

PRESERVING FAMILY BONDS: EXAMINING A CHILD'S RIGHT TO FAMILY INTEGRITY

Kate Daus*

ABSTRACT

This Note examines the holding in *Chambers v. Sanders*—a 2023 Sixth Circuit decision that held that children do not have a constitutional right to family integrity when a parent is wrongfully incarcerated. Children's rights and the right to family integrity have changed and developed throughout American history. While the Supreme Court left open the question as to whether children have this right, a majority of circuit courts have recognized a reciprocal right to family integrity shared by parents and children under the Fourteenth Amendment. The Sixth Circuit, however, does not.

This Note argues that the Sixth Circuit should have reached the opposite conclusion in *Chambers v. Sanders*. The Court should recognize a child's Fourteenth Amendment Due Process right to family association and integrity. Further the Sixth Circuit should reassess related standards that have failed to address harms caused by wrongful state actions.

INTRODUCTION

In the United States, children are routinely separated from their parents by immigration, criminal, and family regulation systems.¹ This separation, even if for a brief period, can have lasting consequences on the child and the family dynamic.² In order to potentially preserve their family unit, a

* Kate Daus is from St. Louis, Missouri and attended Southeast Missouri State University where she was a member of the women's soccer team. She graduated with a B.A. in rhetoric & public communication with minors in philosophy and family studies. She will graduate from Washington University in St. Louis School of Law in spring 2025 and will begin her legal career with Spencer Fane LLP in St. Louis in the fall.

1. See Shanta Trivedi, *My Family Belongs to Me: A Child's Constitutional Right to Family Integrity*, 56 HARV. C.R.-C.L. L. REV. 267, 270 (2021).

2. See Rachel Kennedy, *A Child's Constitutional Right to Family Integrity and Counsel in Dependency Proceedings*, 72 EMORY L.J. 911, 915-916 (2023); see also CHILDREN'S RIGHTS, FAMILY SEPARATION IS AN URGENT HUMAN & CIVIL RIGHTS ISSUE 4 (2023), <https://www.childrensrights.org/>

parent could cite the constitutional right to family integrity.³ This right encompasses the parental interest in preserving the family entity by privately making decisions in the best interest of the family unit, free from unwarranted state intervention.⁴ While Supreme Court jurisprudence makes it clear that parents have a constitutional liberty interest in the care, custody, and control of their children and the family unit at large, the Court has been hesitant to establish such a constitutional right for children.⁵ The right to family integrity is a powerful legal tool parents can use to preserve their family unit against separation, which “disproportionately affects indigent people, and particularly indigent people of color.”⁶ However, whether children can also assert this right remains unanswered by the Supreme Court.

This Comment diverges from the Sixth Circuit’s holding in *Chambers v. Sanders*,⁷ and instead argues that a child’s right to family integrity is implicated when the state deprives that child of routine interaction with the parent due to wrongful incarceration. Part I of this Comment will provide the necessary context surrounding the facts and holding of *Sanders*. Part II will discuss the development and scope of Supreme Court and Circuit Courts of Appeals jurisprudence surrounding children’s rights to family integrity, as well as the history surrounding the parental right to family integrity. Part III will analyze the Sixth Circuit’s decision in *Sanders* and argue that the court should have applied the “shocks-the-conscience” standard to defendant Detective Ronald Sanders’s (Sanders) conduct, as illuminated by the dissent. Further, it suggests the need for a reevaluation of the standards under which familial relationships are protected from state

wp-content/uploads/2023/09/ICCPR-Submission_Family-Separation-Is-an-Urgent-Human-Civil-Rights-Issue-Sept-2023.pdf [https://perma.cc/S363-DH4A] (“The American Academy of Pediatrics has found that separating children from their families, even for short amounts of time, ‘can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short-term health (and) can carry lifelong consequences for children.’”).

3. See Trivedi, *supra* note 1, at 269.

4. *Id.* at 268.

5. See *Wisconsin v. Yoder*, 406 U.S. 205, 231–32 (1972) (refusing to address implications of a conflict between rights of parents and rights of children).

6. See Trivedi, *supra* note 1, at 269 (“In the child welfare system, better described as the family regulation system, minority children are historically and continually overrepresented in foster care. It is well documented that family separation disproportionately affects indigent people and particularly indigent people of color.”).

7. 63 F.4th 1092, 1101 (6th Cir. 2023) (rejecting a child’s right to family integrity even though parent was incarcerated without regular visits).

interference. Lastly, this Comment argues that *Sanders* should have been decided differently. Specifically: When a state official deliberately and intentionally facilitates the wrongful conviction and incarceration of a child's parent—causing the parent's continued absence and consequently the loss of the parent-child relationship—the state official deprives the child of their due process right to family integrity.

I. OVERVIEW OF *CHAMBERS V. SANDERS*

In a suit brought by the children of a wrongfully convicted and incarcerated father, the Sixth Circuit held that the substantive due process right to family integrity is *not* implicated when a state deprives a child of interaction with their parent during wrongful incarceration.⁸ When a Michigan state court jury convicted defendant Danny Burton (Burton) of first-degree murder and a firearm charge in 1987, he was sentenced to life in prison without the possibility of parole.⁹ This meant that Burton's children, Danny Lamont Chambers (Chambers) and Dontell Rayvon-Eddie Smith (Smith), were left without a father.¹⁰ In December 2019, thirty-two years after his conviction, Burton's conviction was vacated.¹¹ He was finally released after key witnesses recanted their statements, and details of witness manipulation and intimidation were unearthed.¹² Also relevant were defendant Sanders's investigative tactics, which included "threats and physical violence against witnesses, including minors, to secure their testimony against Burton."¹³ Further, the complaint exposed that Detective Sanders "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."¹⁴

8. See *Chambers v. Sanders*, 63 F.4th 1092, 1100 (6th Cir. 2023).

9. See *id.* at 1095.

10. See *id.*

11. *Id.*

12. See *id.*

13. *Id.*

14. *Id.* at 1103 (Moore, J., dissenting).

