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WHATEVER HAPPENED TO PROTECTING FAMILIES: THE SIXTH CIRCUIT NARROWS AVAILABILITY OF 42 U.S.C. § 1983 RELIEF FOR CHILDREN OF A WRONGFULLY INCARCERATED PARENT*

ALLISON GHEROVICI**

I. WAKE UP, SAN FRANCISCO: AN INTRODUCTION TO WRONGFUL INCARCERATION AND A CHILD’S RIGHT TO FAMILY INTEGRITY

In 2017, a Texas court overturned the wrongful conviction of Hannah Overton, a mother of five.1 Overton was fostering a four-year-old child who mysteriously died of high sodium levels.2 The court convicted Overton of capital murder and sentenced her to prison for seven years.3 Ten years after the conviction, Overton’s appellate attorney prevailed on a petition claiming that the prosecution withheld evidence vital to Overton’s defense.4 As compensation for her wrongful conviction, the state

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* The title and headings used throughout this Note are based, in whole or in part, on Full House (ABC television broadcast 1987–1995) and the Full House theme song: Jesse Frederick & Bennett Salvay, Everywhere You Look (1987).
** J.D. Candidate, 2025, Villanova University Charles Widger School of Law; B.A., 2021, University of Miami. This Note is dedicated to my parents, Diana and Alejandro, for their constant support and encouragement. I would also like to thank the members of the Villanova Law Review for their time and diligence in the publication process.
2. See Maurice Possley, Hannah Overton, Nat’l Registry Exonerations (Mar. 7, 2018), https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4674 [https://perma.cc/67QB-A6XG] (describing how the doctor in charge of the foster child’s care in the hospital had never seen such high levels of sodium in a blood test before). Overton and her husband were planning to adopt the foster child. Id.; see also John A. Gebauer, Laura Hunter Dietz, Mary G. Leary, Karen L. Schultz, Eileen Wierzbički, Brenda Williamson & Stephanie Zeller, Government Tort Liability Based on Matters Involving Foster Case, in 62A N.Y. JUR. 2D Government Tort Liability § 190, Westlaw (database updated Nov. 2023) (describing foster parents as “essentially contract service providers” of state agencies).
3. See Possley, supra note 2 (describing the charges); see also Effron & Chang, supra note 1 (describing the charges and punishment).
4. See Possley, supra note 2 (explaining how one of the prosecutors from Overton’s first trial came forward and stated that she believed the lead prosecutor withheld evidence and that there was insufficient evidence to convict Overton of intentionally murdering the child).
of Texas offered Overton over $573,000, insurance, educational benefits, and an annuity.  

In 2022, a court overturned Richard Phillips’s wrongful conviction after he spent forty-six years in prison.  Phillips was charged on an unsubstantiated claim with no physical or circumstantial evidence linking him to a murder.  The state of Michigan’s sole theory was based on an acquaintance’s sworn testimony.  It was not until 2010 that Phillips’s alleged coconspirator admitted Phillips was not even at the scene of the crime.  His children were two and four years old at the beginning of his imprisonment.  Phillips was awarded over $2,300,000.  

As these examples demonstrate, damages for wrongful incarceration may be available in the form of financial compensation.  One possible avenue to recover such damages is 42 U.S.C. § 1983 (Section 1983),  

5. See id. (discussing the compensation afforded to Overton); see also Effron & Chang, supra note 1 (further describing the compensation). In addition, District Attorney Gonzalez gave Overton access to Texas funds for victims of wrongful incarceration.  Id.  Gonzalez dismissed the case and ensured Overton would not go to trial again for the murder of Andrew Burd.  Id.  


7. See id. (discussing Phillips’s and Mitchell’s relationship as “juvenile delinquents on the verge of becoming hardened criminals in a city where violent crime was all around”).  Mitchell was the acquaintance who told authorities that Phillips played a part in the murder of George Harris.  Id.  

8. See id. (explaining the failure of the prosecution to admit key evidence, such as whether there were any fingerprints on Harris’s car, while Phillips’s attorney failed to give an opening statement, call witnesses, or introduce evidence).  

9. See id. (describing the public hearing of Richard Palombo, Phillips’s alleged coconspirator, to commute his sentence).  Phillips’s appeal caught the attention of Judge Helen E. Brown who believed the prosecutors struck a secret immunity deal which amounted to prosecutorial misconduct.  Id.  At the hearing, Palombo stated that he only met Phillips eight days after the murder of Harris.  Id.  

10. See id. (describing how Phillips “missed holding his children, missed lacing their shoes and wiping away their tears, and he knew the only way he’d ever return to them was to somehow prove his innocence”).  


also referred to as the "[c]ivil action for deprivation of rights" statute.\(^\text{13}\) However, various hurdles to Section 1983 recovery can bar wrongfully incarcerated plaintiffs from receiving such compensation.\(^\text{14}\) A plaintiff not only must prove that a constitutional right exists and that they were deprived of that right but also that a state actor was responsible for violating it.\(^\text{15}\) Moreover, while the law may offer remedies to Phillips and Overton for their wrongful incarcerations, what does it offer to their children who undoubtedly suffered by losing years of the parent-child relationship?\(^\text{16}\) Applying the same framework to a child’s Section 1983 claim reveals gaps in recovery.\(^\text{17}\)

\(^\text{13}\). See 42 U.S.C. § 1983 (2024). The statute provides, in relevant part: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. Id.; see also Teressa E. Ravenell, *Cause and Conviction: The Role of Causation in § 1983 Wrongful Conviction Claims*, 81 Temp. L. Rev. 689, 691–92 (2008) (“[O]ne person is seldom the ‘cause’ of a wrongful conviction.”); Graham v. Connor, 490 U.S. 386, 393–94 (1989) (“[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” (quoting Baker v. McCollan, 443 U.S. 137, 144 & n.3 (1979))).

\(^\text{14}\). See Ravenell, *supra* note 13, at 692–93 (discussing exonerees’ Section 1983 claims and explaining that “to fit wrongful conviction claims into the § 1983 rubric . . . an exoneree must prove that the alleged conduct deprived him of a federally protected right”).

\(^\text{15}\). See id. (mentioning the difficulties that can arise when the responsible state actor has immunity from such a claim); see also 1 CIVIL ACTIONS AGAINST STATE AND LOCAL GOVERNMENT — ITS DIVISIONS, AGENCIES AND OFFICERS § 7:38, Westlaw (database updated Sept. 2023) (emphasizing that a state actor must “deliberate[ly] disregard” the right). A government actor’s simple mistake is not enough to qualify for a Section 1983 claim. Id.

\(^\text{16}\). See generally infra notes 18–24 (introducing some of the difficulties that can arise when applying Section 1983 standards to wrongful incarceration cases where a child is suing for the loss of a constitutional right with their parent).

\(^\text{17}\). See 42 U.S.C. § 1983 (creating a cause of action for a violation under color of state law of a civil right); see, e.g., Trujillo v. Bd. of Cnty. Comm’rs, 768 F.3d 1186, 1190 (10th Cir. 1985) (highlighting that courts impose an intent requirement and consider the defendant’s state of mind when evaluating associational freedom claims (the basis of many family integrity actions), which can make it difficult for the plaintiffs to recover if they cannot prove the defendant had a specific state of mind when they were deprived of the right); Rachel Kennedy, *A Child’s Constitutional Right to Family Integrity and Counsel in Dependency Proceedings*, 72 Emory L.J. 911, 927, 931 (2023) (discussing joint parent and children’s Section 1983 claims for the state forcibly separating families in *Duchene v. Sugarman*, 566 F.3d 817 (2d Cir. 1977), and *Berman v. Young*, 291 F.3d 197 (7th Cir. 2002)); *Duchene*, 566 F.3d at 821, 833 (finding sufficient evidence for a trial court to make a judgment as to who violated the mother’s and children’s rights to family integrity when the New York City Bureau
The examples discussed above reflect the unfortunate, common harm that wrongfully incarcerated individuals and their families face. Because of the reciprocal nature of the family relationship, children suffer a loss when they are separated from their parent for so many years. Nevertheless, the route to recovery for children is not as straightforward as that of their wrongfully incarcerated parent. Even though the loss of the parent-child relationship is felt by both parties, it is significantly more difficult for children to receive compensation. Further, not all courts recognize that a wrongfully convicted parent impacts a child’s right to family integrity to the extent that relief is readily available.

Recently, in *Chambers v. Sanders*, the United States Court of Appeals for the Sixth Circuit held that a parent’s wrongful conviction did not violate a child’s due process right to family integrity because the officer’s conduct was not intentionally directed towards the family relationship, therefore foreclosing recovery under Section 1983. This Note argues that the *Chambers* court misapplied existing family association precedent by relying too heavily on cases that featured key distinguishing facts and legal questions, took custody of the mother’s children while she was receiving medical help for emotional issues; *Berman*, 291 F.3d at 984 (holding that the plaintiffs “failed to produce evidence creating a genuine issue of fact as to the reasonableness of . . . suspicions of abuse,” and regardless, the police officers qualified for immunity because “the extent of their obligations [and] the extent of the right to family integrity . . . [was not enough] to place them on notice that their actions were unlawful”), as amended on denial of reh’g (June 26, 2002).

18. See Effron & Chang, *supra* note 1 (discussing Overton’s seven-year imprisonment and explaining how her children suffered by not having a parent present during that period of time); *Possley*, *supra* note 11 (highlighting the fact that Phillips was in prison during most of his children’s lives). Phillips went to prison when one of his children was two years old and remained incarcerated until that child was forty-eight. *Id.*. For his other child, Phillips went to prison when he was four years old and remained in prison until he was fifty. *Id.*

19. See Janani Umamaheswar, *The Relational Costs of Wrongful Convictions*, 31 Critical Criminology 707, 709 (2023) (identifying the family members of those who are wrongfully convicted as “secondary victims” and explaining the effects of wrongful incarceration of a parent on secondary victims). One such effect includes children exhibiting depressive symptoms. *Id.*. One of the exonerees interviewed by the author stated that “the worst part of [his] incarceration was seeing how [his] [children] were deprived of a normal childhood.” *Id.* at 714 (third alteration in original).

20. For further discussion of Section 1983 damages, see *supra* notes 12–17 and accompanying text.

21. For further discussion of the difficulties faced by children seeking compensation for the wrongful incarceration of their parent, see *supra* notes 18–19 and accompanying text.

22. See *Chambers v. Sanders*, 63 F.4th 1092, 1100 (6th Cir. 2023) (holding that state actions only indirectly affecting the family bond and infringing upon the integrity of the family relationship (by way of wrongful incarceration of a parent) do not violate a child’s substantive due process rights).

23. 63 F.4th 1092 (6th Cir. 2023).

24. See *id.* at 1097, 1099–1100 (rejecting the argument that a government actor’s incidental impact on the family relationship rises to the level of a substantive due process violation of the right to family integrity). The Sixth Circuit cites and criticizes the Ninth Circuit’s decision in *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1987), both as incorrectly decided and inapplicable. *Chambers*, 63 F.4th at 1099–1100.
and that a revised standard would rightfully provide compensation to children of wrongfully incarcerated parents under Section 1983. 25

Part II discusses the history of Section 1983, the effects of mass and wrongful incarceration, and family-related substantive due process rights. Part III reviews the facts and procedural history of Chambers, emphasizing key facts that should make wrongful incarceration cases an exception to the family integrity Section 1983 “intent to interfere” standard. Part IV reviews the Sixth Circuit’s analysis of the Section 1983 claim in Chambers and its interpretation of what violates the right to family integrity. Part V describes how the Sixth Circuit misapplied police brutality and parental claim cases in Chambers, which resulted in a bilateral harm with a remedy available for only one of the parties. Part VI concludes by exploring the implications of this ruling, its unequal impact on marginalized communities, and the need for all branches and levels of government to dismantle systemic racism.

II. FULL HOUSE: SECTION 1983, WRONGFUL INCARCERATION, AND FAMILY-BASED SUBSTANTIVE DUE PROCESS RIGHTS

Section 1983 provides crucial protection for civil rights. 26 It is modeled after the Civil Rights Act of 1871 (the Act). 27 Through Section 1 of

25. For further discussion of the Sixth Circuit’s approach and analysis, see infra Parts III-V. See U.N. Convention on the Rights of the Child, opened for signature Nov. 20, 1989, G.A. Res. 44/25 (entered into force Sept. 2, 1990) (stating that a child should “not be separated from his or her parents against their will, except when . . . such separation is necessary for the best interests of the child”). The Convention further ensures that “[a] child temporarily or permanently deprived of his or her family environment . . . shall be entitled to special protection and assistance provided by the State.” Id. This definition of the best interest of the child varies by state and places importance on “continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.” Id. The United States has not ratified this Convention and is therefore not bound by it. See LUISA BLANCHFIELD, CONG. RSL. SERV., R40484, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (2015), https://crsreports.congress.gov/product/pdf/R/R40484/25#:~:text=CRC%20entered%20into%20force%20in%20the%20Convention%20[perma%20link unavailable]; see also Civ. Rights Violations 42 USC § 1983 Claims on Behalf of Children, JUSTICE FOR KIDS, https://www.justiceforkids.com/civil-rights-violations-42-usc-1983-claims-on-behalf-of-children/ [https://perma.cc/F25A-B4BG] (last visited May 26, 2024) (describing various Section 1983 lawsuits to vindicate children’s civil rights, often when confronted with sovereign immunity limits).


27. See Civil Rights Act of 1871, Pub. L. No. 42-22, 17 Stat. 13 (codified as amended at 42 U.S.C. § 1983 (2024)); see also Michelman, supra note 26 (detailing the history of Section 1983, including that the Civil Rights Act of 1871 (also known
the Act, plaintiffs had the right to sue an individual acting under color of law in federal court for violations of their civil rights. Section 1983 has changed since its inception in the Act through various amendments and utilizations of the law. Section A below discusses Section 1983 in terms of its judicial expansion of liability, statutory interpretation, and issues posed by qualified immunity. Section B provides a general background on mass incarceration and wrongful incarceration in the United States. Finally, Section C considers Supreme Court precedent on the family relationship and analyzes several circuit court decisions on Section 1983 and the family relationship.

A. Opening the Door with Section 1983 and Civil Rights Claims

One of the first fundamental changes to Section 1983 occurred in the 1961 Supreme Court case of Monroe v. Pape. In Monroe, the Court evaluated whether a narrow reading of Section 1983 that only implicated the “central government” was correct. The Court reasoned that such a narrow interpretation was not supported by the history and purpose of the Act and that Section 1983 claims should be interpreted in the context of individual tort liability, thus opening Section 1983 to state and local government officials. as the Ku Klux Klan Act) was signed into law by President Ulysses S. Grant. Michelman notes that Section 1 of the Act was later codified as Section 1983. Id.

28. See Mosvick, supra note 26 (“Section 1983 permits lawsuits for violations of civil rights by police officers, public educators and officials, or prison guards and wardens.”).

29. See id. (discussing different Supreme Court cases that have expanded or narrowed the interpretation of Section 1983). For further discussion of how Section 1983 was expanded to include both state and local government actors, see infra notes 31–38 and accompanying text.

30. 365 U.S. 167 (1961), overruled by Monell v. Dep’t of Soc. Servs., 436 U.S. 658 (1978). In Monroe, the Court considered whether a warrantless home invasion, search, arrest, and detention deprived the plaintiff of his constitutional rights, and, if so, whether recovery was available. Id. at 170. The Court held that individuals acting “under color of state law” could be held liable if they violated an individual’s civil rights. Id. at 183–86; see also Mosvick, supra note 26 (differentiating the Monroe Court not holding the city liable from it finding that individuals may be held liable).

