

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

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ARGUMENT

The Robinsons assert valid and timely claims under the Fifth Amendment of the U.S. Constitution, so this Court should reverse the district court's dismissal on the pleadings.

Recall that the Robinsons assert two sets of Fifth Amendment claims. First, the Robinsons' 2009 takings claims are premised on an ongoing Fifth Amendment violation: The Okay Public Works Authority took the Robinsons' property but has not paid them for it. Second, the Robinsons' 2023 takings claims are premised on a separate Fifth Amendment violation: The Town of Okay is preventing the Public Works Authority from paying just compensation through a shell game. In their opening brief, the Robinsons explained how text, history, and precedent confirm that these constitutional claims are valid, including why they are timely and not barred.

Rather than grapple with these authorities, Okay provides three reasons it thinks the Robinsons have no constitutional claim.

First, according to Okay, the Robinsons' claims are foreclosed by "controlling precedent." That is wrong. The Supreme Court case that Okay cites does not analyze the Fifth Amendment to the U.S. Constitution, let alone the specific takings theories that the Robinsons raise. Without controlling precedent to rely on, Okay cannot avoid

the text, history, and precedent that confirm Okay has violated, and is continuing to violate, the Fifth Amendment.

Second, Okay insists the Robinsons' claims are untimely and "barred" because the Robinsons could have asserted their Fifth Amendment claims in state court in 2009. That is the opposite of what the Supreme Court said in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), and *Knick v. Township of Scott*, 588 U.S. 180 (2019). Further, Okay misconstrues the Robinsons' claims and ignores that the facts giving rise to those claims were not known or discoverable until well after the state-court litigation began.

Third, Okay says the Court should affirm on the alternative basis that Melisa Robinson's mother could not assign Fifth Amendment claims to the Robinsons under Oklahoma law. That suggestion is waived because Okay does not provide the Court with any substantive argument or authority to support it. In any event, Okay is wrong about Oklahoma law.

Ultimately, Okay's response tries to muddy the water by misreading both the Robinsons' claims and precedent. But Okay cannot distract from the heart of this dispute: The Fifth Amendment requires Okay to pay the Robinsons just compensation, the Fifth Amendment duty continues until money is paid, and Okay cannot use a shell entity to prevent payment. Because the Robinsons properly assert Fifth

Amendment claims that are timely and not barred, the Court should reverse the district court's dismissal on the pleadings.

I. The Robinsons assert valid Fifth Amendment claims.

In response to the Robinsons' opening brief explaining why they assert valid Fifth Amendment claims, Okay argues those claims are barred by precedent—the Supreme Court's decision in *Louisiana ex rel. Folsom v. City of New Orleans*, 109 U.S. 285 (1883), and the Fifth Circuit's decision in *Ariyan, Inc. v. Sewerage & Water Board of New Orleans*, 29 F.4th 226 (5th Cir.), *cert. denied*, 143 S. Ct. 353 (2022). The Robinsons begin by briefly summarizing their Fifth Amendment claims and why those claims are properly stated. Then, the Robinsons explain why Okay is wrong that their Fifth Amendment claims are barred by *Folsom* and *Ariyan*.

A. The Robinsons' 2009 takings claims are valid.

The Robinsons' 2009 takings claims (Counts I and II) are valid. Again, the Robinsons' 2009 takings claims state that there is an ongoing Fifth Amendment injury until just compensation is paid with actual money. Opening Br. at 33–40.¹

The Fifth Amendment requires the government to pay just compensation—with actual money—when it takes private property. In March 2023, the Robinsons

¹ All page citations to “Opening Br.” and “Response Br.” refer to the page numbers at the bottom of the briefs.

learned for the first time that Okay intends to pay them exactly zero dollars in just compensation, even though the Public Works Authority undisputedly took their property in 2009. *See* Opening Br. at 9–10. 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. *See id.* at 10, 34–40, 46. That result flows from the text of the Fifth Amendment, precedent, and history. *See, e.g., Horne v. Dep’t of Agric.*, 576 U.S. 350, 358–61 (2015) (analyzing text, precedent, and history in a Takings Clause case).

