

No. 25-7076

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

MELISA ROBINSON and MICHAEL ROBINSON d/b/a
The RIVER VALLEY MOBILE HOME COMMUNITY,
Plaintiffs-Appellants,

v.

The TOWN OF OKAY, OKLAHOMA and
the OKAY PUBLIC WORKS AUTHORITY,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Oklahoma
Case No. 6:24-cv-270-RAW-DES, The Honorable Ronald A. White

PLAINTIFFS-APPELLANTS' OPENING BRIEF

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ORAL ARGUMENT REQUESTED

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STATEMENT OF RELATED CASES

Plaintiffs-Appellants are unaware of any prior or related federal appeals. *See* 10th Cir. R. 28.2(C)(3). The only related appeal is in state-court, which involved an inverse condemnation proceeding under the Oklahoma Constitution. *See Barnett v. Okay Public Works Auth.*, 507 P.3d 1245 (Okla. 2022).

INTRODUCTION

When the government takes your property, the Fifth Amendment of the U.S. Constitution requires the government to pay you “just compensation.” The Takings Clause imposes a categorical duty on the government: The government *must* pay with actual money. Not only is that duty intuitively true, but it is also backed by text, history, and precedent. Simply put, payment is not an option; it is an obligation.

The Okay Public Works Authority, along with the Town of Okay, has shirked this constitutional duty. Long after Okay damaged Melisa and Michael Robinson’s property, the Robinsons have not received just compensation for the taking. That is partly because Okay believes “just compensation” does not mean the Robinsons must be paid with actual money. It is also because the Public Works Authority has the power of eminent domain but claims it has no money to pay for using that power.

The Robinsons only recently learned of Okay’s breathtaking position. In accordance with then-binding Supreme Court precedent, the Robinsons originally filed an inverse condemnation claim under the Oklahoma Constitution in state court against the Town. On the eve of trial, the Town pointed the finger at the Public Works Authority, forcing the Robinsons to re-file their suit in state court against both the Town and the Public Works Authority. After the state court dismissed the Town because the Town once again pointed the finger at the Public Works Authority, the case

went to trial. There, a jury awarded the Robinsons over \$73,000 against the Public Works Authority for the taking. The Public Works Authority appealed, and the Supreme Court of Oklahoma ultimately affirmed in favor of the Robinsons.

On remand, the Public Works Authority revealed for the first time that it has no money and therefore will not pay the Robinsons. That was news to the Robinsons. After all, the Town repeatedly pointed the finger at the Public Works Authority, the Public Works Authority was apparently paying its attorneys, and the Town and Public Works Authority are functionally the same entities controlled by the same people. Worse, the Robinsons learned for the first time that revenue from the Public Works Authority's water and sewer services is funneled into an account controlled by the Town. Under this arrangement, the Public Works Authority exercises the power of eminent domain but has no money or assets to pay for using that power—by design.

Based on these new revelations, the Robinsons filed this lawsuit in federal court to raise federal claims that were ripe for the first time: an ongoing Fifth Amendment violation until the Public Works Authority pays the Robinsons with actual money for taking their property, and a new Fifth Amendment violation arising out of the Town preventing the Public Works Authority from paying just compensation through its shell game.

As Okay sees it, there is nothing a federal court can do about all this. According to Okay, the Robinsons received just compensation under the Fifth Amendment when they obtained a state-court judgment under the Oklahoma Constitution—even though Okay refuses to pay with actual money. And, according to Okay, the Robinsons’ Fifth Amendment claims are time-barred—even though the Robinsons followed then-binding Supreme Court precedent by first pursuing a claim under the Oklahoma Constitution in state court. In a terse opinion, the district court agreed with Okay, granted the motion to dismiss, and dismissed the case on the pleadings.

This Court should reverse. First, the Robinsons’ Fifth Amendment claims are timely. Then-binding Supreme Court precedent required the Robinsons to pursue their inverse condemnation claim in state court *and* fail to obtain just compensation through that procedure before any Fifth Amendment claim existed or could be brought in federal court. That is exactly what happened here. At any rate, the Robinsons’ Fifth Amendment claims are also timely under both the accrual rule and because they were tolled. Second, the Robinsons properly asserted Fifth Amendment claims. That is because text, history, and precedent confirm that a takings injury is ongoing until the government pays just compensation with actual money and that the government cannot use a shell entity to prevent payment of just compensation.

JURISDICTIONAL STATEMENT

On August 28, 2025, the district court entered final judgment after entering an order adopting the magistrate judge’s recommendation to grant Okay’s Motion to Dismiss and dismiss the Robinsons’ case. App. Vol. 1 at 126–30.¹ On September 24, 2025, the Robinsons filed a timely notice of appeal. App. Vol. 1 at 131–32; Fed. R. App. P. 4(a)(1)(A). The appeal is from a final judgment that disposes of all parties’ claims. *See* Fed. R. App. P. 28(a)(4)(D). This Court has jurisdiction under 28 U.S.C. § 1291.

¹ All references to “App. Vol. 1” refer to the single-volume appendix that the Robinsons filed concurrently with this brief. *See* 10th Cir. R. 28.1(A).

STATEMENT OF THE ISSUES

Did the district court err by dismissing the Robinsons' claims under the Fifth Amendment's Takings Clause, on the pleadings, as time-barred?

Did the district court err by dismissing the Robinsons' claims under the Fifth Amendment's Takings Clause, on the pleadings, arising out of the Okay Public Works Authority's ongoing refusal to pay just compensation with actual money?

Did the district court err by dismissing the Robinsons' claims under the Fifth Amendment's Takings Clause, on the pleadings, arising out of the Town of Okay's use of a shell entity to prevent the payment of just compensation with actual money?

STATEMENT OF THE CASE

The Robinsons own property in Okay, Oklahoma, where they own, manage, and rent out mobile homes as the River Valley Mobile Home Community.² App. Vol. 1 at 13, ¶ 5. In 2009, Okay tried to replace sewer lines near and across the River Valley property. *Id.* at 18–19, ¶¶ 33–37. Okay’s engineer cautioned Okay to obtain easements for the River Valley property. *Id.* at 19, ¶ 38. But Okay did not tell the Robinsons about the plan to excavate the property, let alone obtain easements. *Id.* at 20, ¶¶ 39, 45. Instead, Okay showed up unannounced and started excavating the River Valley property. *Id.* at 20, ¶¶ 40–45. Okay botched the job. *Id.* at 21, ¶¶ 46–49. It failed to properly grade the pipes and even hit the underground power lines. *Id.* at 21, ¶¶ 46–48. The damage was massive: Sewage and water did not drain, tenants lost power, and appliances blew out. *Id.* This was a “classic taking . . . in which the government directly appropriates private property for its own use.” *Horne v. Dep’t of Agric.*, 576 U.S. 350, 357 (2015).

² The state-court proceedings were in Melisa Robinson’s mother’s name along with River Valley’s. App. Vol. 1 at 16–17 n.1, 21 n.2. It is undisputed that Melisa’s mother “was the property owner at the time,” but Melisa “controlled the litigation, was managing the property, and owned all rights and claims related to the property.” *Id.* at 127 n.*; *see also id.* at 16–17 n.1; *id.* at 21 n.2; *id.* at 51 (conceding the Robinsons controlled the state-court litigation). Today, the Robinsons own the property and any other rights or claims associated with the property and the taking. *Id.* at 16–17 n.1. For simplicity, Appellants use “the Robinsons.”

The Robinsons asked Okay to help fix the damage so tenants could live in their homes, but Okay refused. App. Vol. 1 at 21, ¶¶ 49–51. So the Robinsons paid for the repairs out of their own pockets. *Id.* at 21, ¶ 52.

To recover for the damage and taking of their property, in October 2009, the Robinsons filed an inverse condemnation suit under the Oklahoma Constitution against the Town. *Id.* at 21–22, ¶¶ 53–54; *id.* at 134–35; *see* Okla. Const. art. II, § 24 (“Private property shall not be taken or damaged for public use without just compensation.”). The Robinsons filed in state court because the Supreme Court in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), held that a plaintiff cannot assert a takings claim under the Fifth Amendment until the plaintiff first used the state procedure *and* failed to obtain just compensation through that procedure. App. Vol. 1 at 21, ¶ 54; *id.* at 29–30, ¶¶ 102–03. Until that state procedure failed to provide just compensation, the Fifth Amendment claim both did not exist and could not be brought in federal court.³

On the eve of trial in state court, the Town blamed the Public Works Authority for the property damage. *Id.* at 21, ¶¶ 55–56. Notably, the Public Works Authority is a “public trust” that was created solely for the use and benefit of the Town. *Id.* at 14,

³ In 2019, the Supreme Court overturned *Williamson’s County’s* state-litigation requirement. *Infra*, at 11, 19.

¶ 12. The Town created the Public Works Authority to provide utility services, including water and sewer services, to the residents of the Town. *Id.* at 14, ¶¶ 12–13. The Public Works Authority is a “blended component unit,” which is a separate legal entity for which the elected officials of the primary government are financially accountable. *See id.* at 14–15, ¶¶ 14–15. The Town and Trust are governed by the same five people, and both entities are located in the same city hall building. *Id.* at 15, ¶¶ 16–17; *see also id.* at 13, ¶¶ 7–10 (structure of the Town); *id.* at 189–90 (similar).

Because the Town blamed the Public Works Authority, in July 2012 the Robinsons re-filed their inverse condemnation suit under the Oklahoma Constitution, this time against the Town *and* the Public Works Authority. *Id.* at 23, ¶¶ 57–58; *id.* at 138–39. The Town again pointed the finger at the Public Works Authority and asked the state court to dismiss the Town. *Id.* at 23, ¶¶ 59–60. After the state district court dismissed the Town, a jury awarded the Robinsons over \$73,000 in just compensation against the Public Works Authority. *Id.* at 23–24, ¶¶ 61–69; *see id.* at 141, 143. The trial court entered judgment against the Public Works Authority. *Id.* at 145–46.

The Public Works Authority appealed the trial court’s judgment. *Id.* at 24–25, ¶¶ 70–74. Eventually, the Oklahoma Supreme Court affirmed the trial court’s judgment. *Id.* at 25, ¶¶ 71–74; *Barnett v. Okay Pub. Works Auth.*, 507 P.3d 1245, 1250 (Okla. 2022). In affirming, the Oklahoma Supreme Court held that the Public Works

Authority had the power of eminent domain over the project that damaged the Robinsons' property.⁴ *Barnett*, 507 P.3d at 1249–50 (discussing Okla. Stat. tit. 60, § 176(J)).

Following remand, the Robinsons finished exhausting their state-court remedies by seeking to enforce the state-court judgment. Specifically, on March 16, 2023, the Robinsons learned through discovery that Okay planned to pay them exactly zero dollars in just compensation. *See* App. Vol. 1 at 25–28, ¶¶ 75–93. Town officials (the same officials who control the Public Works Authority) revealed the financial shell game they had set up: The Town takes and keeps all the revenue, money, property, or anything else of value from the Public Works Authority. *Id.* at 13–15, ¶¶ 6–18; *id.* at 26–30, ¶¶ 77–103. That scheme renders the Public Works Authority insolvent. For example, all revenue from water and sewer customers in Okay is deposited directly into bank accounts controlled by the Town, even though the Public Works Authority provides water and sewer services to Okay residents. *Id.* at 26, ¶ 82; *id.* at 14, ¶¶ 12–13; *see also id.* at 28–29, ¶¶ 94–98; *id.* at 191 (“All accounts are in the Town of Okay’s

⁴ The Oklahoma Supreme Court described the Public Works Authority as “a public trust, pursuant to 60 O.S.2021, Ch. 4, §§ 176–180.4 . . . that supplies utilities, including a sanitary system and a water treatment plant, for Okay, Oklahoma.” *Barnett*, 507 P.3d at 1247.

name[.]”). As a result, the Public Works Authority claims it has no bank accounts, real estate, equipment, or personal property. *See id.* at 178–79, 190–94.