31. See Monroe, 365 U.S. at 170 (“[T]he history of the section of the Civil Rights Act presently involved does not permit such a narrow interpretation” that the rights at issue must be “by reason of [a] relation to the central government, not to state governments”).

32. See id. at 170–71, 187 (referencing the history of the Act to conclude that the legislative “purpose is plain from the title of the legislation, ‘An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States’” and also explaining that Section 1983 “should be read against the background of tort liability” (quoting Civil Rights Act of 1871, 17 Stat. 15)); see also Adam S. Lurie, Note, Ganging Up On Police Brutality: Municipal Liability for the Unconstitutional Actions of Multiple Police Officers Under 42 U.S.C. § 1983, 21 Cardozo L. Rev. 2087, 2108–09 (2000) (arguing municipal liability under Section 1983 should be inferred in cases where multiple state actors are acting together). Lurie discusses Section 1983, Supreme Court precedent emphasizing the tort background of Section 1983, decisions of lower federal courts utilizing res ipsa to apply that tort background, and the res ipsa-effect of allowing municipal liability under Section 1983 for police
Monroe was overruled in part by Monell v. Department of Social Services, where the Court extended liability to include local governments. Effectively, Monroe and Monell served as vital case law that broadened the scope and applicability of Section 1983 claims—Monroe by reviving such claims and Monell by extending them to municipalities. Further, the Ninth Circuit in Smith v. City of Fontana emphasized the importance of considering the legislative history of the Act when analyzing Section 1983 claims. A state representative, as highlighted by the Ninth Circuit, described the Act to function as a remedy for familial loss.

brutality causes of action. Id. at 2090 & n.109. As Lurie explains, the tort background to Section 1983 can provide clarity while also causing some difficulty in "differentiat[ing] between common law torts and constitutional torts." Id. at 2110; Developments in the Law—Section 1983 and Federalism, 90 Harv. L. Rev. 1133, 1137 (1977) (referencing the Monroe court’s reliance on legislative history, specifically on “the debates of the Reconstruction Congresses”). The article cites to Aldinger v. Howard, 427 U.S. 1 (1976), where Justice Brennan stated that “the sole rationale for construing the ‘persons’ susceptible of liability under section 1983 as excluding local units of government lies in the legislative history.” Developments in the Law, supra, at 1137 n.2 (quoting Aldinger, 427 U.S. at 24 (Brennan, J., dissenting)).


34. See id. at 659 (“Monroe v. Pape is overruled insofar as it holds that local governments are wholly immune from suit under § 1983.”). But see Robert J. Kaczorowski, Reflections on Monell’s Analysis of the Legislative History of § 1983, 31 Urb. L. 407, 412–14 (1999) (arguing the Monell Court misinterpreted the congressional debates, or the lack thereof, in arriving at the conclusion that it was Congress’s intent to include municipal liability in Section 1983).

35. See Monell, 436 U.S. at 659 (overruling Monroe insofar as it dictated Section 1983 liability for local governments); Howard M. Klein, Federal Courts—42 U.S.C. 1983—Suing Municipalities Under 42 U.S.C. 1983: The Impact of Monell v. Department of Social Services, 24 Vill. L. Rev. 1008, 1008 (1979) (describing Monroe as the basis of both reviving and restricting Section 1983 liability). The author explains how Monell expanded the liability that was originally restricted in Monroe. Id. at 1019–20; see also Fagan v. City of Vineland, 22 F.3d 1283, 1291 (3d Cir. 1994) (“[T]he inadequacy of police training may serve as the basis for municipal liability under section 1983 if the failure to train amounts to deliberate indifference to the rights of persons with whom the police come in contact.” (citing City of Canton v. Harris, 489 U.S. 378, 388 (1989))).

36. 818 F.2d 1411 (9th Cir. 1987), overruled on other grounds by Hodgers-Durgin v. De La Vina, 199 F.3d 1037 (9th Cir. 1999).

37. See id. at 1419 (finding “compelling support in the legislative history of section 1983’s precursor, the Ku Klux Klan Act of 1871”). The court reasoned that the “legislative history makes a clearer case for recovery to the child due to loss of support or loss of society and companionship of a parent . . . [than for] the parent’s rights [for recovery] vis-à-vis the loss of a child.” Id. (alterations in original) (citing Bell v. City of Milwaukee, 746 F.2d 1205, 1244 (7th Cir. 1984)). But see Chambers v. Sanders, 65 F.4th 1092, 1099 (6th Cir. 2023) (arguing that the Ninth Circuit misinterpreted the legislative history of the Act). For further discussion of the debates and the legislation, see infra note 38 and accompanying text.

38. See Smith, 818 F.2d at 1419 (describing the Act “as a remedy . . . to a man whose house has been burned . . . to the woman whose husband has been murdered, [and] . . . to the children whose father has been killed” (emphasis omitted) (quoting Cong. Globe, 42d Cong., 1st Sess. 807 (1871) (statement of Rep. Benjamin Butler))).
One difficulty in interpreting Section 1983 is its broad and ambiguous language.\(^\text{39}\) As considered in \textit{Monroe, Monell, Smith}, and other courts, the congressional debates at the time of the Act provide the best context for statutory interpretation.\(^\text{40}\) To better understand the scope of Section 1983, courts have largely looked to the statute’s definition of “person” and, to a lesser extent, 42 U.S.C. § 1988—an all-purpose “gap-filler” statute used to supplement Section 1983.\(^\text{41}\) \textit{Monell} modified Section 1983’s definition of “persons” to include municipalities with the condition that the state officer acted pursuant to the municipality’s custom or policy.\(^\text{42}\) Although rarely applied, Section 1988 directs choice of law for select

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\(^{40}\) See, e.g., id. at 54–57, 77–79 (discussing the influence of legislative history). Beermann explains that the Court in \textit{Gomez v. Toledo}, 446 U.S. 635 (1980), referenced Section 1983 as remedial legislation. See Beermann, supra note 39, at 56. However, Beermann also explains that this interpretation requires some “manipulation of text and history” to discover the “legislative intent.” \textit{Id}. Considering the cited portions of Section 1983 in various court opinions, Beermann classifies a possible intent as protecting against “as many constitutional violations as possible.” \textit{Id}. at 78.

\(^{41}\) See \textit{id.} at 54–55, 57–59 (explaining Section 1988’s “gap-filler” function for the purposes of Section 1983 claims and providing an overview and analysis of the conflicting opinions over the scope of Section 1988 application). The various arguments for Section 1988 application range from compulsory application of state law whenever there is no applicable federal law, persuasion in choice of law, or merely as an additional option to be used at the court’s discretion. \textit{Id}. at 59. Section 1988(a) provides, in relevant part:

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.


\(^{42}\) See \textit{Monell} v. \textit{Dep’t of Soc. Servs.}, 436 U.S. 658, 691 (1978) (“[T]he language of § 1983 . . . compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort.”). In other words, municipalities cannot be held vicariously liable for the actions of their state employees. \textit{Id}. However, \textit{Monroe...
civil rights legislation and has been utilized by the courts to interpret and apply Section 1983. Theoretically, cases concerning the actions of state police officers which lead to wrongful incarceration could involve the application of state laws as long as doing so does not violate choice of law principles.

Qualified immunity also presents potential obstacles to obtaining recovery under Section 1983. Qualified immunity can shield officers from monetary liability in some cases where the state action violated a civil right. The Supreme Court has judicially altered this doctrine, notably in Harlow v. Fitzgerald and Mullenix v. Luna. In Harlow, the Court determined that it is necessary for a right to be clearly established in order for an officer to be liable for violating it. Similarly, in Mullenix, the Court clarified that the applicable inquiry was whether the law "clearly . . . prohibited the officer's conduct in the 'situation [she] confronted.'" In the Fourteenth Amendment context, qualified immunity established that municipal liability could be based on the municipality's official policies. Id.

43. See Beermann, supra note 39, at 58, 60 & n.64 (referencing Justice Blackmun's dissent in Robertson v. Wegmann, 436 U.S. 584 (1978), which the author refers to as one of the only Section 1983 cases up until that point where the Court looked to and included state law to fill in the gaps); see also Robertson, 436 U.S. at 589 (applying Section 1988(a) as a survivorship gap-filler to a Section 1983 claim).

44. See Beermann, supra note 39, at 57–58 (considering Section 1988's function as a gap-filler); Revoir, 853 F.3d at 106 (declining to apply Section 1988(a) to the Fair Housing Act because "Section 1988(a) provides that where certain federal laws 'are deficient' the federal courts may apply 'common law' . . . provided that the state law is 'not inconsistent with the Constitution and laws of the United States'" (quoting 42 U.S.C. § 1988(a))). The Fair Housing Act is one piece of legislation, similar to Section 1983, that originated in one of the Civil Rights Acts. Id.


46. See Ravenell, supra note 13, at 729–30 (explaining the origin of qualified immunity in Pierson v. Ray, 386 U.S. 547 (1967), which “protected officials from monetary liability”); see also Pierson, 386 U.S. at 557 (“We hold that the defense of good faith and probable cause, which the Court of Appeals found available to the officers in the common-law action for false arrest and imprisonment, is also available to them in the action under § 1983.”).

47. 457 U.S. 800 (1982).


49. See Harlow, 457 U.S. at 818 (“We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”); see also Hernandez v. Foster, No. 09 C 2461, 2009 WL 1952777, at *3 (N.D. Ill. July 6, 2009) (“Before liability can attach, the contours of the right must be sufficiently well established that a reasonable official would understand their conduct violates that right.”).

50. Mullenix, 577 U.S at 12, 13 (second alteration in original) (quoting Broseau v. Haugen, 543 U.S. 194, 199 (2004)). In the context of excessive force, the
can apply to bar a plaintiff’s recovery when the enumerated right was not clearly established or the officer had reason to believe their actions were lawful.51

B. Teaching Lessons About the Impact and Effects of Mass and Wrongful Incarceration

The United States’ record-breaking incarceration rate affects families across the nation.52 Approximately 664 people out of every 100,000 are incarcerated—a rate drastically higher than other countries.53 To add to this, approximately four to six percent of those convicted are actually innocent.54 Trials are often subjective and left up to prosecutorial

Court emphasized that “[t]he relevant inquiry [was] whether existing precedent placed the conclusion that [the officer] acted unreasonably in [the] circumstances ‘beyond debate.’” Id. at 13–14 (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011)); see also Schweikert, supra note 45, at 2 (discussing the “clearly established” right standard for Section 1983 claims more generally).

51. See, e.g., Chavez v. Martinez, 538 U.S. 760, 763, 765–66 (2003) (plurality opinion) (reversing the Ninth Circuit’s decision that an officer knowingly violated the defendant’s “clearly established constitutional rights” and setting the order of inquiries as first establishing causation on the part of the officer and then deciding whether the violated right was “clearly established”). But see Baxter v. Bracy, 140 S. Ct. 1862 (2020) (Thomas, J., dissenting from the denial of certiorari) (explaining that judicial interpretation of qualified immunity to Section 1983 claims has largely departed from the text); see also Berman v. Young, 291 F.3d 976, 984 (7th Cir. 2002) (affording qualified immunity to state employees because “neither the extent of their obligations, nor the extent of the right to family integrity and association, were so well-developed as to place them on notice that their actions were unlawful), as amended on denial of reh’g (June 26, 2002).

52. See United States Profile, Prison Pol’y Initiative, https://www.prisonpolicy.org/profiles/US.html#:~:text=With%20nearly%20two%20million%20people,any%20country%20in%20the%20world [https://perma.cc/FTD4-7CT3] (last visited May 20, 2024) (providing statistics on incarceration in the United States and comparisons to other NATO countries). For example, approximately 129 people out of every 100,000 are incarcerated in the United Kingdom, and approximately 33 people out of every 100,000 are incarcerated in Iceland. Id.; see also Emily Widra & Tiana Herring, States of Incarceration: The Global Context 2021, Prison Pol’y Initiative (Sept. 2021), https://www.prisonpolicy.org/global/2021.html [https://perma.cc/Q4A3-ZLEA] (providing statistics which show that as of September 2021, over thirty U.S. states had a higher incarceration rate than countries such as El Salvador, Turkmenistan, and Rwanda). Notably, if every U.S. state were its own country, twenty-four states would have a higher average incarceration rate than the United States as a whole. Id. For further examples of families affected by incarceration in the United States, see supra notes 1–11 and accompanying text.

53. See United States Profile, supra note 52 (comparing incarceration rates of other countries to the United States); see also Don Stemen, Vera Inst. Just., The Prison Paradox: More Incarceration Will Not Make Us Safer 1 (2017), https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf [perma link unavailable] (rejecting the belief that mass incarceration results in heightened safety because of its “minimal impact on reducing crime”).

and judicial discretion, resulting in varied approaches taken to factually similar cases. This nonuniformity is further exacerbated by juror bias, which varies by jurisdiction and further contributes to disparate outcomes.

The impact of mass incarceration and wrongful conviction is even more jarring when considering the disproportionate effects on marginalized communities and people of color. Although Black, Latino, and Native American people comprise roughly thirty-four percent of the population, they make up around sixty-five percent of the population in correctional facilities. Further, according to the Innocence Project, “innocent Black people are seven times more likely to be wrongfully convicted of murder than innocent white people.” People of color are not more likely to commit crimes than white people, but they are arrested and convicted at a much higher rate. Therefore, the significant loss of

(last visited May 15, 2024) (presenting statistics on systemic racism and wrongful convictions).

55. See Wendy Sawyer & Peter Wagner, Mass Incarceration: The Whole Pie 2023, PRISON POL’Y INITIATIVE (Mar. 14, 2023), https://www.prisonpolicy.org/reports/pie2023.html (attributing one factor of mass incarceration to the fact that the U.S. lacks one, sole criminal justice system). Thousands of “federal, state, local, and tribal systems” came together to form the criminal justice system in place today. Id.; see also Zachary Price, The Fifty States’ Varied Laws on Prosecutorial Nonenforcement, STATE & LOCAL GOV’T L. BLOG (Jan. 27, 2022), https://www.sloglaw.org/post/the-fifty-states-varied-laws-on-prosecutorial-nonenforcement (explaining the lack of uniformity in prosecutorial discretion across the fifty states with major differences in who is wielding the power and how much power is allowed or foreclosed).

56. See generally Annie H. Sloan, Racial Bias in Jury Selection Must Be Addressed, 61 JUDGES J. 24 (2022) (reviewing the problem of juror bias, the effects of peremptory strikes, and the different approaches taken by states to resolving this problem).

57. See, e.g., Beneath the Statistics: The Structural and Systemic Causes of Our Wrongful Conviction Problem, supra note 54 (discussing the disproportionate number of people of color who are affected by mass incarceration). While wrongful convictions affect all people regardless of race, the effects of systemic racism in the criminal justice system increase the probability of a person of color being wrongfully incarcerated compared to a white person. Id.

58. United States Profile, supra note 52 (including data from the 2022 U.S. Census showing that Black people make up fourteen percent of the population but account for forty-two percent of incarcerated individuals, Latino people make up nineteen percent of the population but account for twenty percent of incarcerated individuals, and American Indian or Alaskan Natives make up one percent of the population but three percent of incarcerated individuals).

59. Race and Wrongful Conviction, INNOCENCE PROJECT, http://innocenceproject.org/race-and-wrongful-conviction/ (last visited May 26, 2024) (providing data on demographics and exoneration at the Innocence Project); see Beneath the Statistics: The Structural and Systemic Causes of Our Wrongful Conviction Problem, supra note 54 (providing statistics which show that Black people are three-and-a-half times more likely to be wrongfully convicted of sexual assault, seven times more likely to be wrongfully convicted of murder, and twelve times more likely to be wrongfully convicted of drug crimes).

