No. 25-887

In the Supreme Court of the United States

SAUER WEST LLC, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
AMBER BLAHA
BRIAN R. HERMAN
Attorneys

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

QUESTION PRESENTED

Whether the Surface Transportation Board's issuance of a Notice of Interim Trail Use, which grants a rail carrier time to attempt to reach an agreement to transfer its right-of-way for interim use as a recreational trail, caused a taking of petitioners' property when the carrier never reached an agreement and no trail use occurred on petitioners' property.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution and statutes:

Miscellaneous: Page

In the Supreme Court of the United States

No. 25-887

SAUER WEST LLC, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 151 F.4th 1339. The opinion and order of the Court of Federal Claims (Pet. App. 18a-104a) is reported at 168 Fed. Cl. 49.

JURISDICTION

The judgment of the court of appeals was entered on August 14, 2025. A petition for rehearing was denied on October 21, 2025 (Pet. App. 105a-106a). The petition for a writ of certiorari was filed on January 20, 2026 (the Tuesday after a Monday holiday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners brought suit against the United States in the United States Court of Federal Claims (CFC), alleging that the Surface Transportation Board (Board)

had effected a taking of their property by issuing a Notice of Interim Trail Use or Abandonment (NITU). See Pet. App. 7a-8a. The NITU provided a period of time for a rail carrier to attempt to reach an agreement to transfer its right-of-way on petitioners' land for use as a recreational trail, but the negotiations ended without any agreement and no trail use ultimately occurred. See *id.* at 7a. The CFC granted summary judgment to the United States after finding that petitioners had not shown that the NITU had caused any change to petitioners' property interests. See *id.* at 18a-19a, 76a. The court of appeals affirmed. See *id.* at 1a-17a.

1. The Board generally has "exclusive" authority to regulate "transportation by rail carriers." 49 U.S.C. 10501(b)(1). As relevant here, the Board oversees the process by which a rail carrier may abandon a line and thereby remove the line from the national transportation system. See 49 U.S.C. 10903; see *Preseault* v. *ICC*, 494 U.S. 1, 5 n.3 (1990) (*Preseault I*).

To abandon a rail line, a rail carrier must seek the Board's authorization to abandon, either by applying for such authorization and meeting the Board's requirements or by seeking an exemption from those requirements. See 49 U.S.C. 10903(a)(1) and (d); 49 C.F.R. 1152.20, 1152.22; see also 49 U.S.C. 10502; 49 C.F.R. 1121.4, 1152.50. If the Board authorizes abandonment, the rail carrier decides whether to complete the abandonment. See 49 C.F.R. 1152.29(e)(2). If the carrier chooses to abandon, it must satisfy applicable conditions and file a notice of consummation with the Board within the time allotted for abandonment, which typically is one year. See *ibid.* If the carrier does not file a notice of consummation within the allotted time, the

authorization to abandon expires, and the rail line is not abandoned. See *ibid.*

Abandonment of a rail line may impact state-law property rights in the railroad right-of-way. See *Preseault I*, 494 U.S. at 8. Rail carriers sometimes hold fee title to land in the right-of-way, but in other instances carriers hold easements. See *ibid.* The terms of such easements vary, but frequently they provide that the easements cease upon abandonment of rail operations. *Ibid.* Thus, in some cases, when a rail carrier consummates abandonment of the rail line and ends the Board's jurisdiction over that line, the rail carrier also abandons its right-of-way under state law, and the servient landowner is relieved of an encumbrance on its state-law property rights in the right-of-way. *Ibid.*

2. The National Trails System Act (Trails Act), Pub. L. No. 90-543, 82 Stat. 919 (16 U.S.C. 1241 *et seq.*), promotes the establishment of recreational trails in both urban and rural areas. In 1983, Congress amended the Trails Act "to preserve for possible future railroad use rights-of-way not currently in service and to allow interim use of the land as recreational trails." *Preseault I*, 494 U.S. at 6; see National Trails System Act Amendments of 1983, Pub. L. No. 98-11, Tit. II, § 208(2), 97 Stat. 48. In particular, the 1983 amendments "provide[d] that a railroad wishing to cease operations along a particular route may negotiate with a State, municipality, or private group that is prepared to assume financial and managerial responsibility for the right-of-way," and "[i]f the parties reach agreement, the land may be transferred to the trail operator for interim trail use." *Preseault I*, 494 U.S. at 6-7; see 16 U.S.C. 1247(d).