Because of the Town-Public Works Authority structure, the Public Works Authority has the power to take private property through eminent domain but cannot fulfill its constitutional duty to pay just compensation. *Id.* at 29, ¶ 98. In essence, the Town is preventing the Public Works Authority from paying the Robinsons the money they are constitutionally owed. At this point, the Robinsons had used the state procedure but failed to obtain just compensation—as *Williamson County* envisioned.⁵

Okay’s newfound revelations gave rise to two sets of Fifth Amendment violations that were finally ripe. First, the Fifth Amendment requires the government to pay just compensation—with actual money—when it takes private property. App. Vol. 1 at 30–34, ¶¶ 104–40. So long as the Public Works Authority refuses to pay the Robinsons with money for the taking, the Robinsons continue to suffer an ongoing and unremedied Fifth Amendment violation. *Id.* at 33, ¶ 125. These are the Robinsons’ 2009 takings claims.

Second, so long as the Town continues to prevent the Public Works Authority from paying the Robinsons with money for the taking (using the Public Works

⁵ An April 2024 asset hearing confirmed the Public Works Authority has no intention of paying the Robinsons. *See* App. Vol. 1 at 28–29, ¶¶ 94–97; *id.* at 183–96.

Authority as a shell entity), the Town is violating the Fifth Amendment. *Id.* at 35–40, ¶¶ 141–76. These are the Robinsons’ 2023 takings claims.

To seek redress for these violations, the Robinsons filed this suit in federal court on July 30, 2024. *Id.* at 11. The suit was timely: It was filed within two years of learning that the Public Works Authority would not pay and within two years of learning about the Town’s scheme. *See supra*, at 9–10. The Robinsons raised their 2009 takings claims and 2023 takings claims directly under the Fifth Amendment and under 42 U.S.C. § 1983. App. Vol. 1 at 31–40.

The Robinsons’ 2009 takings claims were now ripe because they had finished exhausting their state-court remedies but had not yet received just compensation. The Robinsons also had 2023 takings claims for the Town deliberately preventing the payment of just compensation. These 2023 takings claims did not require exhaustion because the Supreme Court in *Knick v. Township of Scott*, 588 U.S. 180 (2019), overruled *Williamson County*’s state-litigation requirement.

After the Robinsons filed this federal suit, Okay moved to dismiss under both Rule 12(b)(1) and 12(b)(6). App. Vol. 1 at 42. In support, Okay mainly argued that the Robinsons’ claims are barred by the statute of limitations, the Robinsons cannot re-litigate the state-court judgment, and the Robinsons’ claims are precluded by *Louisiana ex rel. Folsom v. City of New Orleans*, 109 U.S. 285 (1883). App. Vol. 1 at 46–51.

The Robinsons filed a response in opposition, explaining that their claims are not time-barred and that Okay misconstrued their claims. *Id.* at 53, 58–65, 67–69. Okay replied.⁶ *See id.* at 72–79.

The magistrate judge recommended the district court grant Okay’s Motion to Dismiss. *Id.* at 95. The magistrate judge concluded there is no “jurisdiction” for three reasons: the Robinsons’ state-court judgment under the Oklahoma Constitution means they “were not denied just compensation in state court”; the “inability to collect on a judgment does not create a constitutional violation” under *Folsom*; and the Fifth Amendment claims cannot be “retried in federal court” because they were “decided” in state court. App. Vol. 1 at 89, 91–92. Notwithstanding the claimed lack of jurisdiction, the magistrate judge also concluded the statute of limitations for any Fifth Amendment claims had “long passed” and cannot be tolled. *Id.* 92–94.

The Robinsons filed objections to the report and recommendation. *Id.* at 96. The Robinsons contested each of the reasons for the magistrate judge’s recommendation to dismiss, including by explaining that the Fifth Amendment claims are not time-barred and that the report misconstrued the Robinsons’ claims. *Id.* at 96–105.

⁶ The Robinsons also filed a sur-reply that addressed an issue that is not before this Court because neither the magistrate judge nor the district court addressed it. *See id.* at 81–84.

Okay filed a response to the Robinsons’ objections, to which the Robinsons filed a reply. *Id.* at 108 (response), 119 (reply).

On August 28, 2025, the district court adopted the magistrate judge’s report and recommendation, granted the Motion to Dismiss, and entered final judgment. *Id.* at 129–30. The district court concluded the Robinsons were “mistaken” to argue “that they were required to first exhaust their state court remedies” under *Williamson County*—even though *Williamson County*’s exhaustion requirement was the law of the land until the Supreme Court overruled it in *Knick*. App. Vol. 1 at 128. Next, the district court concluded the Robinsons “were awarded just compensation”—even though Okay has not paid the Robinsons a single cent. *Id.* Third, the district court thought it lacked “jurisdiction” to consider the Robinsons’ claims because of the state-court case, but it misconstrued those claims. *Id.* at 128–29. Finally, the district court held that the statute of limitations has “long passed,” which created a split with other federal courts. *Id.* at 129.

On September 24, 2025, the Robinsons filed a timely Notice of Appeal of the final judgment. *Id.* at 131.

SUMMARY OF ARGUMENT

The district court erred by dismissing the Robinsons’ Fifth Amendment claims on the pleadings. The Robinsons’ properly stated claims that are timely.

STANDARD OF REVIEW

Okay moved to dismiss under Rule 12(b)(1) and 12(b)(6), and the district court granted the motion. App. Vol. 1 at 41 (motion), 126 (order). To decide whether dismissal was under Rule 12(b)(1) or 12(b)(6), this Court looks to substance, not form. *See, e.g., Kerr v. Polis*, 20 F.4th 686, 699–700 (10th Cir. 2021) (en banc). Here, the district court principally held that the Robinsons’ claims are time-barred. *See* App. Vol. 1 at 129. Statute of limitations is an affirmative defense, Fed. R. Civ. 8(c)(1), that is analyzed under Rule 12(b)(6). *See, e.g., Wyo-Ben Inc. v. Haaland*, 63 F.4th 857, 866 (10th Cir. 2023); *Herrera v. City of Espanola*, 32 F.4th 980, 991 (10th Cir. 2022).

This Court reviews “a dismissal for failure to state a claim de novo.” *Knellinger v. Young*, 134 F.4th 1034, 1042 (10th Cir. 2025). The facts in the complaint are taken as true, *Tyler v. Hennepin County*, 598 U.S. 631, 636 (2023), and viewed in the light most favorable to the Robinsons, *Knellinger*, 134 F.4th at 1042. The Court must draw reasonable inferences in favor of the Robinsons. *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 194 (2024). Ultimately, dismissal under Rule 12(b)(6) “is appropriate only if the complaint lacks enough facts to state a claim to relief that is plausible on its face.” *Knellinger*, 134 F.4th at 1042 (cleaned up).

ARGUMENT

The district court erred by dismissing the Robinsons’ Fifth Amendment claims on the face of the complaint. First, their claims are not time-barred because

the Robinsons first pursued relief under the Oklahoma Constitution in state court in accordance with *Williamson County*, which was the law of the land until the Supreme Court overturned it in *Knick*. Their Fifth Amendment claims simply did not exist in 2009. In any event, their claims are timely under the accrual rule and because they are tolled. Second, the Robinsons properly pleaded Fifth Amendment claims arising out of their ongoing constitutional injury due to the uncompensated taking of their property. Third, the Robinsons properly pleaded Fifth Amendment claims arising out of the Town's use of a shell entity to prevent payment of just compensation.

I. The Robinsons' Fifth Amendment claims are timely.

The district court held that the Robinsons' Fifth Amendment claims are time-barred. App. Vol. 1 at 129. This Court should reverse because the Fifth Amendment claims are timely. A federal takings claim could not exist until the Robinsons either pursued state procedures to no avail or until *Knick* overruled *Williamson County*. Here, the Robinsons' Takings Clause claims are timely under the accrual rule and fraudulent concealment. Under either theory, the Robinsons' Fifth Amendment claims did not begin to accrue until March 16, 2023—less than two years before the Robinsons filed this federal suit.

A. Under *Williamson County*, the Robinsons' claims did not exist until the state-court procedure failed to provide just compensation.

The district court erred when it determined the Robinsons could have asserted a Fifth Amendment claim when the property damage occurred in 2009. The Fifth Amendment claims could not have been brought in federal court when the damage occurred in 2009 because then-binding Supreme Court precedent required plaintiffs to first pursue state-court remedies before the Fifth Amendment claim even existed or could be filed in federal court. While intervening Supreme Court precedent has changed that rule, courts have recognized that plaintiffs who filed their state-court actions before the change in law must be allowed to file their federal takings actions after the conclusion of their state-court cases. That means the Robinsons' claims did not accrue, and could not have been brought in federal court, until March 16, 2023.

For a Section 1983 claim, “the standard rule [is] that accrual occurs when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and obtain relief.” *Herrera*, 32 F.4th at 990 (internal quotation marks omitted) (quoting *Wallace v. Kato*, 549 U.S. 384, 388 (2007)). “Put another way, a civil rights action accrues when the plaintiffs knows or has reason to know of the injury which is the basis of the action, . . . or when the plaintiff’s right to resort to federal court was perfected.” *Id.* (cleaned up). Here, the Robinsons’ Fifth Amendment claims started to accrue on March 16, 2023.

To understand why, start with binding Supreme Court precedent at the time Okay damaged the Robinsons' property in 2009. In 2009, *Williamson County* was the law of the land. And *Williamson County* required a plaintiff to first use the state procedure and fail to obtain just compensation through that procedure before a federal Takings Clause claim even existed or before a federal suit could be brought.

In *Williamson County*, the Supreme Court concluded that the plaintiff's Fifth Amendment takings claim was "premature" and "not yet ripe." 473 U.S. at 185–86, 194. That is because the plaintiff did not first seek compensation for the taking through the state's procedures. *Id.* at 194. The failure to seek compensation through the state procedure was dispositive: So long as a state "provides an adequate procedure for seeking just compensation, the property owner *cannot claim a violation* of the Just Compensation Clause until it has used the procedure and been denied just compensation." *Id.* at 195 (emphasis added). That is because a property owner "has *not suffered a violation* of the Just Compensation Clause," and the injury is "not 'complete,'" until the state procedure "fails to provide adequate compensation for the taking." *Id.* (emphasis added). In essence, a property owner could not skip the state-court procedure and immediately assert a Fifth Amendment claim. *See Williamson County*, 473 U.S. at 196–97.

In line with *Williamson County*, in 2009 the Robinsons had no “violation of the Just Compensation Clause,” and no Fifth Amendment injury, until they first used the Oklahoma procedure to seek compensation for the taking. So the Robinsons took the Supreme Court at its word and followed the *Williamson County* roadmap by filing an inverse condemnation claim under the Oklahoma Constitution in state court in 2009. App. Vol. 1 at 21, ¶ 54.

On May 28, 2019, the state trial court entered judgment for the Robinsons after the jury awarded the Robinsons over \$73,000 in damages. *Id.* at 24, ¶¶ 63–67. In March 2022, the Oklahoma Supreme Court affirmed the trial court’s judgment. *Barnett*, 507 P.3d at 1250. Up until this point, the state-court procedures were working just as *Williamson County* envisioned.

