No.

In the Supreme Court of the United States

IRON BAR HOLDINGS, LLC, PETITIONER,

v.

BRADLEY CAPE, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Between 1850 and 1870, Congress ceded millions of acres of public land in the West to railroads in a distinct checkerboard pattern of alternating public and private plats of land. The result of Congress's peculiar land-grant scheme is that many parcels of public land in the checkerboard are landlocked and accessible only by "corner crossing"—the act of moving diagonally from the corner of one public parcel to another, trespassing through the adjoining private property in the process.

Nearly fifty years ago, this Court unanimously rejected the government's argument that Congress "implicitly reserved an easement to pass over the [privately-owned] sections in order to reach the [public] sections that were held by the Government" in the checkerboard. *Leo Sheep Co.* v. *United States*, 440 U.S. 668, 678 (1979). In *Leo Sheep*, that meant the government could not create public access to a Wyoming reservoir by clearing a dirt road that crossed two checkerboard corners—at least not without exercising the government's power of eminent domain and paying just compensation.

In 2021, four hunters corner crossed through Iron Bar's property to hunt on public land; Iron Bar sued for trespass. In the decision below, the Tenth Circuit recognized that, under Wyoming law, the hunters had trespassed on Iron Bar's property. The court nonetheless held that an 1885 federal statute governing fences—the Unlawful Inclosures Act—implicitly preempted Wyoming law and "functionally" created a "limited easement" across privately-held checkerboard land.

The question presented is:

Whether the Unlawful Inclosures Act implicitly preempts private landowners' state-law property right to exclude in an area covering millions of acres of land throughout the West.

PARTIES TO THE PROCEEDING

Petitioner is Iron Bar Holdings, LLC, plaintiff-appellant in the Tenth Circuit.

Respondents are Bradley Cape, John Slowensky, Zachary Smith, and Phillip Yeomans, defendants-appellees in the Tenth Circuit.

RULE 29.6 STATEMENT

Iron Bar Holdings, LLC is a single-member LLC, of which Fred Eshelman personally is the sole member and manager. It is not a publicly held corporation, and no publicly held corporation has any interest in it.

RELATED PROCEEDINGS

U.S. District Court for the District of Wyoming (D. Wyo.):

Iron Bar Holdings, LLC v. *Cape*, No. 22-CV-67 (May 26, 2023)

U.S. Court of Appeals for the Tenth Circuit (10th Cir.):

Iron Bar Holdings, LLC v. *Cape*, No. 23-8043 (Mar. 18, 2025)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-47a) is reported at 131 F.4th 1153. The opinion of the district court (App. 48a-84a) is reported at 674 F. Supp. 3d 1059.

JURISDICTION

The judgment of the court of appeals was entered on March 18, 2025. App. 1a. On May 27, 2025, Justice Gorsuch extended the time to file a petition for a writ of certiorari to and including July 16, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the Appendix. App. 87a-92a.

INTRODUCTION

This case presents an important and recurring federalism question that "affects property rights in 150 million acres of land in the Western United States." *Leo Sheep Co.* v. *United States*, 440 U.S. 668, 678 (1979). Namely, whether an 1885 federal statute known as the Unlawful Inclosures Act (UIA)—without saying a word about trespass law—implicitly "preempt[s]" private landowners' state-law right to exclude throughout large areas of the West. App. 44a.

In the mid-19th century, Congress executed a peculiar land-grant scheme in the West, ceding alternating squares of federal land to the Union Pacific Railroad. This created a "checkerboard" of land ownership across the West that remains to this day: Public land is often entirely surrounded by private land.

Over the next 100 years, skirmishes about access to public checkerboard land culminated in a dispute taken up by this Court: Did Congress reserve a right of access to

the public sections of land when it granted railroads title to sections completely surrounding those public ones? In a unanimous opinion authored by Justice Rehnquist, the Court held that Congress reserved no such access right, rejecting the government's argument that "settled rules of property law" and the UIA established an "implicit reservation of … [an] easement" across privately-owned checkerboard sections. *Leo Sheep*, 440 U.S. at 679. In the ensuing 45 years, federal and state authorities agreed that the public may not "corner cross"—the act of moving diagonally through private property from the corner of one public parcel in the checkerboard to another.

The decision below upended that long-shared understanding, holding for the first time that federal law implicitly "overrid[es] the state's civil trespass regime," App. 23a, and "functionally" grants "a limited easement" across privately-held checkerboard land, App. 40a. As in *Leo Sheep*, this case arose in Carbon County, Wyoming—"the epicenter of a 150-year conflict touching on the core of property law and, simultaneously, defining the American West." App. 4a. Respondents embarked on hunting trips at Elk Mountain on land accessible only by trespassing over Petitioner Iron Bar's property. The hunters ignored "no trespassing" signs and corner crossed at several intersections of public and private land. After respondents disregarded repeated requests to leave, Iron Bar sued for civil trespass.

The Tenth Circuit agreed with Iron Bar that respondents had trespassed under Wyoming law. But the court held that the UIA—a federal statute governing physical enclosures like fences—implicitly "preempted" Wyoming's trespass law and precluded Iron Bar from exercising its right to exclude. App. 44a.

The Tenth Circuit's transformation of an 1885 anti-fence statute into a broad preemption provision directly contravenes *Leo Sheep*, flouts the presumption against

preemption, and unveils that Congress 140 years ago unwittingly effected an uncompensated taking of unprecedented scale. The court of appeals recognized that its decision "functionally" granted respondents "a limited easement" through Iron Bar's property to access public land, App. 40a—precisely the right this Court in *Leo Sheep* held Congress had *not* reserved for the public. The Tenth Circuit's distinction of *Leo Sheep*—that the government there cleared a dirt road through the corner—is irrelevant. If Congress did not reserve a right of access, government officials could no more step across a corner than construct a dirt road. Because *Leo Sheep* held that Congress reserved *no* easement, the magnitude of the trespass makes no difference.

Even if *Leo Sheep* did not control, the Tenth Circuit's override of state trespass law would still call out for this Court's review. The Tenth Circuit inverted the presumption against preemption, reading the UIA not merely as a prohibition on erecting physical blockades, but as an implied preemption provision that renders state laws unenforceable whenever they have the *effect* of excluding would-be trespassers. The premise underlying this conclusion was that a state-law trespass action can constitute a "nuisance," which in turn can be understood as an unlawful "inclosure." App. 38a, 40a. Setting aside that the UIA's text says nothing about preempting state trespass law, a trespass action is neither unlawful nor an "inclosure," in its 1885 or present-day sense. Nor can asserting a valid trespass action under state law constitute a "nuisance"; to counsel's knowledge, the Tenth Circuit is the first court to so hold.