“In July of 2020 Burton filed claims under §§ 1983¹⁵ and 1988¹⁶ against Sanders and the city of Detroit for *Brady* violations, malicious prosecution, and fabrication of evidence.”¹⁷ The United States District Court for the Eastern District of Michigan granted Detroit’s motion to dismiss.¹⁸ However, Detective Sanders did not move to dismiss the claims, instead leaving them pending at the time that Burton appealed.¹⁹ After the city was dismissed from Burton’s suit, Chambers and Smith filed a § 1983 suit against Detective Sanders and the city of Detroit.²⁰ They alleged that “the wrongful conviction and incarceration of their father throughout their childhood and into adulthood violated their constitutional right to family integrity.”²¹ In response, the district court granted Sanders’s motion to dismiss the claim because they did not find any cognizable due process right for the “interference with family integrity” when one is “indirectly” harmed by a constitutional tort against a family member.²²

In their appeal to the Sixth Circuit, Chambers and Smith asserted that “the substantive due process right of familial association extends to cases where the state has wrongfully incarcerated a parent for a significant period and argue[d] that the district court erred in dismissing their federal claims under Rule 12(b)(6).”²³

II. HISTORY AND DEVELOPMENT OF CHILDREN’S RIGHTS AND THE RIGHT TO FAMILY INTEGRITY

The concept of children’s rights is one that has experienced significant change and development. In the early twentieth century children were considered more similar to property, and as a means of performing labor,

15. 42 U.S.C. § 1983. This statute provides individuals with the right to sue state government employees and others “acting under the color of law” for the violation of a clearly established right, which includes violations of the Fourteenth Amendment’s substantive and procedural due process provisions. *Id.*

16. 42 U.S.C. § 1988. This statute works in connection with 42 U.S.C. § 1983 to strengthen civil rights enforcement and instructs courts to leverage existing legal frameworks and award attorney’s fees to winning plaintiffs. *Id.*

17. *Id.* at 1095.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 1096.

rather than autonomous individuals.²⁴ This view was reinforced by the 5-4 decision in *Hammer v. Dagenhart*, where the Court struck down a law attempting to regulate child labor.²⁵ This decision made clear that the parental unit, specifically the father, had nearly unanimous authority to dictate how children were to be raised with the expectation of complete obedience (resembling a property-like approach).²⁶ Parents, particularly fathers, determined nearly every aspect of their children's lives, including: education, religious upbringing, discipline, and contributions to family income.²⁷ Because women had few legal rights at this time, children were essentially the property of their fathers and were afforded no protection from harm or unfair child labor practices.²⁸

These attitudes and beliefs about children's rights, or lack thereof, continued until the Progressive Era²⁹ marked a paradigm shift—showcasing an acknowledgment of the state's interest in offering vulnerable children protection and a departure from all-encompassing parental authority.³⁰ Beginning in 1899, almost every state developed a juvenile court with jurisdiction over the maltreatment of children, juvenile status offenses,³¹ and

24. See Trivedi, *supra* note 1, at 272 (“In the early 1900s, the notion of ‘children’s rights’ was a laughable concept. Children were considered to be the property of their parents and therefore any rights that could possibly belong to a child really belonged to the parent.”).

25. See *Hammer v. Dagenhart*, 247 U.S. 251, 275–77 (1918).

26. See Kennedy, *supra* note 2, at 918 (“Parents had the high duty of providing for their children, accompanied by the virtually unchecked authority to dictate how their children were raised; in return, children had the duty of obeying their parents in all circumstances.”).

27. See Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, 118 MICH. L. REV. 1371, 1380–81 (2020).

28. See Barbara Bennett Woodhouse, *Children’s Rights: The Destruction and Promise of Family*, 1993 B.Y.U. L. REV. 497, 502 (1993).

29. See Thomas Clark, *Think of the Children: Child Labor through the Progressive Era in Early Twentieth-Century America* (Dec. 2017) (B.A. thesis, University of Washington Tacoma), https://digitalcommons.tacoma.uw.edu/history_theses/30/ [<https://perma.cc/YE5B-VY2D>] (explaining that the Progressive Era included “the time period between 1890–1920 during which people believed that the problems in society such as, poverty, greed, and class warfare could be improved upon through social policies including education [sic] improved work conditions.”).

30. See Huntington & Scott, *supra* note 27, at 1373 (“Beginning in the 1960s, courts and legislatures started treating children as rights-bearing legal persons for some purposes.”).

31. See Marlene Sallo & Darbee Smith, *Representing the Status Offender: The Need for a Multi-Systemic Approach*, ABA CHILDREN’S RIGHTS LITIGATION COMM. (2010) (“Status offenses are unique to juveniles, meaning that only juveniles can be charged with or adjudicated for conduct that, under the law of the jurisdiction in which the offense was committed, wouldn’t be a crime if committed by an adult. Status offenses include truancy, incorrigibility, running away from home, using vulgar language, and drinking.”).

juvenile delinquency cases.³² Many juveniles charged with crimes were removed from the criminal justice system and addressed in this new court system with the goal of rehabilitation instead of punishment.³³ Additionally, legislative measures taken by the states established compulsory school attendance laws.³⁴ By 1918, every state had such a law in place.³⁵ In the 1920's, the Supreme Court issued two significant decisions regarding a parent's authority to make decisions about their children's education—holding that this decision-making power is constitutionally protected under the Fourteenth Amendment.³⁶ The Court reasoned that parents have the right to raise their children in terms of the parent's individual liberty, and emphasized the freedom of adults from excessive state intrusion into their private lives.³⁷ In *United States v. Darby*, the Supreme Court held that the Fair Labor Standards Act was constitutional, overruling their decision twenty-three years prior in *Dagenhart*, and implementing child labor standards for the first time.³⁸

This new structure appeared to be a “dyadic model of regulation, under which parents retained much of their traditional authority, but the state stepped in when perceived parental failures threatened harm to children.”³⁹ However, this model heightened tensions surrounding the idea of the state as competing with parental authority. While Progressive Era reformers made great strides in improving the protective measures for children and changing the way that children were regulated, these systems were not without flaws.