That changed on March 16, 2023, when the Robinsons learned, for the first time, that the Public Works Authority ostensibly has no money to pay the Robinsons. *See* App. Vol. 1 at 26–28, ¶¶ 82–93. On that same day, the Robinsons also learned, for the first time, about the shell game Okay had created to prevent the Robinsons from receiving just compensation. *See id.* at 13–15, ¶¶ 6–18; *id.* at 26–28, ¶¶ 77–93. For *Williamson County* purposes, this March 16, 2023, discovery was the point at which Oklahoma’s inverse condemnation procedure “fail[ed] to provide [any] compensation for the taking.” 473 U.S. at 195. The result: the Robinsons now had a

complete Fifth Amendment injury and could now assert a Fifth Amendment claim. *Id.* Accordingly, their 2009 takings claims under the Fifth Amendment started to accrue on March 16, 2023.

This result is consistent with *Knick*—the case that overturned *Williamson County*. In 2019, the Supreme Court “overruled” the “state-litigation requirement” in *Williamson County*. *See Knick*, 588 U.S. at 206. *Knick* held for the first time that a property owner can now immediately seek redress under the Fifth Amendment in federal court “upon the taking of his property without just compensation by a local government”—without the need to first go to state court. *Id.* If *Knick* had existed in 2009, the Robinsons could have asserted a Fifth Amendment claim at the time of the taking.

But *Knick* did not exist in 2009. By the time the Supreme court decided *Knick* in 2019, the Robinsons had been diligently pursuing their state-court claims under *Williamson County*. Indeed, *Knick* was not decided until over three weeks after the state trial court entered judgment against the Public Works Authority. *See App. Vol. 1* at 24, ¶ 67. At that point, there was no reason to file this federal lawsuit. The Robinsons were still using the state procedure that *Williamson County* originally required. That did not change until March 16, 2023—when Okay denied the Robinsons just compensation by revealing the ostensible inability to pay with actual money and the

shell game. *Supra*, at 9–10. At that point, the state procedure that the Robinsons were originally required to follow was complete and had “fail[ed] to provide [any] compensation for the taking.” *Williamson County*, 473 U.S. at 195.

Despite all this, the district court held that “even in 2009 when this taking occurred, there was sufficient authority that would allow [the Robinsons] to proceed with a Fifth Amendment claim despite the ruling in *Williamson County*.” App. Vol. 1 at 128. That is wrong. In 2009, *Williamson County* was binding and held that a plaintiff had “not suffered a violation of the Just Compensation Clause” under the Fifth Amendment, and “cannot claim a violation of the Just Compensation Clause,” “until” he had “used the [state] procedure and been denied just compensation.” 473 U.S. at 195. The Supreme Court repeated the holding: There is “no constitutional violation until just compensation has been denied” through the state procedure. *Id.* at 194 n.13. Put differently, a Fifth Amendment claim was not “actionable” until after “the property owner has tried and failed to obtain compensation through the available state procedure.” *Knick*, 588 U.S. at 194–95. These holdings explain why this Court has said a takings “violation has not actually occurred” until the state procedures fail. *Pinder v. Mitchell*, 658 F. App’x 451, 454 (10th Cir. 2016) (discussing *Williamson County*). The failure of those state procedures is “the prerequisite for a § 1983 challenge[.]” *Id.*

Even in 2019, the Supreme Court described the state of the law under *Williamson County*: a “takings plaintiff . . . cannot go to federal court without going to state court first.” *Knick*, 588 U.S. at 184 (emphasis added). The takings plaintiff must have “tried and failed to obtain compensation through the available state procedure.” *Id.* at 194–95. That is because there is “no Fifth Amendment claim *at all* until the State denies compensation.” *Id.* at 192 n.3 (emphasis in original); *see also id.* at 188 (“had no federal takings claim”). No Fifth Amendment claim and no federal court.

Between 1985 (*Williamson County*) and 2019 (*Knick*), the Robinsons could not claim a Fifth Amendment violation or go to federal court because they had not suffered a Fifth Amendment violation, as they had not yet failed to obtain just compensation through the state-court procedure.

Despite the inability to assert a Fifth Amendment claim at the time of the taking, the district court held that the Robinsons could have asserted that claim in 2009. App. Vol. 1 at 128. But in reaching this conclusion, the district court merely cited the following statement in *Knick*:

[J]ust two years after *Williamson County*, in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), the Court returned to the understanding that the Fifth Amendment right to compensation automatically arises at the time the government takes property without paying for it.

App. Vol. 1 at 128 (quoting *Knick*, 588 U.S. at 191–92).

The district court, however, ignored that the “right to compensation” says nothing about whether a plaintiff has suffered a ripe violation of the Takings Clause, can assert a violation of the Takings Clause, or can go to federal court for an alleged violation of the Takings Clause—*i.e.*, what *Williamson County* actually addressed. *See Williamson County*, 473 U.S. at 194–95 & n.13; *Knick*, 588 U.S. at 184, 192 n.3. Until *Knick*, a plaintiff had no choice but to seek a remedy in state court before a Takings Clause violation could exist.⁷ *See id.*

Regardless, the district court misreads *First English*. Most importantly, *First English* acknowledged and applied the *Williamson County* state-litigation rule. *See First English*, 482 U.S. at 312 n.6. Specifically, the Supreme Court held that the claim was ripe because the state court dismissed the action, which established the inverse condemnation procedure was unavailable for *Williamson County* purposes. *Id.* Rather than provide a basis for the Robinsons to assert a Fifth Amendment claim (as the district court said), *First English* confirmed the *Williamson County* state-litigation requirement still applied. *See, e.g., Schnuck v. City of Santa Monica*, 935 F.2d 171, 173–74 (9th Cir. 1991) (applying the *Williamson County* requirement that “a plaintiff must

⁷ Without explanation, the magistrate judge cited three cases besides *First English*, but each of those cases pre-date *Williamson County* and have no relevance to whether the Robinsons had Fifth Amendment claims in 2009. *See App. Vol. 1* at 91.

seek compensation through the procedures the state has provided before a claim of taking is ripe” after quoting *First English*).

Indeed, if the Robinsons had filed their takings claims in federal court in 2009, the district court would have dismissed them. *See Barton v. City of Midwest City*, No. CIV-06-0179-HE, 2006 WL 2520260, at *3–4 (W.D. Okla. Aug. 29, 2006) (“In general, a takings claim must be exhausted in state court before it may be brought in federal court.”). And this Court would have affirmed. *See, e.g., Miller v. Campbell County*, 945 F.2d 348, 352 (10th Cir. 1991) (“[A] Fifth Amendment takings claim is not ripe until the aggrieved property owner ‘has used the [state] procedure and been denied just compensation.’” (quoting *Williamson County*, 473 U.S. at 195)). The district court was wrong to hold otherwise.

B. The Robinsons’ Fifth Amendment claims began to accrue on March 16, 2023.

Since the Robinsons’ Fifth Amendment claims could not have accrued in 2009, the next step is to determine when they did.

The parties agreed below that the applicable statute of limitations for the Robinsons’ Fifth Amendment claims is two years. App. Vol. 1 at 49, 59; Okla. Stat. tit. 12, § 95. Again, the accrual of a Section 1983 claim is a question of federal law in which “the standard rule [is] that accrual occurs when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and obtain relief.”

Herrera, 32 F.4th at 990 (internal quotation marks omitted) (quoting *Wallace*, 549 U.S. at 388). “Put another way, a civil rights action accrues when the plaintiffs knows or has reason to know of the injury which is the basis of the action, . . . or when the plaintiff’s right to resort to federal court was perfected.” *Id.* (cleaned up). Here, the Robinsons’ right to resort to federal court was not perfected, and the Robinsons did not know or have reason to know of the injury that forms the basis of their Fifth Amendment claims, until March 16, 2023. *See* App. Vol. 1 at 60–62 (raising this argument).

Both sets of the Robinsons’ Fifth Amendment claims did not begin to accrue until March 16, 2023. First, until March 16, 2023, the Robinsons did not have a “complete and present cause of action” regarding their 2009 takings claims, and could not “file suit” in federal court,” because their “right to resort to federal court was [not] perfected,” *Herrera*, 32 F.4th at 990 (cleaned up), under *Williamson County*. Again, their Fifth Amendment claims did not exist until the Robinsons failed to obtain just compensation through the state procedure. *See Williamson County*, 473 U.S. at 194–95 & n.13; *Knick*, 588 U.S. at 184, 188, 192 n.3. Similarly, the 2023 takings claims accrued then because the Robinsons first learned “of the injury which is the basis of the action,” *Herrera*, 32 F.4th at 990 (cleaned up), on March 16, 2023—when Okay revealed the Public Works Authority will not pay just compensation with actual

money and that the Town is preventing the Public Works Authority from doing so. *Supra*, at 9–10. It is at this point that the Robinsons knew or could have known that their Fifth Amendment rights had been violated through Okay’s scheme.

Herrera is instructive. In that case, the plaintiffs brought claims under 42 U.S.C. § 1983 after the city discontinued their water service. *Herrera*, 32 F.4th at 985. The district court granted the city’s motion to dismiss under Rule 12(b)(6) that argued the claims were barred by the statute of limitations. *Id.* at 986. On appeal, this Court acknowledged that the plaintiffs’ claims “[a]rguably” started to accrue on the day that one of the plaintiffs learned the reason the city terminated the water service. *Id.* at 992. That said, this Court concluded those claims “certainly first accrued” over two weeks later—on the day that one of the plaintiffs told the city that it violated his rights by discontinuing water service. *Id.* In reaching this conclusion, this Court quoted the rule that Section 1983 “claims accrue when the plaintiff knows or should know that his or her constitutional rights have been violated.” *Id.* (cleaned up).

The logic of *Herrera* applies to the Robinsons’ Fifth Amendment claims. It was not until March 16, 2023, that the Robinsons first learned or could have learned that the Public Works Authority will not pay with actual money (the 2009 takings claims) and that the Public Works Authority and the Town set up an arrangement by which the Public Works Authority can use the power of eminent domain but cannot

pay for it (the 2023 takings claims). *Supra*, at 9–10. At this point, the Robinsons first knew or could have known that Okay “had violated [their] rights.” *See Herrera*, 32 F.4th at 992.

The Robinsons’ claims are also timely for an additional reason: As federal courts across the county have recognized, a federal lawsuit is timely so long as the landowners had been diligently pursuing their state-court rights under *Williamson County* when *Knick* was decided. *See App. Vol. 1* at 63, 104 (raising the argument).

Consider *Donnelly v. Maryland*, 602 F. Supp. 3d 836 (D. Md. 2022). In that case, the defendants argued the plaintiffs’ federal takings claims were barred by the statute of limitations because the lawsuit was filed in 2020 but the allegations involved events as late as 2012. *Id.* at 863. The district court acknowledged that *Williamson County* “was still in effect” in 2012. *Id.* at 865. The court then correctly recognized that *Williamson County* meant “the statute of limitations period could not commence until the conclusion of state litigation.” *Id.* It concluded that *Knick*, in opening the door to “a previously unavailable federal forum to pursue their constitutional takings claims,” was a basis for concluding the plaintiffs’ claims were timely. *Id.* The court described Supreme Court precedent, the “strong public policy of providing a federal forum for the vindication of a federal right,” the fact that the plaintiffs “doggedly pursued their claims” through the state process, and the reality

that the plaintiffs “lacked a meaningful right to bring their takings claims” in federal court until after *Knick*. *Id.* at 865–66. Accordingly, the Court concluded that the plaintiffs’ takings claims started to accrue in 2020 and were timely. *Id.* at 866. These same circumstances, including the Robinsons’ diligent pursuit of the state process, apply with equal force here.

