No. 25-40475

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MICHAEL RAMIREZ,

Plaintiff – Appellant,

v.

CITY OF TEXAS CITY,

Defendant – Appellee.

On Appeal from the United States District Court
for the Southern District of Texas
Honorable Jeffrey Vincent Brown, District Judge

APPELLANT'S REPLY BRIEF

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STATEMENT OF ISSUES

1. Whether the district court erred in denying Ramirez a jury trial, including on the issue of damages, where Ramirez served a request for a jury five days after removal of the case, his subsequent pleadings continued to request a jury, the court initially set a jury trial date, the issues were appropriate for a jury, and the City would not have been prejudiced by a jury trial?

2. Whether the court erred in applying inapposite Fifth and Fourth Amendment tests to deny Ramirez compensatory damages for the demolition of a valuable house, and for the loss of $15,000 worth of personal property inside the home, in violation of due process?

3. Whether the district court erred in concluding that Ramirez was not entitled to reasonable attorneys' fees as a "prevailing party" under 42 U.S.C. § 1988?

INTRODUCTON AND SUMMARY OF REPLY ARGUMENT

In its Response Brief, Appellee City of Texas City (City) fails to rebut Appellant Micheal Ramirez's (Ramirez) argument that the district court erred in denying Ramirez a jury trial and in refusing to award

compensatory damages for the demolition of Ramirez's property without due process of law.

On the issue of whether the court improperly denied Appellant Micheal Ramirez a jury trial, the City does not dispute that Ramirez made a jury request within the fourteen-day post-removal period allowed by Federal Rule of Federal Civil Procedure (FRCP) 38(b). See ROA.34. But it contends that this jury request was inadequate because it was not in a "pleading" or separate document. Yet, FRCP Rule 38(b) does not require a special form; it only requires a written and served demand. Ramirez made such a jury demand in his initial request five days after removal. ROA.34. Even if the initial jury request was deficient, the City fails to show that the trial court properly denied Ramirez's later Rule 39(b) motion for a jury trial.

With respect to the district court's denial of compensatory damages for the violation of Ramirez' due process rights, the City does not dispute that the denial rests on a Takings Clause principle that bars just compensation for the taking of a nuisance. ROA.1920-ROA.1921 Yet, the City defends the court's takings-based approach because "the Fifth Amendment takings claim and the Fourteenth Amendment due process

claim are so intertwined that the damages for any resultant injury should not be calculated in isolation, or to the exclusion of the other." City's Brief at 31.

The City waived this issue by failing to raise it below, but it is baseless in any case. In the trial/damages phase of this case, no takings claim was before the district court. The only claim at issue was Ramirez's due process claim. ROA.1870-ROA.1912. Thus, there is no takings issue before the lower court that could become "intertwined" with a due process damages analysis. In any case, the City points to no authority for the idea that a court can deny compensatory damages for a due process violation based on a Takings Clause property principle that has never been a part of due process law. Ramirez proved he lost more than $160,000 when the City demolished his home without due process, ROA.2088, and inapposite takings rules do not negate those damages.

Lastly, the City appears to agree that the district court improperly relied on a Fourth Amendment "privacy interest" analysis to deny Ramirez compensatory damages for the destruction of personal property inside his house without due process. City's Brief at 40-43; *see* ROA.1921-ROA.1924. Nevertheless, it tries to stretch *Freeman v. City of Dallas*, 242

F.3d 642 (5th Cir. 2001), to support the court's decision. This fails too, as *Freeman* deals only with Fourth Amendment issues and does not address a procedural due process claim like that here. The City deprived Ramirez of personal property interests without due process and it did not contest the valuation of that loss. ROA.1919. This is all that was necessary to entitle Ramirez to compensatory damages, and the district court erred in holding otherwise.

ARGUMENT

I. The City Has Failed to Show That the Court Properly Denied a Jury Trial

A. The City's claim that Ramirez's jury request was inadequate under Rule 38(b) fails

The City argues that the district court properly denied Ramirez a jury trial because it believes Ramirez failed to file a jury request within fourteen days of removal of the case, as required by FRCP Rule 38(b). Notably, the City does not deny that, five days after removal, Ramirez filed and served a "Certificate of Interested Parties" document whose caption stated, "JURY REQUESTED." ROA.34. Yet, the City contends that this was not a sufficient jury demand under Rule 38(b) because Ramirez did not make his jury request through a "pleading" or "separate

demand." City's Brief at 17. This hyper-technical view of what is required to obtain a jury is inconsistent with both FRCP Rule 38(b) and the Seventh Amendment.