60. See Radley Balko, There’s Overwhelming Evidence That the Criminal Justice System Is Racist, Here’s the Proof, WASH. POST (June 10, 2020), https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/ (explaining how systemic racism has
rights suffered by those who are imprisoned, as well as their families, are more prevalent in these communities.  

C. Reflecting on Family Association History

Different aspects of the family relationship have been afforded protections under the law, dating back as far as Roman civil law. In modern constitutional law, family-related rights are generally considered due process rights that fall under the purview of the right to privacy.

The foundational constitutional law cases impacting family law are almost unanimously considered to be *Meyer v. Nebraska* and *Pierce v. Society of Sisters*, which affected the criminal justice system and manifests in the form of policing, juries, and sentencing; see also David Neiwert, *White Supremacists' Favorite Myths About Black Crime Rates Take Another Hit from BJS Study*, S. Poverty L. Ctr., (Oct. 23, 2017), https://www.splcenter.org/hatewatch/2017/10/23/white-supremacists-favorite-myths-about-black-crime-rates-take-another-hit-bjs-study [https://perma.cc/3GZ5-Z5KP] (describing Department of Justice statistics that counter the myths that people of color commit more crimes, especially against white people). These statistics show that is not the case.

61. See What Rights Do Convicted Felons Lose?, The Law Dictionary, https://thelawdictionary.org/article/what-rights-do-convicted-felons-lose/ [perma link unavailable] (last visited May 15, 2024) (noting that although the rights of imprisoned individuals can vary depending on what state they are in, lost rights generally include government benefits, the right to vote, and employment).

62. See, e.g., Fudacz v. Univ. of Toledo Med. Ctr., No. 2013-00441, slip op. at 3 (Ohio Ct. Claims Nov. 15, 2013) (“The history of loss of consortium claims can be traced back to Roman civil law . . . .”). Loss of consortium provided a legal “remedy for deprivation of the benefits of a family relationship due to injuries caused by a tortfeasor.” Id.; see also Thomson v. Ohio Ins. Co., 780 N.E.2d 1082, 1085 (Ohio Ct. App. 2002) (defining loss of consortium as “a loss of the benefits that one spouse is entitled to receive from the other or that a child is entitled to receive from his or her parent, including companionship, cooperation, aid, affection, and, between spouses, sexual relations” (quoting Black’s Law Dictionary (7th ed. 1999))); Linda D. Elrod, *The Federalization of Family Law*, A.B.A. (July 1, 2009), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/summer2009/the_federalization_of_family_law/ [perma link unavailable] (“Historically, family law has been a matter of state law.”). This includes the definition of “family,” the regulation of marriage, divorce, child custody proceedings, and more. Id. Due in part to states not being able to resolve all family-related issues, the federal government started taking a more active role in the 1930s.

63. See infra notes 64–69 for further discussion of the widely regarded foundational cases of constitutional family law, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); see also Kennedy, supra note 17, at 911 (“Despite the prominence of family values in American discourse, the Constitution does not speak to the family, and the Supreme Court has shied away from addressing children’s rights in the family context . . . .”). Kennedy argues that Supreme Court jurisprudence implies children have a constitutional right to family relationships free from unwarranted state interference—in other words, a right to family integrity.

64. 262 U.S. 390 (1923). In *Meyer*, the plaintiff was a teacher in a Nebraska parochial school who taught German to his students contrary to a statute that made
In *Meyer*, the Supreme Court alluded to the fact that the family relationship fell under the scope of the Fourteenth Amendment. *Meyer* is particularly significant because it was the first Supreme Court case to define such a liberty; it is regarded as "a vital cornerstone for the protection of personal liberty, particularly parental rights." *Pierce* solidified *Meyer* by confirming that there are limits to how far into the family relationship the state can reach. Over time, these cases have expanded family protections to include family association, family privacy, and, as fundamental to this Note, family integrity.

While family integrity claims raise significant constitutional concerns, a Section 1983 claim based on family integrity for a wrongfully it illegal to teach languages other than English to children below the eighth grade. *Id.* at 396–97. The teacher was convicted for breaking the law. *Id.* The Court held that the teacher’s "right thus to teach and the right of parents to engage him so to instruct their children . . . are within the liberty of the [Fourteenth] Amendment." *Id.* at 400; see also Kennedy, *supra* note 17, at 922 (providing background information on *Meyer* and a summary of the holding).

65. 268 U.S. 510 (1925). *Pierce* held that a child’s upbringing falls within the purview of parental rights protected by the substantive due process right to family liberty. *Id.* at 534–35; see also Kennedy, *supra* note 17, at 922 (detailing how *Pierce* drew upon the dicta in *Meyer*).

66. See *Meyer*, 262 U.S. at 400 (indicating that parents had a right to rear their children’s education). The *Meyer* Court also noted that there were limits on the government’s ability to encroach upon “certain fundamental rights.” *Id.* at 401; see also Kennedy, *supra* note 17, at 922 (noting how the *Meyer* Court, in dicta, described such a right).


68. See *Pierce*, 268 U.S. at 535 (refuting the idea that children are "mere creatures[s] of the state" and asserting that their parents or guardians have control over decisions that shape who they are); see also Kennedy, *supra* note 17, at 922 (describing how the *Pierce* Court built upon *Meyer* and solidified what it had previously stated in dicta); Ross, *supra* note 67 (explaining how *Pierce* enforced *Meyer*, and how both cases have been utilized together to protect family integrity in judicial reasoning).

69. See Kennedy, *supra* note 17, at 922–27 (discussing cases that extended the family integrity right between the 1970s and the 2000s); see also *Duchesne* v. Sugarman, 566 F.2d 817, 825 (2d Cir. 1977) (recognizing family integrity as a reciprocal right for the first time in judicial history). The Second Circuit stated: “This right to the preservation of family integrity encompasses the reciprocal rights of both parent and children.” *Id.*; Kennedy, *supra* note 17, at 927–28 (discussing *Duchesne* and the court’s analysis of the reciprocal family interest). *Duchesne* and subsequent cases adopting its holding tended to reflect a fact pattern where the state agency at issue was Child Protective Services (CPS) which had more direct involvement in the family relationship than other government agencies. *Id.* at 927–31. But see generally Dobbs v. Jackson Women’s Health Org., 142 S. Ct. 2228, 2244–45 (2022) (placing an emphasis on the text of the Constitution when determining whether a fundamental right exists). The *Dobbs* Court found that the right to an abortion, originally considered to fall under the right to privacy, was not explicitly mentioned in the Constitution and thus could not be considered a fundamental right. *Id.*
incarcerated parent has not yet reached the Supreme Court. Consequently, the most authoritative guidance is typically derived from federal appellate courts, which predominantly determine the types of state interference with familial relationships that are legally actionable. The decisions of nine out of the twelve circuit courts of appeal generally discuss the right to family association, and eight of those decisions impose some variation of an intent requirement—for such claims to be actionable under Section 1983, the state actor must have directed their actions toward the family relationship. Notably, only the Ninth Circuit has held that children have a cognizable family association claim rooted in the Fourteenth Amendment’s guarantee of substantive due process.

1. Police Brutality as the State Action

A couple of the relevant family association cases analyze fact patterns where police brutality caused the death of a family member. The Ninth Circuit faced such a situation in Smith where the deceased individual was a father. Smith’s children sued in various capacities, including as the administratrix of Smith’s estate and as Smith’s adult and minor children. Despite acknowledging that only a companionship interest was implicated, the Ninth Circuit held that such an interest was sufficient

70. See, e.g., Randy Wimbly & David Komer, Family of Man Wrongly Imprisoned for 32 Years Sue City of Detroit for Justice, FOX 2 DETROIT (Apr. 2, 2021, 11:38 PM), https://www.fox2detroit.com/news/family-of-man-wrongly-imprisoned-for-32-years-sue-city-of-detroit-for-justice [https://perma.cc/K9G5-MERB] (including thoughts from Chambers and Smith’s lawyers who stated that such lawsuits against the government are “rare” but “there does seem to be case law which supports this position”); Braillard v. Maricopa County, 232 P.3d 1263, 1270 (Ariz. Ct. App. 2010) (“[A]lthough the United States Supreme Court had not yet ruled on [whether the right to family integrity is violated by an indirect state interference], it had cautioned courts to ‘exercise the utmost care’ in extending constitutional protection to an asserted right or liberty interest.” (quoting Russ v. Watts, 414 F.3d 783, 789 (7th Cir. 2005))).

71. See, e.g., Ortiz v. Burgos, 807 F.2d 6 (1st Cir. 1986); Smith v. City of Fontana, 818 F.2d 1411 (9th Cir. 1987), overruled on other grounds by Hodgers-Durgin v. De La Vina, 199 F.3d 1037 (9th Cir. 1999); Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994); McCurdy v. Dodd, 352 F.3d 820 (3d Cir. 2003); Russ, 414 F.3d at 783; Gorman v. Rensselaer County, 910 F.3d 40 (2d Cir. 2018); Partridge v. City of Benton, 929 F.3d 562 (8th Cir. 2019); Lowery v. County of Riley, 522 F.3d 1086 (10th Cir. 2008). For further discussion of the circuit split, see infra Sections II.C.1–.3 and accompanying text.

72. See sources cited supra note 71 for the circuit courts of appeal that analyze some form of a family association claim and consider the state actor’s intent to interfere with the family relationship for that claim to be cognizable.

73. For further discussion of the Ninth Circuit’s decision, see infra Section II.C.1.

74. See, e.g., Smith, 818 F.2d at 1414 (“Mr. Smith was unarmed . . . [but] Officer Smith . . . shot Mr. Smith in the back.”); Shaw, 13 F.3d at 794 (describing how the decedent ran from the officer, so the officer chased him and shot him).

75. See Smith, 818 F.2d at 1414 (“Mr. Smith died approximately one and a half hours later, during emergency surgery.”). Sonja Smith (Mr. Smith’s wife) and his other children brought the lawsuit. Id.

76. See id. (explaining the plaintiffs’ sued as administratrix of Smith’s estate to vindicate his civil rights and also as his children to vindicate their own civil rights).
to hold constitutional weight.\textsuperscript{77} The court rejected the idea that the narrow, parent-child custodial interest was the basis for the children’s due process claim; instead, their interest in the family relationship could stand alone as a “cognizable liberty interest.”\textsuperscript{78} Further, although the officer’s conduct was not specifically directed at separating the parent from the child, the conduct itself was sufficient to invoke a substantive due process claim.\textsuperscript{79}

In 1994, the Fourth Circuit examined both supervisory and individual liability in \textit{Shaw v. Stroud},\textsuperscript{80} where the plaintiffs alleged that a police officer’s frequent, violent conduct violated their right to “love and support” from a family member.\textsuperscript{81} The Fourth Circuit denied the supervisor’s motion for summary judgment, in which he claimed he was not liable under Section 1983 for the actions of his subordinate officer.\textsuperscript{82} Declining to create a new substantive due process right, the Fourth Circuit held that the right to love and associate did not fall under any

\textsuperscript{77} See \textit{id.} at 1419 (explaining the “distinction between the parent-child and the child-parent relationships does not . . . justify constitutional protection for one but not the other”); \textit{see also Manual of Model Civil Jury Instructions for the District Courts of the Ninth Circuit} 217 (2017) ("A parent’s right includes a custodial interest (but only while the child is a minor), and a companionship interest (even after a child reaches the age of majority)).

\textsuperscript{78} See \textit{Smith}, 818 F.2d at 1419 ("We hold that a child’s interest in her relationship with a parent is sufficiently weighty by itself to constitute a cognizable liberty interest."). The court further specified that “the familial relationship, and not the more narrow custodial interest of the parents, gave rise to the due process action.” \textit{Id.}

\textsuperscript{79} See \textit{id.} at 1420 (explaining that the children had a substantive due process claim “based on their loss of [their father’s] companionship”). The court explained that “the same allegation of excessive force giving rise to Mr. Smith’s substantive due process claim based on his loss of life also gives the children a substantive due process claim based on their loss of his companionship.” \textit{Id.}

\textsuperscript{80} 13 F.3d 791 (4th Cir. 1994).

\textsuperscript{81} See \textit{id.} at 795–96, 804 (discussing the multiple claims against Alfred Morris, a police officer who had been complained of using excessive force, assaulting his arrestees, and making racist comments to them, among other things). The decedent’s wife and minor child filed a claim on behalf of the decedent alleging that Morris’s excessive force (including the use of a firearm) caused the death of the decedent. \textit{Id.} at 794. They argued this violated their “‘right to enjoy the ‘life, love, comfort, and support of their husband and father’ without undue state interference.” \textit{Id.} at 796–97.

\textsuperscript{82} See \textit{id.} at 799–801 (discussing three elements to establish vicarious liability under Section 1983). The elements include:

(1) that the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed “a pervasive and unreasonable risk” of constitutional injury to citizens like the plaintiff; (2) that the supervisor’s response to that knowledge was so inadequate as to show “deliberate indifference to or tacit authorization of the alleged offensive practices,”; and (3) that there was an “affirmative causal link” between the supervisor’s inaction and the particular constitutional injury suffered by the plaintiff. \textit{Id.} at 799.
precedential categories and the family relationship was not an intended
target of the police officer.\textsuperscript{83}

2. \textit{The Parent as the Section 1983 Claimant}

Within the circuit split, another factual scenario arises in cases where
parents invoke Section 1983 to seek recourse for the loss of the relation-
ship with their child.\textsuperscript{84} \textit{Ortiz v. Burgos}\textsuperscript{85} reflects on this aspect of the
family relationship.\textsuperscript{86} The decedent died at the age of twenty-one after
being beaten by guards at a detention center, and his mother, stepfather,
and siblings brought suit under Section 1983.\textsuperscript{87} The First Circuit held
that parents’ due process rights are implicated only when the state action
sought to alter the parent-child relationship.\textsuperscript{88} The court explained that
while the parent-child relationship might suffer, substantive due process
protections were unwarranted here because the government action was
not sufficiently aimed at the family relationship—especially because the
child in this case was not a minor.\textsuperscript{89}

Three decades after \textit{Ortiz}, the Third Circuit in \textit{McCurdy v. Dodd}\textsuperscript{90}
similarly denied a father’s right to companionship after his son was
fatally shot by police officers.\textsuperscript{91} The Third Circuit held that the limited

\textsuperscript{83.} \textit{Id.} at 804 (detailing the two types of substantive due process claims that
have been recognized by other circuit courts). These include a direct injury to the
family relationship as a result of state action and a derivative claim of incidental
injury. \textit{Id.}

\textsuperscript{84.} \textit{See generally} \textit{Ortiz v. Burgos}, 807 F.2d 6 (1st Cir. 1986); \textit{McCurdy v. Dodd},
352 F.3d 820 (3d Cir. 2003); \textit{Russ v. Watts}, 414 F.3d 783 (7th Cir. 2005); \textit{Partridge
v. City of Benton}, 929 F.3d 562 (8th Cir. 2019) (where parents are bringing Section
1983 claims for the loss of their right to family association with their children).

\textsuperscript{85.} 807 F.2d 6 (1st Cir. 1986).

\textsuperscript{86.} \textit{See id.} at 7 (describing the family relationship at issue: the decedent’s
mother, stepfather, and siblings brought suit under Section 1983 for wrongful death
after the decedent was beaten by guards in a detention center where he was an
inmate).