The Board has implemented a process to allow for negotiations of such transfers during abandonment

proceedings. See 49 C.F.R. 1152.29. Under current regulations, a rail carrier that is interested in a transfer for trail use—also known as "rail banking"—must first begin the process for obtaining abandonment authority. See 49 C.F.R. 1152.29(a). During the abandonment proceeding, an interested trail sponsor may request to negotiate with the carrier to acquire the carrier's right-of-way for use as a recreational trail. See 49 C.F.R. 1152.29(d)(1). If the carrier declines to negotiate, it may continue the abandonment process and either consummate abandonment or opt not to do so. *Ibid.* But if the rail carrier agrees to negotiate, the Board issues a Notice of Interim Trail Use or Abandonment (NITU), which indicates that the rail carrier is considering either abandonment or a potential transfer of the right-of-way for use as a trail. *Ibid.*

That NITU does not itself permit trail use; it instead grants time during the abandonment process for the rail carrier to negotiate with a trail sponsor, and to transfer its right-of-way to the trail sponsor if negotiations are successful during that time. See 49 C.F.R. 1152.29(d)(1)(i) and (e)(2). The Board may grant extensions of time to continue negotiating, 49 C.F.R. 1152.29(d)(1)(ii), and during negotiations, a rail carrier may discontinue service and salvage track and materials, consistent with any other Board orders on the line, 49 C.F.R. 1152.29(d)(1)(i).

As with a decision regarding whether to abandon or transfer a right-of-way to any other third party, the rail carrier's option to transfer the right-of-way to a trail sponsor is voluntary. If the carrier and sponsor do not reach an agreement, the carrier may consummate abandonment of the line absent any other legal or regulatory barriers, or it may choose not to consummate abandonment and maintain the line in the national transpor-

tation network. See 49 C.F.R. 1152.29(d)(1)(i) and (e)(2). If an agreement is reached, the parties must notify the Board. See 49 C.F.R. 1152.29(d)(2) and (h). Interim trail use may not begin before an agreement is reached. See 49 C.F.R. 1152.29(d)(2) ("[I]f an interim trail use agreement is reached (and thus interim trail use established), the parties shall file the notice described in paragraph (h).").

Congress has directed that, once a carrier transfers its right-of-way to the trail sponsor "pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with" the Trails Act, "interim use" as a recreational trail "shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes," so long as "such interim use is subject to restoration or reconstruction for railroad purposes." 16 U.S.C. 1247(d). Thus, if a rail carrier's transfer of a rail line to a trail sponsor meets Section 1247(d)'s requirements, interim use as a recreational trail will not constitute abandonment of the right-of-way for railroad purposes.

3. In *Preseault I*, this Court declined to decide whether interim trail use under the Trails Act amendments constitutes a taking. The Court held that, "even if the rails-to-trails statute gives rise to a taking, compensation is available to petitioners under the Tucker Act." 494 U.S. at 4; see *id.* at 17.

Although the Court in *Preseault I* did not resolve the constitutional question, the Federal Circuit has since held that the process to transfer a right-of-way for interim trail use may result in a taking in two situations. First, the Federal Circuit has held that a "taking of possession of the lands" occurs if the rail carrier transfers its right-of-way to a trail sponsor and that right-of-way

is used for trail use that would not be authorized by the transferred easement. See *Preseault* v. *United States*, 100 F.3d 1525, 1550 (Fed. Cir. 1996) (en banc). Second, regardless of whether an agreement is reached and trail use occurs, the Federal Circuit has held that a taking occurs if the Board's issuance of a NITU delays or stops the rail carrier's ultimate abandonment of its easement and, as a consequence, "state law reversionary property interests that would otherwise vest in the adjacent landowners are blocked from so vesting." *Caldwell* v. *United States*, 391 F.3d 1226, 1233 (Fed. Cir. 2004), cert. denied, 546 U.S. 826 (2005); see *Ladd* v. *United States*, 630 F.3d 1015, 1023 (Fed. Cir. 2010) ("A taking occurs when state law reversionary property interests are blocked.").