At the outset, it is important to note that the City concedes that the issues in this case—whether Ramirez's house was a nuisance and whether he was entitled to damages—are proper jury questions. City's Brief at 18. This means that the issue of whether the district court properly rejected Ramirez's jury demand must be resolved in light of Seventh Amendment-based standards that jealously protect the right to a jury. *Aetna Ins. Co. v. Kennedy ex rel. Bogash*, 301 U.S. 389, 393 (1937) (court should "indulge every reasonable presumption against waiver" of the jury trial "right"); *Swofford v. B. & W., Inc.*, 336 F.2d 406, 409 (5th Cir. 1964); *Lutz v. Glendale Union High Sch.*, 403 F.3d 1061, 1064-65 (9th Cir. 2005) (Given that the right to a jury is a constitutional right, parties are afforded "a great deal of flexibility in how the [jury] request is made.").

With that in mind, Rule 38(b) states:

> (b) Demand. On any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand—which *may* be included in a pleading—no later than 14 days after the last pleading directed to the issue

> is served; and (2) filing the demand in accordance with Rule 5(d).

FRCP 38(b) (emphasis added).

Nothing in this language supports the City's contention that Ramirez's jury demand had to be in a "pleading," or in a special, "separate" document. *Winant v. Carefree Pools*, 118 F.R.D. 28, 29 (E.D.N.Y. 1988) ("Rule 38(b) . . . requires only that the demand be in writing and that it be timely served."). To the contrary, through use of the term "*may,"* Rule 38(b) gives parties the option to make their jury demand in a "pleading," but it does not mandate it.

Rule 38(b) does impose a few requirements. It requires a party to make a "written" jury demand that is properly served and filed. *Winant*, 118 F.R.D. at 29. Ramirez's jury request on the front of his "Certificate of Interested Parties" document, served five days after removal, satisfies the plain language of the rule. The request was written, served, and filed. ROA.34.

Ramirez's request was "sufficiently clear to alert a careful reader that a jury trial is requested on an issue." *Lutz*, 403 F.3d at 1064-65. While a jury request on a "Certificate of Interested Parties" may not be the City's preferred method, in this case, it was enough to notify the City

that Ramirez sought a jury. *Lutz*, 403 F.3d at 1064-65 (a reference to a jury award of damages in a prayer for relief sufficed); *Winant*, 118 F.R.D. at 29; *Baldwin v. United States*, 823 F. Supp. 2d 1087, 1107 (D.N. Mar. I. 2011) (plaintiffs written notation "[t]his is a jury case" on a case management statement held sufficient).

B. The City fails to justify the district court's improper denial of Ramirez's Rule 39(b) motion

Even when a party fails to make a proper jury demand under Rule 38(b), Rule 39(b) grants the district court discretion to order a jury trial upon a motion. *Swofford*, 336 F.2d at 409. The City acknowledges that Ramirez submitted a motion for a jury trial under FRCP Rule 39(b). City's Brief at 21.

While the City defends the lower court's decision to deny Ramirez's Rule 39(b) motion, it fails to brief the factors identified by this Court as relevant to resolution of the issue. These factors are set out in *Daniel Int'l Corp. v. Fischbach & Moore, Inc.*, 916 F.2d 1061, 1064 (5th Cir. 1990), and include: (1) whether the case involves issues best tried to a jury; (2) whether granting the motion would disrupt the court's schedule or that of an adverse party; (3) the degree of prejudice to the adverse party;

(4) the length of the delay in having requested a jury trial; and (5) the reason for the movant's tardiness in requesting a jury trial. *Id.*

Ramirez briefed and applied the *Daniel* factors to this case in his Opening Brief. *See* Opening Brief at 21-23. But the City neglects to respond to Ramirez's analysis and does not independently apply the *Daniel* factors. By failing to adequately brief these issues, the City has effectively forfeited any argument that the *Daniel* factors support the district court's denial of Ramirez's Rule 39(b) motion for a jury trial. *United States v. Guillen-Cruz*, 853 F.3d 768, 777 (5th Cir. 2017) (refusing to consider appellee's arguments that could have been, but were not, raised in appellate brief).

In any case, the City inadvertently points to nothing that undercuts Ramirez's application of the *Daniel* factors to this case, or the conclusion that the factors support reversal. It is true that, at one point, the City complains that, because Ramirez made his timely jury request on a "Certificate of Interested Parties" document, the City was "blindsided" by Ramirez's later pursuit of a jury. City's Brief at 17. This is not credible. The City does not deny that Ramirez properly served the jury request on the "Certificate of Interested Parties" document five days after removal.

Any "careful reader" of that filing would have seen the capitalized jury request on the document. Moreover, on February 18, 2025, the district court made an entry on the case docket setting a "Jury Trial set for 4/7/2025." ROA.1568.