Following the Progressive Era, the 1960s ushered in the modern children's rights movement, along with the civil rights and feminist movements—challenging the framework established in the Progressive

32. See Huntington & Scott, *supra* note 27, at 1381 (explaining that advocates of reform invoked the states authority as *parens patriae* in order to construct a new government role for protecting children from parental abuse and neglect).

33. See Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119–20 (1909).

34. See Trivedi, *supra* note 1, at 273.

35. See Trivedi, *supra* note 1, at 273.

36. See *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400–01 (1923).

37. See *Pierce*, 268 U.S. at 534–35 (validating “the liberty of parents and guardians to direct the upbringing and education of children under their control”); *Meyer*, 262 U.S. at 399 (“Without doubt, [the liberty interest granted by the Fourteenth Amendment] denotes . . . the right of the individual . . . to marry, establish a home and bring up children”).

38. See *United States v. Darby*, 312 U.S. 100, 116–17 (1941).

39. Huntington & Scott, *supra* note 27, at 1380.

Era.⁴⁰ Advocacy for children's rights embodied a radical energy in raising important questions about children's autonomy and independent decision-making abilities.⁴¹ Importantly, it was also during this time that doctors began to express concern about unexplainable injuries that children presented with—presumed to have been inflicted by their parents or caregivers—resulting in what we now know as “battered child syndrome.”⁴² The realization that parents were intentionally harming their children led to an understanding that it was necessary to legally recognize that children were far more than a means to complete labor.⁴³ Instead—children possess their own human rights, *especially* the right to safety.⁴⁴ Additionally, the Court sought to solve some of the apparent defects in the previously established systems surrounding child welfare by extending procedural protections to juveniles facing delinquency adjudications.⁴⁵ Despite these important developments, however, inconsistencies have been noted in the logic and reasoning applied to and underlying such decisions.⁴⁶

This lack of uniformity can be observed throughout the Supreme Court's holdings surrounding children's rights. First, *In re Gault* held that children were effectively “persons” in juvenile delinquency proceedings as established by Fourteenth Amendment Due Process rights.⁴⁷ The Court noted that juveniles in delinquency proceedings tend to have the “worst of both worlds,” neither receiving rehabilitative treatment nor the procedural protections that adult defendants were afforded.⁴⁸ The Court explained that minors accused of crimes must be given many of the same rights and

40. See MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 2, 5 (2005).

41. See Trivedi, *supra* note 1, at 273.

42. Trivedi, *supra* note 1, at 273.

43. See *id.*

44. See *id.*

45. See *Breed v. Jones*, 421 U.S. 519, 540–541 (1975) (holding a child has the protection of the Fifth Amendment double jeopardy clause and cannot be tried for the same crime twice); *In re Winship*, 397 U.S. 358, 367 (1970) (finding that the level of evidence for a finding of juvenile delinquency is “proof beyond a reasonable doubt”).

46. See Kennedy, *supra* note 2, at 919 (“This so-called modern era of children's rights has been criticized as ‘a slogan in search of a definition’ due to the inconsistent logic underlying the asserted rights. For example, some advocates have rooted their reasoning in capacity-based arguments, emphasizing that children are a vulnerable class requiring special legal protection. In contrast, others have rooted their advocacy in principles of personhood and liberation. These advocates stress that children should have adultlike rights and sometimes, controversially, present children's rights as diametrically opposed to parents' rights.”).

47. *In re Gault*, 387 U.S. 1, 24 n.31 (1967).

48. *Gault*, 387 U.S. at 18 n.23.

procedural protections as adults.⁴⁹ This includes: the right to an attorney, the right to remain silent, the right to notice of the charges, and the right to a full hearing on the merits of the case.⁵⁰ This pivotal case arose when the fifteen-year-old plaintiff, Gerald Gault (Gault), was removed from his home without notice to his parents, brought before a juvenile court without any notice of the charges being brought against him, and convicted and sentenced without being provided professional assistance or given a fair hearing on the surrounding facts.⁵¹ Gault was accused of making an obscene phone call to a neighbor, Mrs. Cook.⁵² As a result, Gault was sentenced to juvenile detention for six years, until he turned twenty-one.⁵³ Examining the current state of the juvenile court system, the Supreme Court found that juveniles facing an adjudication of delinquency and incarceration are entitled to procedural protections under the Due Process Clause of the Fourteenth Amendment.⁵⁴

Next, in *New Jersey v. T.L.O.*,⁵⁵ the Supreme Court held that children are afforded protection from unreasonable searches and seizures by public school officials and law enforcement officials under the Fourth Amendment.⁵⁶ However, other Supreme Court decisions have only afforded children special protection grounded in certain “peculiar vulnerabilities.”⁵⁷ In certain instances, the Court has granted unique rights to children in circumstances surrounding sentencing and juvenile confessions.⁵⁸ Much like the inconsistent patterns in the previous Supreme Court holdings, the “modern era” of children’s rights has faced criticism for being “a slogan in search of a definition”⁵⁹ as a result of inconsistencies in the logic underlying

49. *See id.* at 21.

50. *See id.* at 4.

51. *See id.* at 4–5, 8.

52. *Id.*

53. *See id.*

54. *See id.* at 30–31.

55. 469 U.S. 325, 333 (1985).

56. *See id.*

57. *Bellotti v. Baird*, 443 U.S. 622, 634 (1979) (“We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.”).

58. *See Kennedy, supra* note 2, at 920; *see also Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding that sentencing minors to the death penalty was unconstitutional); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding that sentencing a minor to life in prison without the possibility of parole for a non-homicide offense was unconstitutional).