\textsuperscript{87.} \textit{See id.} at 8 (distinguishing Ortiz’s case on the grounds that he was
not a minor child at the time of his death and the state was not intruding upon
child-rearing decisions); \textit{see also id.} at 7 (describing the narrow question as whether
Section 1983 can protect a family member’s companionship interest with an adult
relative). This appeal was a result of the District Court of Puerto Rico granting a
motion for summary judgment dismissing the claims of the stepfather and siblings,
while allowing Ortiz’s mother’s claims to proceed in court. \textit{Id.} Ortiz’s mother
sued on her behalf as well as her son’s behalf and was awarded $20,000 and
$30,000 respectively. \textit{Id.}

\textsuperscript{88.} \textit{See id.} at 8 (declining to stray from Supreme Court precedent which holds
that government action must be directed at the family relationship and finding
instead that the incidental impact here did not qualify).

\textsuperscript{89.} \textit{See id.} at 9 (declining to extend precedent regarding government action
that is “directly aimed at the relationship between a parent and a young child” to
one that regards an “adult relative”). The First Circuit distinguished this case from
other precedent because the relationship here involved “a stepfather and siblings.”
\textit{Id.}

\textsuperscript{90.} 352 F.3d 820 (3d Cir. 2003).

\textsuperscript{91.} \textit{See id.} at 822. According to the court, the police officer “fired his weapon,
fatally shooting [the decedent] in the head. A subsequent investigation revealed
substantive due process rights under the Fourteenth Amendment do not extend to a parent’s right to companionship with their adult child and therefore, relief was not available under Section 1983. Further, the court found that the officer’s actions were not sufficiently directed at the family relationship so as to invoke due process protections. The Seventh Circuit ruled similarly in \textit{Russ v. Watts}, where the parents of an adult who had been fatally shot by a police officer brought a Section 1983 claim. The court, in finding that the officer did not intentionally harm the family relationship, held that there must be “intentional action by the state to interfere with [that] familial relationship” to be viable under Section 1983.

The Eighth Circuit in \textit{Partridge v. City of Benton}, considered the right of parents to companionship with their child after he was shot by police officers. Relying on the Supreme Court’s decision in \textit{Daniels v. that [the decedent] was unarmed.” Id. The court noted that the decedent was raised by his mother. Id. at 823. His father, who brought the suit, did not have much contact with his adult son. Id.

92. See id. at 828 (distinguishing this case on the grounds that “the Supreme Court has never considered whether parental liberty interests extend to the companionship of independent adult children”). The Third Circuit noted “that childhood and adulthood are markedly distinct, thus requiring different constitutional treatment in this context.” Id. at 829.

93. See id. at 830 (“[The officer’s] actions were not directed at the relationships between the parents and their son . . . .”). Because a liberty interest was not implicated here and precedent would not support Section 1983 liability for an act not directed towards the family relationship, the Third Circuit did not “recognize a constitutional violation.” Id.; see also \textit{Troxel v. Granville}, 530 U.S. 57, 75 (2000) (finding “that the application of [a visitation statute to a mother] and her family violated her due process right to make decisions concerning the care, custody, and control of her daughters”); Est. of Bailey by Oare v. York County, 768 F.2d 503, 509 n.7 (3d Cir. 1985) (finding that the child’s “father also has a cognizable liberty interest in preserving the life and physical safety of his child from deprivations caused by state action”), abrogated by \textit{DeShaney v. Winnebago Cnty.}, 489 U.S. 189 (1989). The \textit{Bailey} court held that this “right . . . logically extends from [the father’s] recognized liberty interest in the custody of his children and the maintenance and integrity of the family.” Id.

94. 414 F.3d 783 (7th Cir. 2005).

95. See id. (noting Watts was twenty-two years old when he was shot by a police officer).

96. Id. at 790. The Seventh Circuit explained that “[a]ffording plaintiffs a constitutional due process right to recover against the state in these circumstances would create the risk of constitutionalizing all torts against individuals who happen to have families.” Id. This holding marked the court’s overturning of two decades of precedent established in \textit{Bell v. City of Milwaukee}, 746 F.2d 1205 (7th Cir. 1984), “insofar as it recognized a constitutional right to recover for the loss of the companionship of an adult child when that relationship is terminated as an incidental result of state action.” \textit{Russ}, 414 F.3d at 791.

97. 929 F.3d 562 (8th Cir. 2019).

98. See id. at 564 (detailing the parents’ lawsuit against the officers for depriving them of their “right to a familial relationship” with their son). According to the court, the son was armed and reported to be suicidal; he was shot by police officers after he did not drop his weapon. Id.. The decedent’s parents brought Section 1983 claims against the officers in both their individual and official capacities. Id. These claims included “excessive force and deprivation of the right to a familial
Williams, which held that a state actor’s negligence does not amount to a due process violation, the Eighth Circuit emphasized that there must be a “deliberate decision[] of government officials to deprive a person of life, liberty, or property” in order for due process rights to apply. The court also emphasized that viable Section 1983 claims require the plaintiff to allege that the state actor intentionally acted to interfere with the family relationship. Because the plaintiffs did not allege that the officer intentionally interfered with the family relationship, the claim was dismissed on procedural grounds.

3. Intent to Interfere with the Family Relationship

The issue of intent to disrupt the family relationship overlaps between the two aforementioned categories. The Tenth Circuit in Lowery v. County of Riley held that a child’s Section 1983 claim to family association with her wrongfully incarcerated parent required a showing of the officer’s intent. In Lowery, the plaintiff’s father was wrongfully convicted of rape, aggravated burglary, and aggravated assault; he was incarcerated for ten years and spent another ten years relationship” and “failure to train and failure to adequately investigate police misconduct.”

99. 474 U.S. 327 (1986). Daniels held that the Due Process Clause is not implicated by a state actor’s negligent actions that cause loss of or injury to life, liberty, or property. Id. at 335–36.

100. See Partridge, 929 F.3d at 568 (emphasis omitted) (quoting Daniels, 474 U.S. at 331). The court also looked to Russ to support its holding that the plaintiffs’ claim was foreclosed because they did not allege the conduct of the police officers was “directed at the parent-child relationship.” (quoting Russ, 414 F.3d at 789–90).

101. See id. (Pleading a plausible familial-relationship claim under § 1983 requires an allegation that the state action was intentionally directed at the familial relationship.).

102. See id. (finding a lack of sufficient allegations to support a Section 1983 claim). The Eighth Circuit held that the parents’ claim was foreclosed because they neither originally alleged that the officer’s action “was directed at their relationship with [their son]” nor argued it during the appeal process. Id.

103. See Lowery v. County of Riley, 522 F.3d 1086, 1092 (10th Cir. 2008) (including the requirement for “[t]he conduct or statement . . . [to] be directed ‘at the familial relationship’” (quoting J.B. v. Washington County, 127 F.3d 919, 927 (10th Cir. 1997))); Gorman v. Rensselaer County, 910 F.3d 40, 47 (2d Cir. 2018) (“[W]e consider the intent requirement within the framework of the Due Process Clause of the Fourteenth Amendment.”).

104. 522 F.3d 1086 (10th Cir. 2008).

105. See id. at 1092 (“In addition, in Trujillo, we held that ‘an allegation of intent to interfere with a particular relationship protected by the freedom of familial association is required to state a claim under section 1983.’” (emphasis omitted) (quoting Trujillo v. Bd. of Cnty. Cmm’rs, 768 F.2d 1186, 1190 (10th Cir. 1985)))). But see Smith v. City of Fontana, 818 F.2d 1411, 1420 n.12 (9th Cir. 1987) (declining to follow Trujillo and holding that the facts giving rise to the plaintiff’s claim for excessive use of force by the police officer also give the plaintiffs’ children a substantive due process right to loss of companionship), overruled on other grounds by Hodgers-Durgin v. De La Vina, 199 F.3d 1037 (9th Cir. 1999); see also Shaw v. Stroud, 13 F.3d 791, 805 (4th Cir. 1994) (declining to extend substantive due process protections to incidental impacts).
as a registered sex offender. The plaintiff did not present evidence that the conduct of any of the officers was directly targeted at the parent-child relationship, so the court, guided by its precedent, concluded that qualified immunity shielded the officers and the municipality from liability.

In Gorman v. Rensselaer County, the Second Circuit considered a family association claim where the plaintiff was a former corrections officer. Notably, this case did not involve the death of a family member; instead, the plaintiff claimed his right to family association with his sister was violated after a conflict between the plaintiff and his sister’s boyfriend caused the deterioration of their family relationship. The plaintiff argued that his sister’s boyfriend intentionally interfered with his family association right, but the court determined there was insufficient evidence to substantiate that claim. Similar to other circuit courts, the Second Circuit held that specific intent was necessary to find that the plaintiff’s right to family association had been violated.

106. See Lowery, 522 F.3d at 1088–89 (explaining that plaintiff’s father claimed he was coerced into admitting to crimes he did not commit to appease police officers who would not provide him with a lawyer). He was later found innocent on account of DNA evidence excluding him as a possible perpetrator. Id. at 1088.

107. See id. at 1092 (explaining the plaintiff and her father’s goal was to bring the issue before a court (specifically, a court that would grant en banc review) after several courts declined to follow Trujillo and questioned its holding, and conceding that they did not have evidence that the officers intended to break up the family relationship at issue). Instead, Lowery followed Trujillo and held that the officers were entitled to immunity in both their individual and official capacities. Id. at 1092–93. The court explained that the availability of such a claim depends on whether the subordinate violated a plaintiff’s constitutional rights and whether there is “an affirmative link between the supervisor and the violation.” Id. at 1093. Without “active participation or acquiescence of the supervisor,” the supervisor may not be held liable. Id. (quoting Serna v. Colo. Dep’t of Corr., 455 F.3d 1146, 1151 (10th Cir. 2006)); Shaw, 13 F.3d at 799 (discussing the necessary elements for supervisory liability).

108. 910 F.3d 40 (2d Cir. 2018).

109. See id. at 44 (describing the plaintiff’s testimony “that his relationship with his sister deteriorated” because of the defendant). The plaintiff brought Section 1983 claims, and the court proceeded to analyze “the intent requirement within the framework of the Due Process Clause of the Fourteenth Amendment.” Id. at 47.

110. See id. at 44 (reiterating the plaintiff’s claim that his relationship with his sister deteriorated because of a conflict with her boyfriend who threatened the plaintiff).

111. See id. at 48 (holding that a reasonable jury would have insufficient evidence to find that the right to intimate association was violated). The Second Circuit considered the plaintiff’s Fourteenth Amendment claim and ultimately held that “any impairment of the sibling relationship was at best the indirect and incidental result of [the defendant’s] conduct.” Id.

112. See id. at 47–48 (emphasizing the need for there to be deliberate conduct (citing Daniels v. Williams, 474 U.S. 327, 331 (1986))).
Danny Burton, a Black man, was nineteen years old when he was accused of murdering Leonard Ruffin, who was shot in Detroit in 1987. The prosecution alleged that the three suspects and the deceased participated in a drug trafficking ring and that Burton was an accomplice. This theory rested on the testimony of four witnesses whose somewhat conflicting account of events supported the belief that Ruffin was shot as he was walking to Burton’s car. However, Detective Sanders, who was assigned to investigate the case, coerced Burton and the other witnesses into corroborating a story that fit the prosecution’s theory.

113. See Chambers v. Sanders, 63 F.4th 1092, 1095 (6th Cir. 2023) (explaining the charges); see also Maurice Possley, Danny Burton, Nat’l Registry Exonerations (June 23, 2022), https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5648 [https://perma.cc/3BJA-JJYK] (sharing Danny’s story, the details of the crime he was charged with, and the procedural history); Sophie Mishara, Danny Burton: A 32-Year Wait for the Truth to Set Him Free, Policing & Soc. Just. Hist. Lab. (May 2021), https://storymaps.arcgis.com/stories/ce6770664c0462da-67cebe47df1e7a7 [https://perma.cc/84RF-H57C] (reflecting on Burton’s story, the war on crack in Detroit in the 1980s, the abusive interrogation tactics used by Detective Sanders, Burton’s incarceration, and his exoneration). Mishara explains that the war on crack resulted in more convictions and specifically “target[ed] poor Black neighborhoods such as the ones where Danny Burton lived in Detroit.” Id. Simultaneously, “law enforcement adopted extreme and often illegal tactics.” Id. Detective Sanders was “in charge of interrogating Danny after his arrest.” Id.

114. See Chambers, 63 F.4th at 1095 (providing background on the conviction); see also Possley, supra note 113 (naming Burton, Paul Young, and David Owens as the three individuals arrested in connection with the murder). Young was arrested one day after the murder and “subsequently confessed to involvement and implicated Owens and Burton.” Id. “The prosecution contended that Owens killed Ruffin, and that Young and Burton helped dump the body in the alley.” Id.

115. See Chambers, 63 F.4th at 1095 (“The complaint in this case alleges that the conviction primarily rested on witness testimony from individuals who were present at the home where the shooting had allegedly occurred.”); see also Possley, supra note 113 (explaining that the witnesses were in a crack house and that while a portion of their testimony conflicted, the prosecution believed it was sufficient to move forward with the charges because “they testified that Ruffin was shot walking from [the] crack house to the car he was driving . . . that belonged to Burton”).

116. See Chambers, 63 F.4th at 1095 (“Detective Ronald Sanders’s investigative tactics allegedly included threats and physical violence against witnesses, including minors, to secure their testimony against Burton.”); see also Mishara, supra note 113 (explaining how Detective Sanders used “physically and psychologically abusive tactics” to manipulate the witnesses). According to Burton, “Sanders threatened him that he would never see his mother again and that he would be in prison for the rest of his life if he did not confess.” Id.; Possley, supra note 113 (explaining Detective Sanders’s abusive tactics, including bribery, threats to charge the witnesses with murder, and writing out statements for the witnesses who were under the influence of crack). One of the witnesses, Clara Hill, was fourteen years old when she was interrogated. Id. Hill claimed that she had been “locked in a closet and kept there even after she urinated on herself” to coerce her into testifying that Burton had been involved in the crime. Id.
A Michigan state court found Burton guilty of first-degree murder and sentenced him to life in prison without parole.\(^{117}\) Thirty-two years later, the prosecutor moved to vacate the conviction due to concerns over the witness statements, witness manipulation, and the investigative tactics used by Detective Sanders.\(^{118}\) One year after his release, Burton alleged *Brady* violations, malicious prosecution, and evidence fabrication against Detective Sanders and his employer, the City of Detroit—all of which were actionable under 42 U.S.C. § 1983 and 42 U.S.C. § 1988.\(^{119}\)

Burton’s two children then filed the present suit.\(^{120}\) Danny Lamont Chambers (Chambers) and Dontell Rayvon-Eddie Smith (Smith) claimed their right to family integrity was violated when their father was wrongfully convicted and incarcerated pursuant to Section 1983 and under *Monell*; they also filed several state law claims.\(^{121}\) Detective Sanders filed a motion to dismiss the Section 1983 claim, arguing that his indirect interference with the plaintiffs’ right to family integrity did not comprise a

\(^{117}\) See Chambers, 63 F.4th at 1095 (explaining the procedural history of the case and the sentence Burton received in state court); see also Possley, supra note 113 (discussing Young and Burton’s first-degree murder conviction and life imprisonment sentence).

\(^{118}\) See Chambers, 63 F.4th at 1095 (“Plaintiffs allege that, as a result, Burton spent thirty-two years in prison.”); see also Possley, supra note 113 (explaining that key witnesses recanted their statements and Detective Sanders threatened physical violence against the witnesses). For further discussion of the abusive tactics used against the witnesses, see supra note 116 and accompanying text. See also Interrogation: Torture and False Convictions, POLICING & SOC. JUST. HIST.LAB, https://policing.umhistorylabs.lsa.umich.edu/s/crackdowndetroit/page/interrogation-torture-and-false-convictions [perma link unavailable] (last visited May 15, 2024) (including several affidavits from witnesses regarding Detective Sanders’s abusive tactics in various cases).