As Judge Tymkovich previewed in his opinion for the Tenth Circuit, equally concerning is that the panel's interpretation of the UIA effects widespread unconstitutional takings by granting easements to the public across private property without compensation,

thereby stripping landowners of "one of the most treasured rights of property ownership"—the right to exclude. *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139, 149 (2021). Judge Tymkovich accordingly invited this Court to "reconsider the scope of *Leo Sheep* as it applies to this case." App. 47a.

This case presents questions of profound legal and practical significance. The panel below all but asked for this Court's review, acknowledging major "doctrinal inconsistencies at play," App. 40a, and that "more recent Supreme Court precedent" on the Takings Clause "may cast doubt on" its holding, App. 45a. The court of appeals also recognized that federal preemption of trespass actions would create significant new "questions for landowners and the public alike." App. 47a. That's an understatement: The decision to upend decades of consensus about property rights affecting millions of acres of checkerboard land is already sowing confusion among landowners and recreationists. Nor is the decision below limited to corner crossing: Under the Tenth Circuit's rationale, the UIA necessarily permits the public to access public land even if it requires trekking through dozens of miles of private land. This case is an optimal vehicle for this Court to put these questions to rest and to restore the long-held understanding that states can forbid trespassing across private checkerboard property. The petition for a writ of certiorari should be granted.

STATEMENT

A. Background

1. The Land Ordinance of 1785 established a system for the survey, sale, and settling of the country's newly acquired territories west of the colonies. Under the new system, surveyors platted landscapes into six-mile-by-six-mile squares called "townships." Bureau of Land Management, *Manual of Surveying Instructions for the*

Survey of the Public Lands of the United States 1 (2009), http://bit.ly/46IJxt0 (*BLM Surveying Manual*). Each township was then subdivided into 36 one-mile-by-one-mile parcels of land called "sections." *Id.*

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

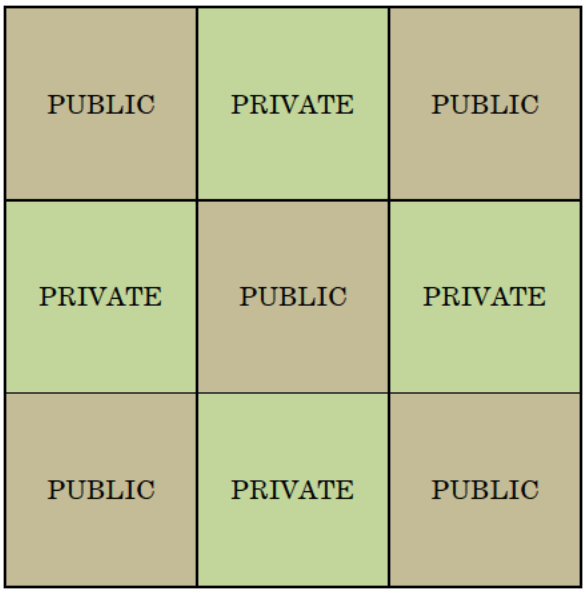
Surveyors marked the section boundaries by placing monuments at each corner where four sections met. *BLM Surveying Manual* 105. The Bureau of Land Management (BLM) has largely replaced the original monuments—rocks, sticks, dinosaur bones, or whatever was on hand, C.A. App. 178—with die-cast "brass caps" roughly the size of soda cans, *BLM Surveying Manual* 106.

2. During the eighteenth and nineteenth centuries, the federal government sold off land to repay debts. Congress, however, came to believe that the country's prosperity depended on enhancing transportation infrastructure. But questions lingered over the constitutionality of direct subsidies for "internal improvements," 2 Joseph Story, *Commentaries on the Constitution* 166-171 (5th ed. 1891), and private

companies lacked funds to undertake these massive construction projects.

Congress found the solution in land: The government would finance internal improvements through public land grants. But giving away public land would still leave the federal government at a loss, arguably in violation of constitutional prohibitions.

So starting in the 1820s, Congress began granting public land in an unusual pattern. Rather than conveying large blocks of contiguous land, Congress granted only alternate sections of land, interspersing squares of soon-to-be private land with squares of federal land. Paul Gates, *History of Public Land Law Development* 357-358 (1968). The result was a "checkerboard" pattern of land ownership, in which the federal government reserved control of every other section, while states and private actors owned the remainder.



The government hoped that, once the private squares appreciated, it could sell the interspersed public land at a premium—perhaps even "at double the usual price."

Cong. Globe, 31st Cong., 1st Sess. 845 (1850). Congress implemented the scheme at scale during construction of the transcontinental railroad. To incentivize construction, Congress in 1862 granted Union Pacific "every alternate section of public land, designated by odd numbers, … within the limits of ten miles on each side of said road," 12 Stat. 489, 492—later doubled to twenty miles on each side, Act of July 2, 1864, 13 Stat. 356, 358. By the early 1870s, Congress had given away roughly 150 million acres of checkerboard land, with over 130 million acres going to the railroad companies alone. Gates, *supra*, at 379, 384-385.

3. Congress's checkerboard scheme would lead to recurring access problems over the next 150 years.

Congress reserved no rights to access the public lands it retained in the checkerboard. It saw no point, assuming that "when development came, it would occur in a parallel fashion on adjoining public and private lands and that the process of subdivision, organization of a polity, and the ordinary pressures of commercial and social intercourse would work itself into a pattern of access roads." *Leo Sheep*, 440 U.S. at 686. Everyone assumed the government would have no trouble selling the reserved sections of public land.

Everyone was wrong. The government could not dispose of its holdings even at minimal prices. Settlers scooped up a few sections with significant sources of water but passed over what remained because it was not economically viable in the arid West. See *id.* at 683.

Conflicts over access did not surface immediately, in part because of the custom of the "open range." Common-law property principles ordinarily would have obliged ranchers to "confine [their stock] to [their] own land"; if they did not, they would "be liable for trespasses committed by [that stock] upon the uninclosed lands of others." *Lazarus* v. *Phelps*, 152 U.S. 81, 84 (1894). "Such

a principle," however, "was ill adapted to the nature and condition of the [West]." *Buford* v. *Houtz*, 133 U.S. 320, 328 (1890).

So across the West, a different custom arose: "Everybody used the open, uninclosed country … as a public common o[n] which their horses, cattle, hogs, and sheep could run and graze." *Id.* at 327-328. The result was a "fence-out" property regime, under which "the owner of land was obliged to inclose it with a view to its cultivation; that without a lawful fence he could not … maintain an action for a trespass thereon by the cattle of his neighbor running at large; and that to leave uncultivated lands uninclosed was an implied license to cattle and other stock at large to traverse and graze them." *Id.* at 330.

