, producing a checkerboard pattern. *Id.* at 7a-8a. While Congress hoped to sell its retained sections, it failed to do so in a few western states. So the checkerboard land pattern remains in some places.



Over time, some purchasers of odd-numbered (private) checkerboarded-land sections have tried to exploit the checkerboard pattern to secure exclusive use of the adjacent public-land sections. *See Camfield*, 167 U.S. at 524–25. Using its constitutional power over these public lands, Congress responded to these

monopolistic efforts with the Unlawful Inclosures of Public Lands Act of 1885 (UIA). *Ibid.*

Under the UIA, "[a]ll inclosures of any public lands in any State or Territory of the United States" are unlawful. 43 U.S.C. § 1061. So is "the assertion of a right to the exclusive use and occupancy of any part of the public lands of the United States in any State or any of the Territories of the United States." *Ibid.* And so is "prevent[ing] or obstruct[ing] . . . any person from peaceably entering upon . . . any tract of public land subject to . . . entry under the public land laws of the United States, or . . . prevent[ing] or obstruct[ing] free passage or transit over or through the public lands" "by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means." *Id.* § 1063. Thus, the UIA outlawed every device, however "ingenious," employed to completely deny access or entry to public land, including checkerboarded public land. *Camfield*, 167 U.S. at 524–25.

This Court and others thereafter applied the UIA to prohibit checkerboard landowners' affirmative attempts to cut off access to public land. In *Camfield*, this Court held that the UIA prohibited "all 'enclosures' of public lands, by whatever means"—including fences erected entirely on private-land sections. 167 U.S. at 522–25. As the Court explained, given "the necessities of preventing the inclosure of public lands," obstructive fencing "is clearly a nuisance," and "it is within the constitutional power of congress to order its abatement." *Id.* at 525. The Court reached that conclusion "notwithstanding" that abating the nuisance "may involve an entry upon the lands of a private individual." *Ibid.* The Court also rejected the idea that the checkerboard pattern itself "operate[s] incidentally or indirectly" to deprive anyone but a

checkerboard landowner of the use of checkerboarded public land. *Id.* at 526; *see also Buford v. Houtz*, 133 U.S. 320, 325–26 (1890).

Following *Camfield,* the Eighth Circuit (then covering Wyoming) held that the UIA barred a checkerboard landowner's trespass action against a shepherd who crossed private-land sections to reach public land with his flock. *See Mackay v. Uinta Dev. Co.*, 219 F. 116, 119–20 (8th Cir. 1914). The court explained that the UIA "prohibit[s] every method that works a practical denial of access to and passage over the public lands." *Id.* at 119.

And in *McKelvey v. United States*, 260 U.S. 353 (1922), this Court held that the UIA's prohibitions cover both "continuing obstacle[s]" like physical barriers and "transient obstacle[s]" like roving, trigger-happy enforcers. *Id.* at 357. As the Court explained, under the UIA's text, "it is 'free' passage or transit that is to be unobstructed," and "[w]hen some withhold [passage] from others, whether permanently or temporarily, it is not free." *Ibid.*

Congress has augmented and complemented the UIA's public-access protections as it has enacted new public-land laws. In 1934, the Taylor Grazing Act (TGA) regulated grazing on public lands while also prohibiting private actors from restricting "ingress and egress" to the public lands or interfering with a person's "right to hunt" within a grazing district. 43 U.S.C. §§ 315, 315e. In 1976, the Federal Land Policy and Management Act (FLPMA) strengthened the federal government's control over public lands while expressly protecting "outdoor recreation" and "human occupancy and use" of public lands. 43 U.S.C. § 1701(a)(8).

B. Facts and Procedural History

1. Petitioner Iron Bar Holdings, LLC, is owned by Dr. Fred Eshelman, a multimillionaire pharmaceutical executive from North Carolina. In 2005, Dr. Eshelman, through Iron Bar, bought some checkerboarded land around Elk Mountain in Carbon County, Wyoming. Pet. App. 12a.[1]

At the northern end of the Medicine Bow Mountains, Elk Mountain "stands as a beacon above the surrounding terrain." MARK E. MILLER, BIG NOSE GEORGE: HIS TROUBLESOME TRAIL 40 (High Plains Press 2021). The lands surrounding Elk Mountain are largely open, unfenced, and unimproved. C.A. App. 773, 798–800, 806–07. As a result, Elk Mountain is "a desirable location for elk hunting." Pet. App. 12a.

Iron Bar's sections are interspersed with 11,000 acres of public-land sections. *Ibid.* Added together, the public-land sections tangled up with Iron Bar's lands make up a landmass about three-quarters the size of Manhattan. *See* BEN PASSIKOFF, THE WRITING ON THE WALL: REDISCOVERING NEW YORK CITY'S "GHOST SIGNS" 61 (2017) (noting that Manhattan Island is 22.7 square miles, or about 14,500 acres).

Since acquiring these checkerboarded lands, Dr. Eshelman, through Iron Bar, has been aggressive in his efforts to keep Elk Mountain to himself and his guests by preventing corner crossing. Pet. App. 14a-15a. Beginning in 2009, Iron Bar employees would

---

[1] Iron Bar states that when Dr. Eshelman purchased the property, he relied on "definitive[]" guidance from BLM that corner crossing is illegal. Pet. 10 (quoting C.A. App. 728). Iron Bar is quoting Dr. Eshelman's recollection of unspecified "BLM websites" he allegedly visited, C.A. App. 728, the contents of which are not in the record.

confront and attempt to expel any person discovered on a public-land section adjacent to Iron Bar's property—no matter how the person got there. C.A. App. 376–77, 392–93, 448–50. (Unless she arrived by aircraft. Sort of.[2]). Iron Bar employees would also sabotage or interfere with the person's lawful use of the public lands. *Id.* at 565–82.