59. *Kennedy, supra* note 2, at 919 (citing GUGGENHEIM, WHAT’S WRONG WITH CHILDREN’S

such asserted rights.⁶⁰

While the Supreme Court has addressed parental rights surrounding the family relationship, it has not explicitly found a *child's* right to family integrity.⁶¹ Although the Fourteenth Amendment does not make an express mention of the right to family privacy, the Supreme Court has demonstrated support to family related rights in several influential cases—beginning with *Meyer v. Nebraska*⁶² and *Pierce v. Society of Sisters*.⁶³ In *Meyer*, the Court held that the Fourteenth Amendment's Due Process Clause protected the right to “establish a home and bring up children” and the right to “teach” and “instruct their children.”⁶⁴ Just two years later in *Pierce*, the Court applied its reasoning in *Meyer* to hold that an Oregon statute requiring parents to send their children to public schools unjustly interfered with the “liberty of parents and guardians to direct the upbringing and education of children.”⁶⁵

Building off of the fundamental ideas in *Meyer* and *Pierce*, in 1972, the Supreme Court decided *Stanley v. Illinois*, holding that parents in Illinois were entitled to a hearing before their children could be removed from them.⁶⁶ The Court further stated that “[t]he integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment.”⁶⁷ From this language, it appears that the Court was not expressly delineating a protected interest in family integrity to parents alone, but rather extending it to the entire “family unit.”⁶⁸ Five years later, the Supreme Court furthered the development of this doctrine in *Smith v. Organization of Foster Families for Equality and Reform*, in which a group of foster parents challenged New York's procedures for transferring foster

RIGHTS 12 (2005)).

60. *See id.* (explaining that while some supporters of the children's rights movement have emphasized that children are classified as a vulnerable class requiring unique legal protection, others have grounded their arguments in principles of personhood and liberation, arguing that children should have adultlike rights).

61. *See* Trivedi, *supra* note 1, at 277.

62. 262 U.S. 390 (1923).

63. 268 U.S. 510 (1925).

64. *Meyer*, 262 U.S. at 403.

65. *Pierce*, 268 U.S. at 534–35.

66. *See* *Stanley v. Illinois*, 405 U.S. 645, 646 (1972).

67. *Id.* at 651 (citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); and *Griswold v. Connecticut*, 381 U.S. 479, 496 (1965)).

68. *Id.*

children between foster homes.⁶⁹ The foster parents claimed that the procedures in place violated the foster parents' Fourteenth Amendment Due Process rights, and that they had a protected liberty interest in their relationships with the foster children, analogous to that of a biological parent's relationship with their child.⁷⁰ In analyzing this issue, the Court explained that the right to raise one's children is "essential," and "the importance of the familial relationship . . . stems from the emotional attachments that derive from the intimacy of daily association."⁷¹ The Court also stated, "the liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'"⁷² Hinting that this right also extends to children, Justice Stewart wrote in his concurrence that if a state were to attempt to separate a "natural family, over the objections of the *parents and their children*, without some showing of unfitness," he should have "little doubt that the State would have intruded impermissibly on 'the private realm of family life which the state cannot enter.'"⁷³ Shortly after, the Supreme Court decided *Quilloin v. Walcott*, where Justice Marshall applied Justice Stewart's concurrence in *Smith*.⁷⁴ In *Quilloin*, the Court assessed the constitutionality of a Georgia statute that denied "an unwed father authority to prevent adoption of his illegitimate child."⁷⁵ Holding that the statute did not violate the Due Process and Equal Protection clauses of the Fourteenth Amendment, the Court recognized the constitutional protection of the parent-child relationship, but differentiated *Quilloin* from previous cases like *Stanley* on the grounds that the father had never sought legal custody, never attempted to legitimate the child, and had never been a de facto member of his child's household.⁷⁶ However, using language directly from Justice Stewart's concurrence in *Smith*, Justice Marshall explained that he had "little doubt that the Due Process Clause would be offended" if the State tried to separate "a natural family, over the objections of the parents and their children, without some

69. 431 U.S. 816, 818–20 (1977).

70. *See id.* at 839.

71. *Id.* at 844.

72. *Id.* at 845.

73. *Id.* at 862–63 (emphasis added).

74. *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

75. *Quilloin*, 434 U.S. at 247.

76. *Id.* at 252–253.

showing of unfitness and for the sole reason to do so was thought to be in the children's best interest."⁷⁷

Only a few years later, the Supreme Court used similar language in their 1982 decision, *Santosky v. Kramer*.⁷⁸ There, the Court held the minimum standard of proof needed to terminate parental rights was clear and convincing evidence.⁷⁹ In its reasoning, the Court suggested that the right to family integrity extends not only to parents, but also children, stating, "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship."⁸⁰ More recently, in *Troxel v. Granville*, Justice Stevens dissented—explaining:

While this Court has not yet had occasion to elucidate the nature of a child's liberty interests in preserving established familial or family-like bonds, it seems to be extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation.⁸¹

Notably, this statement by Justice Stevens is thought to address Justice Scalia's plurality opinion in *Michael H. v. Gerald D.*, in which Scalia expressed in dicta, the notion that the Court "ha[s] never had occasion to decide whether a child has a liberty interest, symmetrical with that of her parent, in maintaining her filial relationship."⁸² While this statement would seem to contradict previously established rights for children—an attentive

77. *Id.* at 255 (quoting *Smith v. Org. of Foster Families for Equal. and Reform*, 431 U.S. 816, 862–63 (1977) (Stewart, J., concurring)).

78. 455 U.S. 745 (1982).

79. *See id.* at 745, 754, 760, 769 (applying the *Eldridge* factors to examine the procedural due process rights of parents in child removal proceedings for a finding of neglect and termination of parental rights. The *Eldridge* factors include "the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interests supporting use of the challenged procedure," and are used to assess "the nature of the process due in parental rights termination proceedings." *Id.* at 758–69. The "private interest affected" standard weighed heavily against New York's "fair preponderance" standard. *Id.* at 758–69.).

80. *Id.* at 760 (emphasis added).

