

Iron Bar Reshapes Public Land Access in the West

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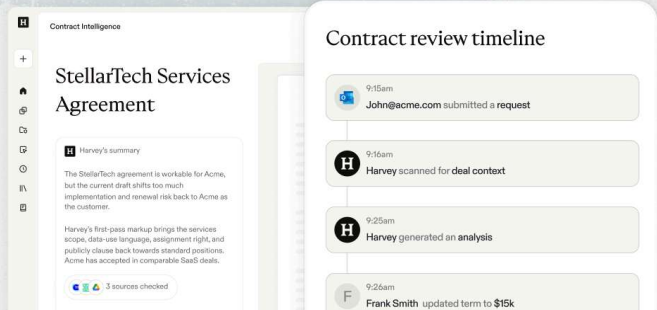
Summary

- As Congress disposed of the public domain, it created an alternating grid of public and private ownership that left vast stretches of federal and state land isolated behind private parcels.
- *Iron Bar Holdings, LLC v. Cape* addressing corner-crossings reshapes public land access in the West.
- The Unlawful Inclosures Act protects corner-crossing and public-land access on checkerboard lands.

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In 2020, four hunters in Wyoming sought access to public land in a way that would begin a five-year legal conflict and reshape access to public lands across part of the American West. That access is called corner-crossing. When public and private land are arranged in a checkerboard pattern, the corner is where the tips of the four squares meet. Imagine the public lands as the red squares on a checkerboard and the private lands as the black squares. Only their corners touch. At that point, a person can cross diagonally from one square of public land to another, never touching the surface of the two adjoining private land squares. Within this action there exists a legal paradox—the public owns the airspace above the two public squares, but the private landowner(s) own the airspace above the two private squares. At the exact point where the four squares meet, in an infinitesimal space, those rights are shared. Neither interest can assert a right to exclusive and absolute control over the space without infringing the other's rights.

The checkerboard pattern is not merely a metaphor. It describes the literal landscape of millions of acres across the American West. As Congress disposed of the public domain through railroad grants, homestead acts, and state enabling legislation, it created an alternating grid of public and private ownership that today leaves vast stretches of federal and state land isolated behind private parcels. The practice of corner-crossing emerged as a response to this fragmented ownership pattern. Rather than being barred from publicly owned land that had no formal access point, some recreationists began stepping diagonally across the precise point where four sections meet, never setting foot on the private squares that flank the corner. The four hunters at the center of the *Iron Bar* dispute did precisely that in Carbon County, Wyoming, to reach federal and state public sections that were otherwise landlocked by private property.

The conflict over the hunters' access resulted in criminal trespass charges by the Carbon County attorney and a civil trespass claim by the landowner, Iron Bar Holdings, LLC. The four hunters ultimately prevailed. A jury acquitted the group of their criminal trespass charges. *See State v. Cape*, Nos. CT-2021-5869–5872 (Cir. Ct., 2d Jud. Dist., Carbon County, Wyo.). The federal trial court for District of Wyoming granted summary judgment for the hunters, finding the Unlawful Inclosures Act of 1885 (UIA), 43 U.S.C. §§ 1061–66, permitted the hunters to corner-cross, and the Tenth Circuit affirmed in 2025. *Iron Bar Holdings, LLC v. Cape*, 674 F. Supp. 3d 1059 (D. Wyo. 2023), *aff'd*, 131 F.4th 1153 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 327 (2025). This article provides a brief history of the legislation that led

to the corner-crossing dilemma, the substance of the *Iron Bar* decision, and possible implications for public lands access.

Congress passed the Land Ordinance of 1785, which had the practical effect of abandoning the colonial metes-and-bounds system and adopting the linear Public Land Survey System (PLSS). An Ordinance for Ascertaining the Mode of Disposing of Lands in the Western Territory (May 20, 1785). As the country's land base expanded with the acquisition of the Northwest Territory, the Louisiana Purchase, and the Treaty of Guadalupe Hidalgo, the PLSS enabled the government to efficiently survey and grant the land. As westward expansion continued, Congress passed the Pacific Railroad Act in 1862, followed by a series of subsequent railroad acts. *See, e.g.,* Ch. 120, §§ 2, 4, 12 Stat. 489, 491–92 (1862). These acts provided railroad companies with the right-of-way to lay their tracks. To incentivize track construction, each railroad was given title to alternating sections of land, 10 miles on each side of the proposed railway line, creating a checkerboard pattern across federal public lands.

Coinciding with the intent and timing of railroad grants, Congress also passed the Homestead Act of 1862. Ch. 75, 12 Stat. 392 (1862). The Homestead Act gave away to settlers across the West more than 80 million acres in 160-acre parcels of land. Because homesteaders sought the most fertile land, homesteading generally occurred on valley floors. This often left the public domain in the hills and mountains above the valleys and less fertile country inaccessible without public easements.