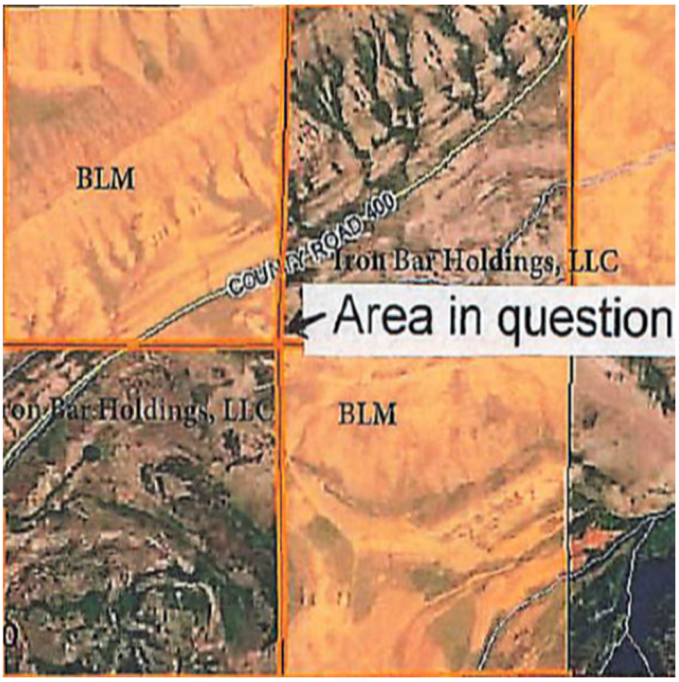
Then, in 2015, Iron Bar installed two t-posts with red-and-white "No Trespassing" signs at the first public-private corner off the county road, northwest of Elk Mountain. Pet. App. 14a; C.A. App. 433–34. Iron Bar oriented the "No Trespassing" signs to face northwest towards the public-land section and the county road. C.A. App. 438–39. "There were no other posts, fencing, or buildings within a quarter mile of the corner." Pet. App. 14a. Until four days before it sued respondents, Iron Bar locked these t-posts together with a chain and wire. Pet. App. 14a; C.A. App. 435, 437. The chained t-posts physically prevented anyone from walking over the corner. C.A. App. 470 (Iron Bar property manager: "I have signs there so you can't step over [the corner]."); *see id.* at 332.

---

[2] Iron Bar has represented people may access these public-land sections by "helicopter." C.A. App. 462. But its employees confront people who access the public land this way all the same. *See* D. Ct. Doc. 82; Michael Allen, *The Hunters, the Landowner and the Ladder That Triggered a Wyoming Showdown*, THE WALL STREET JOURNAL (Nov. 10, 2022).

C.A. App. 418–19.

Iron Bar blocked this first corner off the county road because doing so kept pedestrians off the public lands beyond. C.A. App. 460–63.



C.A. App. 84.

Since implementing these practices, Iron Bar has never permitted anyone to cross that first corner. And it has allowed just one group—some Florida lawyers who had made a personal request directly to Dr. Eshelman—to cross its lands elsewhere to reach the adjacent public lands. C.A. App. 386–88.

2. In 2020, respondents Bradly Cape, Phillip Yeomans, and Zachary Smith drew tags to hunt elk near Elk Mountain. Pet. App. 12a. They drove from Missouri and camped on the first public-land section off the county road. *Ibid.* They intended to corner cross to reach the public lands beyond. *Ibid.*

At the first corner, Iron Bar's chained t-posts obstructed their path. Pet. App. 14a. The chains forced them to swing around the posts to reach the next public-land section. *Ibid.* At the other corners, the hunters used a GPS navigation app and their eyes to locate the monument demarcating the corner and then simply stepped over that monument. *Id.* at 13a–14a; C.A. App. 482. They never set foot on or damaged Iron Bar's property. Pet. App. 54a–56a; C.A. App. 482.

Even so, Iron Bar's property manager confronted the hunters while they were on public land. Pet. App. 56a; C.A. App. 471–75. The property manager approached and demanded to know how they got there. *Id.* at 471. Cape told him they swung around the t-posts at the first corner and corner crossed elsewhere. *Ibid.* The manager asserted that touching the t-posts was "criminal trespass." *Ibid.* He told the hunters he would be contacting the local sheriff. *Ibid.*

A deputy responded and took statements. Pet. App. 56a. Dr. Eshelman demanded that the hunters be arrested for trespassing. C.A. App. 524–25. After

learning the hunters had "merely corner crossed," the deputy took no action. Pet. App. 15a.

3. Cape, Yeomans, and Smith returned to Elk Mountain in 2021 with respondent John Slowensky. Pet. App. 56a. Given the property manager's prior admonition about touching the t-posts, the hunters brought a ladder to climb over the t-posts at the first corner. *Id.* at 56a–57a. After using the ladder at the first corner, they again used GPS and visual cues to locate and step over the other corners. And, just like the 2020 hunt, the hunters never touched or damaged Iron Bar's property. Pet. App. 60a.