As more settlers moved west, residents began fighting for control. Cattlemen battled encroaching settlers and sheep herders, whose flocks de-pastured the rangeland. *Pub. Lands Council* v. *Babbitt*, 529 U.S. 728, 732 (2000). Sometimes these rivalries turned deadly. Cattlemen mercilessly drove sheep off cliffs to their deaths, and antagonists on both sides were quick to shoot opposing stock—and their owners—on sight. Candy Moulton, *Conflict on the Range*, True West (Aug. 29, 2011), http://bit.ly/46aueJw. Dozens of ranchers and rustlers were killed in these "range wars." *Id.*

4. Congress sought to tamp down these conflicts by outlawing some cattlemen's practice of erecting fences around hundreds of thousands of acres of land, enclosing not only their own lands but also those of the federal government. The Unlawful Inclosures Act of 1885, 43 U.S.C. § 1061, outlawed such fencing and also prohibited any "unlawful" attempts to "prevent or obstruct … any person from peaceably entering upon … any tract of public land," *id.* § 1063. Shortly after its passage, this Court explained that the statute was grounded in the government's power to "protect[] the public lands from

nuisances erected upon adjoining property." *Camfield* v. *United States*, 167 U.S. 518, 528 (1897).

Peace eventually came with Congress's closing of the open range in the Taylor Grazing Act of 1934, 43 U.S.C. § 315, which allowed the President to withdraw the public's implied license to graze stock on public lands and replaced it with a system of exclusive grazing permits that largely endures to this day. 48 Stat. 1269, 1269-1271. That change consigned the open range to the history books, along with the West's free-for-all grazing custom.

5. Even as these developments signaled the end of the range wars, they opened a new conflict over access to public land. For decades, the custom of the open range had provided access to public rangeland, *Buford*, 133 U.S. at 326-328, thereby mostly sparing courts from having to resolve access disputes. But the demise of that custom threw into sharp relief the question that had long lurked in the background: Did the federal government—and the public as its licensee—reserve an easement to cross private property for access to public land in the checkerboard? See, *e.g.*, George A. Gould, Comment, *Access to Public Lands Across Intervening Private Lands*, 8 Land & Water L. Rev. 149, 150-151 (1973).

Because that question "affect[ed] property rights in 150 million acres of land in the Western United States, [this Court] granted certiorari" in *Leo Sheep*. 440 U.S. at 678. Plaintiffs were successors-in-interest to odd-numbered parcels originally granted to Union Pacific. *Id.* at 677-678. After receiving numerous requests for public access to recreate at a nearby reservoir, the federal government cleared a dirt road four feet into one private section corner and "blad[ed] a pre-existing" dirt road 30 feet from another corner of the plaintiffs' checkerboard land to create public access. *Leo Sheep Co.* v. *United States*, 570 F.2d 881, 884 (10th Cir. 1977).

Plaintiffs sued to quiet title. In response, the federal government claimed a right of access under an easement implicitly reserved in the initial railroad land grants and under the UIA. This Court rejected both arguments, holding that if the federal government wanted to access its land across the private parcels, it would need to use its power of eminent domain and pay just compensation. 440 U.S. at 687-688. *Leo Sheep* ended the federal government's claim to a generalized right of access to checkerboard public land, reflected in BLM's subsequent public guidance that "[i]t is illegal to cross public land at corners." C.A. App. 237.

B. Facts and Procedural History

1. In 2005, Fred Eshelman purchased roughly 22,000 acres of private land on Elk Mountain in Carbon County, Wyoming, through Iron Bar Holdings. C.A. App. 80. Because Elk Mountain was part of the checkerboard granted to Union Pacific, Dr. Eshelman in the purchase process relied on BLM's "definitive[]" guidance that corner crossing is illegal. C.A. App. 728.

Since then, Dr. Eshelman has opened the property to government officials and even strangers who have asked permission to cross or hunt. C.A. App. 386-387; C.A. App. 730. He partners annually with the Wyoming Game & Fish Department to turn thousands of acres of his ranch into a "hunter management area" for the public to hunt. Wyo. Game & Fish Dep't, *Elk Mountain Hunter Management Area* (2023), https://bit.ly/3u0MAeO. Most important to him personally, Dr. Eshelman enrolled Elk Mountain Ranch in Hunting with Heroes, a program that honors our nation's disabled veterans by giving them "unique hunting, fishing and other outdoor experiences." Hunting with Heroes Wyoming (2020), https://bit.ly/46UMmVl (last visited July 15, 2025).

Like other ranch owners, Dr. Eshelman has been forced to address trespassers, including corner crossers.

In 2015, Iron Bar's property manager asked the Wyoming Game & Fish Department about the best way to prevent trespassing. C.A. App. 441-443. An officer advised him to post "no trespassing" signs on either side of checkerboard corners where trespassing had been an issue. *Ibid.* The property manager complied.

Signs were not enough; the ranch repeatedly encountered corner crossers. So in 2018 and 2020, Dr. Eshelman proposed land swaps with Wyoming and BLM to consolidate contiguous public and private parcels that would have increased public access and (hopefully) reduced trespassing. See C.A. App. 909-910, 926, 939-940. Despite those efforts, neither swap materialized. See *ibid.*

One corner-crossing incident that had spurred Iron Bar's land-swap proposal involved out-of-state hunters. After arriving at Elk Mountain in 2020, the hunters approached the corner with the "no trespassing" signs, grabbed the posts, and swung themselves around—across Iron Bar's property—landing on the adjoining public land. App. 12a-14a. Over the next week, they repeatedly crossed Iron Bar's property at multiple corners. App. 13a. After confirming that the hunters had crossed Iron Bar's property and planned to do so again, Iron Bar's property manager warned that he would call law enforcement. C.A. App. 512-513. The local sheriff's office ultimately assured Iron Bar that it would cite the hunters, and the incident seemed closed. C.A. App. 250.

It was not. One year later, respondents returned to Elk Mountain with a fourth companion. App. 16a. This time, respondents brought an A-frame ladder to climb over the "no trespassing" signs. *Ibid.* After they crossed that initial corner, they proceeded to repeatedly corner cross. *Ibid.*

Once again, Iron Bar learned of the hunters' presence, and once again its staff confronted them. App. 16a. When the hunters refused to stop trespassing,

the property manager called the prosecutor's office, which directed the sheriff's office to write citations for criminal trespass. App. 17a. Wyoming Game & Fish instructed the hunters to leave Iron Bar's property. *Ibid.*

Carbon County prosecuted the hunters for criminal trespass. "[C]orner crossing is illegal," the county attorney explained, noting that the County had "a consistent policy" of citing offenders under the State's criminal trespass law. State's Resp. to Defs.' Mot. to Dismiss at 2, *State of Wyoming* v. *Cape*, No. CT-2021-5869 (Mar. 8, 2022). In April 2022, a jury acquitted the hunters. App. 17a.

2. Iron Bar filed this civil trespass action against the four hunters in Wyoming state court, which respondents removed to federal court. C.A. App. 12. The district court granted summary judgment to the hunters, concluding that the private landowner's property rights must cede to a right to access public land. App. 82a.