Western land access issues also stem from the congressional path to statehood for certain territories under the Northwest Ordinance of 1787. 1 Stat. 50, 51 (1789). Congress granted specific sections of every township to states within their respective enabling acts. As territories in the West became states, they received various sections of every township. For example, Montana became a state through the Enabling Act of 1889 and received sections 16 and 36 of every township, totaling five million acres. Omnibus Enabling Act of 1889, ch. 180, 25 Stat. 676 (1889).

The above laws, which led to the disposition of land to states, individuals, and corporations, solidified the linear grid legacy of the PLSS on the western landscape and left parcels of public domain landlocked by private land. The present-day consequences, prior to the Tenth Circuit's decision, meant that approximately 15.87 million acres of federal and state public lands were inaccessible to the public because they are landlocked by private lands. *See* OnX Maps & Theodore Roosevelt Conservation P'ship, *Off Limits, but Within Reach* (2018); OnX Maps & Theodore Roosevelt Conservation P'ship, *Inaccessible State Lands in the West* (2019). Roughly 8.3 million acres could be accessible on foot only via corner-crossing. OnX Maps, *The Corner-Locked Report* (2022). This inaccessibility brings us back to Wyoming and the story of the four hunters.

The U.S. Supreme Court's denial of certiorari in October 2025 left the Tenth Circuit's ruling intact. The Tenth Circuit began its analysis by noting that under Wyoming law and longstanding common-law principles, Iron Bar owns the airspace above its land. *Iron Bar*, 131 F.4th at 1164–67. Wyoming's "Ownership of Space" statute vests airspace rights in the surface owner, and the *ad coelum* doctrine supports the proposition that even a fleeting intrusion into a landowner's airspace is actionable. *Id.* at 1165–68. Thus, the hunters' momentary passage through Iron Bar's airspace would normally constitute a civil trespass. *Id.* at 1166.

The court held, however, that the UIA preempted Wyoming's trespass law in the checkerboard context. *Id.* at 1167. The UIA prohibits any barrier, including a legal one enforced through a trespass action, that completely encloses public lands and prevents lawful access. *Id.* at 1174. The statute separately prohibits obstruction by "force, threats, intimidation, or by any fencing or inclosing." *Id.* at 1167–68. The court, relying on a line of authority from *Camfield v. United States* through the Tenth Circuit's own decision in *United States ex rel. Bergen v. Lawrence*, explained that the UIA prohibits more than physical fencing, emphasizing that "inclosure" under the UIA is a term of art broader than physical fencing. *See id.* at 1169–74 (citing *Camfield v. United States*, 167 U.S. 518 (1897); *United States ex rel. Bergen v. Lawrence*, 848 F.2d 1502 (10th Cir. 1988)). Because Iron Bar's land surrounded the federal and state public sections, enforcing Iron Bar's trespass claims would create precisely the kind of unlawful inclosure that Congress sought to prohibit. *See id.*

The court distinguished *Leo Sheep Co. v. United States*, on which Iron Bar relied heavily in its briefing. *Id.* at 1174–77 (citing 440 U.S. 668 (1979)). The court explained that *Leo Sheep* addressed only whether the government had an implied easement to construct a permanent public road across private land. *Id.* The court deemed such an intrusion a far more invasive appropriation than the momentary airspace incursion involved in corner-crossing. *Id.* The court recognized it was bound by *Bergen*, which held that *Camfield's* "nuisance-abatement" framework, rather than *Leo Sheep's* implied-easement analysis, controlled in cases where a landowner's actions effectively inclose public lands. *Id.* at 1179.

Finally, the court addressed Iron Bar's Takings Clause argument and its tension with *Cedar Point Nursery v. Hassid*, concluding that, under *Bergen*, the right to exclude others from accessing the public domain was a right Iron Bar "never had." *Id.* at 1178–79 (citing 594 U.S. 139 (2021); *Bergen*, 848 F.2d at 1507). Rather than impeding an existing private right, the ruling confirmed a limitation that always existed. It also defined the scope of corner-crossing to prevent physical contact with the surface of private land and property damage, allowing only momentary passage through the airspace at the corner. *Id.* at 1179.