Next, consider *Stensrud v. Rochester Genesee Regional Transportation Authority*, 507 F. Supp. 3d 444 (W.D.N.Y. 2020). In that case, the defendant argued the plaintiffs’ takings claims were barred by the statute of limitations. *Id.* at 447–48. The district court disagreed because the plaintiffs “have diligently pursued their rights” and “faced extraordinary circumstances” in trying to sue in federal court before *Knick* overturned *Williamson County*. *Id.* at 453–54. In the district court’s view, equitable tolling is allowable “where on June 21, 2019, when *Knick* was issued, a plaintiff was actively litigating a takings claim through state court procedures but had not yet filed a § 1983 claim in federal court because of *Williamson*.” *Id.* at 455. That is precisely what happened to the Robinsons—they were diligently pursuing the roadmap the Supreme Court laid out for them in *Williamson County* when *Knick* was decided. *See* App. Vol. 1 at 22–27, ¶¶ 54–75.

If more is needed, *Donnelly* and *Stensrud* also align with this Court’s precedent on equitable tolling. According to “long-settled equitable-tolling principles,

generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way.” *Chance v. Zinke*, 898 F.3d 1025, 1034 (10th Cir. 2018) (cleaned up). Here, the Robinsons “ha[d] been pursuing [their] rights diligently” under *Williamson County* until those proceedings concluded. *See id.* Further, *Williamson County*, along with Okay’s concealment, “stood in [the Robinsons’] way” of bringing any Fifth Amendment claim in 2009. *See id.*; *supra*, at 9–10. In short, the Robinsons “faced extraordinary circumstances in trying to commence a § 1983 action in federal court [in 2009 because] they could not have done so until the Supreme Court overturned 34-year-old precedent that materially changed the ripeness of their claim.” *Stensrud*, 507 F. Supp. 3d at 454. The Robinsons, like other plaintiffs in similar circumstances, should not be punished because they followed the rules as they stood at the time.

The district court departed from these principles, *Donnelly*, and *Stensrud*. The result? The Robinsons were shut out from the federal courthouse and penalized for following binding Supreme Court precedent that was in place in 2009. *See App. Vol. 1 at 98, 104* (raising the argument).

In reaching this result, the district court stated that “*Knick* does not support [the Robinsons’] assertion that their claims were tolled until they determined that

they could not collect on their judgment.” *Id.* at 129. The district court, however, misconstrued the Robinsons’ claims. The Robinsons have long made clear that they are *not* arguing there is a Fifth Amendment injury from an unpaid state-court judgment. *See, e.g., id.* at 67–69 & n.3, 101. Rather, the Robinsons are arguing there is a Fifth Amendment injury until the government pays just compensation with actual money *and* that there is a new Fifth Amendment violation arising out of Okay’s shell game that is preventing the payment of just compensation. *Id.* at 30–34, ¶¶ 104–40; *id.* at 35–40, ¶¶ 141–76.

Okay’s arguments below fare no better. Before the district court, Okay argued that the Robinsons’ Fifth Amendment claims accrued in 2009. *See id.* at 76–77. In Okay’s view, the Robinsons “had the opportunity *and right* to bring their U.S. Constitutional claims” in state court. *Id.* at 72. That is incorrect. Once again, under *Williamson County*, the Robinsons’ Fifth Amendment claims did not exist until they first used the state procedure and failed to secure just compensation. *See Williamson County*, 473 U.S. at 194–95 & n.13; *Knick*, 588 U.S. at 184, 188, 192 n.3. So the Robinsons followed the process that “*Williamson County* envisioned”—*i.e.*, “that takings plaintiffs would ripen their federal claims in state court and *then, if necessary, bring a federal suit* under § 1983.” *Knick*, 588 U.S. at 204 (emphasis added).

To avoid this binding precedent, Okay may try to argue, for the first time, that the Robinsons' Fifth Amendment claims started to accrue the day *Knick* was issued. But that would also be incorrect. No federal court has held that a property owner who was in the midst of exhausting her state remedies when *Knick* was decided had a duty to dismiss the ongoing state proceeding in order to timely file her federal challenge. And it is obvious why: It would be unjust and inefficient to require the Robinsons to drop the (previously mandatory) state proceeding mid-stream and start over in federal court simply to preserve the ability to ever bring a federal claim regarding the 2009 taking. And, in any event, there is no way the 2023 takings claims could have ripened upon the Supreme Court's decision in *Knick* because, as of that date, the Robinsons still had no reason to know that Okay officials were strategically keeping the Public Works Authority insolvent to avoid paying just compensation. *See Herrera*, 32 F.4th at 990; *supra*, at 9–10; App. Vol. 1 at 103 (raising the argument).

In sum, this Court should hold that the Robinsons' Fifth Amendment claims are timely and reverse the district court's dismissal.

C. Even if the statute of limitations has passed, the Robinsons' claims were tolled under the fraudulent concealment rule.

The Robinsons' claims are also timely because they were tolled until March 16, 2023, under the fraudulent concealment rule. *See App. Vol. 1 at 64–65, 105* (raising the argument).

When a defendant uses undercover actions to conceal its conduct from a would-be plaintiff, the statute of limitations is tolled. *King & King Enters. v. Champlin Petrol. Co.*, 657 F.2d 1147, 1154–56 (10th Cir. 1981); accord *Morgan v. State Farm Mut. Auto. Ins. Co.*, 488 P.3d 743, 753 (Okla. 2021). That is exactly what happened here. Any reasonable person would think that the Public Works Authority could pay for the property it takes. After all, residents of Okay pay for water and sewer services and, to do so, make payments to the Public Works Authority. App. Vol. 1 at 26, ¶ 81. According to the Town’s audit reports, there is an Okay Public Works Authority Enterprise Fund that receives hundreds of thousands of dollars per year, including revenue from water and sewer services. App. Vol. 1 at 27–28, ¶¶ 89–90. Any reasonable observer would believe that a government entity that provided water and sewer services by collecting revenue from residents would be able to pay just compensation when it exercises its power of eminent domain. *See id.* at 28, ¶¶ 91–92, 146, 163.

Yet on March 16, 2023, the Robinsons discovered Okay’s undercover actions to conceal its conduct from them. *See King*, 657 F.2d at 1154–56. Specifically, the officials who controlled both the Town and the Public Works Authority created a financial shell game so that all revenue from water and sewer customers in Okay is actually deposited directly into bank accounts controlled by the Town—not the Trust. App. Vol. 1 at 26, ¶ 82; *id.* at 14, ¶¶ 12–13; *see also id.* at 28–29, ¶¶ 94–98. Depositing all

revenue into the Town's bank account was secret. *See id.* at 26–28, ¶¶ 82, 85, 87, 89–91. The financial set-up (and the Public Works Authority's insolvency) was also hidden from the public. *See id.* at 26–29, ¶¶ 82–98.

Okay created this arrangement even though the Public Works Authority provides those very same water and sewer services for Okay residents. *See id.* at 14, ¶¶ 12–13; *id.* at 26, ¶ 81; *id.* at 28, ¶ 90. Worse, all along the Town pointed the finger at the Public Works Authority for the damage to the Robinsons' property, waiting until after the Public Works Authority lost at the Oklahoma Supreme Court to reveal that the Robinsons' efforts to obtain just compensation were all for naught. *See id.* at 21, ¶¶ 55–56 (pointing the finger); *id.* at 23, ¶¶ 59–60 (same); *supra*, at 9–10 (the reveal). The magistrate judge implicitly acknowledged the problem with this arrangement (and the applicability of fraudulent concealment) when it *sua sponte* suggested that the Robinsons “may have” a claim “for potential fraud or misrepresentation.” *See App. Vol. 1* at 94.

To avoid these factual allegations and the liberal pleading standard, the magistrate judge concluded that the Robinsons' Fifth Amendment claims cannot be tolled because learning that the Public Works Authority “cannot satisfy a judgment” is not an element of the Robinsons' claims. *Id.* at 93. Here, once again, the magistrate judge misconstrued the Robinsons' claims. *Supra*, at 28–29. A property owner's injury

begins the moment her property is taken and continues until it is remedied by the payment of actual money. *Infra*, at 33–48 (2009 takings claims). And the government cannot use a shell entity to prevent the payment of just compensation. *Infra*, at 48–52 (2023 takings claims).

Because the Robinsons did not know or could not have known Okay’s “undercover actions” to conceal the conduct from them until March 16, 2023, the statute of limitations for their Fifth Amendment claims did not begin to accrue until March 16, 2023. And the Robinsons’ Fifth Amendment claims were timely because they were filed within two years of this discovery.

* * *

Viewing the factual allegations in the light most favorable to the Robinsons, and drawing all reasonable inferences in their favor, the Robinsons’ Fifth Amendment claims are timely. The district court erred in holding otherwise.

II. There is an ongoing Fifth Amendment injury until just compensation is paid with actual money.

The district court also dismissed the Robinsons’ 2009 takings claims on the merits. This Court should reverse because the Robinsons properly asserted Fifth Amendment claims.

A. Precedent confirms that the Fifth Amendment requires payment with actual money.

The Fifth Amendment states, “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. In accordance with this mandate, today “[a] property owner has an actionable Fifth Amendment takings claim when the government takes property without paying for it.” *Knick*, 588 U.S. at 185. The claim is actionable because taking “private property without paying for it” violates the Fifth Amendment—just as the text says. *Id.* at 189. So the key is payment; a property owner must be able “to obtain compensation” from the local government. *See id.* at 185. That is because the Fifth Amendment conveys a right, or entitlement, “to full compensation.” *Id.* at 190. In this vein, the Constitution “require[s]” a local government to pay compensation to fulfill its “constitutional obligation” and “duty.” *See id.* at 192–93. The “duty to pay just compensation” is not negotiable; it is “categorical.” *Horne*, 576 U.S. at 358. Simply put, the government “*must* compensate the owner at fair market value.” *Sheetz v. County of El Dorado*, 601 U.S. 267, 273 (2024) (emphasis added).

Given these constitutional mandates, there is an ongoing Fifth Amendment violation until the government pays the “just compensation” that the Fifth Amendment commands. After all, it is the taking of one’s property for public use *without just compensation* that gives rise to a Takings Clause claim. *Knellinger v. Young*, 134 F.4th

1034, 1043 (10th Cir. 2025). Takings for public use are not a Fifth Amendment violation—“uncompensated takings” are. *See Knick*, 588 U.S. at 205. That explains why the Supreme Court has said “payment of compensation” is the “remedy” for a Takings Clause violation. *See Knick*, 588 U.S. at 193, 195; *First English*, 482 U.S. at 316 & n.9. That result faithfully applies the text of the Fifth Amendment, which provides that “private property [shall not] be taken for public use, *without just compensation.*” U.S. Const. amend. V (emphasis added). Given the compensation requirement, a local government’s “commitment to pay” is not enough to avoid violating the Fifth Amendment. *See Knick*, 588 U.S. at 208 (Kagan, J., dissenting) (describing the holding in *Knick*). Ultimately, it is this Court’s “role . . . to *ensure* just compensation” is provided. *See Knellinger*, 134 F.4th at 1045 (emphasis added).