The Federal Circuit has also held that no taking occurs if "even in the absence of the challenged government action, the plaintiff would not have possessed the allegedly taken property interest." *Caquelin* v. *United States*, 959 F.3d 1360, 1371 (Fed. Cir. 2020). In particular, the court has explained that the Board's issuance of a NITU that allows negotiations for interim trail use does not constitute a taking if (1) no rail banking agreement is reached, and (2) "the railroad would not have abandoned the rail line * * * even in the absence of the NITU." *Ibid.* In those circumstances the NITU has not prevented or delayed the rail carrier's abandonment of its easement and therefore is not the cause of any remaining limitation on the servient landowner's property interests. *Ibid.*

4. Petitioners own land over which a rail line passes between Johnstown, Colorado, and Welty, Colorado. See Pet. App. 6a, 8a. The 6.2-mile rail line is known as the Welty Branch and is owned by Great Western Railway of Colorado (Great Western), whose predecessors

in interest obtained easements for railroad purposes. See *id.* at 6a-7a, 32a. The line was originally used for transporting sugar beets from Welty to Johnstown, but over time it has been used for other railroad purposes, such as railcar storage. See *id.* at 6a-7a, 69a-75a.

In April 2008, Great Western sought authorization to begin abandonment proceedings for the line, and in May 2008 the Board authorized abandonment proceedings. See Pet. App. 7a. The town of Johnstown, Colorado requested to negotiate for a transfer of Great Western's right-of-way, and Great Western told the Board that it was interested in negotiating with the town. *Ibid.* In July 2008 the Board therefore issued a NITU that allowed time for negotiations. *Ibid.* While negotiations were ongoing, Great Western continued to use the line for storage purposes and made improvements to the line, including by replacing relay ties, switch ties, and spikes. *Ibid.* Great Western and the town ultimately did not reach an agreement, and the NITU expired on December 2, 2008. *Ibid.*

After negotiations failed, Great Western did not consummate abandonment. Pet. App. 7a. Instead, it sought and obtained six consecutive one-year extensions of time. *Ibid.* In each request, Great Western told the Board that it was exploring alternatives to abandonment. *Ibid.*; see *id.* at 48a-49a. During this time, Great Western continued to use and maintain the corridor, including by replacing ties and repairing track. See *id.* at 14a; see also *id.* at 70a-71a. In August 2014, Great Western informed the Board that it had decided not to abandon the line, and its authority to abandon expired in May 2015. See *id.* at 7a, 49a.

5. Petitioners brought takings claims against the United States in the Court of Federal Claims (CFC).

See Pet. App. 7a-8a. They alleged that the Board's issuance of the NITU had effected a "temporary" taking of their property. *Id.* at 8a.

The CFC granted summary judgment to the United States. See Pet. App. 18a-104a. As relevant here, the court concluded that petitioners had failed to establish that the NITU had caused a taking because "[t]he actions of the railroad strongly indicate it would not have abandoned the line at the time of the NITU." *Id.* at 76a; see *id.* at 38a-76a. The court emphasized Great Western's repeated "requests for extension," in which Great Western stated that it was looking for alternatives to abandonment. *Id.* at 68a. In addition, the court noted that "[t]he railroad made no effort to remove track, it performed nominal maintenance on the line, and it invested to repair the line and vital structures." *Id.* at 72a.

6. The court of appeals rejected petitioners' request to refer the case for initial hearing en banc and affirmed the CFC's judgment. Pet. App. 1a-17a.

The court of appeals first rejected petitioners' argument that "the mere authorization to enter into a trails agreement" constitutes "a per se taking" under this Court's decision in *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139 (2021). Pet. App. 9a. The court explained that "mere authorization to seek access to property is not a taking unless it is coupled with compulsion directly to the property owner," as was the case "[i]n *Cedar Point*." *Ibid.* (citing *Cedar Point*, 594 U.S. at 162). In this case, the court observed, the potential taking was "not the authorization for the railroad to enter into a trails agreement," but "the bar to abandonment that the NITU creates," which is a taking "only if the railroad would have otherwise abandoned the railroad easement." *Ibid.*