The 2021 hunt was pockmarked by near-constant surveillance, sabotage, and hostility. Pet. App. 59a. Iron Bar's property manager and other employees followed the hunters and documented their activities. C.A. App. 569–72, 581–82. The employees also directly interfered with the hunters' pursuit of elk "by driving motorized vehicles on public parcels . . . to scare away the game." Pet. App. 59a. And the property manager repeatedly reported the hunters to law enforcement. *Ibid.*; C.A. App. 583.

Once again, law enforcement did not cite the hunters for corner crossing. Pet. App. 59a. But Dr. Eshelman, who was hunting on the other side of the mountain with some friends, C.A. App. 554, was undeterred. He instructed his property manager to keep calling and to try lobbying the county attorney directly. Pet. App. 59a; C.A. App. 452–53. During one discussion with law enforcement, the property manager warned that if the hunters weren't charged with trespassing, his "boss" would "shut down" all the land around Elk Mountain. C.A. App. 470.

A few days later, the county attorney ordered the hunters to be cited for criminal trespass, a jailable offense in Wyoming. *Id.* at 591. The hunters took the case to a trial in April 2022 where a jury acquitted them of all charges. C.A. App. 601–08.

4. While the criminal case was ongoing, Iron Bar sued the hunters for civil trespass. Iron Bar claimed that corner crossing without its approval violated its property rights because—even if the hunters did not touch or damage Iron Bar's property—corner crossing required some minimal incursion into the airspace above Iron Bar's private land. *Id.* at 74–78. Thus, Iron Bar claimed a right to prevent corner crossing. *Ibid.*

The district court entered judgment for the hunters. Pet. App. 48a–84a. The court concluded that the hunters had not committed a trespass, finding that Iron Bar's airspace rights do not include the right to prevent corner crossing on foot to access public land where the corner crosser does not contact, damage, or interfere with the use of Iron Bar's property. *Id.* at 77a. And the court further reasoned that Iron Bar's state-law property rights are subject to "valid preexisting" legal limits, including the century-old precedent holding that a checkerboard landowner cannot use "actions in trespass" to secure for itself "exclusive use of the public lands." *Id.* at 67a (quoting *Mackay*, 219 F. at 118–20).

5. A unanimous Tenth Circuit panel affirmed. Pet. App.1a–47a. The panel first made an "*Erie*-guess" that corner crossing would be a trespass under Wyoming law. *Id.* at 22a–23a (acknowledging that Wyoming courts have not spoken directly on the issue). The court then held that, under the UIA, "a barrier to access, even a civil trespass action, becomes an abatable federal nuisance in the checkerboard when its effect is

to inclose public lands by completely preventing access for a lawful purpose." *Id.* at 38a.

The Tenth Circuit began with the UIA's text, which prohibits making "any inclosure" of public land. Pet. App. 24a. Relying on contemporaneous dictionary definitions and statutory context, the court concluded that "inclosing" public land includes both physical and non-physical means to remove access to that land—including lawsuits. *Id.* at 24a–25a, 30a.

The Tenth Circuit next explained that precedent supported its plain-text reading. *See* Pet. App. 26a–37a. The court noted that this Court's understanding of the UIA's effect on state-law property rights in *Camfield* directly applied to Iron Bar's claim. *Id.* at 28a–30a. The court also observed that the Eighth Circuit had already applied the UIA to bar a checkerboard landowner's civil-trespass action in *Mackay*. *Id.* at 30a–31a. And the court emphasized that its decision in this case was "made straightforward" by its own precedent, *United States ex rel. Bergen v. Lawrence*, 848 F.2d 1502, 1506 (10th Cir.), *cert. denied sub nom. Lawrence v. United States*, 488 U.S. 980 (1988). Pet. App. 38a; *see id.* at 34a–37a. In *Bergen*, the Tenth Circuit had applied *Camfield* and *Mackay* to hold that a checkerboard landowner could not install antelope-proof fencing on its private land, as well as across private-public corners, when that fencing had the effect of denying all access to the interior sections of public land. *See* Pet. App. 34a–35a.

Having determined that the UIA applied, the Tenth Circuit concluded that the UIA preempted any state-law rights insofar as state law allowed Iron Bar to extinguish access to—and so make a privately controlled inclosure of—checkerboarded public land. Pet. App. 44a.

The Tenth Circuit also determined—just as it had in *Bergen*—that this Court's decision in *Leo Sheep* did not speak to the UIA dispute before it. Pet. App. 33a–34a, 38a–42a. In *Leo Sheep*, this Court held that the federal government does not have an implied easement to build a road on a checkerboard landowner's property to *increase* access to checkerboarded public land. 440 U.S. at 677–81. As the Tenth Circuit noted, unlike Iron Bar's claims, *Leo Sheep* did not involve a checkerboard landowner eliminating all access to neighboring public-land sections. *See* Pet. App. 41a-42a (discussing *Leo Sheep*, 440 U.S. at 677–78).

The Tenth Circuit thus held that a checkerboard landowner's inability to extinguish access to neighboring public-land sections by preventing corner crossing "does not rise to the level of 'an implied easement'" rejected by *Leo Sheep*. *Id.* at 40a (quoting *Leo Sheep*, 440 U.S. at 669). The court also observed that Iron Bar's claimed right would leave the public without "any alternative" to freely access checkerboarded public lands—a fact pattern that this Court had distinguished in *Leo Sheep*. Pet. App. 41a (quoting *Leo Sheep*, 440 U.S. at 688 n.24).