First, text. The text of the Fifth Amendment is mandatory and provides a specific remedy: “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. Here, the Public Works Authority took “private property” but has not paid “just compensation.” *See* Opening Br. at 6. Taking property but not paying for it violates the Fifth Amendment, as a property owner must obtain the full compensation that the constitutional text commands. *See Knick*, 588 U.S. at 190, 192–93.

Next, precedent. The Supreme Court in *Knick* explained that the Fifth Amendment “require[s]” the government to pay compensation to fulfill its “constitutional obligation” and “duty.” *See id.* at 192–93 (citations omitted). In *Knick* and *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, the

Supreme Court explained that payment of “compensation” is the “remedy” for a Takings Clause violation. *See Knick*, 588 U.S. at 193; *First Eng.*, 482 U.S. 304, 316 & n.9 (1987). That aligns with *Alto Eldorado Partnership v. County of Santa Fe*, in which this Court acknowledged that providing compensation eliminates a Takings Clause claim. *See* 634 F.3d 1170, 1176 (10th Cir. 2011). And in *Knellinger v. Young*, this Court recognized that its “role” is “to ensure just compensation” is paid. *See* 134 F.4th 1034, 1045 (10th Cir. 2025). Together, these cases confirm that the government must pay compensation to remedy the Fifth Amendment injury—an obligation this Court must ensure is fulfilled.

Finally, history. The just-compensation requirement dates back to Clause 28 of Magna Carta, which aimed to end the king’s uncompensated taking of property by requiring immediate payment of money. *See* Opening Br. at 37–38 (collecting authorities); *Horne*, 576 U.S. at 358–59. Then came the Fifth Amendment, in which “[t]he Framers meant to prohibit the Federal Government from taking property without paying for it.” *Knick*, 588 U.S. at 200 (emphasis omitted). The goal was “to secure *compensation*” when the government takes property. *First Eng.*, 482 U.S. at 315. After ratification, American courts recognized the history dating back to Magna Carta and the Fifth Amendment’s mandatory compensation requirement. *See* Opening Br. at 39–40.

Collectively, text, precedent, and history point toward a single conclusion: If the government takes your property, the Fifth Amendment continues to require payment of just compensation until money is paid. Because Okay has not paid the Robinsons a single cent for taking their property, the Robinsons' Counts I and II are valid Fifth Amendment claims.

B. The Robinsons' 2023 takings claims are valid.

The Robinsons' 2023 takings claims (Counts III and IV) are also valid. Again, the Robinsons' 2023 takings claims state that a local government violates the Fifth Amendment by using a shell entity to take property but not pay for it. *See* Opening Br. at 48–51.

Under the Constitution, “what cannot be done directly cannot be done indirectly.” *Cummings v. Missouri*, 71 U.S. 277, 325 (1866); *see* Opening Br. at 48–51. Just as a local government cannot directly take property without paying just compensation, a local government cannot indirectly take property without paying by using a shell entity.

Here, the Public Works Authority has the power of eminent domain, including over the project that damaged the Robinsons' property. *Barnett v. Okay Pub. Works Auth.*, 507 P.3d 1245, 1249–50 (Okla. 2022). Yet the Public Works Authority claims it cannot pay for using that power. The power to take but not pay is by design: The

Public Works Authority provides water and sewer services to residents, but all revenue from those services is deposited into bank accounts controlled by the Town. *See* Opening Br. at 9–10. The Town takes and keeps the revenue, money, property, or anything else of value from the Public Works Authority, ostensibly leaving the Public Works Authority without the ability to pay. *See id.* Worse, the Town and Public Works Authority are by all accounts one and the same. *See id.* at 7–8, 48–49; *infra*, at 15–16.

Through this arrangement, the Town is preventing the Public Works Authority from paying the just compensation the Robinsons are owed. This scheme runs headlong into the Supreme Court’s recent acknowledgment that the Fifth Amendment prescribes an “irrevocable right to just compensation.” *DeVillier v. Texas*, 601 U.S. 285, 291 (2024) (quoting *Knick*, 588 U.S. at 192). Like the Supreme Court concluded in *Horne*, property rights under the Fifth Amendment “cannot be so easily manipulated.” *See* 576 U.S. at 365. So long as the Town continues to prevent the Public Works Authority from paying the Robinsons with money for the taking, the Town is also violating the Fifth Amendment. *See* Opening Br. at 10–11, 48–51.