Okay has shirked its constitutional duty by refusing to pay the Robinsons just compensation even though the Public Works Authority indisputably took the Robinsons’ property without compensation. The district court disagreed because, in its view, the Robinsons “were awarded just compensation in state court” because of the state-court judgment. App. Vol. 1 at 128. In other words, according to the district court, a Fifth Amendment injury is extinguished when a litigant receives a judgment under a state constitution that says the government owes money. The upshot? The

government can take property for free. “History and precedent say otherwise.” *Tyler*, 598 U.S. at 639 (interpreting the Fifth Amendment).

Start with precedent. Under the district court’s view, the words “just compensation” in the text of the Fifth Amendment, and the Supreme Court’s instruction that “compensation” is the “remedy” for a Takings Clause violation, would have no meaning. *See Knick*, 588 U.S. at 193, 195; *First English*, 482 U.S. at 316 & n.9. And under the district court’s view, this Court has no ability to fulfill its obligation to “ensure just compensation,” *Knellinger*, 134 F.4th at 1045, leaving property-rights violations meaningless in the face of government creativity. The Louisiana Supreme Court had it exactly right when it recently held, under the Louisiana Constitution, that “[a] judgment for inverse condemnation, left unsatisfied, does not constitute the payment of just compensation.” *Watson Mem’l Spiritual Temple of Christ v. Korban*, 387 So. 3d 499, 512 (La. 2024). So too for the U.S. Constitution. A judgment is not payment of just compensation—actual money is.

Ignoring this weight of authority, Okay seizes on a Fifth Circuit case that addressed claims that are distinct from the Robinsons’ claims: *Ariyan, Inc. v. Sewerage & Water Board of New Orleans*, 29 F.4th 226 (5th Cir.), *cert. denied*, 143 S. Ct. 353 (2022). *See App. Vol. 1* at 46–47. *Ariyan* holds only that it is not a separate taking to fail to timely pay a judgment. 29 F.4th at 228–29. *Ariyan* does not hold that a property

owner's right to just compensation is extinguished by the award of a state-court judgment. *See* App. Vol. 1 at 58–59, 67–68 (raising the argument). Nor does *Ariyan* hold that the government does not continue to violate the Fifth Amendment when it fails to pay just compensation for what was taken.

Until a landowner receives actual money, her injury under the Takings Clause of the Fifth Amendment remains ongoing. An unpaid state-court judgment does not qualify as “just compensation” under the Fifth Amendment.

B. There is a long history of requiring payment with actual money.

History reinforces the common-sense principle that just compensation must be paid with actual money.

The just-compensation requirement dates back to Magna Carta in 1215. *See* App. Vol. 1 at 99–101 (raising the argument). Originally, English kings used “purveyance” (a predecessor to eminent domain) to take property without the consent of the owner. *See* 1 William Blackstone, *Commentaries* *277; *see also Little Rock Junction Ry. v. Woodruff*, 5 S.W. 792, 793 (Ark. 1887) (discussing “the king’s ancient prerogative of purveyance”). While the use of purveyance typically created an obligation to pay money, in practice “[p]ayment was often indefinitely delayed or made not in coin but in exchequer tallies[.]” William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John, with an Historical Introduction* 330 (1914). These

exchequer tallies, or “tally sticks,” documented and proved the authenticity of a royal debt. See Christine Desan, *Making Money: Coin, Currency, and the Coming of Capitalism* 171–86 (2014). The tallies, however, became essentially worthless. See *Landlords, Peasants and Politics in Medieval England* 310–11 (T.H. Aston ed., 2006). As a result, the king could effectively take what he wanted without paying. See *id.*

Magna Carta sought to fix these problems. See McKechnie at 331. Clause 28 provided (in translation) that “[n]o constable or other bailiff of ours shall take corn or other provisions from any one *without immediately tendering money therefor*, unless he can have postponement thereof by permission of the seller.” *Id.* at 329 (emphasis added). As the text itself illustrates, the heart of Clause 28 was to ensure that seizures of property were paid by “immediately tendering money.” *Id.* at 329, 331. Thus, the principle of just compensation, along with its restriction on government, dates back to Magna Carta. See *Horne*, 576 U.S. at 358; *Young v. McKenzie*, 3 Ga. 31, 44 (1847).

Enter the Bill of Rights. By its plain text, the Fifth Amendment enshrined the promise that “private property [shall not] be taken for public use, without just compensation.”⁸ U.S. Const. amend. V. “The Framers meant to prohibit the Federal Government from taking property without paying for it.” *Knick*, 588 U.S. at 200

⁸ The Fifth Amendment was incorporated against the States. See *Chi., Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226, 241 (1897).

(emphasis omitted). To that end, the Fifth Amendment was designed “to secure *compensation*” when the government takes your property. *First Eng.*, 482 U.S. at 315. And “payment” is the mechanism to secure that “compensation.” *See Knick*, 588 U.S. at 193. Similar to Clause 28 of Magna Carta, the Fifth Amendment provides a property owner an “entitlement to compensation as soon as the government takes his property without paying for it.” *See Knick*, 588 U.S. at 190. This entitlement is “immediate[]” and “irrevocable.” *DeVillier v. Texas*, 601 U.S. 285, 291 (2024) (quoting *Knick*, 588 U.S. at 192).

Indeed, in the century after the Fifth Amendment was ratified, “courts held that compensation must be provided at the time of the act alleged to be a taking.” *Arrigoni Enters., LLC v. Town of Durham*, 136 S. Ct. 1409, 1410 (2016) (Thomas, J., dissenting from denial of certiorari) (cleaned up). Early American courts harkened back to Magna Carta. One court discussed Magna Carta and declared that “compensation must, in all cases, be previously made to the individuals affected” as a “necessary qualification” for “taking private property for public uses.” *Gardner v. Village of Newburgh*, 2 Johns. Ch. 162, 166 (N.Y. Ch. 1816). Similarly, another court declared that it would be “against common right, as well as against Magna Charta, to take away the freehold of one man, and vest it in another . . . without any compensation.” *Bowman v. Middleton*, 1 S.C.L. (1 Bay) 252, 252 (S.C. Ct. Common Pleas 1792). It is

therefore unsurprising that the Louisiana Supreme Court recently confirmed that a judgment on its own is not just compensation. *Watson*, 387 So. 3d at 512. Payment, with money, is just compensation.

In short, the government gets to decide what property to take. But, once it makes that decision, it has no power to decide whether it has to pay or whether it can be in a form other than actual money. The district court's conclusion that the Robinsons were awarded just compensation in state court, even though they have not received a single cent, runs headlong into this history and precedent.

C. The district court's reasoning was erroneous.

The district court and magistrate judge offered three apparent justifications for concluding otherwise, all of which are wrong.

a. *The district court misconstrued the Robinsons' claims.*

First, the district court questioned whether it could consider “this case simply because the judgment awarded remains unpaid.” App. Vol. 1 at 128. But that misconstrued the Robinsons' claims. *Supra*, at 28–29. The district court thought that all of the Robinsons' claims are that an unpaid judgment creates a cause of action. But the Robinsons' 2009 takings claims arise out of the ongoing failure to pay actual money, and their 2023 takings claims arise out of the Town preventing the Public Works Authority from paying with actual money.

This Court reverses when a district court misconstrues a claim and prematurely dismisses a complaint. In *Wyo-Ben Inc.*, for example, the plaintiff “argue[d] that the district court erred by misconstruing its claim as a challenge to the BLM’s . . . determination that [the plaintiff’s] pending application did not qualify for a statutory exemption.” 63 F.4th 857, 867 (10th Cir. 2023). The plaintiff noted that “its complaint instead challenge[d] the Secretary’s *inaction* in failing to review [the plaintiff’s] patent application to determine whether it qualifies for the exemption, as required under the relevant appropriations acts.” *Id.* This Court examined the complaint, agreed that the district court misconstrued the claim, and reversed the premature Rule 12(b)(6) dismissal. *Id.* at 866–68.

Similarly, here, the Robinsons do not raise claims arising out of the Oklahoma judgment—as the district court thought. *See App. Vol. 1 at 67–69 & n.3, 101.* Instead, the Robinsons assert two sets of claims: an ongoing Fifth Amendment violation arising out of the failure to pay with actual money (the 2009 takings claims) and a new Fifth Amendment violation for using a shell entity to prevent the payment of just compensation (the 2023 takings claims). *Id.* at 30–40, ¶¶ 104–76. For the 2009 takings claims, it is ongoing failure to pay with actual money, not the ongoing failure to pay a state-court judgment, that is a cognizable constitutional injury. *See supra*, at 33–40. Regardless, an unpaid judgment says nothing about the Robinsons’ 2023 takings

claims—whether the Town violated the Fifth Amendment by preventing the Public Works Authority from paying just compensation through a shell entity. *See* App. Vol. 1 at 69 (raising the argument). The district court ignored this second set of claims when it misconstrued the Robinsons’ claims as arising out of the Oklahoma judgment. *See Wyo-Ben Inc.*, 63 F.4th at 866–67.

b. *San Remo* does not pose a barrier to considering the Robinsons’ Fifth Amendment claims.

Next, the district court concluded the Robinsons’ Fifth Amendment claims are barred by *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323 (2005). *See* App. Vol. 1 at 92, 128–29. But *San Remo* does not preclude those claims.

San Remo says that sometimes *Williamson County* forces property owners to litigate everything in state court. *See San Remo*, 545 U.S. at 346. After all, “*Williamson County* envisioned that takings plaintiffs would ripen their federal claims in state court and then, if necessary, bring a federal suit under § 1983.” *Knick*, 588 U.S. at 204. Usually, plaintiffs fell into the “*San Remo* trap” because they exhausted their state remedies and *lost*, which doomed their federal takings claim as a matter of issue preclusion. *See San Remo*, 545 U.S. at 326–27 (the state court “rejected petitioners’ various state-law takings claims”); *Knick*, 588 U.S. at 188 (an “adverse state court decision”). By contrast, the Robinsons exhausted their state remedies and *won* under the Oklahoma Constitution. And, until this suit, the Robinsons never asserted (or

received a ruling on) a Fifth Amendment claim under the U.S. Constitution. Indeed, the Robinsons still have not received the “just compensation” promised in the Fifth Amendment—compensation that would eliminate their Takings Clause injury. *See Alto Eldorado P’ship v. County of Santa Fe*, 634 F.3d 1170, 1176 (10th Cir. 2011) (“Compensation negates the constitutional Takings Clause claim altogether.”). A federal court can remedy this constitutional injury by compelling payment. So the Robinsons can still sue under the Fifth Amendment.

To be sure, issue preclusion still attaches as to whether there was a taking and whether the Robinsons are entitled to compensation. *See* App. Vol. 1 at 21–25, ¶¶ 54–75. These are “issue[s]” that were “actually decided” in state court and in the Robinsons’ favor. *See San Remo*, 545 U.S. at 342. So the parties cannot dispute those issues. But issue preclusion does not govern the specific *claims* the Robinsons raise in this case—*i.e.*, whether the Public Works Authority has *paid* the Robinsons just compensation (the 2009 takings claims) or whether the Town is *preventing* the Public Works Authority from doing so (the 2023 takings claims). *See* App. Vol. 1 at 21–25, ¶¶ 54–75. That is because the state court did not “actually decide[]” these Fifth Amendment “issues” as part of “its judgment” under the Oklahoma Constitution. *See San Remo*, 545 U.S. at 342. Put another way, these Fifth Amendment claims have never been adjudicated.

In fact, these claims could not have been resolved by the state-court action. For starters, the facts giving rise to the Robinsons' Fifth Amendment claims did not come to light until after the state-court judgment—*i.e.*, when the Robinsons discovered, on March 16, 2023, Okay's scheme and its ostensible inability to pay with actual money. *Supra*, at 9–10. Those discoveries form the basis for the Robinsons' Fifth Amendment claims. Second, under *Williamson County*, the Robinsons' Fifth Amendment claims did not yet exist. *See* 473 U.S. at 194–95 & n.13; *Knick*, 588 U.S. at 184, 188, 192 n.3.