Finally, the Tenth Circuit rejected Iron Bar's argument that applying *Camfield* and *Bergen*'s interpretation of the UIA effects a taking. Pet. App. 44a–47a. The Tenth Circuit explained that Iron Bar was merely deprived of "the right to exclude others . . . from the public domain—a right [it] never had." *Id.* at 45a (ellipses and brackets in original) (citation omitted). And "[e]ven if" the UIA effected a taking, that taking "occurred when the UIA was passed or when *Camfield* was decided." *Id.* at 46a–47a.

REASONS FOR DENYING THE PETITION

Iron Bar claims a checkerboard landowner may exclude others from airspace above public-private section corners its property shares with neighboring public lands. Because many checkerboarded public lands are accessible only by crossing these corners, Iron Bar thus asserts that its ownership of checkerboarded lands includes the right to eliminate access to these public lands, thereby giving it a functional right to exclusive use of those public lands. The Tenth Circuit rejected Iron Bar's position because the UIA expressly prohibits it. Pet. App. 50a.

The Tenth Circuit's decision was correct and does not warrant further review. The court of appeals closely analyzed the UIA's text, which prohibits unlawful "inclosures" of public land. 43 U.S.C. § 1061. And the court faithfully parsed and applied this Court's precedents—most notably *Camfield*, which concluded that the UIA preempts a checkerboard landowner's state-law property right when wielded to make an inclosure of public land, 167 U.S. at 528.

This petition does not meet this Court's criteria for granting review. Sup. Ct. R. 10(a). Iron Bar doesn't claim that the decision below implicates a circuit split. No split exists: The Tenth Circuit's conclusion fully accords with the Eighth Circuit's decision regarding trespass actions in *Mackay*. Instead, Iron Bar bases its request for certiorari almost entirely on the proposition that the holding below contravened *Leo Sheep*. But the Tenth Circuit thoroughly considered and correctly rejected that contention. The petition should be denied.

I. The Decision Below Is Correct, Does Not Implicate Any Split, And Aligns With This Court's Precedent.

A. The Tenth Circuit Correctly Applied The UIA's Text And Precedent

1. The Tenth Circuit applied the UIA's plain text to prohibit Iron Bar from using a trespass action to eliminate access via corner crossing to public lands.

The UIA declares "[a]ll inclosures of any public lands . . . to be unlawful." 43 U.S.C. § 1061. It also prohibits inclosures that restrict public entry upon public land, while also broadly targeting any effort to prevent or obstruct free passage over public lands:

> No person, by force, threats, intimidation, or *by any* fencing or *inclosing*, or any other unlawful means, *shall prevent or obstruct . . . any person from peaceably entering upon . . .* any tract of public land subject to settlement or entry under the public land laws of the United States, or shall prevent or obstruct free passage or transit over or through the public lands.

Id. § 1063 (emphasis added). Thus, "any inclosure of public land is prohibited, and no one may completely prevent or obstruct another from peacefully entering or freely passing over or through public lands." Pet. App. 24a.

"Inclosure" is a noun referring to a thing with one of two statuses related to the separation of some tract of land from common (or public) lands. An "inclosure" can be "that which incloses," like a physical barrier. *Inclosure*, WEBSTER'S PRACTICAL DICTIONARY OF THE ENGLISH LANGUAGE (1884). Or it can be the "thing

which is inclosed." *Ibid.* As the Tenth Circuit observed, Black's Law Dictionary contemporaneously defined "inclosure" as "the act of freeing land from rights of common [and] commonable rights." Pet. App. 24a (quoting BLACK'S LAW DICTIONARY (1819)). Thus, to "inclose" or "mak[e] an "inclosure" of public land is to withdraw it from the public domain.

Iron Bar's own assertions show that its trespass lawsuit would make an "inclosure" of checkerboarded public land within the meaning of the UIA. As it conceded below, Iron Bar concedes in its petition that "many parcels of public land in the checkerboard are . . . accessible only by 'corner crossing.'" Pet. i; *see also* C.A. Oral Arg. at 6:40–7:01. Still, it claims a right to prevent corner crossing and thus fully eliminate access to the checkerboarded public lands adjacent to its property. *E.g.*, Pet. 2. Through enforcement of this claimed right, Iron Bar could prevent entry to and use of these public lands except as its permits. That is, Iron Bar could fully inclose these public lands.

Iron Bar nonetheless contends that the word "inclosure" must refer to "a *physical* barrier" only. Pet. 21.

To start, Iron Bar *did* maintain a physical barrier obstructing access to public land: the chained-off t-posts at the first public-private corner off the county road. *See* Pet. App. 14a; Pet. App. 78a-79a (finding that these barriers violated the UIA). These obstacles prevented anyone from stepping directly over that corner to reach the public-land sections beyond. Pet. App. 78a-79a; *see also* pp. 9-11, *supra*. Iron Bar did not dispute below that placing t-posts at this juncture completely prevented pedestrian access. *See* C.A. App. 332; C.A. Supp. App. 44. Even under Iron Bar's reading of "inclosure," it violated the UIA. *See Camfield*, 167 U.S. at 528 (holding that a person violates the UIA

"when, under the guise of inclosing his own land, he builds a fence which is useless for that purpose, and can only have been intended to inclose the lands of the government").