C. *Folsom* does not foreclose the Robinsons’ Fifth Amendment claims.

In defense of the district court’s dismissal on the pleadings, Okay primarily argues the Robinsons’ claims are foreclosed by “controlling precedent”—namely, *Folsom*. *See* Resp. Br. at 1–2. But *Folsom*, a Supreme Court case from 1883, does not

involve the Fifth Amendment or the specific theories that the Robinsons raise. *See* Opening Br. at 45–47. Instead, the plaintiffs in *Folsom* brought claims under the Contracts Clause and the Fourteenth Amendment’s Due Process Clause in which they asked the court to compel city authorities to pay state-court judgments arising out of obligations under state law, even though the city’s funds were exhausted by current expenses. *Id.* at 47 (quoting *Folsom*, 109 U.S. at 286–87). So, rather than being “controlling,” *Folsom* is distinguishable in multiple ways—different constitutional provisions, under different legal theories, under different facts. *See id.*; Bryan A. Garner et al., *The Law of Judicial Precedent* 84 (2016) (“A decision’s authority as precedent is limited to the points of law raised by the record, considered by the court, and determined by the outcome.”).

Still, Okay repeatedly claims *Folsom* held “that the failure of a state agency to pay a state court judgment will not support a federal claim.” Resp. Br. at 2, 5–6. Yet Okay does not provide this Court with *where* the Supreme Court said that. Okay’s omission is unsurprising: *Folsom* does not say that. Indeed, nothing in *Folsom* stands for the proposition that a property owner who has not been paid for her property cannot bring a Fifth Amendment claim for the taking. Nor does anything in *Folsom* suggest that a local government is immune from suit when it uses an entity

empowered to take property but incapable of paying just compensation. *See* Opening Br. at 45–47.

Simply put, *Folsom* does not foreclose the Robinsons’ claims.

D. The Fifth Circuit’s decision in *Ariyan* did not address the Fifth Amendment claims that the Robinsons raise here.

Left without shelter under *Folsom*, Okay seeks refuge under the Fifth Circuit’s decision in *Ariyan*. In Okay’s view, *Ariyan* “squarely addressed the same arguments the Robinsons make here.” *See* Resp. Br. at 2–3, 6. Not so.

As the Robinsons explained in their opening brief, *Ariyan* holds only that it is not a separate taking to fail to timely pay a judgment. *See* Opening Br. at 36–37 (citing *Ariyan*, 29 F.4th at 228–29). Here, however, the Robinsons do not argue there is a separate taking based on the untimeliness of payment. Instead, the Robinsons raise claims based on the Public Works Authority’s physical taking of their property (the 2009 takings claims) and the Town preventing the payment of just compensation through a shell game (the 2023 takings claims). *See id.* at 41–42, 45. *Ariyan* does not bar the 2009 takings claims because *Ariyan* does not hold that the government does not continue to violate the Fifth Amendment when it fails to pay just compensation for what was taken. *See id.* at 36–37. And *Ariyan* says nothing about the Robinsons’ 2023 takings claims, which are about the shell game. *See id.* at 41–42.

Like with *Folsom*, Okay does not point the Court to language in *Ariyan* that forecloses one or both sets of the Robinsons' claims. Instead, Okay first quotes the Fifth Circuit's characterization of the *district court's* reading of precedent—not the Fifth Circuit's holding itself. *See* Resp. Br. at 6 (quoting *Ariyan*, 29 F.4th at 229). Then, Okay turns to the Fifth Circuit's description of *Folsom*. But, even there, Okay quotes the Fifth Circuit's acknowledgment that *Folsom* analyzed whether a state constitutional change deprived the plaintiffs of their property in state-court judgments under the Fourteenth Amendment. *See id.* at 7. Again, the Robinsons do not raise a Fourteenth Amendment claim or a claim about a separate property interest in a state-court judgment. Those differences underscore why *Folsom* does not preclude the claims the Robinsons bring. *See supra*, at 7–8. Finally, Okay quotes from the district court's decision in *Ariyan*. *See* Resp. Br. at 8–9. But similar to Okay's reliance on *Folsom*, Okay's reliance on *Ariyan* is misguided at best. That is because the *Ariyan* plaintiffs asserted different claims than the Robinsons, as even the language that Okay quotes illustrates. *See* Opening Br. at 41–42, 45.