\(^{119}\) See Chambers, 63 F.4th at 1095 (stating Burton’s claims); Possley, supra note 113 (same); see also Brady v. Maryland, 373 U.S. 83, 87 (1963) (holding “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution”); Justice Manual 9-5.000 - Issues Related to Discovery, Trials, and Other Proceedings, U.S. DEP’T JUST., https://www.justice.gov/jm/jm-9-5000-issues-related-trials-and-other-court-proceedings [https://perma.cc/EWL3-ZFAM] (last visited May 26, 2024) (explaining that *Brady* imposes a requirement to disclose “exculpatory and impeachment evidence when such evidence is material to guilt or punishment”). See generally 42 U.S.C. § 1988 (2024); id. § 1983 (encompassing Burton’s claims).

\(^{120}\) See Chambers, 63 F.4th at 1095 (“Several months after the city was dismissed from Burton’s suit, Burton’s sons filed the instant suit against Sanders and the city.”); see also Possley, supra note 113 (explaining how Burton’s children filed claims against Detective Sanders); Wimbley & Komer, supra note 70 (including thoughts from Chambers and Smith’s lawyer that this was a rare lawsuit, but that “the right to the preservation of family integrity, is reciprocal to both parents and children”).

\(^{121}\) See Chambers, 63 F.4th at 1095 (stating the claim); see also Wimbley & Komer, supra note 70 (quoting Chambers and Smith’s lawyer, who explained that the right to family integrity has been long-established in the judicial system and that children can bring an action for the violation of the right under the Due Process Clause); Chambers v. Sanders, No. 21-cv-10746, 2022 WL 1143486, at *1, *10 (E.D. Mich. Apr. 18, 2022) (reciting the plaintiffs’ federal and state law claims that Detective Sanders and the City of Detroit violated their right to family association when they wrongfully incarcerated their father), aff’d, 63 F.4th 1092 (6th Cir. 2023).
“cognizable due process right” and the City of Detroit similarly filed a motion to dismiss the Monell claim.122

The district court granted both motions to dismiss the Section 1983 and Monell claims.123 Chambers and Smith’s additional state law claims were dismissed for lack of jurisdiction, which fell within the district court’s discretion to decline to exercise supplemental jurisdiction.124 Chambers and Sanders appealed, arguing that the wrongful incarceration of their father for a significant period of time violated their substantive due process right to family association.125

IV. You’re (Not) in Big Trouble, Detective: The Sixth Circuit Holds That a State Actor Must Intend to Interfere with the Family Relationship

The Sixth Circuit ultimately determined that the United States District Court for the Eastern District of Michigan properly dismissed Burton’s children’s claim.126 Section A below discusses the Sixth Circuit’s analysis of the issue presented. Section B then discusses the application of that analysis to the facts of Chambers. Section C concludes with Judge Moore’s dissenting opinion.

A. Our Very First Step: Analyzing the Issue in Chambers

The Sixth Circuit began its analysis with Section 1983—the first step of which is to prove that a claim exists upon which relief can be

122. See Chambers, 63 F.4th at 1095 (stating the district court did not find a “cognizable due process right for family integrity when a party is indirectly harmed by a constitutional tort against a family member”); see also Chambers, 2022 WL 1143486, at *4 (agreeing with Detective Sanders based on precedent that “only the purported victim, or his estate’s representative(s), may prosecute a section 1983 claim” (quoting Claybrook v. Birchwell, 199 F.3d 350, 357 (6th Cir. 2000))).

123. See Chambers, 2022 WL 1143486, at *1, *4–10 (declining to find that Chambers and Smith’s constitutional right to family integrity had been infringed upon by Detective Sanders on either claim). Because the court found no cognizable interest and the claim “relied on the same theory of due process parental-interference” both Detective Sanders’s and the City of Detroit’s motions to dismiss were granted. Chambers, 63 F.4th at 1095.

124. See Chambers, 2022 WL 1143486, at *10 (declining to exercise supplemental jurisdiction and explaining that it was within the power of the court to so decline); see also id. (finding that the action was based upon federal question jurisdiction, and that by granting the motions to dismiss the Section 1983 and Monell claims, federal jurisdiction was gone); 28 U.S.C. § 1367 (2024) (outlining the statutory rules for supplemental jurisdiction).

125. See Chambers, 63 F.4th at 1096 (arguing that the district court erred in granting Detective Sanders’s motion to dismiss). “On appeal, Chambers and Smith reassert their argument that the substantive due process right of familial association extends to cases where the state has wrongfully incarcerated a parent for a significant period.” Id.

126. See id. at 1101–02 (explaining that because “no constitutional rights violation occurred under the facts alleged” and “[w]ith no underlying [constitutional] rights violation plausibly established” to support the Monell claim, the district court’s dismissal was proper).
granted.\footnote{See \textit{id.} at 1096 (explaining the Sixth Circuit's de novo review of the district court's dismissal for failure to state a claim).} Section 1983 only applies when (1) an individual acts under the color of state law (2) to deprive the complainant of a federal right.\footnote{See \textit{id.} (“For a claim under 42 U.S.C. § 1983, the plaintiff must allege two elements: (1) ‘the defendant acted under color of state law;’ and (2) ‘the defendant’s conduct deprived the plaintiff of rights secured under federal law.’” (quoting Fritz v. Charter Twp. of Comstock, 592 F.5d 718, 722 (6th Cir. 2010))). \textit{See generally} 42 U.S.C. § 1983 (2024) (creating a federal remedy when an actor “under color of any statute . . . subjects . . . any citizen of the United States . . . to the deprivation of any [constitutional] rights”).} Neither party contested the first prong of the claim; Detective Sanders acted under color of state law “in [the] course of his investigation.”\footnote{See \textit{Chambers}, 63 F.4th at 1096 (referencing the statutory elements and noting that neither party contested the fact that Detective Sanders was acting under color of law).} Therefore, the court focused on the alleged conduct that deprived Chambers and Smith of their right to family integrity.\footnote{See \textit{id.} (“As the city and Sanders have not contested that Sanders was acting ‘under color of state law’ in course of his investigation, we focus our inquiry on the second prong: whether the challenged conduct deprived Chambers and Smith of a federal right.”).}

The court then analyzed which rights are covered under the Fourteenth Amendment's guarantee of substantive due process and defined those protections as “guard[ing] against ‘governmental deprivations of life, liberty, or property . . . regardless of the adequacy of the procedures employed.’”\footnote{Id. (second alteration in original) (quoting Range v. Douglas, 763 F.3d 573, 588 (6th Cir. 2014))).} According to the court, these protections apply to rights directly stated in the U.S. Constitution as well as those deeply rooted in history and tradition.\footnote{See \textit{id.} (referring to the “freedom from government actions that ‘shock the conscience’” (first quoting \textit{Range}, 763 F.3d at 588; and then citing Bell v. Ohio State Univ., 351 F.3d 240, 249–50 (6th Cir. 2003))); \textit{see also} Moore v. City of E. Cleveland, 431 U.S. 494, 503 (1977) (tracing the origin of the Court’s history and tradition inquiry).} With regard to unenumerated rights, the Sixth Circuit recognized the Supreme Court’s warning that courts should use the “utmost care” before defining a new protected liberty.\footnote{See \textit{Chambers}, 63 F.4th at 1096 (quoting Washington v. Glucksberg, 521 U.S. 702, 720 (1997)) (qualifying this as a “tough test” (quoting Golf Vill. N., LLC v. City of Powell, 42 F.4th 593, 601 (6th Cir. 2022))); \textit{see also} Glucksberg, 521 U.S. at 720–21 (emphasizing the history and tradition test). The self-described “restrained methodology” from \textit{Glucksberg} limits due process protections to “those fundamental rights and liberties which are, objectively, ‘deeply rooted in this nation’s history and tradition’” and “require[] . . . a ‘careful description of’” that interest.” \textit{Id.} (first quoting \textit{Moore}, 431 U.S. at 503; and then quoting Reno v. Flores, 507 U.S. 292, 503 (1993)). In applying this test, the Sixth Circuit found that the substantive due process right at issue differed from the “longstanding [family] liberty interest[s].” \textit{Chambers}, 63 F.4th at 1096.)

The Sixth Circuit analyzed family integrity and autonomy as due process rights and looked to other cases involving family interests such
as custody and education to aid in its analysis.\textsuperscript{134} The court warned that these due process protections generally become relevant when the contested state action is “directed at the family relationship.”\textsuperscript{135} As a matter of first impression, the Sixth Circuit addressed whether the state deprived Burton’s children of their family integrity right to routine interaction with their father by wrongfully incarcerating him.\textsuperscript{136} While the court held that the children in this case were not deprived, it continued its analysis as if such a right were implicated.\textsuperscript{137}

B. \textit{Precedent Made Me Do It: Application to the Facts of Chambers}

The Sixth Circuit first highlighted that the Supreme Court has limited the scope of due process guarantees to deliberate government interferences.\textsuperscript{138} To violate an individual’s due process rights, the state action must be “arbitrary, or conscience shocking.”\textsuperscript{139} The “conscience shocking” standard is somewhat of a subjective spectrum in constitutional tort law, but it “categorically fails” to be met by negligent behavior.\textsuperscript{140} A


\textsuperscript{135} See \textit{id.} (using as examples visitation, custody, educational decisions, living arrangements, and choosing to have children as liberty interests that can implicate direct interference by the state). These interests are more likely to be actionable due to the nature of the intrusion. \textit{Id.}

\textsuperscript{136} See \textit{id.} at 1097 (“This circuit has not previously decided whether the right to family integrity is implicated whenever the state deprives a child of routine interaction with a parent through wrongful incarceration.” (citing \textit{Purnell v. City of Akron}, 922 F.2d 941, 948 n.6 (6th Cir. 1991))). In \textit{Purnell} in 1991, the Sixth Circuit had declined to decide whether the children of a man who was wrongfully killed by state police could bring a Section 1983 claim for deprivation of the parent-child relationship. \textit{Id.}

\textsuperscript{137} See \textit{id.} (noting that even if a due process right had been identified, such a right would not be violated in this case because Chambers and Smith did not allege that Detective Sanders had the requisite state of mind to interfere with their family integrity right to be with their father). The Sixth Circuit also asserted that this outcome finds support in other courts of appeal and Sixth Circuit precedent. \textit{Id.}

\textsuperscript{138} See \textit{id.} (“\textit{H}istorically, the guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property.” (emphasis omitted) (quoting \textit{Daniels v. Williams}, 474 U.S. 327, 331 (1986))).

\textsuperscript{139} See \textit{id.} (quoting County of Sacramento v. Lewis, 523 U.S. 833, 847 (1998)) (clarifying that this action must be analyzed in a constitutional sense). “\textit{O}nly the most egregious official conduct can be said to be ‘arbitrary in the constitutional sense.’” \textit{Lewis}, 523 U.S. at 846 (quoting \textit{Collins v. Harker Heights}, 503 U.S. 115, 129 (1992)) .

\textsuperscript{140} See \textit{Chambers}, 63 F.4th at 1097 (holding that intentional conduct can meet the conscience shocking standard, while negligent behavior does not). As a result, the court clarifies that: “[\textit{T}he majority of circuits have recognized that ‘not every . . . act that results in an interference with the rights of familial association is actionable.’” \textit{Id.} at 1097–98 (second alteration in original) (quoting \textit{Lowery v. County of Riley}, 522 F.3d 1086, 1092 (10th Cir. 2008)); see also Robert C. Farrell, \textit{An Excess of...
state actor must possess the requisite culpable state of mind to be held responsible for interfering with family integrity rights.141

The Sixth Circuit also relied heavily on the cases in the intent-to-interfere family association circuit split to support its finding against a violation of due process here.142 According to the court, Smith provided the only support that incidental impacts, such as those found in Chambers, are sufficient to violate the right to family integrity.143 The court found this case law unpersuasive and described the Ninth Circuit’s reasoning as flawed, both for its broad interpretation and mischaracterization of Section 1983’s legislative history.144 The Sixth Circuit also referred to its own precedent on Section 1983, where it previously rejected claims of family members of individuals who were wrongfully killed by police officers.145

Methods: Identifying Implied Fundamental Rights in the Supreme Court, 26 St. Louis U. Pub. L. Rev. 203, 236 (2007) (describing the “shocks the conscience” standard as “hardly provid[ing] any sort of objective standard that would make police conduct subject to review by courts in a consistent way”).

141. See Chambers, 63 F.4th at 1098 (“The conduct or statement must be directed at the familial relationship with knowledge that the statements or conduct will adversely affect that relationship.” (quoting Lowery, 522 F.3d at 1092)).

142. See id. at 1097–98 (first citing Lowery, 522 F.3d at 1092; then citing Ortiz v. Burgos, 807 F.2d 6, 9 (1st Cir. 1986); then citing Gorman v. Rensselaer County, 910 F.3d 40, 48 (2d Cir. 2018); then citing McCurdy v. Dodd, 352 F.3d 820, 827–28 (3d Cir. 2003); then citing Russ v. Watts, 414 F.3d 783, 790 (7th Cir. 2005); then citing Partridge v. City of Benton, 929 F.3d 562, 568 (8th Cir. 2019); and then citing Shaw v. Stroud, 13 F.3d 791, 804–05 (4th Cir. 1994)) (asserting that not all alleged violations of a family-related right rise to such a level that can be actionable).

143. See id. at 1098–99 (explaining that the Ninth Circuit is the only circuit court that “allows children to claim [a] violation of their right to family integrity against state actions which incidentally impact their relationship with their parents” (citing Smith v. City of Fontana, 818 F.2d 1411, 1417–20 (9th Cir. 1987))).

144. See id. at 1099 (describing the flawed reasoning of the Ninth Circuit in Smith). The Sixth Circuit first reemphasized the fact that the Supreme Court in Glucksberg “cautioned against such broad interpretations of rights under the due process clause.” Id. (citing Washington v. Glucksberg, 521 U.S. 702, 720 (1997)). The court then discussed how the Ninth Circuit’s reliance on the legislative history behind the Ku Klux Klan Act (also the Civil Rights Act of 1871) was mischaracterized, as it came from Representative Butler who was mocking the Act rather than supporting it. Id. According to the Chambers court, “Representative Butler was an opponent of this provision . . . and said that he did not believe any real cases would be decided under it.” Id. The Sixth Circuit argued that the context behind the legislative history actually weighs against the idea that incidental impacts qualify as state harm for due process purposes. Id. But see Civil Rights Act of 1871, Pub. L. No. 42-22, 17 Stat. 13 (specifically referring to the deterrence of witnesses, the prevention of true and complete testimony, and witness intimidation generally).

145. See Chambers, 63 F.4th at 1100 (specifying that Section 1983 claims are “entirely personal to the direct victim of the alleged constitutional tort” (quoting Claybrook v. Birchwell, 199 F.3d 350, 357 (6th Cir. 2000))); id. (explaining only victims themselves or administrators of their estate may pursue a Section 1983 claim for wrongful death cases (citing Claybrook, 199 F.3d at 350)). The Sixth Circuit references a series of unpublished cases, which similarly do not allow plaintiffs in a position such as Chambers and Sanders to vindicate their own rights or the rights of their parents. Id.
The Chambers court ultimately established a rule that an officer must possess a requisite culpable state of mind directed toward the family relationship or those relationships traditionally associated with it to be liable under Section 1983. The court relied on the Tenth Circuit’s decision in Lowery for support, as that case also concluded the state actor must have had knowledge that their actions would harm the family relationship. Similarly, the court reasoned that the holdings in Ortiz, Gorman, McCurdy, Russ, Partridge, and Shaw supported the conclusion that a child’s Section 1983 claim for the wrongful incarceration of their parent requires the state officer to intentionally break apart the family relationship. By relying on and agreeing with its sister circuits, the Sixth Circuit added to the circuit-wide difficulty in establishing a child’s Section 1983 cause of action for the wrongful incarceration of their parent.