For similar reasons, the court of appeals rejected petitioners' argument that requiring proof of this causal link was "inconsistent with" prior Federal Circuit decisions. Pet. App. 10a; see *id.* at 10a-11a. The court explained that none of its prior decisions had recognized a per se taking in circumstances where "even in the absence of the NITU, the railroad would not have abandoned the rail line." *Id.* at 11a (quoting *Caquelin*, 959 F.3d at 1372). Instead, "for there to be a cognizable taking" when an agreement for trail use is not reached, "the plaintiffs must show that the issuance of the NITU delayed the railroad's abandonment, after which their state-law reversionary interests would have otherwise vested." *Ibid.*

The court of appeals also affirmed the CFC's finding that, because Great Western would not have abandoned the line even in the absence of a NITU, the NITU in this case had not caused a taking under "the totality of circumstances." Pet. App. 12a. The court highlighted Great Western's "six one-year extensions," its "improvements to the Line," "the fact that no track was removed," Great Western's "use of the line for railcar storage," its "negotiations with other parties to reopen the Line," and its "eventual decision not to abandon." *Id.* at 13a-14a. "On this record," the court could not "say that the [CFC] erred in determining that [petitioners] failed to adduce sufficient evidence to support causation." *Id.* at 14a.

7. The court of appeals denied petitioners' requests for rehearing and rehearing en banc without noted dissent. Pet. App. 105a-106a.

ARGUMENT

Petitioners challenge (Pet. 15-34) the court of appeals' finding that the Board did not cause a taking of

petitioners' property by issuing a NITU—a notice that allowed time for Great Western's ultimately unsuccessful negotiations to transfer its right-of-way on petitioners' land. The court of appeals' fact-dependent decision is correct and does not conflict with any decision of this Court or another circuit. Moreover, the Board is currently considering whether to propose new rulemaking regarding the NITU process that could make resolution of the question presented irrelevant to future cases involving interim trail use under the Trails Act. Further review is not warranted.

1. The court of appeals correctly held that the Board's issuance of a NITU in this case had not caused a taking of petitioners' property.

a. The Just Compensation Clause of the Fifth Amendment provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. Amend. V. Under this Court's precedents, whether government action effects a taking depends on the nature of the action. "The government commits a physical taking when it uses its power of eminent domain to formally condemn property," or when it "physically takes possession of" or "occupies property." *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139, 147-148 (2021). "When the government, rather than appropriating private property for itself or a third party, instead imposes regulations that restrict an owner's ability to use his own property," the Court has applied "a different standard" for what are known as "'regulatory takings.'" *Id.* at 148-149 (citation omitted).

No matter the kind of alleged taking, however, this Court has recognized the "settled principle[]" that a takings plaintiff must demonstrate "causation." *Arkansas Game & Fish Comm'n* v. *United States*, 568 U.S. 23,

34 (2012). The causation requirement reflects "a fundamental principle of takings law that a government action is not a taking of property if, even in the absence of the challenged government action, the plaintiff would not have possessed the allegedly taken property interest." *Caquelin* v. *United States*, 959 F.3d 1360, 1371 (Fed. Cir. 2020); accord *St. Bernard Parish Gov't* v. *United States*, 887 F.3d 1354, 1359-1360, 1362 (Fed. Cir. 2018), cert. denied, 586 U.S. 1069 (2019); see 9 Julius L. Sackman, *Nichols on Eminent Domain* § G34.03[2][d], at G34-60, G34-63 (3d ed. 2025) (*Nichols*) (noting "causation" issues in different kinds of inverse-condemnation cases); *United States* v. *Archer*, 241 U.S. 119, 129, 131-132 (1916) (remanding takings case to the Court of Claims for the court to distinguish between "effects caused by the United States and effects caused by the State"); *John Horstmann Co.* v. *United States*, 257 U.S. 138, 144-145 (1921) (assuming a "causal connection between the work of the Government" and the plaintiffs' loss of property).

Here, the court of appeals correctly found that the Board's issuance of a NITU had not effected a taking because that agency action had not caused any change to petitioners' property interests or prevented any dissolution of an existing encumbrance that otherwise would have occurred. See Pet. App. 9a-14a. The NITU granted Great Western time within the abandonment proceeding to negotiate and transfer its right-of-way to a trail sponsor for potential use as a recreational trail, but no agreement was reached and no trail use occurred. See *id.* at 7a. The NITU therefore could not have caused a taking unless it had prevented or delayed Great Western from abandoning the line and thereby had prevented or delayed the removal of an

encumbrance on petitioners' property interests that such an abandonment otherwise would have entailed. See *id.* at 11a.