The City was neither blindsided nor prejudiced by Ramirez's subsequent motion for a jury, *Lutz*, 403 F.3d at 1064-65. The City does not argue that district court's schedule would have been prejudiced by Ramirez's motion for a jury trial, and rightly so, since the court itself scheduled a jury trial date, ROA.1568, two months before Ramirez's motion. There was no compelling reason for the court to deny the motion and doing so was an abuse of discretion.

II. The City Points to Nothing That Supports the Court's Denial of Compensatory Due Process Damages Based on Takings and Fourth Amendment Standards

A. The City fails to show that the court properly employed Takings Clause principles to deny Ramirez damages for the deprivation of his home without due process

The City does not dispute that the district court employed a Fifth Amendment "no nuisance takings" principle grounded in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029-31 (1992), in denying Ramirez compensatory damages for violation of his due process rights.

City's Brief, at 32. Even more importantly, the City does not contest Ramirez's contention that the *Lucas* takings principle is inapplicable to the procedural due process context.[1] Opening Brief, at 25-30.

Instead, the City claims the district court correctly interjected the *Lucas* principle into this due process case to deny Ramirez damages because "the Fifth Amendment takings claim and the Fourteenth Amendment due process claim are so intertwined that the damages for any resultant injury should not be calculated in isolation, or to the exclusion of the other." City's Brief at 31. In the proceedings below, the City never raised an issue as to whether Ramirez's procedural due process claim is subsumed in a takings analysis. It is too late now. *Martco Ltd. P'ship v. Wellons, Inc.*, 588 F.3d 864, 877 (5th Cir. 2009) ("[A]rguments not raised before the district court are waived and cannot be raised for the first time on appeal.")

Regardless, the City's "intertwined claims" argument is deeply flawed as a matter of fact and law. First, by the time the lower court got

[1] The City goes so far as to identify a new reason the *Lucas* principle does not apply to the home demolition due process issue in this case. *Lucas*, it says, "is not generally relied upon to assess physical takings as claimed in the present matter, or those like it." City's Brief at 38.

to the issue of damages at the bench trial on April 14, 2025, there was no takings claim before the court. Although Ramirez raised a takings claim in his complaint, ROA.22, that claim was quickly left behind as the parties and court focused on Ramirez's due process claim, and as Ramirez secured summary judgment on the claim. The trial proceedings involved only Ramirez's due process claim, and the damages and nuisance issues arising from that claim. *See* ROA.1870-ROA.1912. Thus, there was no takings claim before the district court during the damages phase that could have possibly entangled its disposition of Ramirez's claim to compensatory damages for the due process violation.[2]

Second, there is no support in the law for the idea that takings and due process claims are so intertwined that courts can employ the *Lucas* "no nuisance takings" principle to deny damages for a procedural due process violation. As explained in the Opening Brief, takings and due process claims are distinct and separate constitutional claims. They involve different injuries and trigger distinct bodies of constitutional law. *Schanzenbach v. Town of La Barge*, 706 F.3d 1277,1283 (10th Cir. 2013) (holding that a plaintiff's procedural due process claim based on lack of

[2] There is no takings claim before this Court, either.

notice "is factually and conceptually distinct from his takings claim."); s*ee generally*, *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 540-43 (2005) (distinguishing takings and due process claims). Therefore, as this Court has recognized, "[a] procedural due process violation is actionable *and compensable without regard to any other injury*." *Archbold-Garrett v. New Orleans City*, 893 F.3d 318, 322 (5th Cir. 2018) (emphasis added); s*ee also, RBIII, L.P. v. City of San Antonio*, No. SA-09-CV-119-XR, 2010 WL 3516180, at *9-13 (W.D. Tex. Sept. 3, 2010) (allowing a due process claim based on a demolition to proceed to trial while dismissing a takings claim under the *Lucas* nuisance principle).

Under the City's theory, a property owner could never bring a claim seeking damages for a Fourteenth Amendment due process violation based on lack of notice, along with a Fifth Amendment claim seeking compensation for a taking based on denial of all economically viable use of property, because the former would always swallow the latter. This is not the law. *Soldal v. Cook Cnty.*, 506 U.S. 56, 70-71 (1992) ("Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands.")

Hoping to breathe life into its novel theory, the City relies heavily on *Rosedale Missionary Baptist Church v. New Orleans City*, 641 F.3d 86 (5th Cir. 2011. City's Brief at 31-32. But *Rosedale* is an outdated ripeness case, not a damages case, and nothing in *Rosedale* buttresses the City's novel belief that the *Lucas* takings rule forecloses damages for a due process violation.