Despite the court’s unwillingness to find that the Chambers plaintiffs had a viable Section 1983 claim, it recognized that wrongful incarceration claims will rarely satisfy this stringent constitutional standard. Indeed, in Chambers, the plaintiffs’ claim failed because Detective Sanders’s conduct was not directed at the family relationship and his “misconduct and deliberate indifference” did not constitute “conscience shocking” treatment. However, the court acknowledged that without such a high standard, litigation from all family members alongside the wrongfully incarcerated individual would burden courts and hinder their ability to establish clear boundaries for legitimate family integrity claims.

146. See id. (“The government official must have, at a minimum, acted with a culpable state of mind directed at the plaintiff’s family relationship or a decision traditionally within the ambit of the family.”).

147. See id. at 1098 (explaining that there must be knowledge that the action would harm the family relationship and that the action was directed at that relationship); see also Lowery, 522 F.3d at 1092 (emphasizing the intent requirement for family integrity claims to be actionable under Section 1983).

148. For the referenced cases and support from the other circuits, see supra note 142.

149. See Chambers, 63 F.4th at 1100 (“Our precedent and that of most other circuits lead us to conclude that substantive due process claims based on the right to family integrity require that the state official act with a culpable state of mind directed at the family relationship. The due process right of familial association does not protect against all forms of state action that impact parent-child relationships.”).

150. See id. at 1100–01 (explaining the necessity of requiring plaintiffs to prove intent but also noting how such a requirement will rarely lead to a finding of a due process violation in family integrity cases).

151. See id. at 1101 (declining to conclude that any conscience shocking action towards Burton was directly transferrable to his children).

152. See id. (reasoning that this rule is the only way to remain consistent with the Supreme Court’s precedent counseling against broadly interpreting due process rights as well as the rules adopted by the sister circuits).
C. Family Protection Rides Again: Judge Moore’s Dissent

Judge Moore’s dissenting opinion rejected the court’s requisite state of mind standard as well as its application to the facts of the case.\(^{153}\) The dissent asserted that the correct standard was whether the action of the state official shocked the conscience.\(^{154}\) In wrongful incarceration cases, this standard would consider the loss of the parent-child relationship through the parent’s perpetual absence in the child’s life.\(^{155}\) Significantly, Judge Moore disagreed with the majority’s argument that a specific intent requirement was necessary to avoid burdening the judicial system; the “more than simpl[e] neglig[ence]” requirement outlined by Daniels inherently solved that problem.\(^{156}\) Further, the dissent noted that the cases the majority relied upon to distinguish traditionally protected family interests, such as a parent’s right to rear their child’s education in Meyer, involved interests that were in fact impacted by wrongful incarceration.\(^{157}\)

The dissent also criticized the majority for “overlook[ing] the unique nature of the due-process right to family association and integrity—it is a reciprocal right.”\(^{158}\) The dissent argued that a reciprocal right exists

\(^{153}\) See id. at 1102 (Moore, J., dissenting) (describing the conduct of Detective Sanders as deliberate and intentional).

\(^{154}\) See id. (questioning the precedent the majority relied on). Judge Moore stated: “[T]he Supreme Court’s precedent instructs that [the court] ask whether the official’s conduct shocks the conscience to determine whether an executive official violated a person’s substantive-due-process rights. But the majority looks outside this framework and instead turns to other sibling circuits to impose a state-of-mind requirement—a requirement with an outdated and mooted rationale.” Id. at 1106 (emphasis omitted).

\(^{155}\) See id. at 1102, 1109–10 (asserting that, even under the stricter “shock the conscience” standard, Detective Sanders’s conduct constituted an intent to interfere with the family relationship). According to Judge Moore:

The risks and consequences of physically, mentally, and emotionally abusing witnesses to obtain false statements and testimony, fabricating evidence, and refusing to turn over exculpatory evidence in order wrongfully to convict an innocent person and deprive them of their family—and necessarily deprive their family of them—are self-apparent and extreme. Id. at 1112.

\(^{156}\) See id. at 1106–07 (quoting Smith v. City of Fontana, 818 F.2d 1411, 1420 n.12 (9th Cir. 1987)) (“Now that Daniels has closed this potential floodgate by requiring the act causing the deprivation to have been more than simply negligent, Trujillo’s additional focus on the state actor’s motivation is no longer necessary to serve its purpose.” (quoting Smith, 818 F.2d at 1420 n.12)). Judge Moore argued that the majority, in applying the shocks-the-conscience standard to Detective Sanders’s state of mind, did not follow the Supreme Court’s Daniels precedent. Id.

\(^{157}\) See id. (“By deliberately procuring the wrongful conviction of [plaintiffs’] father despite knowing of his innocence, the state, here too, interfered with parental decisions regarding education, living arrangements, the size of the family, and custody.”). Judge Moore also highlighted the difference between a Section 1983 claim regarding a family member’s rights and a Section 1983 claim regarding one’s own family integrity rights to associate with a harmed family member. Id. at 1108.

\(^{158}\) See id. at 1105 (citing Kovacic v. Cuyahoga Cnty. Dep’t of Child. & Fam. Servs., 724 F.3d 687, 700 (6th Cir. 2013)) (describing the family relationship as one that is shared between a parent and a child).
when an action “that deprives one family member of their ability to associate with their family likewise deprives the family of their constitutional right and ability to associate with that member.”159 Accordingly, proceeding with caution in substantive due process cases should not equate to abandoning family integrity protections; following precedent in this regard would lead to a different outcome.160

V. FORCED TO HAVE MERCY: CHAMBERS MISAPPLIES THE FAMILY ASSOCIATION CIRCUIT SPLIT AND AVOIDS IMPLICATIONS WITHOUT PROVIDING SOLUTIONS

This Note argues that the Chambers court should not have relied on the intent-to-interfere family association line of cases because the reasoning and conclusions of those cases were not applicable.161 Section A argues that the Sixth Circuit incorrectly equated police brutality cases with wrongful incarceration cases, and that the reasoning behind denying a Section 1983 remedy to the former does not apply to the latter. Section B discusses the Sixth Circuit’s flawed conflation of parental claims for the loss of a child with children’s claims for the loss of a parent, which does not account for the reciprocal nature of the family relationship nor the age of the child when the parent was removed from their life. Finally, Section C explains that because the Chambers rule will lead to rare remedies for children seeking to recover for the wrongful incarceration of a parent, the decision conflicts with well-established tort law principles and will negatively impact marginalized communities the most.

A. Crimes and Misinterpreted Demeanor: Wrongful Incarceration Is Not an Accident

Although Chambers concerned a child’s claim for the wrongful incarceration of their parent, the majority relied in part upon the police brutality line of cases to find that state actors must have acted with intent towards the family relationship for an individual to have been deprived of due process.162 However, this argument is flawed because police brutality and wrongful incarceration—while both severe and unjust—are two

159. See id. at 1106 (emphasizing the importance of considering the reciprocal relationship when analyzing legal questions such as the one posed here).
160. See id. at 1114 (differentiating between an approach that does not create new substantive due process rights but still acts diligently to protect those already identified). Judge Moore did not believe that it was necessary to create any new substantive due process rights for the Sixth Circuit to find in favor of the plaintiffs here. Id. For further discussion of how Judge Moore described the claims in this case to intersect with established family-related due process rights, see supra note 157 and accompanying text.
161. For further discussion of how the court misapplied precedent, see infra Sections VA–B.
162. See Chambers, 63 F.4th at 1097 (emphasizing the historic requirement of a government official deliberately interfering with a constitutionally protected right).
different situations. Wrongful incarceration cases, like Chambers, are often characterized by ongoing, conscious decisions made by a detective to coerce witnesses, fabricate testimony, and purposefully blame an individual for a crime without sufficient evidence. At a minimum, this constitutes a state actor’s reckless disregard for the impact of their actions, which is the proper standard to apply in such cases.

Police brutality cases, including Ortiz, Shaw, and Russ, fundamentally differ from wrongful incarceration cases because, in the latter situation, the state officer objectively has more time to process their actions. Requiring intentional interference with the family relationship.


165. See Disregard, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining reckless disregard as “[c]onsidering to the consequences of an act”). For further discussion of why reckless disregard is the appropriate standard to apply, see infra notes 167–169 and accompanying text.

166. See Allen Slater, Note, It Should Never Be Justified: A Critical Examination of the Binary Paradigm Used to Categorize Police Shootings, 21 Berkeley J. Afr. Am. L. & Pol’y 1, 29 (2020) (describing “mere negligence” as the “failure to act with the level of care that a reasonable person would under similar circumstances”). Slater argues that the binary right-and-wrong framework applied to police brutality cases is inadequate and does not adequately address victims’ needs. Id. at 4. Instead, the correct framework should build off of negligence and apply “a negligence-inspired lens to police shootings.” Id. at 4–5. To bring this into the police brutality and Section 1983 context, Slater cites Daniels. Id. at 29 n.189. “[F]ar from an abuse of power, lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person.” Id. (quoting Daniels v. Williams, 474 U.S. 327, 332 (1986)); see also Chambers, 63 F.4th at 1095 (holding the detective procured a wrongful conviction); Ortiz v. Burgos, 807 F.2d 6 (1st Cir. 1986) (detention guards beat victim to death); Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994) (police officer shot and killed
ship should not extend to wrongful incarceration cases because applying that rule understates the severity of the mistake, time required for the act, and the lack of due diligence involved with procuring a lawful and correct conviction. While “[n]egligent behavior categorically fails to shock the conscience” and “conduct intended to injure is ‘most likely to rise to the conscience-shocking level,’” that does not mean there is no middle ground. Therefore, not only do police brutality cases concern a completely different kind of officer intent—one that is inapplicable in wrongful incarceration cases—but there are other state of mind requirements, such as reckless disregard, that could apply to wrongful incarceration cases.

victim during arrest); Russ v. Watts, 414 F.3d 783 (7th Cir. 2005) (police officer shot and killed victim).

167. See Slater, supra note 166, at 13, 29 & n.189 (differentiating between mistakes and officer negligence and utilizing the “reasonable person” standard when an officer fails to use due care); see also ÖSTROM, HAMLIN, SCHAUFLER & RAEN, supra note 164, at 17, 27 (using the predictive model: “Compared to person-related cases, homicide cases were predicted to add almost four months (110 days) to case duration.”); James Stone, Note, Past-Acts Evidence in Excessive Force Litigation, 100 Wash. L. Rev. 569, 572 (2022) (discussing the convergence of constitutional law, evidence law, and judicial discretion as all having the potential to prevent some police officers from committing civil rights violations and explaining that questions about use of force usually come down to split-second decision-making). Stone analyzes how the Federal Rules of Evidence can exacerbate this through the “past-act” rule. Id. The “past-act” rule prevents “evidence of a party’s past” from being used to damage their character. Id.


169. See Chambers, 63 F.4th at 1107 (Moore, J., dissenting) (“[A]s long as the state official’s action which deprived the plaintiffs of their liberty was more than merely negligent, the plaintiffs can state a section 1983 claim without further alleging that the official was trying to break up their family.” (quoting Smith v. City of Fontana, 818 F.2d 1411, 1420 n.12 (9th Cir. 1987))). The “spectrum of conduct” ranges from “[m]erely negligent tortious conduct” to conduct “intended to injure” without any justifiable government interest.” Id. at 1110 (quoting Range v. Douglas, 763 F.3d 573, 590 (6th Cir. 2014)); see also Sonja Larsen, Anne E. Melley, Karen L. Schultz & Eric C. Surette, Relevance of Defendant’s State of Mind to Action Under Section 1983 Civil Rights Statute, 15 Am. Jur. 2d Civil Rights § 59, Westlaw (database updated Oct. 2023) (stating “42 U.S.C.A. § 1983 contains no state-of-mind requirement independent of that necessary to state a violation of an underlying federal right”). Depending on the federal right violated, it may be necessary to establish a requisite state of mind. Id. For further discussion of states of mind generally and the requisite intent level a state actor must possess for an individual to have a viable Section 1983 claim, see supra note 168 and accompanying text.
As articulated by Judge Moore in her Chambers dissent, the “shocks the conscience” standard should not focus on whether the officer intended to break up the family relationship but instead should be applied to the officer’s general conduct. As the dissent highlights, the Sixth Circuit fundamentally conflated state of mind with degree of culpability and implemented this requirement incorrectly. Therefore, it would have been adequate to either impose a lesser state-of-mind requirement or focus solely on whether the pursuit of a wrongful conviction by Detective Sanders shocked the conscience.

Imposing a lesser state-of-mind requirement would be consistent with Section 1983 litigation because qualified immunity would still apply if an officer reasonably did not know that the right at issue existed. It is highly unlikely that during the Chambers investigation Detective Sanders did not realize Burton was the father of two children. Detective Sanders’s reckless disregard of this relationship, coupled with his knowledge of Burton’s relationship to Chambers and Smith, is simply more culpable than an officer who merely pursued a wrongful conviction.

170. See Chambers, 63 F.3d at 1102 (Moore, J., dissenting) (“Therefore, I would measure whether [Detective Sanders’s] conduct towards [Chambers and Smith]—intentionally and deliberately procuring a wrongful conviction against their father and depriving them of their father—shocks the conscience.”); see also I. SHLOMoN H. NAMiMoD, CiVil RiGhtS CiViL LIBERTiES LiTiGATiON: THE LoW oF SECTioN 1983 § 3:32, Westlaw (database updated Sept. 2022) (reflecting on the differing approaches the Third Circuit has taken to the “shocks the conscience” standard, notably in its 1994 decision, Fagan v. City of Vineland, 22 F.3d 1296 (3d Cir. 1994) (citing Fagan, 22 F.3d at 1296)). In Fagan, the majority tried to reconcile “shocks the conscience” with “deliberate indifference,” while the dissent argued that this was too high of a threshold and “utterly reckless indifference” should suffice. Id. (quoting Fagan, 22 F.3d at 1309). Both the Fagan majority and dissent ultimately conceded that the “shocks the conscience” standard was vague. Id.


172. For further discussion of why a lesser state of mind would have been adequate, see supra notes 170–171 and accompanying text.

173. See Chambers, 63 F.3d at 1106–07 (Moore, J., dissenting) (rejecting the need for an intent standard). Supreme Court case law defines conscience-shocking treatment as “injuries . . . produced with culpability falling within the middle range, following from something more than negligence but ‘less than intentional conduct, such as recklessness or gross negligence.’” Id. at 1107 (emphasis omitted) (quoting County of Sacramento v. Lewis, 523 U.S. 833, 849 (1998)); see, e.g., Harlow v. Fitzgerald, 457 U.S. 800, 819 (1982) (“[I]f the official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard, the defense should be sustained.”); Berman v. Young, 291 F.3d 976, 984 (7th Cir. 2002) (holding that social workers were entitled to qualified immunity when they removed a child from her home under the belief that the child had abusive caretakers because they were not on sufficient notice that they were violating a constitutional right), as amended on denial of reh’g (June 26, 2002).