* * *

Rather than engage with the weight of authority, Okay urges the Court to misconstrue the claims that the Robinsons raise and then shoehorn those claims into two

cases that do not apply.² While that strategy prevailed below, this Court reverses when a district court misconstrues claims and prematurely dismisses them. *See* Opening Br. at 40–41 (citing *Wyo-Ben Inc. v. Haaland*, 63 F.4th 857, 866–68 (10th Cir. 2023)). Instead of accepting Okay’s strawman of the Robinsons’ claims, this Court should hold that, under the Fifth Amendment, a takings injury is ongoing until the government pays just compensation with actual money (Counts I and II) and that the government cannot use a shell entity to prevent payment of just compensation (Counts III and IV).

II. The Robinsons’ Fifth Amendment claims are timely.

In Okay’s response, Okay also argues the Robinsons’ Fifth Amendment claims are untimely. The Robinsons’ claims, however, are timely—whether under the accrual rule or because they were tolled. The Robinsons filed this federal suit on July 30, 2024, which is less than two years before the statute of limitations began to run.

A. The Robinsons’ Fifth Amendment claims are timely because they began to accrue on March 16, 2023.

The first question is when the Robinsons’ Fifth Amendment claims began to accrue. The Robinsons’ opening brief explained why their claims began to accrue on

² Other than citing *Folsom* and *Ariyan*, Okay does not provide the Court with another basis for rejecting the Robinsons’ Fifth Amendment claims on the merits.

March 16, 2023. *See* Opening Br. at 15–30. That result flows from the standard accrual rule for constitutional cases. Specifically, a 42 U.S.C. § 1983 claim accrues “when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and obtain relief.” *Id.* at 16 (quoting *Herrera v. City of Espanola*, 32 F.4th 980, 990 (10th Cir. 2022)). “Put another way, a civil rights action accrues when the plaintiff 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.* (quoting *Herrera*, 32 F.4th at 990).

a. The 2009 takings claims began to accrue in 2023.

Start with the 2009 takings claims. Those claims began to accrue on March 16, 2023, because that is when the Robinsons had a “complete and present cause of action” under the Fifth Amendment. *Herrera*, 32 F.4th at 990. Specifically, March 16, 2023, is when the Robinsons failed to obtain compensation through the state procedure, per *Williamson County*. *See* Opening Br. at 16–25.

At the time of the taking in 2009, the Robinsons were stuck with the *Williamson County* rule.³ Under *Williamson County*, a “property owner *cannot claim a violation* of the Just Compensation Clause *until* it has used the [state] procedure and been denied just compensation.” 473 U.S. 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). Put differently, there is “*no constitutional violation . . . until just compensation has been denied*” through the state procedure. *Id.* at 194 n.13 (emphasis added).

Even when the Supreme Court overturned *Williamson County*’s state-litigation requirement in *Knick*, the Supreme Court said the prior rule under *Williamson County* was that 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. Indeed, under the old *Williamson County* rule, there was “no Fifth Amendment claim *at all* until the State denies

³ Unlike when the Public Works Authority took the Robinsons’ property in 2009, takings plaintiffs today are no longer required to first seek relief under state law and in state court. Instead, takings plaintiffs today can proceed directly to federal court and immediately assert Fifth Amendment claims. Taking plaintiffs no longer have to start in state court because the Supreme Court in *Knick* (2019) overruled *Williamson County*’s state-litigation requirement. See Opening Br. at 11, 19–20.

compensation.” *Knick*, 588 U.S. at 192 n.3 (emphasis in original); *see also id.* at 188 (“had no federal takings claim”). In that vein, this Court has acknowledged that a takings “violation has not actually occurred” under the *Williamson County* rule until the state procedures fail. *Pinder v. Mitchell*, 658 F. App’x 451, 454 (10th Cir. 2016).