When this Court decided *Rosedale*, it was generally the law that a property owner must seek just compensation in state court to ripen federal review of a takings claim (and potentially related claims). *See Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank*, 473 U.S. 172, 186, 194-96 (1985). In *Rosedale*, a church asserted takings and substantive and procedural due process claims against a city after it demolished its building. On appeal, this Court considered whether the claims were ripe.

The *Rosedale* court held that the church's due process claims would not ripen until the church pursued a takings claim for compensation in state court. The court stated:

> where the injury that resulted from an alleged procedural due process violation is merely a taking without just compensation, we cannot know whether the plaintiff suffered any injury until the takings claim has been adjudicated. And

> because *Williamson County*, [citation omitted], requires that the takings claim be adjudicated "through the procedures the State has provided for doing so," we cannot decide the takings claim ourselves.
>
> We must therefore allow state takings procedures to run their course before we can adjudicate the procedural due process claim. . . . [A] decision by this court that the church was entitled to the value of its demolished property would permit an end-run around *Williamson County*.

641 F.3d at 91 (footnotes omitted).

Eight years after the *Rosedale* decision, the Supreme Court overruled *Williamson County* in *Knick v. Township of Scott*, 588 U.S. 180 (2019), erasing the ripeness principles undergirding *Rosedale*. *Rosedale* is accordingly now limited to its time and its facts, even with respect to ripeness disputes. And just to be clear, no ripeness issues are present in this case. The City did not claim below that Ramirez's procedural due process claims injury is redundant of its takings claim, it did not raise a ripeness argument, and the district court did not consider ripeness issues. Here, the City concedes it is not newly raising ripeness issues like those in *Rosedale*. City's Brief at 31 ("The City is not contending that

either of [Ramirez's] claims is not ripe."). *Rosedale* lends no support to the City.[3]

The bottom line in this case is that the City destroyed Ramirez's home without due process, in violation of the Fourteenth Amendment, and Ramirez proved a resulting loss of approximately in property value $167,740.20, which the City did not contest, much less rebut. ROA.2088, ROA. 1919. Ramirez thus had a right to compensatory damages under 42 U.S.C. § 1983. *Wilson v. Taylor*, 658 F.2d 1021, 1032 (5th Cir. 1981) (a procedural due process claimant is entitled to compensatory damages upon proof of injury).

B. The City fails to show that the court properly employed a Fourth Amendment "privacy" test to deny damages for the deprivation for Ramirez's personal property without due process

The City also fails to justify the district court's decision to deny Ramirez compensatory damages for the destruction of personal property inside the home on the basis that Ramirez lacked a "privacy" interest in the property. The City acknowledges that the district court's "privacy

[3] A similar analysis applies to the City's citation to portions of *Bowlby v. City of Aberdeen*, 681 F.3d 215, 233 (5th Cir. 2012). Bowlby was also a ripeness case that is immaterial here.

interest" approach to personal property damages is "akin" to one addressing "a claimed Fourth Amendment violation." City's Brief at 40. The City then declines to brief and justify the court's use of the "privacy interest" standard to resolve the due process damages issues in this case, ultimately conceding that this Court "seems to agree with Ramirez's assessment of the inapplicability of the Fourth Amendment claim." City's Brief at 40-41.

To be sure, the City does not completely give up. It argues that this Court's en banc decision in *Freeman v. City of Dallas*, 242 F.3d 642 (5th Cir. 2001), justifies the court's denial of compensatory damages for the violation of Ramirez's due process rights. But, as Ramirez explained in his Opening Brief, the *Freeman* decision did not address any procedural due process claim or issues; it involved only a Fourth Amendment "seizure" claim. Neither the City nor district court can twist *Freeman* to create a damages bar in a procedural due process context which *Freeman* does not address.

Finally, because the Court erred in denying Ramirez a jury trial on damages and/or erred in denying him compensatory damages for the loss of his house or personal property, or both, the court also erred in holding

that Ramirez was not the kind of "prevailing party" that is entitled to attorneys' fees. That part of the court's judgment must be reversed along with the rest.

CONCLUSION

The Court should reverse the judgment below and remand for further proceedings.

DATED: January 26, 2026.

Respectfully submitted,

J. DAVID BREEMER
SAVANNAH LINA ROBINSON

s/ J. David Breemer
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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ J. David Breemer
J. DAVID BREEMER

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This document complies with Federal Rule of Appellate Procedure 27(d)(2)(a) because this brief contains 3,359 words, excluding items enumerated in Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2. I relied on my word processor, Microsoft Word, to obtain the count.

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/s/ J. David Breemer
J. DAVID BREEMER