174. See Chambers, 63 F.3d at 1104 (Moore, J., dissenting) (inferring that Detective Sanders, who “spent months investigating Burton for first-degree murder . . . presumably knew that the suspect of his investigation had children”). Judge Moore
that this conviction was not procured lawfully, should be sufficient to support a Section 1983 claim for Burton’s children.\textsuperscript{175} Regardless of whether the Sixth Circuit applied the shocks the conscience standard more broadly or adopted a lesser state-of-mind standard, it likely would have led to a different outcome with Chambers and Smith being successful in their claim.\textsuperscript{176}

B. Double Trouble: Equating Child and Parental Section 1983 Claims

Understates the Importance of the Formative Years

The parent-child relationship is inherently reciprocal, and the incarceration of a parent has a tremendous impact on their children—a fact that was seemingly overlooked by the majority but was an important point in Judge Moore’s dissent.\textsuperscript{177} While the emotional impact of a loss on either end of this relationship is difficult, it is more profound on children during their formative years who suffer from the loss of their caregiver.\textsuperscript{178} It is difficult to imagine how a liberty interest is not violated

\textsuperscript{175} See id. at 1106 (questioning the likelihood that Detective Sanders did not know the circumstances and effects of the conviction); see also Hernandez v. Foster, No. 09 C 2461, 2009 WL 1952777, at *8 (N.D. Ill. July 6, 2009) (“Moreover, the allegations of coercion and misrepresentations are of a nature that any reasonable official would recognize that this conduct transgresses plaintiffs’ constitutional rights.”). The Hernandez court rejected a qualified immunity defense due in part to “a reasonable inference that defendants knew their actions were unconstitutional.” Id. at *7; Kennedy, supra note 17, at 917–20 & n.57 (expanding upon some of the limited circumstances where the Supreme Court has clearly recognized a child’s rights, such as falling under the constitutional definition of “persons” and rights related to criminal sentencing). Kennedy explains that the shared interest of parents and children does not hinder a child’s right to family integrity due to the “commonality of interests.” Id. at 920–21.

\textsuperscript{176} See Chambers, 63 F.4th at 1108 (Moore, J., dissenting) (describing Detective Sanders’s conduct as “deliberately procuring the wrongful conviction of [plaintiffs’] father despite knowing of his innocence”). Based on Detective Sanders’s conduct, Judge Moore asserts that “the state . . . interfered with parental decisions regarding education, living arrangements, the size of the family, and custody.” Id.

\textsuperscript{177} See id. at 1104–06 (describing the “unique nature” of the family relationship and the importance of considering that factor in judicial determinations); see also Chesa Boudin, Note, Children of Incarcerated Parents: The Child’s Constitutional Right to the Family Relationship, 101 Nw. J. Crim. L. & Criminology 77, 77–78 (2011) (articulating the third-party harms that result when the parents of minor children are incarcerated).

\textsuperscript{178} See Kennedy, supra note 17, at 943 (describing the effects on children in the context of removal in dependency proceedings). Kennedy explains that negative effects include “anxiety, attachment disorders, trauma, and other negative health experiences due to the ambiguous loss of their caretakers.” Id.; Boudin, supra note 177, at 82 (noting that “63% of federal inmates and 52% of state inmates reported having minor children”); Fran McNeely, Children of Incarcerated Parents: Prisoners of the Future?, 36 DEC PROSECUTOR 12, 28 (2002) (referencing intergenerational trauma as a negative effect of a parent’s incarceration). Other possible consequences are "exposure to substance abuse, domestic violence, poverty or child neglect." Id.; see also Chambers, 63 F.4th at 1104–06 (Moore, J., dissenting) (acknowledging the reciprocal right between family members).
when a child is deprived of this relationship. As such, a child’s family integrity claim should be afforded special deference due to the foreseeable impact on their emotional health and upbringing.

Claiming that the alleged Section 1983 violation does not transfer over from a wrongfully incarcerated parent to their child does not protect the family relationship as indicated by constitutional history and precedent. Growing Supreme Court and circuit court precedent about the family relationship and the nature of that relationship should have persuaded the Sixth Circuit to rule differently. For example, despite denying the plaintiffs’ Section 1983 claim, the First Circuit in Ortiz specifically distinguished “minor child[ren] still within ‘the care, custody, and management’ of [their] parents” as a protected substantive due process class. This distinction indicates that the First Circuit recognized a key difference in the parent-child relationship when the child is a minor.

179. See Chambers, 63 F.4th at 1105–06 (Moore, J., dissenting) (rejecting the notion that there is only a unilateral interest in the parent-child relationship and emphasizing that conduct which harms one party in the reciprocal family relationship will also harm the other (citing Kovacic v. Cuyahoga Cnty. Dep’t of Child. & Fam. Servs., 724 F.3d 687, 700 (6th Cir. 2013))).

180. See Kennedy, supra note 17, at 943–44 (describing the negative effects children experience when they are removed from their parent in the dependency proceeding context); see also Boudin, supra note 177, at 82 (“Yet children’s interests are not, as a matter of right, factored into criminal justice determinations involving their parents.”); McNeeley, supra note 178, at 27–28 (focusing on children up to six years of age and noting that “lack of adequate care-giving may adversely affect developmental achievements that lay the foundation for future personal competencies”). McNeeley refers to the incarceration of a parent as “a mega-risk factor” that “can produce intergenerational patterns of crime and violence.” Id. at 28.

181. See Chambers, 63 F.4th at 1098 (denying a remedy under Section 1983 on the grounds that Detective Sanders’s conduct was not directed at Chambers and Smith’s family relationship with their father); see also Elrod, supra note 62 (explaining the role of Congress and the Supreme Court in the federalization of family law). Elrod discusses how, over the years, the Supreme Court has “extend[ed] constitutional privacy protections” via the Fourteenth Amendment to an increasing number of persons. Id. For example, the Supreme Court-protected family relationships now extend beyond marriage and include “[u]nwed fathers who establish a relationship with their child” and the relationship between grandparents and their grandchildren. Id.

182. See Kennedy, supra note 17, at 925 (“The Court stated, ‘the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.’” (quoting Santosky v. Kramer, 455 U.S. 745, 760 (1982))); Elrod, supra note 62 (describing how the Supreme Court “has repeatedly used the U.S. Constitution to extend constitutional privacy protections to increasing numbers of persons”). For further discussion of the Supreme Court’s recognition of family integrity rights, see supra notes 64–67 (providing the Court’s holdings in Meyer and Pierce and their significance). But see generally Dobbs v. Jackson Women’s Health Org., 142 S. Ct. 2228 (2022) (indicating the current Supreme Court may be less willing to recognize substantive due process claims rooted in the right to privacy).

183. Ortiz v. Burgos, 807 F.2d 6, 7–8 (1st Cir. 1986) (describing Supreme Court decisions as involving two categories of family liberty interests: “private family decisions” and cases where “the state seeks to change or affect the relationship of parent and child in furtherance of a legitimate state interest”).

In *Chambers*, Burton was nineteen years old when he was convicted and both of his children were minors who suffered the loss of their father during their most formative years; his children were therefore at risk for a plethora of negative impacts that affect young children of incarcerated parents.  

The constitutional harm inflicted by wrongful incarceration on the family relationship differs greatly from other Section 1983 claims, such as unlawful searches and wrongful or false arrests, due to the prolonged separation endured by the parent and child. In *Chambers*, the plaintiffs did not argue that a short-term violation of their father’s civil rights resulted in the violation of their own constitutional right to parental companionship. Instead, this case demonstrated that all of the decisions made by Detective Sanders and the City of Detroit were a conscious string of events that removed Burton from his children’s lives for over thirty years. Considering the reciprocal nature of the family relationship, the Sixth Circuit did not properly balance the interests of the family against the interests of the state.

Moreover, while the *Chambers* court did not reach the issue of qualified immunity, such a defense should be limited when dealing with wrongful incarceration and should not be readily available in cases with

185. See Possley, supra note 113 (discussing the background of Burton’s case); *see also Children of Incarcerated Parents*, supra note 184 (discussing the implications of children having incarcerated parents).

186. See generally THOMAS R. DONOHUE, LEONARD H. KESTEN & FRANCESCA M. PAPA, CIVIL RIGHTS CLAIMS AGAINST MUNICIPALITIES § 7.4 (3d ed. 2024) (“The majority of Section 1983 claims lodged against municipalities is based on the conduct of police officers, including excessive force, false arrest, malicious prosecution, and unreasonable searches and seizures.”); *What Is a Section 1983 Lawsuit?*, ANKIN L. (May 31, 2023), https://ankinlaw.com/what-is-a-section-1983-lawsuit/ (listing false arrest or imprisonment, malicious prosecution, and failure to intervene or excessive use of force as common bases of Section 1983 claims); HB 1470: Compensation for the Wrongfully Convicted, ACLU PA., https://www.aclupa.org/en/legislation/hb-1470-compensation-wrongfully-convicted (last visited May 26, 2024) (“People have been falsely imprisoned for an average of about 12 years.”). *See also* sources cited *supra* note 164 and accompanying text for a discussion of why homicide cases generally take much longer to resolve than other types of lawsuits.

187. See *Chambers* v. *Sanders*, 63 F.4th 1092, 1096 (6th Cir. 2023) (reiterating Chambers and Smith’s claim that the right to family integrity extends to the wrongful incarceration of “a parent for a significant period of time”).

188. See *id.* at 1102 (Moore, J., dissenting) (“[W]e are faced with children who lost their association with their father for thirty-two years because a police officer deliberately and intentionally procured a false conviction against their father that condemned him to a life sentence of imprisonment.”).

189. See *id.* at 1105–06 (explaining the reciprocal family relationship and stating that it should “inform determinations regarding whether a state official has violated [that] right”); *see also* Novek, *supra* note 164, at 1 (discussing the two competing state interests of qualified immunity: accountability and protection from liability).
similar fact patterns. Since the first application of qualified immunity to a Section 1983 claim, the judiciary has stayed consistent in requiring that the state officer act in good faith. The actions Detective Sanders took in *Chambers* were not rash and illustrated conscious, systematic decisions that deprived the plaintiffs of their constitutional right to be with their father. Therefore, qualified immunity should not be an applicable defense in cases similar to *Chambers*.

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190. See David J. Oliveiri, Annotation, *Defense of Good Faith in Action for Damages Against Law Enforcement Official Under 42 U.S.C.A. § 1983, Providing for Liability of Person Who, Under Color of Law, Subjects Another to Deprivation of Rights*, 61 A.L.R. Fed. 7 Art. 1, § 2[a] (1983) (describing how “a number of courts have subscribed to the general view that [qualified immunity] consists not only of a subjective component that the official acted without malice or improper intentions but also an objective component to the extent that the belief of the official in the actions taken, or the actual execution of these actions, must be reasonable”); Taylor Kordsiemon, *Challenging the Constitutionality of Qualified Immunity*, 25 U. Pa. J. Const. L. 576, 593 (2023) (arguing qualified immunity is unconstitutional because it “forces judges to violate their responsibilities under Article III of the Constitution”). Specifically, Kordsiemon argues that qualified immunity violates due process under the Fifth Amendment by geographic discrimination. *Id.* at 600–01. Kordsiemon specifically recognizes Section 1983 as problematic in this area because “what rights are ‘clearly established’ for a particular plaintiff depends on where the plaintiff was located at the time of the alleged constitutional violation—a right may be recognized in some circuits but not in others.” *Id.* at 601; see also *Schweikert*, supra note 45, at 1 (referring to qualified immunity as an “unjustified legal doctrine[.]”). Schweikert reviews some alternatives to qualified immunity, such as “eliminat[ing] qualified immunity for most cases, while still preserving a modified version of the defense under a few more-limited, reasonable circumstances.” *Id.* at 3.


192. See *Chambers*, 63 F.4th at 1103 (Moore, J., dissenting) (explaining how Detective Sanders allegedly “suppressed exculpatory evidence, fabricated evidence, and coerced witnesses into making false statements and false testimony through threats and physical, mental, and emotional abuse—statements they subsequently recanted”).

193. See, e.g., *Pierson*, 386 U.S. at 557 (explaining the defenses of good faith in the context of Section 1983 actions); *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982) (“[W]e have held that qualified immunity would be defeated if an official ‘knew or reasonably should have known’ that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff].’” (second alteration in original) (quoting *Wood v. Strickland*, 420 U.S. 308, 322 (1975))). In *Harlow*, the Court also emphasized that an officer acting “with the malicious intention to cause a deprivation of constitutional rights or other injury” would similarly lose the qualified immunity defense. *Id.* (emphasis omitted) (quoting *Wood*, 420 U.S. at 322). For further discussion of the likelihood that Detective Sanders knew Burton had children and that Burton’s family relationship would be impacted by his wrongful conviction, see *supra* notes 174–175 and accompanying text.
C. Oh Where, Oh Where Has the “Rare Remedy” Gone?

The Sixth Circuit made clear that “it will admittedly be a rare case in the wrongful incarceration context that meets this standard” but held that such a high standard was nonetheless appropriate. 194 The court did so in order to prevent an overflow of family integrity wrongful incarceration claims from burdening the court system. 195

However, the Sixth Circuit’s stringent constitutional standard stands in contrast with well-established tort law principles. 196 In the same way that foreseeability is a term of art that does not require a tortfeasor to know with certainty the consequences of their actions, state actors should be held liable for separating families through wrongful incarceration when its effects can be reasonably anticipated. 197 It is misguided to relieve state officers of the liability of separating a family when the issue is, at its core, a constitutional tort. 198 Section 1983 was created to protect exactly the type of rights at issue in Chambers and allowing officials to evade accountability under the statute effectively forecloses the right to a constitutional remedy without providing any alternative. 199

194. Chambers, 63 F.4th at 1101 (“That rarity is appropriate in light of both the narrow scope of substantive due process generally and our case law and that of other circuits consistently rejecting such claims in the Fourteenth Amendment context.”).

195. See id. (“On the other hand, were we to dispense with the requirement that the government action at issue target the family relationship, then every close family member of a wrongfully incarcerated individual would have a constitutional claim based on the incidental, even unknowing, impact of that individual’s incarceration on the family relationship.”).

196. See Peter Nash Swisher, Robert E. Draim & David D. Hudgins, Proximate Causation—The Extent of Harm, in VIRGINIA PRACTICE TORT AND PERSONAL INJURY LAW § 3:31, Westlaw (database updated Aug. 2023) (explaining that, under the “egg-shell skull” rule, a “defendant must ‘take the plaintiff as he finds him’” (citing cases that have applied this rule)); Chambers, 63 F.4th at 1101 (describing Chambers and Smith’s claim that “violations of their rights were an inevitable byproduct of Sanders’s violation of their father’s constitutional rights”). For further discussion of constitutional torts and tort law concepts more generally, particularly foreseeability, see infra notes 197–199 and accompanying text.

197. See Fowler Vincent Harper, Foreseeability Factor in the Law of Torts, 7 NOTRE DAME L. REV. 468, 469–70 (1952) (discussing the different ways a foreseeability test can be applied, as “[h]arm may be foreseeable in several senses and much confusion [can] be found in the cases” applying it). Harper concludes that “[t]hroughout the entire ambit of tort law, the anticipation of harm of a general sort to persons of a general class is a determinative factor.” Id. at 482. See generally Barry A. Lindahl, 1 MODERN TORT LAW: LIABILITY AND Litigation § 6.1, Westlaw (database updated May 2023) (explaining liability for injuries that are not necessarily foreseeable).

198. See Sheldon H. Nahmod, Michael L. Wells & Fred O. Smith Jr., CONSTITUTIONAL TORTS 3 (5th ed. 2020) (defining constitutional torts as “actions brought against governments and their officials and employees seeking damages for the violation of federal constitutional rights, particularly those arising under the Fourteenth Amendment and the Bill of Rights”).