3. The Tenth Circuit affirmed on different grounds. Judge Tymkovich's opinion began by acknowledging that "[t]he right to exclude has long been a core property right," App. 18a, Iron Bar "own[s]" the area "above its land," *id.*, and above-surface invasions (like corner crosses) "are the same as surface invasions," App. 21a. Based on those straightforward principles, the court concluded that "Wyoming would deem the Hunters' corner-crossing an actionable civil trespass." App. 22a.

The court went on to hold, however, that federal law—the UIA—implicitly "preempted" Wyoming trespass law, App. 44a, on the theory that Iron Bar's trespass action constituted "an abatable federal nuisance," App. 38a. In assessing whether the UIA applied, the court determined that a trespass cause of action met the definition of an "inclosure" because it acted "like a virtual wall." App. 25a. Under that reasoning, because Iron Bar's trespass action

had "the effect of fully enclosing public lands," it violated the UIA. App. 37a.

The Tenth Circuit recognized significant "doctrinal inconsistencies at play," App. 40a, and acknowledged that this Court's precedent "may cast doubt on" its decision, App. 45a. The court also recognized that its decision "functionally" granted the public "a limited easement" to cross privately-held checkerboard land, App. 40a, notwithstanding *Leo Sheep*'s rejection of such an implied easement. The court further recognized the "force" to Iron Bar's argument that reading the UIA to "limit [Iron Bar's] right to exclude" would "diminish[] its property rights without just compensation and constitute an unconstitutional taking." App. 44a-45a. But the court viewed that argument as foreclosed by circuit precedent interpreting the UIA to "unquestionably sanction[] physical invasions without compensation," App. 46a—precedent the court admitted may have been undercut by "recent Supreme Court precedent" like *Cedar Point Nursery*. App. 45a.

The court recognized that its novel holding created "questions for landowners and the public alike, including who might be liable during a corner-crossing incident, and what duty of care each party owes the other." App. 47a. The court expressly invited this Court to "reconsider the scope of *Leo Sheep* as it applies to this case." *Ibid.*

REASONS FOR GRANTING THE PETITION

By holding that the UIA grants the public a "limited easement" to pass through private land to recreate on public land, the Tenth Circuit's decision contravenes *Leo Sheep* and upends decades of federal and state consensus that corner crossing is illegal. The court also rewrote the UIA's narrow prohibition on unlawful physical enclosures to hold—for the first time—that it implicitly preempts state trespass law, inverting the presumption against

preemption on the untenable premise that a legitimate state-law trespass claim is an abatable "nuisance." If the UIA grants a public easement through Iron Bar's property, it means that Congress in 1885 effected one of the broadest uncompensated property takings in U.S. history—one that we are just learning about 140 years later.

This Court's review is imperative. The decision below steamrolls state law, takes easements, and revolutionizes property law affecting up to 150 million acres of private land. It has already created confusion about the new legal landscape. In addition to erasing billions of dollars in private property value, the decision below will lead to widespread trespasses and property damage by even the most well-intentioned recreationists. The petition for a writ of certiorari should be granted.

I. THE DECISION BELOW DIRECTLY CONTRAVENES THIS COURT'S PRECEDENT

When Congress executed its checkerboard land-grant scheme, it did not reserve for the government any easement to pass through the privately-owned sections to reach the public sections. The Tenth Circuit's contrary understanding of the UIA cannot be reconciled with *Leo Sheep*, the UIA's text, or this Court's takings precedents.

A. The Tenth Circuit's Interpretation of the UIA Violates *Leo Sheep*

Leo Sheep rejected arguments that Congress reserved an easement in the checkerboard allowing the public to cross private property to recreate on adjacent public land. Because the decision below cannot be squared with that controlling precedent, this Court should grant the petition and reverse.

1. Like Iron Bar, Leo Sheep Company and Palm Livestock Company owned private checkerboard land in Carbon County. 440 U.S. at 677-678. Like Iron Bar, "the

checkerboard configuration" of those companies' lands made it "physically impossible" for the public to access public parcels "without some minimum physical intrusion" to the companies' private parcels. *Id.* at 678. From the government's perspective, that was untenable, because the public had requested access to the Seminoe Reservoir, an area northwest of the companies' properties where the public liked to fish and hunt. *Id.* To provide access, the government cleared a dirt road that crossed the companies' properties at two corners. *Id.*; 570 F.2d at 884. The companies sued to quiet title, and the district court granted their motion for summary judgment. 440 U.S. at 678.

On appeal, the Tenth Circuit reversed and held that Congress had "intended to reserve an easement to permit access to the even-numbered sections which were surrounded by lands granted the railroad." 570 F.2d at 885. Otherwise, the Tenth Circuit concluded, neither the government nor the public would be able to access "the interlocking even-numbered sections," *id.*, which would contravene what the court saw as "the right of the Government and the public to have access to the public domain," *id.* at 888. In his dissent, Judge Barrett criticized the majority for engaging in "judicial legislation" to fix Congress's mistakes. *Id.* at 890.

This Court granted certiorari to resolve "[w]hether the United States reserved a right of access to the retained even-numbered sections of land when it granted the Union Pacific Railroad title to the odd-numbered sections completely surrounding the even-numbered sections." Brief for the United States, *Leo Sheep*, 440 U.S. 668 (No. 77-1686), 1978 WL 223187, at *1 (U.S. Br.). Relying on the doctrine of easements by necessity, the government argued it was "virtually inconceivable" that Congress intended "to give up the government's right of access to the retained sections," and "no less inconceivable"

for the United States to rely on eminent domain to ensure access. *Id.* at *7.

This Court unanimously rejected the government's arguments. The Court began by observing that the government had no basis for claiming "any express reservation of an easement in the Union Pacific Act." *Leo Sheep*, 440 U.S. at 678-679. Nor was there any "implicit reservation of the asserted easement … established by 'settled rules of property law.'" *Id.* at 679. This Court agreed that an "easement is not actually a matter of necessity in this case because the Government has the power of eminent domain." *Id.* at 679-680. "[B]oth as a matter of common-law doctrine and as a matter of construing congressional intent," this Court refused to "imply rights-of-way" for the government. *Id.* at 681-682.

Leo Sheep likewise held that the UIA lacked "any significance" to whether the federal government retained a right to access public land. *Id.* at 683. As this Court noted, a landowner's odd-numbered lots could be "individually fenced" lawfully under the UIA, even if that would "obstruct[]" "access to even-numbered lots." *Id.* at 685. "In that light," the Court "[could not] see how the Leo Sheep Co.'s unwillingness to entertain a public road without compensation can be a violation of that Act." *Ibid.* That conclusion aligned with the government's position that, "[b]y its terms, the Act created no new rights or interests." U.S. Br., *supra*, at *23 n.13.