81. *Troxel v. Granville*, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting) (explaining that the Supreme Court has acknowledged that children possessed constitutionally protected rights and liberties in other situations like Fourteenth Amendment Due Process rights in juvenile and criminal proceedings and First Amendment rights to political speech in schools) (citations omitted); *see also id.* at 88 n.8.

82. *Michael H. v. Gerald D.*, 491 U.S. 110, 130 (1989) (plurality opinion); *see also* Trivedi, *supra* note 1, at 281.

reading of the case exposes that the Court was not foreclosing the possibility that children have constitutional rights to a relationship with their biological parent; but *only* concluded that a parent-child relationship did not exist in that *specific* case.⁸³ This can largely be attributed to the fact that Justice Scalia's remark surrounded the relationship of a child with a non-legal parental figure, leaving open the question of whether a child has the right to family integrity with a legal parent.⁸⁴

Regardless of the complications resulting from *Michael H.*, most circuit courts have held that children have an independent right to family integrity. This includes the First, Second, Fourth, Fifth, Seventh, Ninth, and Tenth Circuits.⁸⁵ While the Third and Eighth Circuits are silent on the issue, no circuit court has explicitly *rejected* that the right exists.⁸⁶ Additionally, courts in the Sixth Circuit have recognized that children possess the right to family integrity.⁸⁷ Altogether, the majority of circuit courts have affirmed that the right to family integrity is reciprocal (i.e., one retained by both parent and child).

In *Duchesne v. Sugarman*, the Second Circuit found that a constitutional violation occurred after a mother brought a § 1983 civil rights lawsuit on behalf of herself and her two minor children against the family regulation

83. See Susan Hazeldean, *Anchoring More Than Babies: Children's Rights After Obergefell v. Hodges*, 38 CARDOZO L. REV. 1397, 1411 (2017).

84. See Trivedi, *supra* note 1, at 281 ("Since California law presumed that the child's legal father was her mother's husband, Michael was a legal stranger and had no parental claim whatsoever . . . [h]ere, consistent with the established right to family integrity, the Court felt there was no need to rule on the issue, given that the child already had a father and had no right to maintain a relationship with multiple fathers.").

85. See *Suboh v. Dist. Att'y's Off.*, 298 F.3d 81, 91 (1st Cir. 2002); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977); *Jordan ex rel. Jordan v. Jackson*, 15 F.3d, 333, 346 (4th Cir. 1994) (mentioning that delay in reunification "implicates the child's interests in his family's integrity and in the nurture and companionship of his parents."); *Wooley v. City of Baton Rouge*, 211 F.3d 913, 923 (5th Cir. 2000); *Berman v. Young*, 291 F.3d 976, 983 (7th Cir. 2002); *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987) ("[The] constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents. The companionship and nurturing interests of parent and child in maintaining a tight familial bond are reciprocal, and we see no reason to accord less constitutional value to the child-parent relationship than we accord to the parent-child relationship."), *overruled on other grounds by* *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc); *J.B. v. Washington Cnty.*, 127 F.3d 919, 925 (10th Cir. 1997).

86. See Trivedi, *supra* note 1, at 282.

87. See, e.g., *Kovacic v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs.*, 809 F. Supp. 2d 754, 776 (N.D. Ohio 2011) (explaining, "[c]ourts have held that [the right to family integrity] extends to both parents and their children" and the children "met their burden of demonstrating [their] constitutionally protected interest"), *aff'd and remanded*, 724 F.3d 687 (6th Cir. 2013).

administration who removed her two children from her care without a court order, a hearing, or her consent.⁸⁸ In recognizing that the right to family integrity is a reciprocal right, the Second Circuit explained, “the right to the preservation of family integrity encompasses the reciprocal rights of both parent and children.”⁸⁹ Further, the court held that both the mother and her children were “deprived of their right to live together as a family by the refusal to return the children to the custody of the mother.”⁹⁰ Following this logic, the Fifth Circuit held in a child custody case that “a child’s right to family integrity is concomitant to that of a parent.”⁹¹ Similarly, in a § 1983 claim, the Seventh Circuit explained in the same sense that “parents have a fundamental due process right to care for and raise their children . . . [and] children enjoy the corresponding familial right to be raised and nurtured by their parents.”⁹²

In *Jordan ex rel. Jordan v. Jackson*, the Fourth Circuit analyzed a family’s due process claim after a child protective services (CPS) worker removed a child from his home for several days without judicial review.⁹³ There, the Court held that the procedural “delay implicates the child’s interest in his family integrity and in the nurture and companionship of his parents.”⁹⁴ The Tenth Circuit cited to *Jackson* several years later in their decision surrounding an instance of forced family separation, stating, “the forced separation of parent from child, even for a short time, represents a serious impingement upon both the parents’ and child’s rights.”⁹⁵

Prior to the Sixth Circuit’s decision in *Chambers v. Sanders*, the court published several cases in the realm of family integrity. Notably, the Sixth Circuit has recognized that the due process right to family integrity and association is a reciprocal right present in a shared relationship between multiple people.⁹⁶ However, these cases primarily consider whether a plaintiff can bring a § 1983 claim to remedy the state’s deprivation of a

88. 566 F.2d 817, 822 (2d Cir. 1977).

89. *Id.*

90. *Id.*

91. *Wooley v. City of Baton Rouge*, 211 F.3d 913, 923 (5th Cir. 2000).

92. *Berman v. Young*, 291 F.3d 976, 983 (7th Cir. 2002).

93. *Jordan ex rel. Jordan v. Jackson*, 15 F.3d, 333, 346 (4th Cir. 1994).

94. *Jackson*, 15 F.3d at 346.

95. *J.B. v. Washington Cnty.*, 127 F.3d 919, 925 (10th Cir. 1997) (quoting *Jordan ex rel. Jordan v. Jackson*, 15 F.3d, 333, 346 (4th Cir. 1994)).