The court's "never had" framing rests on three complementary rationales. First, the court expressly acknowledged that "even if" the UIA's limitation constituted a taking, that taking would have occurred "when the UIA was passed or when *Camfield* was decided," meaning any such claim is long stale, and all subsequent purchasers, including Iron Bar, acquired their parcels subject to that pre-existing restriction. *Iron Bar*, 131 F.4th at 1179. Second, the court relied on *Camfield's* nuisance-abatement framework, under which a landowner never holds the right to use its property to create a public nuisance. *Id.* Here, Iron Bar's attempt to deploy trespass law to effect such a functional enclosure of the public domain was itself the prohibited nuisance. *Id.*; see also *Camfield*, 167 U.S. at 524–25 (citation omitted). Third, these rationales together foreclose a categorical taking under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). In *Loretto*, the Court held that a permanent physical occupation authorized by government is a per se taking, regardless of economic impact, because it destroys the owner's core rights to possess, use, and exclude. *Id.* at 435–36. *Cedar Point Nursery* subsequently extended that per se rule to intermittent, government-authorized invasions that appropriate the right to exclude, making clear that an invasion's transience alone does not defeat the claim. 594 U.S. at 149–53. Critically, however, *Cedar Point Nursery* also preserved an express carve-out: The per se rule does not apply where the government merely enforces a pre-existing background restriction on the owner's title, including the common-law prohibition on nuisances. *Id.* at 160. Corner-crossing falls squarely within that exception. Unlike the cable installation in *Loretto* or the union-organizer access in *Cedar Point Nursery*, where the government appropriated rights the owners actually possessed, corner-crossing authorization enforces a limitation that was embedded in Iron Bar's title from the moment of acquisition. Because the right to seal off public-land access at the corner was never part of Iron Bar's title, there is no property right for the per se rule to operate upon. *Cf. Cedar Point Nursery*, 594 U.S. at 149–51, 160.

For Tenth Circuit states, trespass statutes remain valid but cannot be applied to block access to federal public lands where doing so would conflict with the UIA. In turn, corner-crossers must cross at the actual corner point without touching private land surfaces. They must not cause damage to private property. They must comply with all other applicable laws, state and federal, including hunting regulations and land-use rules issued by land management agencies. The ruling's careful limitations mean the public must exercise this right responsibly, and violations could expose individuals to legitimate trespass claims.

The legal landscape is also cabined by geography. The Tenth Circuit, where corner-crossing is now legal from federal land to federal land, encompasses Utah, Wyoming, Colorado, New Mexico, Kansas, and Oklahoma. The remaining majority of the western states sit in the Ninth Circuit, where the legality of corner-crossing remains unclear following the Supreme Court's denial of certiorari.

While the *Iron Bar* holding is not controlling in the Ninth Circuit, the decision is likely to carry substantial persuasive authority for four reasons. First, the ruling rests on the supremacy of federal law over conflicting state law. That principle does not vary by circuit. *Cf. Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019). Second, the UIA should arguably apply uniformly across all federal lands, regardless of geographic location. *Cf. Camfield*, 167 U.S. at 526. Third, the court relied on analysis from the Eighth and Ninth Circuits in crafting its opinion. *See Mackay v. Uinta Dev. Co.*, 219 F. 116, 118–20 (8th Cir. 1914); *Golconda Cattle Co. v. United States*, 214 F. 903, 908–09 (9th Cir. 1914). Fourth, the Tenth Circuit’s analysis relied heavily on four Supreme Court cases that are binding nationwide. *See Iron Bar*, 131 F.4th at 1168–74.

The practical effect is that local law enforcement and county prosecutors in the Ninth Circuit will be the first decision-makers if a corner-crossing dispute arises. Awareness of the Tenth Circuit’s ruling may informally shape enforcement decisions. However, the most likely path to clarity in the Ninth Circuit would be a test case, either from a private landowner suing a would-be trespasser or a criminal prosecution challenged on preemption grounds. Even with the uncertainty in the Ninth Circuit, the *Iron Bar* decision informs private and public interests across the West.

Lastly, the court’s ruling was narrow and left unresolved questions. In doing so, the court left room for states to clarify the parameters of corner-crossing and address practical questions the ruling left open, such as scenarios involving corner-crossing from federal land to state land or state land to state land, liability and duty-of-care standards, or guidelines for managing increased access to previously inaccessible areas. *See* H.B. 19, 68th Leg., Budget Sess. (Wyo. 2026); H.B. 23-1066, 74th Leg., Reg. Sess. (Colo. 2023). Legislatures in Ninth Circuit states may proactively legislate on corner-crossing to avoid the uncertainty of litigation. *See* Assemb. 386, 79th Leg., Reg. Sess. (Nev. 2017).

Ultimately, *Iron Bar* clarifies that the checkerboard pattern Congress created cannot render federal public land functionally inaccessible. The Tenth Circuit’s decision preserves the balance between public access and private ownership by allowing only narrow, nondamaging corner-crossing, while leaving room for states to address broader issues the ruling does not resolve. Consequently, the stage is set for the next chapter of the public lands access debate.

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