This Court recognized that its holding and reasoning might impair public access to public land. *Leo Sheep*, 440 U.S. at 685-688. But that did not matter because Congress never intended to reserve such a right. *Id.* at 681, 685-686. Instead, Congress focused on "negotiation, reciprocity considerations, and the power of eminent domain as obvious devices for ameliorating disputes." *Id.* at 681. If the federal government wanted public access to checkerboard public land, it could always pay appropriate "compensation." *Id.* at 688. And while *Leo Sheep* involved the federal

government, its holding applies equally to the government's "licensees," including "the public" at large, as the decision below recognized. App. 37a. After all, the public may enter and use public land only as the government's licensee and at its sufferance. See *Buford*, 133 U.S. at 326; 2 Pub. Nat. Res. L. § 15:4 (2d ed.) ("Most persons who go upon the federal lands do so under a revocable license, meaning that they are entering by sufferance, not by right.").

Leo Sheep establishes that Congress did not reserve any right of public access to the checkerboard parcels that would have permitted defendants to lawfully cross Iron Bar's property. That binding precedent forecloses the contrary decision below.

2. None of the Tenth Circuit's attempts to distinguish *Leo Sheep* is persuasive.

a. The decision below limited *Leo Sheep* to its facts, describing its holding as "narrow" and as establishing only that the government lacks "an implied easement to construct a road for public access in the checkerboard." App. 39a (cleaned up). According to the court, *Leo Sheep* applies to "a permanent, physical appropriation," *ibid.*—like a road—but not "a momentary corner-cross," App. 41a. That misreads *Leo Sheep*.

The relevant question in *Leo Sheep* was not about *how* the public accessed the land but *whether* the government had an access right at all. The difference between clearing a dirt road and stepping across a corner is a difference of degree, not of kind. Whether respondents momentarily invaded Iron Bar's property or built a dirt road, *both* are trespasses under state law, as the Tenth Circuit held. App. 23a. On the Tenth Circuit's reading, *Leo Sheep* would have come out differently had the recreating public been willing to tote their lawn chairs, coolers, and fishing poles across the checkerboard on foot. But this Court clarified that it was "unwilling to imply *rights-of-way*, with the substantial impact that such implication would have on

property rights granted over 100 years ago." *Leo Sheep*, 440 U.S. at 682 (emphasis added).

To the extent a distinction between building a road or granting a less intrusive right-of-way is relevant, it goes to damages—or the value of a potential easement—not whether Congress reserved a right of access. Cf. *Cedar Point*, 594 U.S. at 153 ("The duration of an appropriation—just like the size of an appropriation—bears only on the amount of compensation.").

The *Leo Sheep* briefing confirms that the dispute was about more than a road. The government complained that it was "impossible to *gain access*" to public checkerboard land "except by going over some portion of the [privately owned] odd sections." U.S. Br. at *21-22 (emphasis added). "It must follow," the government contended, "that there is an implied reservation … not only in favor of the government itself for access to these sections … but also in favor of the private citizens who wish to go upon them." *Id.* at *22. The government's requested relief was not to build roads at every corner but that "*a way of reasonable width* from one government section to another should be fixed in each case at the point where the corners join." *Ibid.* (emphasis added). That relief—squarely rejected by this Court—is precisely the relief afforded respondents below.

Since *Leo Sheep*, federal and state authorities have declared corner crossing unlawful. In the 1980s, BLM developed a "Wyoming Public Land Access" guide explaining that "Corner crossings in the checkerboard land pattern area are not considered legal public access." C.A. App. 136. In 1997, BLM's Assistant Regional Solicitor for the Rocky Mountain Region issued an opinion on "the public's right of access to public lands in the 'checkerboard' area of Wyoming." C.A. App. 233. Asked whether a person could "legally step over a checkerboard corner … without trespassing on the cornering private lands," the Solicitor was unequivocal: "The answer to the

question is no." *Ibid.* Why? Because corner crossing necessarily means "trespass[ing] upon the property of the owner of the opposite, private, land." *Ibid.* That guidance has remained unchanged in modern times: In 2013, BLM warned hunters that "[i]t is illegal to cross public land at corners." C.A. App. 237.

Wyoming and other checkerboard states have been equally resolute. In 2004, the Wyoming Attorney General explained that "a person who 'corner-crosses' could be charged under Wyo. Stat. Ann. § 6-3-303," Wyoming's criminal trespass law. C.A. App. 1003. Section 6-3-303 is violated whenever someone "enters or remains on or in the land or premises of another person, knowing he is not authorized to do so… ." *Ibid.* The Attorney General noted that landowners own the space above the land, and that "the definition of 'enter' is expansive enough to include penetrating an invisible plane." C.A. App. 1003-1004. "Accordingly, passing through the space above private property, knowing one does not have permission to be on that private property, may be a criminal trespass under Wyo. Stat. Ann. § 6-3-303." C.A. App. 1004. That aligns with other states' historical policies on corner crossing. See, *e.g.*, Montana Fish, Wildlife & Parks, *Frequently Asked Questions from Montana Hunters* 18 (2023), https://bit.ly/47fZWSI ("Corner crossing … is illegal without permission from the adjacent landowner(s)."); Matthew Copeland, *Cornered*, Outdoor Life (Aug. 10, 2015), https://perma.cc/CD4Q-V3C4 ("Corner crossing … remains a prosecutable offense" in "Utah, Idaho, New Mexico, and Colorado.").

In any event, while the "limited easement" granted to respondents does not permanently alter the *land*, it is no less "a permanent, physical appropriation," App. 39a. This Court has held that "a physical appropriation" may be "permanent or temporary." *Cedar Point*, 594 U.S. at 153. Indeed, while the public may not constantly occupy the easement the Tenth Circuit granted, it is permanently

reserved for its use—24 hours per day, 365 days per year. The easement is thus no less permanent than a parking space, even though the space is not constantly occupied by a vehicle. Cf. *ibid.* (recognizing physical appropriation of property "even though no particular individual is permitted to station himself permanently upon the premises" (quotation omitted)).

b. The Tenth Circuit further distinguished *Leo Sheep* on the ground that, there, "[t]he public could … access the reservoir from *another* direction—just not the southeast," whereas "[n]o foot access to the landlocked federal sections of Elk Mountain is available absent corner-crossing." App. 41a-42a. But this Court's rejection of implied easements made no reference to that supposed distinction. And regardless, the notion that the public could access the reservoir from a different direction appears incorrect; the Tenth Circuit's opinion and accompanying map underscored that, without an easement, areas of the reservoir would be "inaccessible." 570 F.2d at 885; *see id.* appx. Otherwise, there would have been no basis for the government to argue for an easement by necessity, which was central to its case.