96. *See Kovacic v. Cuyahoga Cnty. Dep’t of Child & Fam. Servs.*, 724 F.3d 687, 700 (6th Cir. 2013).

family member's rights.⁹⁷ Additionally, in responding to claims involving the deprivation of due process rights to familial association, the Sixth Circuit held that substantive due process provides the "freedom from government actions that 'shock the conscience.'"⁹⁸ The shocks-the-conscience standard applies to executive actions of a state official, and holds an official's conduct constitutes a due process violation when their conduct is "something more than negligence," and either intentional or "less than intentional conduct, such as recklessness or gross negligence."⁹⁹ The Sixth Circuit has applied the shocks-the-conscience standard to find that in CPS investigations, an officer's actions *could* shock the conscience, and deprive a plaintiff of their due process right to familial association.¹⁰⁰

III. ANALYSIS OF *CHAMBERS V. SANDERS*

A. How the Sixth Circuit Analyzed the Case

In *Chambers v. Sanders*, plaintiffs Chambers and Smith alleged that defendants Detective Sanders and the city of Detroit violated their Fourteenth Amendment right to familial integrity through the wrongful conviction and incarceration of their father, Burton.¹⁰¹ Based on its history and jurisprudence, the Sixth Circuit had not previously decided the issue of whether the right to family integrity is implicated when the state deprives a child of routine interaction with a parent through wrongful incarceration, and ultimately held that it is not.¹⁰²

97. See *Jaco v. Bloechle*, 739 F.2d 239, 240 (6th Cir. 1984) (considering a mother's § 1983 claim to remedy the state's deprivation of a *family member's* rights) (emphasis added); *Purnell v. Cty. of Akron*, 925 F.2d 941, 941–942 (6th Cir. 1991) (plaintiff brought a § 1983 claim for the violation of *decedent's* constitutional rights by defendants and sought damages for only a violation of the decedent's constitutional rights) (emphasis added); *Claybrook v. Birchwell*, 199 F.3d 350, 353–54 (6th Cir. 2000) (ruling on a cause of action brought in the plaintiffs' *representative capacity* that alleged the deprivation of their decedent-father's constitutional rights) (emphasis added).

98. *Range v. Douglas*, 763 F.3d 573, 588 (6th Cir. 2014) (quoting *Bell v. Ohio State Univ.*, 351 F.3d 240, 249–50 (6th Cir. 2003)).

99. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) (quoting *Daniels v. Williams*, 474 U.S. 327, 328 (1986)).

100. See *Kottmyer v. Maas*, 436 F.3d 684, 691 n.1 (6th Cir. 2006) (addressing a claim that child protective services investigation violated parents right to familial association); *Kolley v. Adult Protective Servs.*, 725 F.3d 581, 585–86 (6th Cir. 2013).

101. 63 F.4th 1092, 1095 (6th Cir. 2023).

102. See *id.* at 1097.

The court focused its inquiry on whether the challenged conduct deprived Chambers and Smith of rights secured under federal law, which is the second prong of a 42 U.S.C. § 1983 claim.¹⁰³ The first element of a § 1983 claim surrounds whether the defendant acted under the color of state law, which was not contested in this case.¹⁰⁴ The court acknowledged that while the Due Process Clause has historically protected certain rights that are based in family integrity, this interest has traditionally been applied to “either state actions directed at the family relationship . . . or state regulation of decisions within the ambit of parental control.”¹⁰⁵ Assuming that the plaintiffs have identified a protectable Fourteenth Amendment interest, the court explained that it would not be violated because they did not allege that a state actor infringed upon that right with the necessary culpability to successfully claim a due process violation.¹⁰⁶ In support of this position, the court primarily cites to precedent from the Sixth Circuit and other circuit courts.¹⁰⁷ Noting that the Due Process Clause can be violated by executive action when it is properly defined as arbitrary, or conscience shocking in a constitutional sense, the court went on to explain that negligent behavior categorically fails to shock the conscience—while conduct intended to injure is “most likely to rise to the conscience-shocking level.”¹⁰⁸

Of primary focus in the court’s analysis is the principle that for a substantive violation of the Due Process Clause to occur, the state must have acted toward the plaintiff with a “culpable” state of mind.¹⁰⁹ Specifically, the Sixth Circuit explained that the plaintiffs failed to show that the state showed a culpable mental state *directed towards* them.¹¹⁰ The plaintiffs claimed that the defendants violated their father’s constitutional rights through various bad acts, and that their “constitutional right to have their family unit protected,” was necessarily “violated when defendants violated Mr. Burton’s rights.”¹¹¹ From this, the court concluded that the Due Process Clause and the right to family integrity are not implicated when a

103. *See id.* at 1096.

104. *See id.*

105. *Id.*

106. *See id.* at 1097.

107. *See id.*

108. *Id.* (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)).

109. *See id.* (citing *Lewis*, 523 U.S. at 849).

110. *See id.* at 1098.

111. *Id.*

government official acts *negligently* with respect to a plaintiff's constitutionally protected interests, nor when a government official *unintentionally* harms those interests without a culpable state of mind directed toward them.¹¹² A contrary holding, and especially one that imposes strict liability on state actors for incidental harms resulting from their actions, would be in conflict with the Supreme Court's holding in *Daniels v. Williams*.¹¹³ So, according to the Sixth Circuit, the right to family integrity is not implicated when "unintentional" harm is caused by a state actor, without the specific intent to cause such harm.¹¹⁴

The Sixth Circuit acknowledged that the Ninth Circuit has agreed with the plaintiff's approach in allowing children to successfully claim that their right to family integrity had been violated by state actions that incidentally impact their relationship with their parents.¹¹⁵ However, the opinion of the Sixth Circuit holds that the Ninth Circuit's analysis in *Smith v. City of Fontana* is flawed.¹¹⁶ First, the court explained, the Ninth Circuit's view is based on an overbroad reading of the substantive due process right to family association.¹¹⁷ Second, "the Ninth Circuit mischaracterizes the legislative history on which it relies."¹¹⁸ According to the *Chambers* opinion, the Ninth Circuit's reading of the Ku Klux Klan Act, the precursor to 42 U.S.C. § 1983, does not support the position that Congress passed the Act with the intention of allowing children of parents who were wrongfully incarcerated or killed by police a remedy under § 1983.¹¹⁹ Further, "even if it did, that *statutory* conclusion about the scope of § 1983 would not affect the contours of the *constitutional* right to familial association under the Due Process Clause."¹²⁰ Additionally, the Court cited *Claybrook v. Birchwell* as an "analogous case," despite the fact that the case involved a plaintiff who was seeking to assert the constitutional rights of a *deceased* family member, and not his own right to familial association.¹²¹ Based on this analysis, the Sixth

112. See *id.* (citing *Daniels v. Williams*, 474 U.S. 372, 328–31 (1986)).

113. See *id.* at 1098 (noting that *Williams* held Due Process Clause is not implicated by a state official's negligent act causing unintended loss of or injury to life, liberty, or property).