Under *Knick*, *Williamson County*, and *Pinder*, the Robinsons’ Fifth Amendment claims began to accrue on March 16, 2023, because that is when they failed to obtain just compensation through the state-court procedure. That failure gave the Robinsons a “complete and present cause of action” under the Fifth Amendment. *See Herrera*, 32 F.4th at 990. In other words, the door to asserting a Fifth Amendment claim could not open until the state procedure failed. This explains why federal courts across the country have recognized that a federal lawsuit under the Fifth Amendment is timely so long as the landowners had been diligently pursuing their state-court rights under *Williamson County* when *Knick* was decided—a result consistent with this Court’s precedent on equitable tolling. *See* Opening Br. at 26–28.

Without reference to the accrual rule, Okay urges the Court to hold that the Robinsons’ 2009 takings claims began to accrue in 2009. *See* Resp. Br. at 5, 9–11. True, the Robinsons’ property was originally taken in 2009. But under *Williamson County*—the binding rule at the time—the Robinsons could not bring a Fifth Amendment claim until after they failed to obtain just compensation through state court.

Supra, at 12–14. Okay fails to confront what the Supreme Court said in *Williamson County* and *Knick*, and what this Court said in *Pinder*, regarding the nature of a Fifth Amendment takings claim at the time of the taking. *See id.* The Robinsons’ 2009 takings claims could not have accrued in 2009.

b. The 2023 takings claims began to accrue in 2023.

Next, the 2023 takings claims. Those claims also began to accrue on March 16, 2023, because that is when the Robinsons “kn[ew] or ha[d] reason to know of the injury which is the basis of” their claims. *Herrera*, 32 F.4th at 990; Opening Br. at 24–26. On that date, Okay revealed both that it planned to pay the Robinsons exactly zero dollars and the financial shell game. *See Herrera*, 32 F.4th at 990; Opening Br. at 9–10, 18–19, 24–25. The pleadings describe how a reasonable person could not have known, or had reason to know, of this arrangement:

- The Town and Public Works Authority are governed by the same five people and are located in the same building. App. Vol. 1 at 15, ¶¶ 16–17; *see also id.* at 13, ¶¶ 7–10 (structure of the Town); *id.* at 189–90 (similar).
- The Public Works Authority was created solely for the use and benefit of the Town, including to provide utility services to residents. App. Vol. 1 at 14, ¶¶ 12–13.
- Residents pay the Public Works Authority for water and sewer services. App. Vol. 1 at 26, ¶ 81.

- The Okay Public Works Authority Enterprise Fund receives hundreds of thousands of dollars per year. App. Vol. 1 at 27–28, ¶¶ 89–90.
- The elected officials of the Town are financially accountable to the Public Works Authority. Vol. 1 at 14, ¶¶ 14–15.
- In state court, the Town twice pointed the finger at the Public Works Authority. App. Vol. 1 at 22, ¶¶ 55–56; *id.* at 23, ¶¶ 59–60.
- Okay paid attorneys to fight the Robinsons’ state-court suit all the way to the Oklahoma Supreme Court. *See* App. Vol. 1 at 24–25.

See Opening Br. at 31–32 (citing these allegations). Even the Oklahoma Secretary of State lists the Town and the Public Works Authority as a collective entity with the same phone number and address.⁴ So no reasonable person would know or have reason to know of the Town-Public Works Authority scheme until March 16, 2023.

In response, Okay appears to argue that the 2023 takings claims began to accrue in 2009. *See* Resp. Br. at 5, 9–11. But that is not possible. In 2009, the Robinsons did not “know[] or ha[ve] reason to know” about the Town-Public Works Authority scheme and that the Town would prevent the Public Works Authority from paying

⁴ *Oklahoma Secretary of State – Open Meetings*, Citizen Public Body Page, https://openmeetings.ok.gov/ords/r/oma/omadev/citizen-public-body-page?p51_state_public_body_id=2445&clear=51&session=403768390107338 (last visited Feb. 4, 2026). The Court can take judicial notice of information on a government website. *See* Fed. R. Evid. 201(b); *Sierra Club v. EPA*, 964 F.3d 882, 893 n.9 (10th Cir. 2020).

just compensation. *See Herrera*, 32 F.4th at 990; *supra*, at 15–16. Put another way, the Robinsons’ 2023 takings claims are premised on developments after 2009.