In any event, the text forecloses Iron Bar's cramped reading. As the Tenth Circuit correctly observed, the UIA's text distinguishes "inclosing" from physical barriers like "fencing." Pet. App. 25a (quoting 43 U.S.C. § 1063). So the word "inclosure" necessarily covers more than fences and fenced-off land. *Ibid.* In addition, the UIA prohibits a laundry list of "inclosing" devices and methods beyond erecting physical barriers: "force," "threats," "intimidation," and "maintain[ing] . . . or control[ling] any . . . inclosure." Reading the word in context, Iron Bar's conflation of "inclosure" with "physical barrier" is wrong. *Mackay*, 219 F. at 120 (rejecting trespass action because such "intangible means" of effecting an inclosure violated Section 1063).

Iron Bar also argues that any private impairment to public access must be accomplished through "unlawful means," 43 U.S.C. § 1063, and it argues that a trespass claim is inherently "lawful." Pet. 22. But Iron Bar's understanding of what "lawful" means in this context of this statute is mistaken. Building a fence on one's own land may be "lawful" in the abstract, but the UIA makes it "unlawful" if it prevents access to public land. *See Camfield*, 167 U.S. at 528.

Further reinforcing the UIA's focus on private actions that withdraw, prevent, or obstruct public access to public land—whatever form those actions may take—Section 1061 separately prohibits the "assertion of a right to exclusive use . . . of any part of the public lands." 43 U.S.C. § 1061; *see* Pet. App. 37a. "There are numberless ways in which such an assertion might be made," *United States v. Douglas-*

Willan Sartoris, 22 P. 92, 97–98 (Wyo. 1889) (Maginnis, C.J., dissenting)—including through a legal action. Iron Bar is asserting a right to control passage through the airspace situated above the public-private section corners *and*, in turn, the public lands beyond any public-private corner. That is an assertion of a right to exclusive use of several parts of checkerboarded public land, which the UIA prohibits. 43 U.S.C. § 1061.

2. The Tenth Circuit also correctly explained why that plain-text reading of the UIA aligns with this Court's precedent.

Checkerboard landowners like Iron Bar have never had any right to eliminate all access to neighboring public-land sections for lawful purposes. As the Tenth Circuit observed, dating back to this Court's 1890 decision in *Buford*, "appropriating public lands is presumptively unlawful." Pet. App. 27a. There, checkerboard landowners sought an injunction that would have effectively denied anyone else from accessing the neighboring public-land sections while simultaneously granting the landowner "a monopoly of the whole tract," two-thirds of which was "public land belonging to the United States." *Buford*, 133 U.S. at 325–26. The *Buford* Court wrote "[t]he equity of this proceeding is something which we are not able to perceive." *Id.* at 326.

Camfield also "confirmed that an inclosure in the context of the UIA is broader than fencing." Pet. App. 29a. There, this Court interpreted the UIA to prohibit "all 'inclosures' of public lands, by whatever means[.]" *Camfield*, 167 U.S. at 525. The Court rejected the argument that, by granting lands in a checkerboard pattern, Congress incidentally gave owners of the private-land sections exclusive control of the public-land sections too—even if that would otherwise have

been the result of property-law principles (there, the right to build a fence on one's own land). *Id.* at 526; *see also Mackay*, 219 F. at 119 ("*Camfield* . . . has been recognized as sustaining the doctrine that 'wholesome legislation' may be constitutionally enacted, though it lessens in a moderate degree what are frequently regarded as absolute rights of private property[.]") (citation omitted). That the UIA limits a checkerboard landowner's rights, producing "inconvenience" to that landowner, "does not authorize an act which is *in its nature* a purpresture of government lands." *Camfield*, 167 U.S. at 525 (emphasis added); *see* Pet. App. 30a, 37a.[3] Here, Iron Bar's trespass action—more precisely, its attempt to enforce a right to exclude persons from the airspace above public-private corners—is in its nature a purpresture of public lands that the public cannot otherwise reach. *See* Pet. App. 37a-38a.

The Tenth Circuit also emphasized that its analysis was consistent with inter- and intra-circuit precedent. *See* Pet. App. 30a–32a, 34a–40a, 42a, 46a–47a. In *Mackay*, the Eighth Circuit confronted a "similar land dispute" to the one here, Pet. App. 30a, and held that the UIA barred a checkerboard landowner's trespass action against a shepherd because it would have prevented the shepherd and his flock from ever reaching checkerboarded public land. *Mackay*, 219 F. at 120. The Eighth Circuit reasoned that the UIA "prohibit[s] every method that works a practical denial of access to and passage over the public lands." *Id.* at 118, 120. And the Eighth Circuit explained that a checkerboard landowner cannot "secure for itself that

[3] "Purpresture" is a "[w]rongful appropriation of another's land; esp., any encroachment upon, or inclosure of, land subject to common or public rights[.]" WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1739 (1909).

value, which includes as an element the exclusive use of the [neighboring] public lands, by warnings and actions in trespass." *Id.* at 120. Likewise, in its earlier decision in *Bergen*, the Tenth Circuit recognized that the UIA targets any effort to completely deny access to checkerboarded public land for lawful purposes, whatever form that effort takes. Pet. App. 37a (emphasis omitted); 848 F.2d at 1511 ("[I]t is not the fence itself, but its effect which constitutes the UIA violation.").