B. The UIA Does Not Implicitly Preempt State Trespass Claims

The Tenth Circuit held that the UIA bars a private landowner from exercising its right to exclude when doing so prevents the public from recreation on public land. Even setting *Leo Sheep* aside, that decision was incorrect: Iron Bar has erected no fences or inclosures that come within the UIA's text. A trespass action is not an "inclosure" in any sense of that word. And nowhere in the UIA did Congress clearly and manifestly preempt landowners' rights to exclude under state trespass law.

1. Courts have long recognized a "presumption against pre-emption" that reaches its zenith in any "field which the States have traditionally occupied." *Wyeth* v.

Levine, 555 U.S. 555, 565 & n.3 (2009) (citation omitted). Courts "assum[e] that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Id.* at 565 (cleaned up).

Congress did not clearly and manifestly preempt state-law trespass actions in the Unlawful Inclosures Act. As its title signifies, the Act was designed to outlaw "unlawful" enclosures—efforts to obstruct access to public land that was otherwise legally accessible. The Act does not purport to give the public any new, affirmative right to access public land; it "creates no easements or servitudes." *United States ex rel. Bergen* v. *Lawrence*, 848 F.2d 1502, 1506 (10th Cir. 1988); see U.S. Br., *supra*, at *23 n.13.

Start with the UIA's text. Neither Section 1061 nor 1063 applies because a trespass action is neither an "inclosure" nor an "unlawful means" of impeding access.

Section 1061 declares unlawful "[a]ll inclosures of any public lands … made, erected, or constructed by any person." 43 U.S.C. § 1061. Iron Bar has not "made, erected, or constructed" any "inclosure[]" of public lands; it instead sued defendants for trespassing on *its* lands.

In 1885, the word "inclosure" was a term of art that meant sealing off land with a *physical* barrier. Contemporary legal dictionaries defined "inclosure" to mean "[a] tract of land surrounded by an actual fence, and such fence." William C. Anderson, *A Dictionary of Law* 532 (1889); see, *e.g.*, *id.* at 401 ("[i]mport[ing] land enclosed with something more than the imaginary boundary line,—some visible or tangible obstruction, as, a fence, hedge, ditch, or an equivalent object"). Contemporary usage dictionaries likewise explained that an "inclosure" of real property was "the separation of land from common ground into distinct possessions by a fence." Noah Webster, *An American Dictionary of the*

English Language 674 (1882); accord, *e.g.*, 4 *The Century Dictionary and Cyclopedia* 3038 (William Dwight Whitney ed., 1895) ("The separation and appropriation of land by means of a fence"); 2 *The Universal Dictionary of the English Language* 2635 (Robert Hunter & Charles Morris eds., 1897) ("[T]he act of separating or cutting off land from common land by a fence").

Section 1063 is even further afield. It provides that "[n]o 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 …, or shall prevent or obstruct free passage or transit over or through the public lands." 43 U.S.C. § 1063. Trespass claims—the most routine defense of private property—are not an "unlawful means" of doing anything. Rather, they are a lawful way for property owners to exercise "one of the most treasured rights of property ownership." *Cedar Point*, 594 U.S. at 149 (quotation omitted). Indeed, by forbidding only "unlawful" means of preventing access, Congress acknowledged that access might be hindered through *lawful* means. Put simply, respondents were "prevent[ed]" from "peaceably entering upon … public land," 43 U.S.C. § 1063, not because of anything Iron Bar did, but because respondents never had a right to cross Iron Bar's property in the first place.

2. The Tenth Circuit's contrary holding that the UIA preempts state trespass law is wrong: A trespass action is neither an "inclosure" nor an abatable federal nuisance.

a. The Tenth Circuit held that an "inclosure" is not limited to physical barriers under the UIA. That expansive interpretation does not withstand scrutiny.

Ignoring Iron Bar's definitions, the court instead relied on an 1891 definition of "inclosure" in Black's Law Dictionary—cited by neither party—as "the act of freeing land from rights of common, commonable rights, and

generally all rights which obstruct cultivation and the productive employment of labor on the soil." App. 24a-25a. But even the court's selected definition does not encompass a trespass action. Trespass actions cannot "free[] land from rights of common"; they can only *enforce* property rights already established. Under the court's definition, Iron Bar's lands at issue here were "inclosed" over a century ago when they were sold to Union Pacific—an indisputably *lawful* inclosure—not when Iron Bar brought a valid trespass action.

The Act's history and purpose confirm that Congress was referring to physical barriers. One representative explained that "these wire fences" were "the great evil this bill is addressed to." 15 Cong. Rec. 4769 (1884) (statement of Rep. Henley). The eight-page House Report used the word "fence" and its derivatives 45 times. H.R. Rep. No. 48-1325. Congress never mentioned trespass actions.

The Tenth Circuit advanced two textual arguments in holding that the Act's use of "inclosure" is not limited to physical barriers. First, the court concluded that Section 1063's use of "fencing *or inclosing*" establishes that "fencing" and "inclosing" are not coextensive. App. 25a. Sure enough, but the court then never explained why the term "inclosing," unlike the preceding term "fencing," encompasses *non*-physical barriers. The more plausible reading, particularly in light of the Act's legislative history, is that "inclosing" more broadly encompasses other types of *physical* barriers that might otherwise fall outside the definition of "fencing"—such as ditches, boulders, embankments, or cattle guards.

The court also contended that Section 1061 "makes clear that the statute applies to 'all inclosures of any public land,' not just those done through fencing." App. 25a (quoting 43 U.S.C. § 1061). But the court again failed to explain why that language encompasses legal actions like

trespass claims. The court cited a Wyoming territorial court decision, *United States* v. *Douglas-Willan Sartoris Co.*, 22 P. 92 (Wyo. 1889), as supporting its broader reading, but that court described the UIA only on its way to declaring the law *unconstitutional*. See *id.* at 97 (if the United States shall "have a way over defendant's land," "[i]t must be bought and paid for").

b. The Tenth Circuit also viewed the UIA's "controlling principle" as that "checkerboard landowners cannot maintain a barrier that has the effect of fully enclosing public lands and preventing complete access for a lawful purpose." App. 37a (citation omitted). According to the court, when a landowner exercises its right to exclude in the checkerboard, "he imposes a proscribable nuisance under federal law." *Ibid.* The notion that a trespass action restricting access to public land could constitute a "nuisance" under the UIA has no textual footing, and is wrong even on its own terms.

First, even assuming the UIA proscribed all "nuisances," a genuine trespass claim is not a nuisance even under the broadest conception of that term. The Tenth Circuit did not cite—and counsel has not found—a single case in which a trespass action was held to be a nuisance. Blackstone's 1769 list of "common nuisances" included just eight categories; asserting property rights did not make the list. 4 William Blackstone, Commentaries 167-169. Even as modern plaintiffs have pushed the boundaries of nuisance law, no one has suggested that a civil trespass action could qualify as a nuisance. See Leslie Kendrick, *The Perils and Promise of Public Nuisance*, 132 Yale L.J. 702, 721-727 (2023) (cataloguing "[n]ew applications of the doctrine" ranging from "predatory lending" to "antibiotic resistance," while omitting trespass actions).