The CFC correctly found, however, that the NITU here had caused no such delay because the "totality of circumstances" showed that Great Western would not have abandoned the line in any event. Pet. App. 12a; see *id.* at 76a. Thus, the preexisting railroad easement currently remains in place because of Great Western's independent decision not to abandon the line, not because of the NITU. Although Great Western initially sought authorization to abandon the line, it then sought "six one-year extensions," never removed track, continued using the line, negotiated "to reopen the Line," and eventually decided "not to abandon." *Id.* at 13a-14a. "On this record," the court of appeals correctly upheld the CFC's finding that petitioners had failed to prove a causal link between the NITU and Great Western's ultimate decision not to abandon the line. *Id.* at 12a, 14a. That factbound conclusion does not warrant this Court's review. See *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts.").

b. Petitioners no longer dispute the factual finding that Great Western would not have abandoned the line even if the Board had never issued a NITU. Petitioners argue (Pet. 2), however, that the NITU constitutes a "*per se* physical taking" regardless of whether the rail carrier would have abandoned the line. See Pet. 15-17, 31-34. Petitioners posit (Pet. 27) that while the NITU was in place, it effectively constituted "authorization of a change in use to the existing easement." But petitioners do not dispute that, under the applicable statute and regulations, trail use cannot take place until the rail

carrier and the trail sponsor reach an agreement to transfer the right-of-way—which did not happen here. See 49 C.F.R. 1152.29(d)(2) ("[I]f an interim trail use agreement is reached (and thus interim trail use established), the parties shall file the notice described in paragraph (h)."); Pet. App. 7a.

Petitioners observe (Pet. 25) that the NITU is "the only governmental action" that occurs before any transfer to a trail sponsor. But that does not mean that the NITU itself authorized any trail use; the NITU merely gave Great Western time to negotiate for a transfer of its right-of-way during the abandonment proceedings. "Interim use" as a trail may occur only "pursuant to donation, transfer, lease, sale," or a similar conveyance of the right-of-way in compliance with the Trails Act, 16 U.S.C. 1247(d), and it is entirely up to the rail carrier whether to agree to such a conveyance.

Petitioners' argument (Pet. 15-17, 28-31) that the NITU constitutes a per se taking under this Court's decision in *Cedar Point*, *supra*, is similarly misplaced. In *Cedar Point*, the Court held that a California regulation that allowed labor organizations to "'take access' to an agricultural employer's property" had "appropriate[d] a right to invade the growers' property and therefore constitute[d] a *per se* physical taking." 594 U.S. at 144, 149 (citation omitted). But there, "no one dispute[d] that, without the access regulation, the growers would have had the right under California law to exclude union organizers from their property," and that "the access regulation took that right from them." *Id.* at 155. Here, in contrast, the NITU caused no diminution of petitioners' property rights; it merely provided time for the trail sponsor "to seek access" from Great Western, without any "compulsion directly to the property owner"

to permit trail use beyond the scope of any existing easement. Pet. App. 9a.

Petitioners are likewise incorrect in asserting (Pet. 17) that *Cedar Point* limited any causation requirement to "flooding cases." The Court in *Cedar Point* merely noted that flooding cases "can present complex questions of causation." 594 U.S. at 160. That observation recognizes, rather than denies, that a causation requirement applies in takings cases generally, not simply in cases that involve flooding.

In determining when government action gives rise to a taking, "[t]here is * * * no solid grounding in precedent for setting flooding apart from all other government intrusions on property." *Arkansas Game*, 568 U.S. at 36. Indeed, the general principle that the government is liable only for deprivations of property that it causes applies in all variants of inverse-condemnation actions. See, *e.g.*, 8A *Nichols* § G26.06[2][b], at G26-117 to -118 (explaining that, in takings cases regarding powerlines, "the claimant * * * must also prove that there is causation"). As courts have long recognized, "[i]nverse condemnation law is tied to, and parallels, tort law," *Ridge Line, Inc.* v. *United States*, 346 F.3d 1346, 1355 (Fed. Cir. 2003) (citation omitted), and "[o]ne of the principles of tort law that is applicable to the inverse condemnation context is proximate cause," 9 *Nichols* § G34.03[1], at G34-49.