All of these decisions point toward the conclusion that Iron Bar could not eliminate access to checkerboarded public lands surrounding Elk Mountain by preventing corner crossing. Pet. App. 37a.

B. The Decision Below Is Fully Consistent With *Leo Sheep*

Iron Bar does not (and cannot) claim that the Tenth Circuit's decision implicates any circuit split.[4] As just discussed, the decision below is consistent with the Eighth Circuit's decision a century earlier in *Mackay*, 219 F. 116.[5]

Iron Bar's request for certiorari instead rests on a meritless claim that the Tenth Circuit's decision contravenes this Court's decision in *Leo Sheep*.

---

[4] The decision below references a circuit split over whether the UIA requires that the landowner possess an intent to inclose. Pet. App. 38a n.32. Iron Bar does not invoke that disagreement as a basis for this Court's review. For good reason: there is no question that Iron Bar intended to inclose public land by obstructing the first corner off the county road and implementing its other anti-corner-crossing practices. C.A. App. 330–33; C.A. Supp. App. 44.

[5] Beyond the Tenth Circuit, the Eighth and Ninth Circuits currently have jurisdiction over checker-boarded land. *Cf. Golconda Cattle Co. v. United States*, 214 F. 903 (9th Cir. 1914); *Stoddard v. United States*, 214 F 566 (8th Cir. 1914).

1. *Leo Sheep* presented the question whether the Union Pacific Act of 1862 (the land-grant statute that created checkerboarded land in Wyoming) reserved an implied easement to the federal government to build a road across private-land sections to expand public access to a reservoir. 440 U.S. at 669. The Court concluded that the statutory text did not reserve any such right. *Id.* at 678–79, 682. It also concluded the federal government, as a sovereign with the power of eminent domain, could not rely on the doctrine of easement by necessity. *Id.* at 679–82. At the end of the opinion, the Court observed that the UIA was not of "any significance in this controversy" and did not grant the government authority to build the road. *Id.* at 683–85.

As the Tenth Circuit recognized below, the conclusion that *the federal government* lacks implied authority to build a permanent road on private land to *increase* access to public land does not speak to whether the UIA prohibits *a private landowner* from taking affirmative measures to *eliminate* access to public land. Pet. App. 39a–40a. On that latter question, the UIA's text and *Camfield* control. *Id.* at 39a, 42a. And they provide that private landowners cannot inclose public land even through means that could be permissible in another context, like erecting fences on the landowner's property. *See Camfield*, 167 U.S. at 525; Pet. App. 40a.

Iron Bar reads *Leo Sheep* to hold, *sub silentio*, that the UIA affords the public *no* protection against a private landowner's actions effecting "a purpresture of government lands." *Camfield*, 167 U.S. at 525. But *Leo Sheep* did not concern the actions of a private landowner. *See* Pet. App. 41a (observing that the Court in *Leo Sheep* "was plainly rejecting the government's overreach"). Nor did *Leo Sheep* purport to overrule

Camfield—it discussed that precedent with approval. *See Leo Sheep*, 440 U.S. at 685–86.

Iron Bar emphasizes (Pet. 16) the portion of *Camfield*, which *Leo Sheep* repeated in dicta, suggesting that a private landowner could theoretically fence each of his private-land sections individually without running afoul of the UIA. *See Leo Sheep*, 440 U.S. at 685; *Camfield*, 167 U.S. at 528. But *Camfield* was distinguishing such fencing from obstructions that serve no purpose other than to inclose public land. 167 U.S. at 528. Iron Bar's legal pursuit of corner crossing and its chained t-posts served no purpose other than to keep the public off public land near Iron Bar's property and qualify as inclosing obstructions. *See* pp. 8-11, *supra*.

Leo Sheep relied on *Buford* to contrast the government's effort to improve access to public land with a road and the complete denial of access by others. *See Leo Sheep*, 440 U.S. at 687 n.24. As this Court explained, *Buford* held that checkerboard landowners could not enjoin shepherds from accessing checkerboarded public land, which required some entry onto the landowners' property, because the shepherds lacked "any alternative" way of reaching the public land. *Ibid.* But in *Leo Sheep*, "necessity" did not "support[] the Government." *Ibid.* Here, as the Tenth Circuit recognized—and which Iron Bar does not dispute—corner crossing is the only way for land users to access many checkerboarded public lands. Pet. App. 41a–42a.

2. This Court has been here before. In *Bergen*, the Tenth Circuit rejected a landowner's effort to maintain a barrier to checkerboarded public lands by arguing that *Leo Sheep* displaced *Camfield*. *See Bergen*, 848 F.2d at 1505–07. The landowner made the same

arguments in seeking certiorari. *See* Pet. at i, 10, 22–23, *Lawrence v. United States*, No. 88-437 (filed Sept. 12, 1988). This Court denied review then. *Ibid.* It should follow suit here.

II. Iron Bar's Other Arguments For Review Fail

A. The Decision Is Narrow And Breaks No New Ground

Iron Bar itself has previously denied that this case implicates "an important question of federal law." Sup. Ct. R. 10(c). In resisting the hunters' removal of this suit from state to federal court, Iron Bar described the "federal issues" in this case as "not substantial." D. Ct. Doc. 14, at 18. Iron Bar also told the district court that the case concerned "only two sections" of its property and an amount in controversy well under $75,000. *Id.* at 20–21. Only after losing its remand motion did Iron Bar revise its estimated damages from the hunters' momentary incursions on its airspace upwards to $8 million. C.A. App. 611. Now, Iron Bar contends that this case implicates "billions." Pet. 31.