The only response Okay offers is that the Robinsons did not exercise “due diligence” because they could have submitted an open-records request to uncover the Town-Public Works Authority scheme. *See Resp. Br.* at 12–13. In essence, Okay urges the Court to hold that a reasonable person should have known that a government entity that collects payments in exchange for providing services does not have the ability to pay just compensation and should have known to submit an open-records request to uncover it. But any reasonable person would think that the Public Works Authority—a government entity that provides services in exchange for collecting revenue from residents—could pay just compensation for using eminent domain. *See Opening Br.* at 31–32; *supra*, at 15–16 (the Town-Public Works Authority arrangement). That reality is reinforced by Okay’s obligation to comply with the Constitution, *DeVillier*, 601 U.S. at 293, including its categorical duty to pay just compensation for taking someone’s property. *See supra*, at 3–6.

* * *

Applying the normal accrual rule for Section 1983 claims, the Robinsons' Fifth Amendment claims began to accrue on March 16, 2023, and are therefore timely.⁵

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

Even if the Robinsons' Fifth Amendment claims started to accrue earlier than March 16, 2023, those claims are still timely because they were tolled. When a defendant uses undercover actions to conceal its conduct from a would-be plaintiff, the statute of limitations is tolled. *See* Opening Br. at 31 (citing *King & King Enters. v. Champlin Petrol. Co.*, 657 F.2d 1147, 1154–56 (10th Cir. 1981); *Morgan v. State Farm Mut. Auto. Ins. Co.*, 488 P.3d 743, 753 (Okla. 2021)). Here, Okay did exactly that by using and concealing a financial shell game in which all revenue from residents who pay for water and sewer services is deposited into bank accounts controlled by the Town, leaving the Public Works Authority without money. *See id.* at 31–32.

In response, Okay does not dispute the law of fraudulent concealment. Instead, Okay says there is “no evidence” that Okay “committed any affirmative act of deception” or that Okay concealed facts giving rise to the Robinsons' Fifth Amendment

⁵ Neither Okay nor the district court argue the Robinsons' claims began to accrue on the day the Supreme Court in *Knick* overturned *Williamson County*'s state-litigation requirement. For good reason: That would be unjust and inefficient, which is why no federal court has endorsed that theory. *See* Opening Br. at 30.

claims.⁶ *See* Resp. Br. at 12–13. Okay, however, held itself out as financially solvent, including by providing water and sewer services, collecting revenue for providing water and sewer services, and maintaining an Okay Public Works Authority Enterprise Fund. *See supra*, at 15–16. Yet Okay concealed its intention and financial arrangement until March 16, 2023—after pointing the finger at the Public Works Authority multiple times and losing at the Oklahoma Supreme Court. *See id.* On that day, Okay revealed that it planned to pay exactly zero dollars in just compensation because the Public Works Authority ostensibly has no money, property, or anything else of value.

By holding itself out as financially solvent but concealing its intentions and financial arrangement, Okay used undercover actions to conceal its conduct from the Robinsons. Accordingly, the statute of limitations is tolled until March 16, 2023.

III. Okay waived any res judicata argument and, in any event, the Robinsons’ Fifth Amendment claims are not barred by res judicata.

Okay references res judicata in its “Statement of the Case” and, in its “Argument” section, vaguely says the Robinsons’ Fifth Amendment claims are “barred” before block quoting *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394 (1981). *See* Resp. Br. at 4, 13–14. Okay failed to develop any res judicata argument on appeal,

⁶ Okay’s reliance on “evidence” is misplaced because the district court granted a motion to dismiss (which evaluates pleadings), not a motion for summary judgment (which evaluates evidence). *See* Opening Br. at 14 (standard of review).

so the argument is waived.⁷ *See Perry v. Woodward*, 199 F.3d 1126, 1141 n.13 (10th Cir. 1999); Fed. R. App. P. 28(b), 28(a)(8)(A).

Regardless, *res judicata* does not apply. Under certain circumstances, *res judicata* bars “parties or their privies from relitigating issues that were or could have been raised in that action.” *Federated Dep’t Stores*, 452 U.S. at 398. Here, the state-court action effectively ended on March 16, 2023. *See* Opening Br. at 18–19. But the Robinsons are not relitigating issues that could have been raised in the state-court action. As the Robinsons have explained, it was not until March 16, 2023, that (1) the Robinsons had a cause of action under the Fifth Amendment because it was at that point that the Robinsons failed to obtain compensation through the state procedure, per *Williamson County*; (2) the Robinsons learned the Public Works Authority would not pay just compensation with actual money; and (3) the Robinsons learned that the Town is preventing the Public Works Authority from paying actual money through a shell game. *See supra*, at 11–16; Opening Br. at 16–26. These are later developments that could not have been, and were not, raised or litigated in the state-court action.