199. See id. (referring to Section 1983 as “the most resorted-to federal civil rights statute”); Nancy Leong, Constitutional Accountability Through State Tort Law, 2023 Wis. L. REV. 1707, 1708 (“Section 1983 was designed to compensate injured plaintiffs for their injuries and to deter future violations of constitutional rights.”).
In addition, the *Chambers* holding is very narrow in that it prevents plaintiffs from succeeding on a Section 1983 claim without accounting for the negative effects of wrongful incarceration.\textsuperscript{200} Systemic racism has wide-reaching effects on the criminal justice system and denying a Section 1983 remedy to impacted children inherently allows this system to continue.\textsuperscript{201} Prior to the conviction and sentencing stages, systemic racism significantly affects the early stages of the criminal justice system through arrests and jury selection.\textsuperscript{202} For example, Doug Evans, the former District Attorney for the state of Mississippi, was found to strike “Black jurors 4.4 times more frequently than white jurors over the course of his nearly 30-year career.”\textsuperscript{203} Specifically, in one defendant’s case during Evans’s tenure, the defendant was found guilty despite a lack of evidence after all Black jurors but one were removed from the case.\textsuperscript{204} Officer misconduct is also statistically more prevalent in the murder

\textsuperscript{200} See *Chambers*, 63 F.4th at 1102 (Moore, J., dissenting) (describing the incidental impacts of wrongful incarceration as “often devastating to the child and the family relationship”). Further, Judge Moore explains that “[w]hen the conviction turns out to be in error and the parent has been mistakenly incarcerated for a crime that they did not commit, the impacts may feel even more tragic and severe.” Id.; Leslie Scott, “*It Never, Ever Ends*”: The Psychological Impact of Wrongful Conviction, 5 Am. U. Crim. L. Brief 10, 15 (2010) (discussing the impact of wrongful conviction on exonerees). Scott states: “[A]ll of the men in the study described difficulties in family and close relationships.” Id. Namely, some of these difficulties resulted in their children “feeling hurt and abandoned.” Id.; see also Lake, *supra* note 6 (describing the facts of Richard Phillips’s case and the impact it had on his two children).

\textsuperscript{201} See Rakim Brooks & ReNika Moore, *To End Systemic Racism, Ensure Systemic Equality*, Am. C.L. UNION (Feb. 8, 2021), https://www.aclu.org/news/racial-justice/ending-systemic-racism-requires-ensuring-systemic-equality (explaining it is not enough to address the effects of systemic racism—the law must address the causes as well). This includes the development of new policies aimed at combatting systemic racism. Id.


\textsuperscript{203} Wiley, *supra* note 202 (referencing the practices of the former District Attorney for Mississippi, Doug Evans). Wiley uses the case of Curtis Flowers, a Black man, as an example. *Id.* Flowers “faced six trials for the same charge, each resulting in a hung jury or a reversed conviction due to prosecutorial misconduct.” *Id.* “During those six trials, Evans removed 41 of 42 potential Black jurors and struck them 20 times more frequently than white jurors.” *Id.*

\textsuperscript{204} See *id.* (highlighting that when the jury included at least two Black jurors, they followed the evidence and instead voted to acquit). For further discussion of Flowers’s case, see *supra* note 203.
convictions of Black defendants than white defendants. Further, studies show that, compared to white children, Black children are “7.5 times more likely” and Hispanic children are “2.3 times more likely . . . to have an incarcerated parent,” which results in a disproportionate number of minority children being affected by the lack of a Section 1983 remedy. These are just some of the factors that contribute to the disproportionate number of people of color who are wrongfully incarcerated and impacted by the criminal justice system. By denying children a constitutional remedy under Section 1983 for the wrongful incarceration of a parent, the effects of systemic racism are virtually ignored.

VI. Everywhere You Look There’s Somebody Adversely Affected by Chambers

The Sixth Circuit’s decision in Chambers follows the trend of narrowing family association Section 1983 claims and effectively limits legal options for the children of wrongfully incarcerated parents without providing an alternative. The only appellate court to afford a Section 1983 remedy to children is the Ninth Circuit, although lower courts have not always followed that precedent and sister circuits have chosen not to follow it. The availability of this remedy is unacceptably disparate and


207. See generally Samantha Achenbach, Is Equal Protection Really Equal in the Criminal Courtroom?, PURDUE Glob. L. SCH. BLOG (Apr. 27, 2017), https://www.purduegloballawschool.edu/blog/constitutional-law/is-equal-protection-really-equal [https://perma.cc/376R-C7S6] (describing factors that affect outcomes in the criminal justice system, such as the disproportionate number of Black jurors who are dismissed from juries, the caliber of defenses, and general bias).

208. For further discussion of how wrongful incarceration perpetuates systemic racism, see supra notes 200–207.

209. See Chambers v. Sanders, 63 F.4th 1092, 1097–98 (6th Cir. 2023) (citing precedential cases at the Supreme Court and circuit court levels for support to narrow the availability of wrongful incarceration Section 1983 claims). For a list of the relevant cases from other circuit courts, see supra note 71.

210. See Smith v. City of Fontana, 818 F.2d 1411, 1424 (9th Cir. 1987) (holding that the decedent’s children “stated a section 1983 claim for damages against all defendants for violations of their substantive due process rights”), overruled on other grounds by Hodgers-Durgin v. De La Vina, 199 F.3d 1037 (9th Cir. 1999). But see Chambers, 63 F.4th at 1098–1100 (declining to follow Smith); Braillard v. Maricopa County, 292 P.3d 1263, 1270–71 (Ariz. Ct. App. 2010) (declining to follow Smith). The Braillard court, despite falling within the Ninth Circuit, did not follow
does not account for areas of the United States with higher rates of mass and wrongful incarceration.211

Additionally, Chambers restricts the right to family integrity by imposing a state-of-mind requirement that must be directed at the family relationship, which weakens the importance of the family relationship in the eyes of the courts when a parent is incarcerated.212 This does not speak well to the system as a whole because, rather than provide a solution or remedy, the courts effectively tell children to figure it out on their own.213

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212. See Chambers, 63 F.4th at 1100 (“The government official must have, at a minimum, acted with a culpable state of mind directed at the plaintiff’s family relationship or a decision traditionally within the ambit of the family.”). Judge Moore explains that other cases that intrude into the family relationship, such as Meyer v. Nebraska, should be considered in a similar light to wrongful incarceration cases. Id. at 1108 (Moore, J., dissenting). Drawing upon Moore v. City of East Cleveland, Judge Moore explains:

— Only by ‘clos[ing] our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the Fourteenth Amendment’s Due Process Clause,’ could we “avoid applying the force and rationale of [our] precedents to the family choice[s]” and the family unit taken from the [Plaintiffs].

Id. at 1114 (first, second, and third alterations in original) (quoting Moore v. City of E. Cleveland, 431 U.S. 494, 501 (1977)); see also Moore, 431 U.S. at 500–01 (declining to interpret Meyer and Pierce as limiting constitutional protections to the family unit as defined at that time).
own. By not recognizing the reciprocal relationship that would cause a child to feel the detrimental effects of an act done to their parent, the Sixth Circuit reneges on years of Supreme Court and congressional precedent.

The lack of a remedy becomes significantly more worrisome when one considers the practical implications of incarceration on children. Further, the number of individuals incarcerated has increased exponentially since the war on drugs in the 1980s, leading one to believe that this generation of incarcerated parents might just be the beginning of a new, troubling cycle.

The negative effects of incarceration also do not end when the parent is released; studies show that overall family income stays under its original estimated value post-release. Given these consequences, this area of the law is ripe for future change.

Going forward, under the approach established by Chambers, if Section 1983 does not offer appropriate relief as to individual police

213. See Chambers, 63 F.4th at 1101–02 (denying Chambers and Smith’s claim); Leong, supra note 199, at 1709 (explaining the shared concern among scholars that there is “underenforcement of constitutional rights”).

214. See Chambers, 63 F.4th at 1106 (Moore, J., dissenting) (“[C]onduct that deprives one family member of their ability to associate with their family likewise deprives the family of their constitutional right and ability to associate with that member.”). As support, Judge Moore refers to Duchesne v. Sugarman, writing “[t]his right to the preservation of family integrity encompasses the reciprocal rights of both parent and child[].” Id. at 1105 (emphasis omitted) (quoting Duchesne v. Sugarman, 566 F.2d 817, 825 (2d Cir. 1977)). Further, Judge Moore recognizes that “children maintain an interest in not being dislocated from the “emotional attachments that derive from the intimacy of daily association,” with the parent.” Id. (quoting Duchesne, 566 F.2d at 825). For some examples of congressional involvement in family protection, see Elrod, supra note 62.

215. For further discussion of the practical implications on children and their families, see infra notes 216–218 and accompanying text.


217. See Martin, supra note 206, at 2 (stating “the rate of children with incarcerated mothers has increased 100 percent, and the rate of those with incarcerated fathers has increased more than 75 percent”). Martin also cites a study which “found that children of incarcerated mothers had much higher rates of incarceration.” Id. Arrests were also “earlier and more frequent.” Id. For further discussion of the war on crack, see supra note 113 and accompanying text.

218. See Martin, supra note 206, at 3 (referencing a study which found that “the family’s income was 22 percent lower during the incarceration period and 15 percent lower after the parent’s re-entry”). Martin also references a study finding that “children of incarcerated parents are significantly more likely to be suspended and expelled from school.” Id.

219. For further discussion of possible future change, see infra notes 226–230 and accompanying text.
officers, it should still apply to wrongful incarceration claims against municipalities for failure to adequately train their employees. The effect of an officer’s misconduct on children can lead to detrimental impacts, and the city that employs them is responsible for taking measures to ensure its officers are trained not to commit such mistakes. Another alternative, if Section 1983 does not offer a remedy against the officer nor the city, is for the legislature to adopt an approach that compares the wrongful incarceration of a parent to loss of consortium. In jurisdictions that recognize such a claim, children have a cause of action for the injury or death of their parent when the defendant is legally responsible for causing that harm and the child sustained a loss. Although procedural requirements may vary by state, the nonderivative and optional joinder approach would best expand recovery to these cases.

220. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 691 (1978) (specifically extending coverage of Section 1983 to municipal liability); see also Fagan v. City of Vineland, 22 F.3d 1283, 1291 (3d Cir. 1994) (explaining that municipal liability can be based on the failure to adequately train police officers). For further discussion of the connection between municipal liability and training officers, see supra note 35 and accompanying text.

221. See, e.g., 53 Pa. Cons. Stat. § 2167 (2023) (requiring the municipality to train police officers); Diane M. Allen, Annotation, Liability of Supervisory Officials and Governmental Entities for Having Failed to Adequately Train, Supervise, or Control Individual Peace Officers Who Violate Plaintiff's Civil Rights Under 42 U.S.C.A. § 1983, 70 A.L.R. Fed. 17 (1984) (listing federal cases that considered whether or not a municipality could be held liable for a failure to adequately train an officer); Diana Yates, Changing Police Culture with Stories of Wrongful Convictions, Univ. Ill. News Bureau (June 8, 2023, 8:00 AM), https://news.illinois.edu/view/6367/985387893 [https://perma.cc/8W52-DREG] (describing the Wrongful Conviction Awareness and Avoidance Course, where police recruits heard personal stories from wrongfully convicted exonerates). In Illinois in 2023, this four-hour course became mandatory for police recruits.

222. See Maureen Ann Delaney, Comment, What About the Children?: Toward an Expansion of Loss of Consortium Recovery in the District of Columbia, 41 Am. U. L. Rev. 107, 121 (1991) (describing the origins of state courts extending loss of consortium claims to children). The author explains that courts “acknowledge[] that a child who loses a parent’s companionship and affection suffers a loss comparable to that suffered by an adult who loses spousal consortium.” Id.; see also Thomson v. Ohio Ins. Co., 780 N.E.2d 1082, 1085 (Ohio Ct. App. 2002) (defining loss of consortium as “a loss of the benefits . . . that a child is entitled to receive from his or her parent, including companionship, cooperation, aid, [and] affection”).

223. See Elizabeth Williams, Causes of Action by Child for Loss of Parent’s Consortium, in 12 Causes of Action (2d ed. 2023) (listing the prima facie case requirements). First, “the defendant is legally responsible for the injury or death of the plaintiff’s parent.” Id. Second, “the plaintiff sustained a loss of intangible qualities of the parent-child relationship, such as the parent’s services, society, aid, assistance, companionship, comfort, love, affection, and solace.” Id.

224. See Thomson, 780 N.E.2d at 1085 (“Such losses give rise to a cause of action, which can be recoverable as damages in a personal injury or wrongful death action.”); see also Lurie, supra note 32 (discussing Section 1983 claims as constitutional torts); George L. Blum, Annotation, Action by or on Behalf of Minor Child, or Presumed Minor Child, for Loss of Parental Consortium—Impact of Other Legal Concepts and Theories of Recovery, 6 A.L.R. Fed. 7th Art. 4 (2015) (detailing cases that have addressed loss of parental consortium for a minor child). In Iowa, for example, a
In the fight for equality and the enforcement of civil rights, Chambers is a step backwards.\textsuperscript{225} Chambers is one of many recent decisions that afford too much protection to police officers and other state actors and are quick to excuse their actions as “negligent” or “justified.”\textsuperscript{226} The state actions in Chambers, though more overt due to their thirty-two-year duration, are disguised and condoned because Burton’s relationship with his children was not the intended target of Detective Sanders.\textsuperscript{227} Criminal justice reform to address systemic racism must take place within each governmental branch—legislative, executive, and judicial—at the individual, state, and federal level.\textsuperscript{228} Here, the second highest level of judicial authority in the nation had the chance to address these issues and create lasting, impactful reform.\textsuperscript{229} Instead, children are left without a constitutional remedy for the wrongful incarceration of their parent and the violation of their substantive due process right to family integrity.\textsuperscript{230}

\textsuperscript{225} For further discussion of how Chambers is a step backwards in terms of equality, see infra notes 226–230 and accompanying text.


\textsuperscript{227} See Chambers v. Sanders, 63 F.4th 1092, 1112 (6th Cir. 2023) (Moore, J., dissenting) (“The extent of brutality and malfeasance alleged here differs substantially from the kind of deficient government investigations that do not shock the conscience.”). According to Judge Moore: “It does not matter that Sanders’s primary motivation may not have been to harm the relationship.” Id. at 1113. His behavior nonetheless shocked the conscience and deprived Chambers and Smith from their right to family integrity with Burton. Id.

\textsuperscript{228} See Thomas Kleven, \textit{Separate and Unequal: The Institutional Racism of the Supreme Court}, 12 ALA. C.R. & C.L. L. REV. 277, 277 (2021) (considering Supreme Court decisions, such as those “upholding state actions that explicitly favor whites and oppressed ethnic minorities,” as contributing to systemic racism). Kleven argues that while there are remedial constraints and the judiciary cannot solve systemic racism independently, they still play an important role. Id. at 286.

\textsuperscript{229} See \textit{U.S. Courts of Appeals and Their Impact on Your Life}, U.S. Cts., https://www.uscourts.gov/educational-resources/educational-activities/us-courts-appeals-and-their-impact-your-life [https://perma.cc/P66W-TF4Y] (last visited May 16, 2024) (highlighting the “7,000+ cases appealed to the Supreme Court of the United States” which come from the courts of appeals and the low writ of certiorari success rate). In the government’s own words, this “means Courts of Appeals’ decisions are the final result.” Id.

\textsuperscript{230} See Chambers, 63 F.4th at 1101–02 (affirming dismissal of Chambers and Smith’s Section 1983 and \textit{Monell} claims for failing to establish that the state action was targeting the family relationship).