Iron Bar tells this Court that it must intervene because the Tenth Circuit "transform[ed]" the UIA in ways that "revolutionize[ ] property law," "eras[e] billions of dollars in private property value," and "take[ ] easements." Pet. 2, 14, 28. Iron Bar is wrong on all fronts.

First, Iron Bar contends that the Tenth Circuit broke new ground by holding that the UIA prohibits trespass lawsuits that would eliminate access to checkerboarded public lands. Pet. 13. But *Mackay*—relying on a trespass-as-nuisance theory and decided over a century ago—held just that. *Mackay*, 219 F. at 117, 120; *see also* Pet. App. 31a. Yet the "revolution[ ]"

in property law that Iron Bar foretells (Pet. 14, 28) never came to pass.[6]

Next, Iron Bar's dire predictions about the consequences of the decision below rest on a strawman account of the Tenth Circuit's analysis. The court did not "immunize a trespasser who marches straight down the middle of private property." Pet. 30. Rather, the court held only that "if access to public lands is otherwise restricted," a checkerboard landowner cannot sue a corner crosser for trespassing "*so long as they did not physically touch [private] land*." Pet. App. 4a, 47a (emphasis added).

Iron Bar repeatedly quotes the Tenth Circuit's remark that allowing individuals to corner cross "functionally operates like a limited easement." Pet. 40a; *see* Pet. i, 2-3, 13, 19, 26, 28. But the court was explicit that it was *not* recognizing any easement across checkerboarded private lands—an "approach" *Bergen* had already "foreclose[d]." Pet. App. 40a. It only rejected a state-law right to extinguish access to checkerboarded public land. *Id.* at 38a.

---

[6] Iron Bar invokes (Pet. 18–19) BLM statements about corner crossing in a 1980s brochure; a 1997 memorandum by an assistant regional solicitor; and a 2010 press release offering "tips" for hunting, which provided no legal analysis. C.A. App. 136, 233–34, 237. But the UIA does not grant the Department of the Interior or BLM any regulatory or interpretive authority. In any event, judges—not bureaucrats—get final say on what the law means. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 384–87, 412–13 (2024). As for the 2004 Wyoming Attorney General opinion (Pet. 19), that opinion references an *unsuccessful* prosecution of corner crossing, C.A. App. 1000–01, and merely states that some corner crosses "*may* be a criminal trespass" under Wyoming law without reaching a conclusion absent specific facts, *id.* at 1003–04 (emphasis added).

Nor does the decision below condone "permanent, physical appropriation of" or damage to Iron Bar's property. Pet. App. 39a; *see id.* at 14a, 16a. As the Tenth Circuit explained, if Iron Bar refused the construction of "a public road" on its property to improve access to neighboring public land—rather than preventing "a momentary corner-cross" to eliminate such access—*Leo Sheep* "may well" decide their case. *Id.* at 41a. The Tenth Circuit reserved decision on whether checkerboard landowners would prevail against "new and far greater public usage" of their property. Pet. App. 47a.

Iron Bar moves on to speculate that even "well-intentioned recreationists" will struggle to identify section corners with precision. Pet. 14, 31. It also asserts that trespassing, property damage, and "burdensome litigation" will proliferate. *Ibid.*

If corner crossing is a pressing, important issue because it frequently causes disputes and damage, one would expect Iron Bar—as the party seeking space on this Court's docket—to demonstrate that. Instead, even Iron Bar's own *amici* acknowledge that these disputes are "rare." United Property Owners of Montana Br. 7. And respondents have done the work petitioner should have, looking for evidence of these disputes. But to respondents' knowledge, this case is the only instance in which a landowner in Wyoming has sued for corner crossing. And in Wyoming, corner crossing has been prosecuted criminally only twice, producing no conviction either time. Likewise, aside from the opinions in this case, 43 U.S.C. §§ 1061 and 1063 has been cited only 6 times in the last 25 years of reported decisions, and only twice in appellate decisions.

This Court need not step in to address policy concerns that have not arisen and may never come to pass. Indeed, even if reality bore out these concerns,

that would still not warrant review because state legislatures can address them. Case in point: in August 2025, the Wyoming legislature considered a bill to amend the state's criminal code by clarifying that corner crossing is lawful. Noah Zahn, *Lawmakers Advance Bill Supporting Legality of Corner Crossing*, WYOMING TRIBUNE-EAGLE (Aug. 21, 2025); *see* State of Wyoming, Working Bill Draft 26LSO-0118 v0.5 (Aug. 19, 2025) ("Corner crossing clarification"), *available at* https://www.wyoleg.gov/Legislation/committeeBills/2026.

B. Iron Bar's Misplaced Reliance On A Presumption Against Preemption Further Counsels Against Review

Iron Bar's reliance on a presumption against preemption provides another reason to deny review. Pet. 3, 20–21. It did not preserve these arguments. And they are wrong.

Iron Bar did not properly invoke the presumption below. It failed to raise the presumption against preemption until its reply brief in the court of appeals. *See* Pet. C.A. Reply Br. 7. Surely for this reason, the Tenth Circuit did not address that argument. *See, e.g.*, *Hill v. Kemp*, 478 F.3d 1236, 1250–51 (10th Cir. 2007) (invoking the Tenth Circuit's "general rule" that "arguments and issues" presented in the reply brief are waived). "Ordinarily, this Court does not decide questions not raised or resolved in the lower court." *Youakim v. Miller*, 425 U.S. 231, 234 (1976)

Even so, the presumption is irrelevant here because the UIA's prohibition on "inclosures" preempts Iron Bar's state-law trespass action.