The Tenth Circuit understood precedent to have analyzed checkerboard disputes "under both a nuisance

law approach, such as in *Camfield*, and a no-implied-easement approach, such as in *Leo Sheep*." App. 38a. But the court ignored the obvious common denominator in every case finding a nuisance under the UIA. Each involved the presence of an *actual fence*. *E.g.*, *Camfield*, 167 U.S. at 519 (defendants "construct[ed] and maintain[ed] a fence which inclosed and included about 20,000 acres of the public domain"); *Bergen*, 848 F.2d at 1504 ("[Defendant] constructed a twenty-eight mile fence enclosing over twenty thousand acres of private, state and federal lands[.]"). Before the decision below, *no* court had ever held that the assertion of a trespass action was an abatable public nuisance that violated the UIA.

Second, the court's conclusion that checkerboard landowners cannot maintain a barrier that has the effect of enclosing public lands has been repeatedly rejected by this Court. *Camfield* said exactly the opposite: A landowner "doubtless" has "the right to" "separately fence[]" his "odd-numbered sections" even if "the result"—that is, "the effect"—would be to "practically exclude the government from the even-numbered sections." 167 U.S. at 527-528. Citing this language, *Leo Sheep* confirmed it "was not a violation of the Unlawful Inclosures Act" to "individually fence[]" "odd-numbered lots" *even if* "access to even-numbered lots is obstructed." 440 U.S. at 685.

The decision below crafted a 40,000-foot conception of the UIA's purpose: "harmoniz[ing] the rights of private landowners and those accessing public lands." App. 23a. But that was not the UIA's purpose, and regardless, it would be "quite mistaken to assume … that whatever might appear to further the statute's primary objective must be the law." *Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) (cleaned up). Congress could have prohibited—but didn't—any hinderance to accessing public lands. Congress could have provided—but didn't—

a generalized right of access to public lands. Instead, Congress identified and outlawed only ongoing practices of concern. It is not the judiciary's job to update the UIA's text to redress modern access problems not foreseen or addressed by the enacting Congress.

C. The Tenth Circuit's Interpretation of the UIA Effects an Unconstitutional Taking

The Tenth Circuit recognized that its decision "functionally" granted the public "a limited easement" through Iron Bar's property. App. 40a. The panel further acknowledged the "force" to Iron Bar's argument that this limit on its right to exclude without just compensation would "constitute an unconstitutional taking." App. 44a-45a. But the panel believed itself bound to reject that argument. App. 45a. That was error under this Court's takings precedent.

As Judge Tymkovich explained, "more recent Supreme Court precedent"—specifically, *Cedar Point*—"cast doubt on" the circuit's prior caselaw that rejected a takings challenge under the UIA. App. 45a. In *Cedar Point*, employers challenged a California regulation that allowed labor organizations to "take access" to an agricultural employer's property for up to three hours per day, 120 days per year. 594 U.S. at 144. The employers argued that the access regulation "effected an unconstitutional *per se* physical taking … by appropriating without compensation an easement for union organizers to enter their property." *Id.* at 145.

This Court agreed: Because the access regulation "appropriate[d] a right to invade the growers' property," it constituted "a *per se* physical taking." *Id.* at 149. The Court clarified that "[g]overnment action that physically appropriates property is no less a physical taking because it arises from a regulation" (or statute). *Ibid.* And the Court emphasized that "even if the Government physically invades only an easement in property, it must

nonetheless pay just compensation." *Id.* at 151 (quotation omitted).

Here, there is an even stronger case for a *per se* physical taking than in *Cedar Point*. There, the limit on the property owners' right to exclude was temporary, lasting only a few hours per day for 120 days. The abrogation of Iron Bar's right to exclude here is complete—the public may invade Iron Bar's property 24/7, 365 days a year. "[T]hat a right to take access is *exercised* only from time to time does not make it any less a physical taking." *Id.* at 154 (emphasis added).

Judge Tymkovich acknowledged that the panel's holding—functionally granting respondents an easement—could require compensation under *Cedar Point*: By "permitting limited trespass[,] the UIA diminishes a property right a landowner would otherwise have." App. 46a. And, Judge Tymkovich continued, "[w]hen the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation." *Ibid.* (quoting *Cedar Point*, 594 U.S. at 147).

The Tenth Circuit nonetheless declined to find a taking based on *Cedar Point*'s caveat regarding "longstanding background restrictions on property rights," including the government's right to require a landowner "to abate a nuisance on his property." App. 46a (quoting *Cedar Point*, 594 U.S. at 160). But as explained above, a genuine trespass action has never been deemed a nuisance, and there is certainly no "longstanding background restriction" under the UIA precluding trespass actions. Quite the opposite: The Tenth Circuit's nuisance holding broke new ground.

II. THE QUESTION PRESENTED HAS PROFOUND LEGAL AND PRACTICAL IMPORTANCE

The decision below revolutionizes property law in the American West and beyond, "overrid[ing] the state's civil trespass regime," App. 23a, and granting "limited easement[s]" affecting millions of acres of checkerboard land, App. 40a. That holding implicates federalism and property-law issues of paramount significance. Indeed, this court has recognized the "special need for certainty and predictability where land titles are concerned," and previously has been "unwilling to upset settled expectations" in this area of law. *Leo Sheep*, 440 U.S. at 687. The decision below has created profound *un*certainty and *un*predictability, turning property rights and public land access into "a game of inches" where a "slight misstep" could mean burdensome litigation. onX, *Did the 10th Circuit Court Just Make Corner Crossing Legal? It's Complicated*, http://bit.ly/3GuJo1z (last visited July 15, 2025).

A. The question presented implicates issues of federalism and property rights on which this Court has frequently granted review. The Tenth Circuit in effect applied a presumption *favoring* preemption, converting an obscure federal statute forbidding people from erecting or maintaining "inclosures" into a broad implied preemption provision. "Our federal system would be turned upside down if" federal statutes prohibiting specific conduct implicitly displaced state law. *Kansas* v. *Garcia*, 589 U.S. 191, 212 (2020). This Court routinely grants certiorari to safeguard against overzealous use of implied preemption principles. See, *e.g.*, *Virginia Uranium, Inc.* v. *Warren*, 587 U.S. 761, 767 (2019) (plurality opinion) ("[i]nvoking some brooding federal interest … should never be enough to win preemption of a state law"); *Bates* v. *Dow Agrosciences LLC*, 544 U.S. 431, 449-450 (2005).