⁷ Similarly, Okay has waived any argument that *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323 (2005), bars the Robinsons’ Fifth Amendment claims. That is because Okay failed to develop any *San Remo* argument after the Robinsons addressed it. *Compare United States v. Diaz-Menera*, 60 F.4th 1289, 1294 n.6 (10th Cir. 2023) (applying waiver when the appellee did not include an argument in the response brief), *with* Opening Br. at 42–45 (discussing *San Remo*).

Consider the Sixth Circuit’s recent decision in *HRT Enterprises v. City of Detroit*, 163 F.4th 319 (6th Cir. 2025). There, the panel held that a takings claim was not barred by res judicata because there have been “substantial developments” since the state-court litigation “that could not have been litigated in that proceeding.” *Id.* at 329. Similarly, in this case, there have been substantial developments since the state-court litigation that could not have been litigated in that proceeding. *See supra*, at 11–16. As even Okay concedes, “[t]he Robinsons are not trying to re-litigate the inverse taking determined in state court.” Resp. Br. at 13.

Okay waived any res judicata argument and, regardless, res judicata does not apply.

IV. Okay waived its argument to affirm on a different basis.

Finally, Okay urges the Court to affirm based on an argument that the district court did not reach—Melisa Robinson’s mother cannot assign her Fifth Amendment claims under Oklahoma law. *See* Resp. Br. at 15–16. Okay’s argument is waived and wrong.

This Court “will not craft a party’s arguments” and will not address “an alternative basis to affirm” when the appellees “have not adequately developed the argument” they raise on appeal. *Perry*, 199 F.3d at 1141 n.13; *see also* Fed. R. App. P. 28(b), 28(a)(8)(A). Indeed, “insufficient briefing” on appeal results in waiver even

when the issue was presented to the district court. *See Eizember v. Trammell*, 803 F.3d 1129, 1145 (10th Cir. 2015) (Gorsuch, J.). Here, Okay states the Robinsons’ claims are “barred under 12 O.S. § 2017(D),” but Okay provides no substantive briefing or authority in support. *See Resp. Br.* at 15–16. Thus, Okay waived any argument about unlawful assignment. *See Perry*, 199 F.3d at 1141 n.13.

Regardless of waiver, Oklahoma law does not prohibit the assignment of takings claims.⁸ While Oklahoma law provides a general rule that “[t]he assignment of claims not arising out of contract is prohibited,” Okla. Stat. tit. 12, § 2017(D), Oklahoma law also provides that “[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.” Okla. Stat. tit. 60, § 313. Takings claims, of course, arise out of the violation of a right of property. *See* U.S. Const. amend. V (“private property”); *Taking*, Black’s Law Dictionary (12th ed. 2024) (“There is a taking of property when government action directly interferes with or substantially disturbs the owner’s use and enjoyment of the property.”). Even though there is some surface-level tension between the two statutes, the Oklahoma Supreme Court has “held that ‘actions . . . arising out of violations of rights of property’” are still assignable notwithstanding the general rule. *See Raw*

⁸ The Robinsons’ opening brief details the relationship between Melisa Robinson’s mother and the rights and claims associated with the property and the taking. *See* Opening Brief at 6 n.2.

Crude Oil & Gas, LLC v. Ovintiv Mid-Continent Inc., No. CIV-21-305-J, 2021 WL 6328011, at *1 (W.D. Okla. Oct. 4, 2021) (quoting *Kan. City, Mex. & Orient Ry. Co. v. Shutt*, 104 P. 51, 53 (Okla. 1909)). Oklahoma law does not prohibit the assignment.

Okay waived any argument to affirm on a different basis and, in any event, Okay is wrong about Oklahoma assignment law.

CONCLUSION

The Court should reverse the district court's dismissal of the Robinsons' suit on the pleadings.

Date: February 6, 2026

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I hereby certify that on February 6, 2026, I electronically filed a copy of the foregoing brief 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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