To be sure, the Supreme Court said that “*many* takings plaintiffs never ha[d] the opportunity to litigate in a federal forum” after *Williamson County*. *See Knick*, 588 U.S. at 204 (emphasis added). But the Supreme Court did not say “all.” Even the separate opinion in *San Remo* recognized that pursuing relief in state court under *Williamson County* “will likely” prevent federal takings claims in federal court. *San Remo*, 545 U.S. at 351 (Rehnquist, C.J., concurring in the judgment). Unlike many litigants, however, the Robinsons are in the small category of people who found it “necessary” to “bring a federal suit under § 1983” after the state court proceeding (under the Oklahoma Constitution) failed to result in payment of just compensation. *See Knick*, 588 U.S. at 204.

Simply put, the Robinsons' Fifth Amendment claims were not resolved and could not have been resolved in the state-court action, so *San Remo* poses no barrier to considering those claims.

c. *Folsom* has no relevance to the Robinsons' Fifth Amendment claims.

The third justification for dismissing the Fifth Amendment claims was that the Robinsons “were not denied just compensation in state court” because “a party’s inability to collect on a judgment clearly does not create a constitutional violation.” App. Vol. 1 at 91 (R&R); *see also id.* at 129 (holding the R&R is “affirmed and adopted”). In reaching this conclusion, the district court adopted Okay’s sweeping and flawed reading of *Louisiana ex rel. Folsom v. City of New Orleans*, 109 U.S. 285 (1883). *Compare* App. Vol. 1 at 73 (Okay), *with id.* at 91 (R&R). That misconstrued both the Robinsons’ claims and *Folsom*. *See Wyo-Ben Inc.*, 63 F.4th at 866–67.

Again, the Robinsons’ claims are not about whether the inability to collect on a judgment creates a constitutional violation—contrary to what the district court thought. *Supra*, at 28–29. Instead, the Robinsons’ claims are about whether there is an ongoing Fifth Amendment violation arising out of the failure to pay just compensation and a new Fifth Amendment violation for using a shell entity to prevent the payment of just compensation. *See* App. Vol. 1 at 22–25, ¶¶ 54–75.

To that point, the Robinsons *were* denied just compensation. *Contra id.* at 91. The constitutional duty to pay just compensation is discharged through “payment” of “compensation,” *Knick*, 588 U.S. at 193, not a judgment. Put differently, a judgment is not just compensation; money is. *See Watson*, 387 So. 3d at 512. That makes sense: until the government pays actual money for the property, the property owner is worse off monetarily than before the taking. Indeed, under *Williamson County*, the inquiry is whether the state procedure “fails to provide adequate compensation,” 473 U.S. at 195, which is precisely what happened here. The Robinsons used the available state procedure but did not receive a single cent to compensate them. *See App. Vol. 1* at 32, ¶ 123; *id.* at 33, ¶ 136.

The district court also erred by holding that *Folsom* governs. *Folsom* did not announce a blanket rule that “a party’s inability collect on a judgment clearly does not create a constitutional violation.” *Contra App. Vol. 1* at 89. Nor could it. Under Article III of the U.S. Constitution, federal courts cannot issue advisory opinions about “what the law would be upon a hypothetical state of facts.” *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (citation omitted). In that vein, courts decide only the issue the parties present. *United States v. Sineneng-Smith*, 590 U.S. 371, 375–76 (2020). And as the Supreme Court recently reminded us, opinions “must be read with a careful eye to context.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 373–74 (2023).

In *Folsom*, that context was whether the Louisiana Constitution’s restriction on “the power of the city to impose taxes on property” violated the Contracts Clause and the Fourteenth Amendment’s Due Process Clause. 109 U.S. at 287. *Folsom* said nothing about the Fifth Amendment, let alone the specific Fifth Amendment claims the Robinsons raise in this case. What is more, the plaintiffs in *Folsom* sought “to compel the authorities of the city” to pay their state-court judgments arising out of obligations under state law even though “the funds receivable from the tax thus authorized to be levied are exhausted by the current expenses of the city, which must first be met.” *Id.* at 286–87. Here, by contrast, Okay’s funds are not exhausted by current expenses. Instead, the Town-Public Works Authority arrangement ensures the Public Works Authority is insolvent, while the Town (which has money) continues to pay both entities’ attorneys to deny the Robinsons the money they are constitutionally owed. Further, the Robinsons’ Fifth Amendment claims are premised on a promise enshrined in the U.S. Constitution—just compensation—not an obligation under state law like in *Folsom*. *See id.* at 286.

Folsom does not control the claims that the Robinsons raise.

* * *

Text, history, and precedent all point toward a single conclusion: a Fifth Amendment Takings Clause violation is ongoing until the government pays a

property owner “just compensation,” which means with actual money. Accordingly, the Court should reverse the dismissal of Counts I and II of the Robinsons’ complaint.

III. There is a Fifth Amendment violation when a local government uses a shell entity to prevent the payment of just compensation.

The district court separately erred when it dismissed the Robinsons’ 2023 takings claims (Counts III and IV) arising out of the relationship between the Okay entities. Under that relationship, the Town is preventing the Public Works Authority from paying the Robinsons just compensation by deliberately creating a circumstance under which a government entity has the power of eminent domain but has no ability to fulfill the constitutional duty to pay just compensation. *See App. Vol. 1 at 35–40, ¶¶ 141–76.* That is unconstitutional.

Okay is “bound by obligations imposed by the Constitution,” including the Takings Clause. *DeVillier*, 601 U.S. at 293 (quoting *Alden v. Maine*, 527 U.S. 706, 755 (1999)). Far from fulfilling its “responsibility to enforce [the Constitution],” *id.* at 292 (quoting *Howlett v. Rose*, 496 U.S. 356, 367 (1990)), the Town’s arrangement with the Public Works Authority flouts it. And it does so by using an entity to wield the power of eminent domain but without the ostensible ability to pay for doing so.

Recall that the Town and the Public Works Authority are functionally the same: They are controlled by the same people, are in the same building, and provide

services for the residents of Okay. *Supra*, at 7–8. The Town takes and keeps all the revenue, money, property, or anything else of value from the Public Works Authority. *Supra*, at 9–10. That scheme renders the Public Works Authority insolvent. *Id.* For example, all revenue from water and sewer customers in Okay is deposited directly into bank accounts controlled by the Town, even though the Public Works Authority provides the water and sewer services to residents. *Id.* Even the Town’s audit reports show the Okay Public Works Authority Enterprise Fund receives hundreds of thousands of dollars per year, including revenue from water and sewer services. App. Vol. 1 at 27–28, ¶¶ 89–90. Further, when the Town created the Public Works Authority, the Town effectively gave the Public Works Authority the power of eminent domain. *See id.* at 35, ¶ 146; *id.* at 38, ¶ 163; *see also Barnett*, 507 P.3d at 1248–49 (describing the Public Works Authority’s eminent domain authority under Okla. Stat. tit. 60, § 176(J)).

As a result, although the Public Works Authority has the power to take private property through eminent domain for the benefit of the Town, the Public Works Authority can never fulfill its constitutional duty to pay just compensation because of how the Public Works Authority and the Town have structured their relationship. *Supra*, at 9–10. All of this is by design. *See* App. Vol. 1 at 35–36, ¶¶ 149–152; *id.* at 38–

39, ¶¶ 166–69. In essence, the Town is preventing the Public Works Authority from paying the Robinsons the money they are constitutionally owed.

This arrangement turns the “irrevocable right to just compensation,” *DeVillier*, 601 U.S. at 291 (quoting *Knick*, 588 U.S. at 192), into a revocable right subject to the whims of a local government’s creativity. But that is not how a constitutional duty works. Even in bankruptcy, where debt is dischargeable, the government cannot escape the constitutional duty to pay just compensation. See *In re Fin. Oversight & Mgmt. Bd.*, 41 F.4th 29, 41–46 (1st Cir. 2022) (sovereign debt of Puerto Rico). Just as the government cannot move money around to make just compensation impossible through restructuring, the government cannot move money around to make just compensation impossible through a shell entity.

That the Public Works Authority, rather than the Town, took the Robinsons’ property in 2009 is of no moment. As the Supreme Court has long told us, under the Constitution, “what cannot be done directly cannot be done indirectly.” *Cummings v. Missouri*, 71 U.S. 277, 325 (1866); see *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) (applying this principle to the Equal Protection Clause). If the Town cannot “directly” take the Robinsons’ property without paying just compensation, the Town cannot “indirectly” use the Public Works Authority to take the Robinsons’ property without paying just compensation.

See Cummings, 71 U.S. at 325; *accord Haywood v. Drown*, 556 U.S. 729, 742 (2009) (“[T]he Supremacy Clause cannot be evaded by formalism.”). Property rights under the Fifth Amendment “cannot be so easily manipulated.” *See Horne*, 576 U.S. at 365.

Consult the result if the contrary is true. The Robinsons would be in exactly the same spot had the Fifth Amendment never been ratified. But the Fifth Amendment was ratified, and that means something—not in the abstract, but in the form of actual money. Magna Carta and the Fifth Amendment long ago rejected the idea that the king, or the government, can take without payment. *Supra*, at 37–40. Indeed, one of the central purposes of the Takings Clause is to save “individual property owners,” like the Robinsons, “from bearing ‘public burdens which, in all fairness and justice, should be borne by the public as a whole.’” *Sheetz*, 601 U.S. at 273–74 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)). Okay’s arrangement does the opposite: The Robinsons, instead of Okay, bear a public burden. That cannot stand.

* * *

Absent reversal, Okay provides an alarming blueprint for local governments. Under that blueprint, cities and towns can provide government services but avoid remedies the People ratified in the Fifth Amendment and that Congress prescribed under 42 U.S.C. § 1983, all by using an ostensibly separate government entity to provide services while funneling away all of the money. This outcome would be

anathema to Congress' long-standing judgment that there must be a remedy for "the deprivation of any rights, privileges, or immunities secured by the Constitution" of the United States. *See* 42 U.S.C. § 1983; *Knick*, 588 U.S. at 202 n.8. The promise enshrined in the Fifth Amendment demands more.

CONCLUSION

The Court should reverse the district court's dismissal of the Robinsons' suit on the pleadings because their Fifth Amendment claims are not time-barred and because those claims are properly stated.

Date: November 17, 2025

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REASONS FOR ORAL ARGUMENT

Oral argument is appropriate because this case presents important constitutional questions of first impression in this circuit that will affect the property rights of Americans across the country.

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 12,265 words.

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CERTIFICATE OF ELECTRONIC SUBMISSION

I hereby certify that with respect to the foregoing:

(1) All required privacy redactions have been made under Tenth Circuit Rule 25.5;

(2) If required to file additional hard copies, that the ECF submission is an exact copy of those documents; and

(3) The digital submissions have been scanned for viruses by Bitdefender Endpoint Security Tools, version 7.9.28.580, last updated November 17, 2025, and according to the program are free of viruses.

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, I electronically filed a copy of the foregoing brief and the following attachments with the Clerk of the United States Court of Appeals for the Tenth Circuit using the Court's appellate CM/ECF system. All parties will be served by the appellate CM/ECF system.