Independently, the decision below acknowledged the significance of this Court's physical-takings precedents, which vindicate the "right to exclude," "one of the most treasured rights of property ownership." *Cedar Point*, 594 U.S. at 149 (quotation omitted). This case offers an opportunity to resolve broader confusion about the circumstances under which "physical invasions" like those "unquestionably sanctioned" by the Tenth Circuit, App. 46a, constitute takings. While acknowledging that *Cedar Point* "cast doubt" on its decision, the Tenth Circuit was persuaded that the easement it sanctioned was "consistent with longstanding background restrictions on property rights" and thus was "carved out" by *Cedar Point*. App. 45a-46a. Other courts have sought to narrow *Cedar Point* in similar fashion. *Summit Carbon Sols., LLC* v. *Kasischke*, 14 N.W.3d 119, 128 (Iowa 2024) ("survey access is a longstanding background restriction"); *Betty Jean Strom Tr.* v. *SCS Carbon Transp., LLC*, 11 N.W.3d 71 (S.D. 2024) (similar, though recognizing the need to "limit[]" surveys to avoid "invasive activities"); *Adenariwo* v. *District of Columbia*, No. 24-00856, 2025 WL 1190776, at *5 (D.D.C. Apr. 24, 2025) (similar for safety statute authorizing orders to vacate property); *King* v. *United States*, 165 Fed. Cl. 613, 634 (2023) (similar for restriction on vested pension benefits). The scope of this "carve out" will recur given sovereigns' incentives to avoid takings liability, absent intervention by this Court.

B. Practically, this Court has recognized the "substantial impact" that "imply[ing] rights-of-way" would have "on property rights granted over 100 years ago." *Leo Sheep*, 440 U.S. at 682. The decision below will have far-reaching consequences for landowners that extend beyond corner crossing—and beyond the West. If a trespass action constitutes an unlawful "inclosure," the UIA equally immunizes a trespasser who marches

straight down the middle of private property. Cf. *Mackay* v. *Uinta Dev. Co.*, 219 F. 116 (8th Cir. 1914). Nor would the extent of the trespass matter: Under the logic of the decision below, landowners can never stop trespassers trying to get to public property, even if that public property is a single section of land located hundreds of miles deep in private property. Nothing in the UIA limits its prohibition on "inclosures" to corners, the checkerboard, or trespasses that do not involve setting foot (or hoof or wheel) on land.

Landowners have serious cause for concern. Estimates suggest that over 9.5 million acres of public land—an area twelve times the size of Rhode Island—are landlocked by private land. *Off Limits, But Within Reach: Unlocking the West's Inaccessible Public Lands*, onX & Theodore Roosevelt Conservation Partnership (TRCP) 1 (2018), https://bit.ly/3QcKU9m. For much of this land, the relevant public parcels are isolated and fully enclosed within private land, see *id.* at 2-3, meaning that public access would *require* trespasses beyond corner crosses.

This is not just a Western problem: There remain tens of thousands of acres of landlocked federal lands throughout Minnesota, Wisconsin, North Carolina, Tennessee, Arkansas, Florida, New York, Pennsylvania, and New Jersey. See onX & TRCP, *The Upper Midwest's Inaccessible Public Lands* 6 (last visited July 15, 2025), https://bit.ly/4nIQlwL; onX & TRCP, *The South's Landlocked Public Lands* 4 (last visited July 15, 2025), https://bit.ly/4eG3Ysu; onX & TRCP, *The Mid-Atlantic's Landlocked Public Lands* 5 (last visited July 15, 2025), https://bit.ly/46meK5l. The implication of the decision below is that the UIA permits any member (and any number) of the public to traverse as many miles of private land as needed to access these public parcels throughout the United States.

And even if the decision below limited its implied easement to corners, it will inevitably lead to more trespasses, expensive property damage, and burdensome litigation. The Tenth Circuit's notion that trespassers will be immune from liability so long as they do not "physically touch[]" the land, App. 47a, is neither a realistic nor feasible limitation. One cannot cross a corner without first finding it. GPS devices can help identify only the rough vicinity of a corner; they feature average error ranges of 5-10 feet and regularly err by 50 feet or more. Being off by even 5 feet near a corner means standing several feet inside private property.

Corners can be identified with precision only if there happens to be a monument—like a brass cap—marking the exact spot, but that is an uncertain prospect at best. Even where they exist, brass caps are often hidden under brush, rocks, snow, or fallen timber. And in the process of searching for one, a corner crosser will already have trespassed multiple times.

If corner crossing is permissible, it also means that members of the public, some with high-powered rifles, will roam freely within the perimeter of checkerboard owners' land without notifying anyone of their presence. Most members of the public will act responsibly, but some will not. The potential for accidents (and worse) is obvious.

Thus, while the Tenth Circuit sought to undersell the consequences of its holding, it effectively guarantees trespasses well beyond corner crosses. And it will diminish property values. Iron Bar projects a 10-25% diminution in value of its property from corner crossing, with some estimates approaching 30%. C.A. App. 173. Multiplying those monetary effects across the millions of acres of private checkerboard land, landowners stand to lose billions in value.

C. The decision below has already caused widespread confusion among the public, law enforcement,

and lawmakers. The sweeping implications were recently highlighted before a Wyoming legislative committee regarding a recreationist devising a ladder that would allow motorized corner crossing. See *Joint Travel, Recreation, Wildlife & Cultural Resources Committee Hearing* (Wyo. Legis. June 6, 2025), at 3:39:24-42, YouTube, http://bit.ly/3GdiafI. Under questioning from legislators, Carbon County's sheriff acknowledged difficulties in trying to enforce the law under the Tenth Circuit's decision. *Id.* at 3:32:57-3:34:50. Even proponents of corner crossing described the issue as "wildly" "complicated" in the wake of the decision below. *Id.* at 3:37:43-46.

This unsettled legal landscape is untenable considering the over 200 million Americans who engage in wildlife-related recreation. U.S. Fish & Wildlife Serv., *2022 National Survey of Fishing, Hunting, & Wildlife-Associated Recreation* 3 (Sept. 2023), https://bit.ly/3TSNUtP. Of the 54 million Americans that hunted and fished in 2022, nearly 10 million haled from checkerboard states. *Id.* at 48. The decision below leaves tens of millions of outdoor recreationists in limbo about how and where they may access public land.

D. This case presents an ideal vehicle to decide the question presented, as Judge Tymkovich recognized in his invitation for this Court to "reconsider the scope of *Leo Sheep* as it applies to this case." App. 47a. The case arises on direct appeal of a final judgment after full discovery, with a detailed published opinion squarely addressing the applicability of *Leo Sheep*, the UIA, and the Takings Clause. App. 1a-47a. Each of these federal issues was cleanly preserved and presented below. And the federal question was indisputably outcome-determinative: The Tenth Circuit held that Wyoming trespass law would prohibit respondents' conduct if not for UIA preemption. This case thus provides a unique and timely opportunity

to provide immediate and much-needed clarity to landowners, recreationists, and public authorities alike.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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