This Court has said preemption "work[s]" like this: "If federal law 'imposes restrictions or confers rights on private actors' and 'a state law confers rights or

imposes restrictions that conflict with the federal law,' 'the federal law takes precedence and the state law is preempted.'" *Kansas v. Garcia*, 589 U.S. 191, 202 (2020) (quoting *Murphy v. NCAA*, 584 U.S. 453, 477 (2018)). The preemption inquiry begins with "the text of the provision in question," and then "move[s] on, as need be, to the structure and purpose of the Act[s] in which [those provisions] occur[ ]." *N.Y.S. Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654–55 (1995).

The Tenth Circuit went through exactly that inquiry. *See* pp. 17-22, *supra*. Iron Bar's claimed right to prevent passage over the public-private corners conflicts with several of the UIA's express prohibitions. Again, Iron Bar's claimed state-law right would effectively allow it to prevent *all* access to the public-land sections next door. Pet. i. But the UIA expressly prohibits exercising property rights to this effect. *See Camfield*, 167 U.S. at 525–26. So—whatever its true merits under Wyoming law, Pet. App. 22a—Iron Bar's trespass theory conflicts with the UIA and must recede.

C. Iron Bar's Takings Claim Is Not Presented And Lacks Merit

Iron Bar briefly argues (Pet. 26-27) that review is warranted because the Tenth Circuit's interpretation of the UIA effected a taking without due compensation in violation of the Fifth Amendment. That pitch also fails.

To start, whether the UIA effects a taking is not "fairly included" within the question presented and thus not properly before the Court. Sup. Ct. R. 14.1(a). Iron Bar's question (Pet. i) asks only whether the UIA preempts a landowner's ability to exclude corner crossers from its land. It does not include the further

question whether, if the UIA *does* preempt state law in this way, the statute effects an uncompensated taking. *See Yee v. City of Escondido*, 503 U.S. 519, 537 (1993) (a question that is merely "*complementary*" or "*related*" to the question presented in the petition "is not 'fairly included therein'" (quoting Sup. Ct. R. 14.1(a)). That subsequent question is therefore not presented for this Court's decision. *See, e.g.*, *Izumi Seimitsu Kogyu Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 30–33 (1993) (per curiam); *Wood v. Allen*, 558 U.S. 290, 304 (2010) (finding subsidiary question barred by Rule 14.1(a) even where the issue was discussed elsewhere in the petition).

Nor did Iron Bar advance a takings claim more generally. It filed a trespass case against hunters. It did not sue any government for anything. And Iron Bar does not argue that its interpretation of the UIA is required as a matter of constitutional avoidance. *See* Pet. 14–27.

Even so, any takings claim would be meritless. Where "consistent with longstanding background restrictions on property rights," a government-authorized "physical invasion"—including to "abate a nuisance"—is no taking. *Cedar Point*, 594 U.S. at 160; *see* Pet. App. 46a. Applying a "pre-existing limitation upon the land owner's title" is likewise no taking. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1028–29 (1992).

Checkerboard landowners have never had a right to eliminate all access to the neighboring public lands. *See* pp. 20-21, *supra*. As this Court explained in *Camfield*, checkerboard landowners "were bound to know that the sections they purchased of the railway company could only be used by them in subordination to the right of the government" with respect to the neighboring public-land sections. 167 U.S. at 527.

Accordingly, the Tenth Circuit reasoned that the UIA and decisions interpreting it placed "pre-existing" limits on Iron Bar that prohibited it from preventing access to the public lands next door. Pet. App. 46a.

At times, Iron Bar appears to agree (Pet. 3, 14) with the Tenth Circuit's observation that any taking must have occurred upon the UIA's enactment. But where Iron Bar suggests that the decision below effected a taking (*cf.* Pet. 26), this Court has yet to resolve whether that theory is viable. *See Stop the Beach Renourishment, Inc. v. Florida Dep't of Environ. Prot.*, 560 U.S. 702, 715 (2010); *see also Pavlock v. Holcomb*, 35 F.4th 581, 586–88 (7th Cir. 2022) ("Since [*Stop the Beach*], neither this court nor any of our fellow circuits have recognized a judicial-takings claim"). Even those Justices that have entertained the idea have said that a court decision can constitute a taking only where it "declares that what was once an *established* right of private property no longer exists." *Stop the Beach*, 560 U.S. at 715 (plurality op.) (emphasis added). In light of the UIA and *Camfield, Mackay,* and *Bergen*, Iron Bar cannot claim the decision below eliminated any "established" property right. *See* Pet. App. 47a.

This Court should not take this case to explore Iron Bar's procedurally deficient and doctrinally unfounded takings theory.

CONCLUSION

The petition should be denied.

Respectfully submitted,

LEE MICKUS
EVANS FEARS SCHUTTERT
MCNULTY MICKUS
1805 Shea Center Drive
Suite 120
Littleton, CO 80129

RYAN A. SEMERAD
Counsel of Record
FULLER & SEMERAD, LLC
242 South Grant Street
Casper, WY 82601
(307) 265-3455
semerad@thefullerlawyers.com

Counsel for Respondents

September 17, 2025