114. *Id.*

115. See *id.* (citing *Smith v. City of Fontana*, 818 F.2d 1411, 1417–20 (9th Cir. 1987)).

116. See *id.* at 1099.

117. See *id.*

118. *Id.*

119. See *id.*

120. *Id.*

121. *Id.* at 1100 (emphasizing the principle that "[d]enying relief for a family member

Circuit emphasized that “actions that collaterally impact the family relationship are insufficient to give rise to a substantive due process claim that the state has violated an individual’s right to family integrity.”¹²²

Finally, the Sixth Circuit attempted to clarify the holding by making two points.¹²³ First, the court explained that for the adopted standard to be met, a government official or state actor must act with a “culpable state of mind with respect to the plaintiffs themselves and their own constitutional rights.”¹²⁴ Conduct that is merely negligent is insufficient to give rise to a due process violation, or is a “mere incidental harm.”¹²⁵ For a harm to be considered a “conscience shocking” violation of rights in the constitutional sense, the harm suffered by a family member must be more than a collateral consequence of other wrongful state action.¹²⁶ Moreover, the Sixth Circuit expressed that “it will admittedly be a rare case in the wrongful incarceration context that meets this standard.”¹²⁷ This rarity was attributed to both the narrow scope of substantive due process, and that dispensing with the requirement that the government action at issue target the family relationship, would be inconsistent with Supreme Court case law.¹²⁸ Applying this reasoning to the facts of the case, the Sixth Circuit held that “Chambers and Smith have not pled facts to state a claim that Sanders’s conduct was directed at interfering with their parent-child relationship. We cannot conclude that Sanders’s investigative misconduct and deliberate indifference toward *Burton*’s federally protected rights also amounts to ‘conscience shocking’ treatment of *his children*’s federally protected rights.”¹²⁹

B. How the Sixth Circuit Should Have Ruled

In *Chambers v. Sanders*, the Sixth Circuit incorrectly held that a state

permanently deprived of a loved one through state action suggests a *fortiori* that relief should also be denied for those deprived of their loved ones for temporary periods, such as through wrongful incarceration.”).

122. *Id.*

123. *See id.*

124. *Id.* at 1101.

125. *Id.* (citing *Daniels v. Williams*, 474 U.S. 327, 333 (1986)).

126. *Id.* (citing *Range v. Douglas*, 763 F.3d 573, 591 (6th Cir. 2014)).

127. *Id.*

128. *See id.*

129. *Id.*

official deprives one of their due process right to familial association and integrity *only* when that official “acted with a culpable state of mind directed at the plaintiff’s family or a decision traditionally within the ambit of the family.”¹³⁰ Further, the majority erroneously determined that appellants Chambers and Smith failed to allege that the actions of Detective Sanders violated their due process rights to familial association and integrity. As illuminated by the dissenting opinion, the proper standard is “when the child loses this relationship to the perpetual absence of their parent because a state official deliberately and intentionally procured a wrongful conviction, the official deprives the child of their due-process right to family association and integrity.”¹³¹ The Sixth Circuit should have applied the shocks-the-conscience standard, along with the framework established by the Ninth Circuit, to find that Chambers and Smith sufficiently pled that Detective Sanders’s actions were directly aimed at the family relationship.

First, and as discussed in the history portion of this Comment, the Supreme Court has recognized and established “that the relationship between parent and child is constitutionally protected.”¹³² Further, the Supreme Court has emphasized that the right to raise one’s child(ren) is “essential,” and that “the importance of the family relationship . . . stems from the emotional attachments that derive from the intimacy of daily association.”¹³³ Additionally, the Sixth Circuit has recognized that the right to family integrity is a reciprocal one, and not one exclusively possessed by parents.¹³⁴ Given the reciprocal nature of this right, the conduct that deprived Danny Burton of his due process right to family integrity also deprived his children of the same right. The Ninth Circuit summarized this view well, stating, “[t]he companionship and nurturing interests of parent and child in maintaining a tight familial bond are reciprocal, and we see no reason to accord less constitutional value to the child-parent relationship than we accord to the parent-child relationship.”¹³⁵ Applying this framework to the facts of the case further allows for the conclusion that Detective Sanders violated Chamber’s and Smith’s rights.

130. *Id.*

131. *Id.* at 1102 (Moore, J., dissenting).

132. *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

133. *Smith v. Org. of Foster Families for Equal. and Reform*, 431 U.S. 816, 843–44 (1977).

134. *See Kovacic v. Cuyahoga Cnty. Dep’t of Child. & Fam. Servs.*, 724 F.3d 687, 700 (6th Cir. 2013).

135. *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987).