Petitioners emphasize that even a temporary incursion on property rights may effect a per se taking because "[a] property owner has a claim for a violation of the Takings Clause as soon as a government takes his property without paying for it." Pet. 18 (quoting *Knick* v. *Township of Scott*, 588 U.S. 180, 189 (2019)); see Pet. 17-19, 25-26. But the courts below found that the NITU

standing alone had not caused any change to petitioners' property interests—even temporarily. Petitioners' reliance (Pet. 24) on *United States* v. *Dow*, 357 U.S. 17 (1958), is likewise misplaced. The Court in *Dow* held only that "in cases where there has been an entry into possession before the filing of a declaration of taking, such entry has been considered the time of 'taking' for purposes of valuing the property." *Id.* at 24.

Petitioners also appear to argue (Pet. 3) that the NITU "had the effect of temporarily forestalling or blocking" petitioners from regaining their "property interests" in Great Western's right-of-way. See Pet. 9. That is incorrect for the reasons explained. See pp. 11-12, *supra*. Assuming that Great Western's abandonment of the line would have benefited petitioners, the NITU could have caused them harm only if it had prevented or delayed that abandonment, which is not the case here. See Pet. App. 11a, 13a-14a.

2. Petitioners identify no decision of this Court or any other court that conflicts with the decision below. Petitioners argue (Pet. 5-13, 20-25) that recent Federal Circuit precedent "misinterprets" prior Federal Circuit decisions involving NITUs, which in petitioners' view "described a *per se* standard without specifically calling it that." Pet. 24. But the question whether the court of appeals has correctly interpreted its own prior decisions about the NITU regulatory regime does not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

In all events, petitioners misunderstand prior Federal Circuit decisions, which "simply did not address the issue whether the issuance of a NITU was a per se

taking." Pet. App. 11a. Instead, in cases where rail carriers never reached an agreement to transfer their rights-of-way, the Federal Circuit has found a taking only when "issuance of the NITU delayed the railroad's abandonment, after which * * * state-law reversionary interests would have otherwise vested." *Ibid.* The court below did not question prior decisions that had found takings in that circumstance, but simply held that the NITU here did not have that effect. See *id.* at 4a-6a, 10a-11a (explaining prior cases); *Caquelin*, 959 F.3d at 1370-1372 (same).

Petitioners argue (Pet. 27) that requiring "a factual inquiry * * * to determine if the causation standard has been met" has "resulted in chaos and confusion" in "rails-to-trails case[s] without a trail use agreement." But petitioners elsewhere assert (Pet. 10) that courts applying that standard have found causation "in essentially every case." Petitioners cite no case demonstrating confusion regarding causation, which petitioners agree has been an explicit requirement in the Federal Circuit since at least 2020, see Pet. 9-10, and which is required across diverse inverse-condemnation contexts, see *Moden* v. *United States*, 404 F.3d 1335, 1343 (Fed. Cir. 2005) (explaining that "proof of causation" is "necessary * * * for liability in an inverse condemnation case"); 9 *Nichols* § G34.03[1], at G34-49.

3. Resolution of the question presented turns to a significant extent on the specifics of the Board's regulatory regime implementing the Trails Act—specifically, the effect of a NITU under applicable regulations. But the Department of Justice has petitioned the Board to change its regulations in ways that could obviate any need to address that question in future cases alleging takings for interim trail use under the Trails Act. See

U.S. Dep't of the Interior & U.S. Dep't of Justice Env't & Natural Res. Div. Pet., STB Ex Parte No. 777, No. 309033 (Dec. 20, 2024). Among other recommendations, the petition proposes the replacement of the current NITU process. See Pet.'s Further Filing Concerning Rulemaking Pet., STB Ex Parte No. 777, No. 309928 (Aug. 8, 2025). And recently, two of the Board's three members concurred in a Board decision to separately emphasize the need to consider the Department's petition. Decision at 15, *Great Redwood Trail Agency—Adverse Abandonment—Mendocino Ry. in Mendocino, Cnty.*, STB No. AB 1305 (Sub-No. 1) (Feb. 19, 2026). The possibility of pertinent regulatory changes provides a further reason to deny review here.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
AMBER BLAHA
BRIAN R. HERMAN
Attorneys

MAY 2026