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BRIEF ATTACHMENTS

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

(1) MELISA ROBINSON and)	
(2) MICHAEL ROBINSON, d/b/a THE RIVER)	
VALLEY MOBILE HOME COMMUNITY,)	
)	
Plaintiffs,)	
v.)	Case No. 24-cv-270-RAW-DES
)	
(1) THE TOWN OF OKAY OKLAHOMA,)	
a municipal corporation, and)	
(2) THE OKAY PUBLIC WORKS AUTHORITY,)	
a public trust,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

This matter comes before the Court on Defendants’, The Town of Okay Oklahoma (“the Town”) and The Okay Public Works Authority (“the Trust”) (collectively “Defendants”), Motion to Dismiss Plaintiffs’ Complaint (Docket No. 2), for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and for failure to state a claim for which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6). (Docket No. 14). On January 21, 2025, United States District Judge Ronald A. White referred this case to Magistrate Judge D. Edward Snow for all pretrial and discovery matters, including dispositive motions, pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72. (Docket No. 31). For the reasons set forth below, the undersigned Magistrate Judge recommends Defendants’ Motion to Dismiss be GRANTED.

I. Background

Melisa Robinson and Michael Robinson d/b/a The River Valley Mobile Home Community (“Plaintiffs” or “the Robinsons”), filed their complaint on July 30, 2024, alleging constitutional claims under the Fifth Amendment to the United States Constitution and 42 U.S.C. § 1983 because Defendants took or damaged their private property for public use without just compensation.

(Docket No. 2). Plaintiffs allege that they purchased the River Valley Mobile Home Community in Okay, Oklahoma in 2006. *Id.* at 6. In 2009, Defendants sought to replace, reconstruct, and relocate water lines and facilities at the Town’s sewer treatment plant. *Id.* at 8. In doing so, they replaced two sewer pipes that affected River Valley. Defendants decided to replace the sewer line with a new line that ran through the River Valley property. *Id.* There were no public sewer easements on Plaintiffs’ property and Defendants never sought to obtain one. Instead, Defendants proceeded with the planned project which included storing equipment and materials on the property and digging up private pipes and power lines that ran through the property. *Id.* at 9-10. Damage to the property along with poor construction of the new pipeline led to sewage from homes on the Robinson’s property not draining, and loss of power to the mobile home park which affected residents. *Id.* at 11. The Robinsons sought the Town’s assistance in fixing the problems, but the Town “refused.” *Id.* Therefore, the Robinsons made repairs themselves which cost them “tens of thousands of dollars.” *Id.*

In 2009, the Robinsons filed an inverse condemnation claim against the Town in state court.¹ *Id.* at 12. Ultimately, the 2009 case was dismissed without prejudice because it was discovered that the Trust was the entity that damaged the property, not the Town. Plaintiffs dismissed the 2009 case on the eve of trial and refiled a new petition in 2012 against the Town and the Trust alleging state takings claims. *Id.* at 12-13. Plaintiffs allege they did not include any claims under the Fifth Amendment in the 2012 state court case because, “at that time, precedent from the United States Supreme Court required the Robinsons to first use state court procedures *and* be

¹ Vicky Barnett, Melisa’s mother was the named Plaintiff in the state court lawsuit. Plaintiffs explain this was because she was the property the owner at this time, but the Robinsons claim Melisa controlled the litigation and was managing the property and owned all rights and claims related to the property. This fact is not disputed in this case.

denied just compensation before they could file Fifth Amendment claims in federal court.” *Id.* at 13.

The Town was dismissed from this new suit in June 2013, after a Motion to Dismiss indicated it was the Trust that took and damaged the property. *Id.* However, the Robinsons won in a jury trial against the Trust and were awarded \$73,350.00 in just compensation for the taking or damage that occurred to their property. *Id.* at 14. The Trust appealed the jury verdict and judgment to the Oklahoma Court of Civil Appeals who vacated the verdict and judgment. *Id.* at 14-15. Plaintiffs then appealed to the Oklahoma Supreme Court who, on March 8, 2022, reversed the Court of Appeals and affirmed the trial court’s judgment of \$73,350.00 and remanded the matter back to the state court to resolve the outstanding issues of attorney’s fees and costs. *Id.* at 15. In August 2022, the trial court awarded Plaintiffs’ \$88,681.00 in fees and costs. *Id.*

In November 2022, the Robinsons sought to collect on their judgment from the Trust. *Id.* at 16. However, in March 2023 the Robinsons discovered that the Trust had no money or real estate to satisfy the judgment and that the revenue collected by the Trust was deposited directly into a bank account owned and controlled by the Town. *Id.* Plaintiffs argue this was all concealed from them during the course of the litigation. *Id.* at 17.

On July 30, 2024, the Plaintiffs filed the present complaint, arguing they have not been justly compensated for the taking or damage to their property and therefore they maintain an ongoing unremedied Fifth Amendment violation for the taking. *Id.* at 20-21. On August 16, 2024, Defendants filed their Motion to Dismiss based on: (1) lack of jurisdiction under Fed. R. Civ. P. 12(b)(1), and (2) insufficient facts for which relief can be granted under Fed. R. Civ. P. 12(b)(6). (Docket No. 14).

II. Analysis

Under Fed. R. Civ. P. 12(b)(1) a party may assert a defense to a complaint for lack of subject-matter jurisdiction. There are two types of Rule 12(b)(1) motions: (1) those which attack the complaint on its face, and (2) those which attack the existence of subject matter jurisdiction in fact, quite apart from any pleading. *See Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995). When there is an attack of the complaint on its face, a district court’s review is similar to a Rule 12(b)(6) motion in that “a district court must accept the allegations in the complaint as true.” *Id.* at 1002. However, for a Rule 12(b)(1) motion attacking the facts upon which subject matter jurisdiction exists, “a district court may not presume the truthfulness of the complaint’s factual allegations.” *Id.* at 1003. Accordingly, unlike a Rule 12(b)(6) motion, consideration of a Rule 12(b)(1) jurisdiction-type motion need not be limited since “a court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts.” *Id.* Under this authority, the undersigned Magistrate Judge looks at the Pleadings presented along with all attached exhibits.

a. Jurisdiction Issue

Defendants argue Plaintiffs’ claims of constitutional violations are barred by Supreme Court precedent established in *State of Louisiana ex rel. Folsom v. City of New Orleans*, 109 U.S. 285 (1883). Under this precedent, a party’s inability to collect on a judgment does not create a constitutional violation. *Folsom*, 109 U.S. at 288 (“Where a transaction is not based upon any assent of parties, it cannot be said that any faith is pledged with respect to it; and no case arises for the operation of the prohibition.”) (internal citation omitted). Defendants further cite to the more recent case of *Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans*, 29 F.4th 226, 228 (5th Cir.). The *Ariyan* case involved circumstances similar to the present case, wherein the plaintiffs sued a

state entity for property damage and were awarded a judgment, but when they could not collect on their judgment, they filed suit in federal court claiming the non-payment of the state court judgment constituted a form of an unconstitutional taking or deprivation of constitutional rights. (Docket No. 14 at 5). The District Court in *Ariyan* granted Defendants' Motion to Dismiss, and the Fifth Circuit affirmed the dismissal on the grounds that the Supreme Court, more than a century ago, held that "[a] party cannot be said to be deprived of his property in a judgment because . . . he is unable to collect it." *Ariyan*, 29 F.4th at 230 (citing *Folsom*, 109 U.S. at 289).

In response, Plaintiffs argue that the claim they are making is not the same claim that the Fifth Circuit held was unavailable in *Ariyan*. (Docket No. 21 at 15). Rather than claiming that "Defendants effected a taking by *failing to pay a state-court judgment*," Plaintiffs allege "Defendants effected a taking by *taking property*." *Id.* Plaintiffs argue that they, as property owners, have "a claim for a violation of the Takings Clause as soon as a government takes [their] property for public use without paying for it" and this claim persists until "[a] later payment of compensation [] remed[ies] the constitutional violation[.]" *Id.* at 16 (citing *Knick v. Township of Scott*, 588 U.S. 180, 189 (2019)). Plaintiffs argue they did not have standing to bring their Fifth Amendment claim until the decision in *Knick*. (Docket No. 21 at 10). Prior to *Knick*, Plaintiffs argue *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) required Plaintiff to exhaust their state court remedies before they could file federal claims in federal court. Plaintiffs argue that because *Williamson County* was the law in 2009 when the taking at issue here occurred, they could not have brought their federal claims until they exhausted their state court remedies and were denied just compensation. (Docket No. 21 at 9).

Plaintiffs relied on *Williamson County's* holding that "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just

Compensation Clause until it has used the procedure **and been denied just compensation.**” *Williamson Cnty*, 473 U.S. at 195 (1985) (emphasis added). The undersigned Magistrate understands this argument, but notes that even in 2009 when this taking occurred, there was sufficient authority that would allow Plaintiffs to proceed with a Fifth Amendment claim despite the ruling in *Williamson County*. See *Jacobs v. United States*, 290 U.S. 13, 16, (1933) (“The suits were based on the right to recover just compensation for property taken by the United States for public use in the exercise of its power of eminent domain. That right was guaranteed by the Constitution. The fact that condemnation proceedings were not instituted and that the right was asserted in suits by the owners did not change the essential nature of the claim.”); *First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles Cnty., Cal.*, 482 U.S. 304, 316, (1987) (“[T]he Court has frequently repeated the view that, in the event of a taking, the compensation remedy is required by the Constitution.”); *United States v. Clarke*, 445 U.S. 253, 257, 100 S. Ct. 1127, 1130, 63 L. Ed. 2d 373 (1980) (“A landowner is entitled to bring such an action as a result of the self-executing character of the constitutional provision with respect to compensation”) (internal citations omitted); *United States v. Causby*, 328 U.S. 256, 267 (1946) (“If there is a taking, the claim is founded upon the Constitution and within the jurisdiction”) (internal citations omitted).

In any event, Plaintiffs were not denied just compensation. Upon their own admission, Plaintiffs won a jury trial and received a judgment entitling them to “\$73,350.00 in ‘just compensation’” for the taking that occurred in 2009. (Docket No. 2 at 14). As explained above, a party’s inability to collect on a judgment clearly does not create a constitutional violation. *Folsom*, 109 U.S. at 288. Therefore, under the *Williamson County* standard, Plaintiffs do not have jurisdiction in federal court because they were not denied just compensation in state court.

Furthermore, Plaintiffs' issues were fully reviewed and decided by the state court, thus precluding those same issues from being retried in federal court. The Supreme Court has held:

[I]ssues actually decided in valid state-court judgments may well deprive plaintiffs of the 'right' to have their federal claims relitigated in federal court . . . This is so even when the plaintiff would have preferred not to litigate in state court, but was required to do so by statute or prudential rules. The relevant question in such cases is not whether the plaintiff has been afforded access to a federal forum; rather, the question is whether the state court actually decided an issue of fact or law that was necessary to its judgment.