Next, the majority should have applied the shocks-the-conscience doctrine to find that Detective Sanders's conduct deprived Chambers and Smith of their right to family integrity. Conduct shocks the conscience if it "violates the decencies of civilized conduct."¹³⁶ Further, this conduct includes actions "so brutal and offensive that they do not comport with traditional ideas of fair play and decency."¹³⁷ The shocks-the-conscience standard is a way to "conceptualize the sort of egregious behavior that rises to the level of a substantive due process violation."¹³⁸ While determining what qualifies as conscience shocking behavior is a difficult task, conduct that is "intended to injure without any justifiable government interest, most clearly rises to the conscience-shocking level."¹³⁹ According to the dissenting opinion in *Chambers*, "[c]ourts have found that an officer's conduct in both criminal and child-protective-services-investigations could shock the conscience and, in some instances, deprive a plaintiff of their due-process right to familial association."¹⁴⁰ Allegations of a bad faith investigation are particularly important in this determination.¹⁴¹ Initially discussed in *Lewis*, and subsequently supported by *Daniels*, the "shocks-the-conscience" standard makes clear that official misconduct violates substantive due process *only* if it shocks the conscience (or outrages a sense of decency).¹⁴² Utilizing the language of *Range* to evaluate the full scope of Sanders's conduct, Chambers and Smith sufficiently alleged that his conduct shocked the conscience. In conducting the investigation that led to the decade's long incarceration of Burton—Sanders and the City acted "intentionally . . . purposefully . . . recklessly, deliberately, maliciously, knowingly, carelessly, and with gross negligence."¹⁴³ Through physically and mentally intimidating witnesses to obtain false statements, fabricating evidence, and suppressing exculpatory evidence to wrongfully convict an innocent person—Sanders's conduct meets the court's standard of

136. *Range v. Douglas*, 763 F.3d 573, 589 (6th Cir. 2014) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)).

137. *Id.* at 589–590 (quoting *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957)).

138. *Id.* at 590.

139. *Id.* (quoting *Lewis*, 523 U.S. at 848–49).

140. *Chambers v. Sanders*, 63 F.4th 1092, 1109–10 (6th Cir. 2023) (Moore, J., dissenting).

141. *See id.* at 1110.

142. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (stating the substantive component of the Due Process Clause is violated by executive action only when it "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense.").

143. *See Chambers*, 63 F.4th at 1111–12 (Moore, J., dissenting).

conscience shocking behavior. Sanders engaged in such conduct by intentionally and deliberately procuring a wrongful conviction of Burton that left both Chambers and Smith without a father, directly depriving them of their family association. This is true irrespective of whether Sanders's motivation was to injure the familial relationship amongst the Burtons.

Finally, attention should be paid to the intentional and bad-faith nature of Detective Sanders's actions, as they were overlooked by the majority. For Danny Burton, this meant thirty-two years wrongfully incarcerated, and thirty-two years isolated from his two children; leaving them without the opportunity to hug their father, have his support during major life events, or seek his advice. This detrimental isolation was a product of the deliberate and intentional procurement of a false conviction that condemned Burton to a life sentence of imprisonment. According to the complaint, not only did Sanders threaten, intimidate, and inflict physical violence on Burton to get him to confess—he also suppressed exculpatory evidence, fabricated evidence, and coerced witnesses into making false statements.¹⁴⁴ Based on this information, it is not unreasonable to conclude that Detective Sanders spent a considerable amount of time investigating Burton for first-degree murder and was aware that he had children. Further, as a detective, Sanders has had significant experience in the field of law enforcement and must have known that incarceration separates families and creates lifelong consequences for the parents and children. The majority largely emphasizes that the harms experienced by Chambers and Smith were “incidental harms,” that arose from “routine interactions.”¹⁴⁵ However, Detective Sanders knew that his deliberate and wrongful procurement of Burton's incarceration would deprive his children of their relationship with their father. Therefore, it is reasonable to conclude that Detective Sanders knew that Burton had children, and knew that orchestrating Burton's wrongful conviction would result in the destruction of Burton's family unit.

CONCLUSION

Being separated from their parents can have long lasting impacts on children, even if the period of separation is brief.¹⁴⁶ The Supreme Court has

144. *See id.* at 1112 (Moore, J., dissenting).

145. *Id.* at 1097–98.

146. *See Kennedy, supra* note 2, at 916; *see also* Hurley Riley, *The Impact of Parent-Child*

been hesitant to carve out constitutional rights for children, but children continue to face harm because of the impacts of state powers that exist without adequate protection from the federal government.¹⁴⁷ Further, while parents have a constitutional liberty interest in the care, custody, and control of their children—as well as the family unit at large—family integrity should mean that *all* family members share reciprocal constitutional rights to their relationships with each other.¹⁴⁸ Because the instances where a state actor acts with the specific intent to destroy a family relationship are few and far between, plaintiffs who have suffered the loss of relationship with a family member due to wrongful incarceration are left without a means of recovery. In *Chambers v. Sanders*, the Sixth Circuit held that children do not have the right to family integrity when the state has deprived them of their relationship with a parent through wrongful conviction. However, the Court should have reached the opposite holding. If it had focused its analysis on the intentional nature of Detective Sanders’s conduct, applied the framework established by the Ninth Circuit, and analyzed the facts of the case using the appropriate application of the shocks-the-conscience doctrine, it would have come to a different result. It is vital for children to have a meaningful source of recovery against state actors, especially in instances where wrongful incarcerations have destroyed a familial relationship, and where actions are deemed to have shocked the conscience.

Separation at the Border, UNIV. OF MICH. SCH. OF PUB. HEALTH (Sep. 7, 2018), <https://sph.umich.edu/pursuit/2018posts/family-separation-US-border.html> [<https://perma.cc/65QG-QYHN>] (explaining University of Michigan report highlighting the implications of family separation on young children, and showing that the trauma that children experience when undergoing long-term separation from their parents is extremely detrimental to the child’s development); Johayra Bouza et al., *The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities*, SOC’Y FOR RSCH. IN CHILD DEV. (June 20, 2018), <https://www.srcd.org/briefs-fact-sheets/the-science-is-clear> [<https://perma.cc/4QVZ-AHD9>] (discussing the “overwhelming scientific evidence that separation between children and parents, except in cases where there is evidence of maltreatment, is harmful to the development of children, families, and communities,” and further, “[f]amily separations occurring in the presence of other stressors, such as detention or natural disaster, only adds to their negative effects.”).

147. See Kennedy, *supra* note 2, at 917.

148. See Trivedi, *supra* note 1, at 313.