San Remo Hotel, L.P. v. City & Cnty. of San Francisco, Cal., 545 U.S. 323, 342 (2005). Plaintiffs cite no authority giving this Court new jurisdiction over this case simply because the judgment awarded in state court remains unpaid. Although Plaintiffs argue that there continues to be a taking of property as they have not been paid just compensation, they fail to show how the statute of limitations does not preclude this claim.

b. Statute of Limitations Issue

The Supreme Court in *Knick*, the authority Plaintiff relies on, held “[a] property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” *Knick*, 588 U.S. at 185. “[T]he act of taking’ is the ‘event which gives rise to the claim for compensation.” *Id.* at 190 (quoting *United States v. Dow*, 357 U.S. 17, 22, (1958)). There is no argument between the parties that the taking at issue in this case occurred in 2009. The statute of limitations for a 42 U.S.C. § 1983 claim in Oklahoma is two years. *See Lyons v. Kyner*, 367 F. App'x 878, 881 (10th Cir. 2010) (“The statute of limitations for claims under § 1983 ‘is drawn from the personal-injury statute of the state in which the federal district court sits.”) (quoting *Mondragon v. Thompson*, 519 F.3d 1078, 1082 (10th Cir. 2008)). Plaintiffs seem to argue that their federal claims are tolled under *Knick*, because until the decision in *Knick* their claims were not ripe to bring in federal court, however there is nothing in the *Knick* opinion to support

this argument. In fact, the opinion in *Knick* refutes this assertion. The Court in *Knick* states, “[o]ur holding that uncompensated takings violate the Fifth Amendment will not expose governments to new liability; it will simply allow into federal court takings claims that otherwise would have been brought as inverse condemnation suits in state court.” *Knick*, 588 U.S. at 205. There is nothing in *Knick* that tolls Plaintiffs’ statute of limitations until it is determined that Plaintiffs cannot collect on their judgment.

Plaintiffs next rely on the Tenth Circuit’s accrual rule, which holds that a statute of limitations does not begin to run until the plaintiff knows or has reason to know of the existence and cause of injury which is the basis of his action. *See Indus. Constructors Corp. v. U.S. Bureau of Reclamation*, 15 F.3d 963, 969 (10th Cir. 1994). Plaintiffs further argue Defendants used “undercover actions” to conceal the fact that they could not pay the judgment which also tolls the statute of limitations until it is discovered. (Docket No. 21 at 12). Plaintiffs’ arguments fail here because whether the Defendants satisfy a judgment is not an element to any of Plaintiffs’ causes of actions; therefore, the discovery that the Defendants cannot satisfy a judgment is not enough to toll the statute of limitations for a § 1983 action. The only relevant information Plaintiffs need to initiate a Fifth Amendment takings claim is when did the taking occur. “[T]he act of taking is the event which gives rise to the claim for compensation.” *Knick*, 588 U.S. at 190 (citing *Dow*, 357 U.S. at 22). Plaintiffs made their claim for just compensation in state court and were awarded a valid judgment. Failure to collect on that judgment does not create a constitutional violation separate and apart from the original taking that occurred in 2009. None of the sources cited by Plaintiffs support their theory that the taking continues and therefore should be adjudicated again here in federal court.

While plaintiffs may have additional state actions against Defendants for potential fraud or misrepresentation regarding Defendants' assets, this in and of itself does not give rise to federal jurisdiction. The statute of limitations for any claims Plaintiffs may have had under the Fifth Amendment have long passed. Accordingly, the undersigned Magistrate Judge recommends Defendants' Motion to Dismiss under Fed. R. Civ. P 12(b)(1) and 12(b)(6) be GRANTED.

c. Assignment of Claims

In addition to the arguments to dismiss based on Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Defendants also argue that under Oklahoma law, 12 O.S. § 2017,² assignment of claims is prohibited. As such, Vicky Barnett could not have assigned her claims to Plaintiffs. (Docket No. 22 at 3). Plaintiffs' response to this argument is "[u]nder 60 Okla. Stat. § 313, '[a] thing in action, arising out of the violation of a right of property, or out of an obligation, *may* be transferred by the owner.'" (Docket No. 25 at 3) (quoting *Raw Crude Oil & Gas, LLC v. Ovintiv Mid-Continent Inc.*, 2021 WL 6328011, at *1 (W.D. Okla. Oct. 4, 2021)). Defendants argue that 12 O.S. § 2017, which was enacted in 1984, seventy-three years after 60 O.S. § 313, controls and only gives one exception for assignment of claims not arising out of contract, which is the transfer of claims through subrogation. (Docket No. 26 at 2). Defendants argue that if the Legislature intended for assignment of property claims not arising out of contract to be allowed, they would have included those in the exceptions. *Id.* Because the undersigned Magistrate Judge has recommended this matter be dismissed for lack of jurisdiction, the undersigned Magistrate Judge cannot reach the assignment issue.

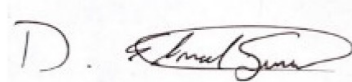
² 12 O.S. § 2017(D) states: "D. ASSIGNMENT AND SUBROGATION OF CLAIMS. The assignment of claims not arising out of contract is prohibited. However, nothing in this section shall be construed to affect the law in this state as relates to the transfer of claims through subrogation."

III. Conclusion

Plaintiffs failed to demonstrate that their claims for a Fifth Amendment taking remain actionable in federal court. While they allege a continuing constitutional violation due to the inability to collect on a state court judgment, the Supreme Court's decision in *Folsom* prohibits this argument because failure to pay a judgment does not create a new constitutional violation. Furthermore, the Supreme Court's decision in *Knick*, while overturning *Williamson County*, does not toll the statute of limitations for a takings claim. The Plaintiffs' cause of action for compensation arose when the taking at issue here occurred in 2009. Therefore, their claims are now barred by the two-year statute of limitations for § 1983 actions in Oklahoma.

Accordingly, the undersigned Magistrate Judge hereby RECOMMENDS the Defendants' Motion to Dismiss (Docket No. 14) be GRANTED. Any objections to this Report and Recommendation must be filed within fourteen days. See 18 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Any objections and response shall each be limited to 10 pages and a reply is permitted only with leave of court upon a showing of good cause.

DATED this 27th day of January, 2025.



D. Edward Snow
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

MELISA ROBINSON and MICHAEL
ROBINSON, d/b/a River Valley Mobile Home
Community,

Plaintiffs,

v.

THE TOWN OF OKAY OKLAHOMA, a
municipal corporation, and
THE OKAY PUBLIC WORKS
AUTHORITY, a public trust,

Defendants.

Case No. CIV-24-270-RAW-DES

ORDER

This action arises from a taking of private property for public use without just compensation. Specifically, Plaintiffs allege that in 2009, the Town of Okay via the Okay Public Works Trust sought to replace, reconstruct, and relocate sewer pipes on and through Plaintiffs' private mobile home park. There were no public sewer easements on the property, but Defendants went forward with the project anyway without permission from the property owners. Defendants caused extensive damage, resulting in sewage backup and loss of power to the residences in the mobile home park. Plaintiffs sought the Town's assistance in repairing the damage, but the Town refused. Ultimately, the repairs cost Plaintiffs tens of thousands of dollars.

In 2009, Plaintiffs filed an inverse condemnation claim against the Town in state court.* In 2012, after discovering that the Trust was the responsible entity, they dismissed the case and filed a new petition against the Town and the Trust. Plaintiffs did not include any federal claims, as they did not believe that such claims were ripe. In 2013, the Town was dismissed, as it was determined that the Trust took and damaged the property. After a jury trial, Plaintiffs prevailed and were awarded \$73,350.00 in just compensation for the taking and damage to the property. The Oklahoma Court of Civil Appeals vacated the verdict and judgment, but on March 8, 2022, the Oklahoma Supreme court reversed the Court of Appeals and affirmed the verdict and judgment. In August 2022, Plaintiffs were awarded \$88,681.00 in attorney fees and costs.

In November 2022, Plaintiffs sought to collect on their judgment. In March 2023, however, Plaintiffs discovered that the Trust had no money or real estate and that revenue collected by the Trust was deposited directly into a bank account owned and operated by the Town. Plaintiffs filed the current action on July 20, 2024, alleging “an ongoing and unremedied Fifth Amendment violation” for the taking. Plaintiffs bring Fifth Amendment claims “directly under the U.S. Constitution” and “through 42 U.S.C. § 1983” against both the Town and the Trust.

Now before the court is the Defendants’ motion to dismiss [Docket No. 14], as well as the subsequent response, reply, and sur-replies [Docket Nos. 21, 22, 25, and 28]. Also before the court is the Report and Recommendation (“R&R”) issued by Magistrate Judge D. Edward Snow, recommending that the motion to dismiss be granted [Docket No. 33], as well as the subsequent objection, response, and reply [Docket Nos. 34, 35, and 39].

* As noted in the R&R, Vicky Barnett, Melissa Robinson’s mother, was the named Plaintiff in the state court lawsuit. It is not in dispute that Vicky was the property owner at the time and that Melissa controlled the litigation, was managing the property, and owned all rights and claims related to the property.

“A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180, 185 (2019). “[T]he act of taking’ is the ‘event which gives rise to the claim for compensation.” *Id.* at 190 (citation omitted). “The Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner.” *Id.* It is undisputed that the taking in this case occurred in 2009.

The *Knick* Court overruled the state-litigation requirement of *Williamson County Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). Plaintiffs argue in their briefing on the motion to dismiss and the R&R that in 2009 under *Williamson County*, their Fifth Amendment claims were not ripe – that they were required to first exhaust their state court remedies. Plaintiffs are mistaken. The Magistrate Judge is correct that even in 2009 when this taking occurred, there was sufficient authority that would allow Plaintiffs to proceed with a Fifth Amendment claim despite the ruling in *Williamson County*. In fact, even in *Knick*, the Supreme Court noted that “[j]ust two years after *Williamson County*, in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), the Court returned to the understanding that the Fifth Amendment right to compensation automatically arises at the time the government takes property without paying for it.” *Id.* at 191-92.

Moreover, Plaintiffs were awarded just compensation in state court, and Plaintiffs have cited no authority giving this court new jurisdiction over this case simply because the judgment awarded remains unpaid. As cited in the R&R, the Supreme Court has “repeatedly held . . . that issues actually decided in valid state-court judgments may well deprive plaintiffs of the ‘right to have their federal claims relitigated in federal court.’” *San Remo Hotel, L.P. v. City and County*

of San Francisco, Cal., 545 U.S. 323 (2005) (citation omitted). “This is so even when the plaintiff would have preferred not to litigate in state court, but was required to do so by statute or prudential rules.” *Id.* (citation omitted). “The relevant question in such cases is not whether the plaintiff has been afforded access to a federal forum; rather, the question is whether the state court actually decided an issue of fact or law that was necessary to its judgment.” *Id.*

Knick does not support Plaintiffs’ assertion that their claims were tolled until they determined that they could not collect on their judgment. As Magistrate Judge Snow notes, whether a judgment is satisfied is not an element to any of Plaintiffs’ causes of action. The action accrued when the taking occurred in 2009. None of Plaintiffs’ citations support their theory that the taking continues until the judgment is paid and that they can now bring another suit in federal court. Magistrate Judge Snow is correct that the statute of limitations for any claims Plaintiffs may have had under the Fifth Amendment have long passed.

After a *de novo* review, the court determines that the Report and Recommendation is well-supported by the prevailing legal authority. The Report and Recommendation [Docket No. 33] is hereby affirmed and adopted as this court’s Findings and Order. Defendants’ motion to dismiss [Docket No. 14] is hereby granted.

IT IS SO ORDERED this 28th day of August, 2025.



**THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA**

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

<p>MELISA ROBINSON and MICHAEL ROBINSON, d/b/a River Valley Mobile Home Community,</p> <p>Plaintiffs,</p> <p>v.</p> <p>THE TOWN OF OKAY OKLAHOMA, a municipal corporation, and THE OKAY PUBLIC WORKS AUTHORITY, a public trust,</p> <p>Defendants.</p>	<p>Case No. CIV-24-270-RAW-DES</p>
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JUDGMENT

In accordance with Rule 58 of the Federal Rules of Civil Procedure and the Order entered contemporaneously herewith, the court hereby enters this judgment dismissing this action.

IT IS SO ORDERED this 28th day of August, 2025.



**THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA**