TIED TOGETHER, TORN APART: EXPLORING "INCIDENTAL" INTERFERENCES WITH THE RIGHT TO FAMILY INTEGRITY

INTRODUCTION

In 1987, Danny Burton was convicted of first-degree murder and sentenced to life in prison without the possibility of parole.[1] Then, after thirty-two years behind bars, Burton was exonerated in 2019 after witnesses who had been instrumental to his incarceration recanted their statements.[2] The witnesses claimed that Detroit Detective Ronald Sanders had threatened them with physical, mental, and emotional harm if they did not testify against Burton.[3] Further, while Burton was in custody, Sanders allegedly "threatened, intimidated, and inflicted physical violence" upon Burton to pressure him into confessing to a murder he did not commit.[4] Sanders also allegedly "suppressed exculpatory evidence, [and] fabricated evidence" to obtain Burton's conviction.[5]

It is well settled that Burton can now seek redress under 42 U.S.C. § 1983 against both Sanders and the City of Detroit for his wrongful conviction and imprisonment.[6] But *Chambers v. Sanders*[7] posed a harder question, and one of first impression for the Sixth Circuit: Is the constitutional right to family integrity implicated whenever the state deprives a child of routine interaction with a parent through wrongful incarceration?[8] That is, can Burton's adult sons, Danny Lamont Chambers and Dontell Rayvon-Eddie Smith, claim under § 1983 that the state violated their rights by wrongfully convicting and incarcerating their father throughout their childhood and into their adulthood?[9] For thirty-two years, the two brothers were unable to hug their father, cry on his shoulder, or seek his advice on major life decisions.[10] Notably, the brothers did not allege that Sanders specifically intended to destroy

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1 Chambers v. Sanders, 63 F.4th 1092, 1095 (6th Cir. 2023).

2 *Id.*

3 *Id.* at 1095; *id.* at 1103 (Moore, J., dissenting).

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

5 *Id.*

6 *See id.* at 1095 (majority opinion). 42 U.S.C. § 1983 provides, in pertinent 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 . . . .

42 U.S.C. § 1983.

7 63 F.4th 1092.

8 *Id.* at 1095, 1097.

9 *See id.*

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

their family unit.[11] Rather, they claimed that their familial "rights were violated when [Sanders] violated [their father's] rights."[12] In cases such as this, where the state incidentally interferes with a family unit by wrongfully incarcerating or killing a family member, has the surviving family members' constitutional right to family integrity been violated?

The right to family integrity assures members of a family the freedom to make family decisions and preserve familial ties without undue interference from the state.[13] Although the doctrine originally derived from the common law patriarchal conception of a man as the sole head of his household and controller of his wife and children,[14] it has developed into a more expansive set of substantive due process rights held by certain family members[15] and backed by the Fourteenth Amendment.[16] Several Supreme Court cases have established a range of rights associated with forming and sustaining the family unit,[17] such as the constitutional right to marry,[18] to procreate,[19] to govern the care, custody, and upbringing of children,[20] and to manage family living arrangements.[21] Specifically, the Court has consistently recognized the right of a parent "in the companionship, care, custody, and management of his or her

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[11] *Id.* at 1095 (majority opinion).

[12] *Id.* (quoting Complaint and Jury Demand at 11, Chambers v. Sanders, No. 2:21-cv-10746 (E.D. Mich. Apr. 1, 2021)).

[13] Kevin B. Frankel, *The Fourteenth Amendment Due Process Right to Family Integrity Applied to Custody Cases Involving Extended Family Members*, 40 COLUM. J.L. & SOC. PROBS. 301, 309 (2007); *see also* Peggy Cooper Davis, *Contested Images of Family Values: The Role of the State*, 107 HARV. L. REV. 1348, 1371 (1994); Mark Strasser, *Fit to Be Tied: On Custody, Discretion, and Sexual Orientation*, 46 AM. U. L. REV. 841, 843–44 (1997).

[14] *See* Jill Elaine Hasday, *Parenthood Divided*, 90 GEO. L.J. 299, 309 (2002); *see also* PEGGY COOPER DAVIS, NEGLECTED STORIES: THE CONSTITUTION AND FAMILY VALUES 8 (1997).

[15] *See infra* Parts I–II, pp. 2367–77.

[16] *See* U.S. CONST. amend. XIV, § 1.

[17] *See, e.g.*, Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977) (plurality opinion); Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 640 (1974) (quoting Eisenstadt v. Baird, 405 U.S. 438, 453 (1972)); Wisconsin v. Yoder, 406 U.S. 205, 232–34 (1972) (quoting Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925)); Ginsberg v. New York, 390 U.S. 629, 639 (1968) (quoting Prince v. Massachusetts, 321 U.S. 158, 166 (1944)); Loving v. Virginia, 388 U.S. 1, 12 (1967); Griswold v. Connecticut, 381 U.S. 479, 485 (1965); Skinner v. Oklahoma, 316 U.S. 535, 541 (1942); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (citing, inter alia, The Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 36 (1873)); *cf. Prince*, 321 U.S. at 166 (citing, inter alia, *Pierce*, 268 U.S. at 510) (mentioning these rights as well as some of their limitations).

[18] *Loving*, 388 U.S. at 12; *Meyer*, 262 U.S. at 399 (citing *The Slaughter-House Cases*, 83 U.S. (16 Wall.) at 36) (noting in dicta the fundamental right to marry).

[19] *Griswold,* 381 U.S. at 485; *see also Skinner*, 316 U.S. at 541.

[20] *Yoder*, 406 U.S. at 232–34 (quoting *Pierce*, 268 U.S. at 534–35); *Ginsberg*, 390 U.S. at 639 (quoting *Prince*, 321 U.S. at 166); *Prince*, 321 U.S. at 166 (citing, inter alia, *Pierce*, 268 U.S. at 510).

[21] *Moore*, 431 U.S. at 499–501, 506 (plurality opinion) (citing *LaFleur*, 414 U.S. at 639–40).

children"[22] "and in not being forcibly separated from them."[23] This liberty interest is the right to family integrity.[24]

The right to family integrity has traditionally applied to state actions directed at the parent-child relationship, such as child welfare cases,[25] or state attempts to regulate decisions within the realm of parental authority, such as the religious and educational training of children[26] or the choice to have children in the first instance.[27] Family regulation law has proven to be the "most fertile ground"[28] for courts to explore the contours of the right to family integrity, due to the tension between the right of a parent to direct the care of their child and the state's responsibility to protect children from abuse.[29] In this context, any state interference with a parent's right to family integrity, such as removing a child from their parent's care, is presumptively subject to intermediate scrutiny: courts require the government to demonstrate a "compelling interest in protecting the welfare of [the child]."[30] In sum, the Supreme Court has "made plain beyond the need for multiple citation that a parent's desire for and right to 'the companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'"[31]

But when the state irreparably severs familial ties by wrongfully killing a family member or wrongfully incarcerating them for years on end, is the constitutional right to family integrity implicated? Though the Supreme Court has never addressed this legal question, most circuits have answered it in the affirmative: generally, close family members

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[22] Stanley v. Illinois, 405 U.S. 645, 651 (1972); Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 27 (1981) (quoting *Stanley*, 405 U.S. at 651); Santosky v. Kramer, 455 U.S. 745, 753 (1982).

[23] Caitlin Mitchell, *Family Integrity and Incarcerated Parents: Bridging the Divide*, 24 YALE J.L. & FEMINISM 175, 180 (2012); *see Stanley*, 405 U.S. at 651.

[24] Mitchell, *supra* note 23, at 180 (quoting *Stanley*, 405 U.S. at 651); *see* Cheryl M. Browning & Michael L. Weiner, Note, *The Right to Family Integrity: A Substantive Due Process Approach to State Removal and Termination Proceedings*, 68 GEO. L.J. 213, 213 (1979).

[25] *See, e.g.*, *Stanley*, 405 U.S. at 645, 651; Heartland Acad. Cmty. Church v. Waddle, 427 F.3d 525, 529, 533 (8th Cir. 2005); Malik v. Arapahoe Cnty. Dept. of Soc. Servs., 191 F.3d 1306, 1315 (10th Cir. 1999).

[26] *See, e.g.*, Meyer v. Nebraska, 262 U.S. 390, 396–99 (1923) (identifying the right to "establish a home and bring up children," *id.* at 399 (citing, inter alia, The Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 36 (1873))); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) ("[T]he custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." (citing Pierce v. Soc'y of Sisters, 268 U.S. 510, 510 (1925)).

[27] *Cf.* Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) (noting "procreation [is] fundamental").

[28] Shanta Trivedi, *My Family Belongs to Me: A Child's Constitutional Right to Family Integrity*, 56 HARV. C.R.-C.L. L. REV. 267, 287 (2021).

[29] *See* Jeanne M. Kaiser, *Finding a Reasonable Way to Enforce the Reasonable Efforts Requirement in Child Protection Cases*, 7 RUTGERS J.L. & PUB. POL'Y 100, 106–07 (2009).

[30] Tara Grigg Garlinghouse, Comment, *Fostering Motherhood: Remedying Violations of Minor Parents' Right to Family Integrity*, 15 U. PA. J. CONST. L. 1221, 1231 (2013).

[31] Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 27 (1981) (quoting Stanley v. Illinois, 405 U.S. 645, 651 (1972)).

whose relatives are killed or wrongfully incarcerated by state actors may maintain a substantive due process claim under 42 U.S.C. § 1983.[32] However, most circuits that have recognized this right have also read it narrowly, requiring that the victim's family members prove that the state actor's misconduct was *specifically aimed* at disrupting the familial relationship.[33]

This Note argues for two points. First, existing family integrity jurisprudence supports the notion that incidental state interference with the family unit, even absent a specific intent to disrupt familial relationships, can still infringe the constitutional right to family integrity. Second, this conception of the right to family integrity survives the alteration of the right to privacy brought on by *Dobbs v. Jackson Women's Health Organization*.[34] Part I of this Note surveys Supreme Court jurisprudence that establishes parents' and children's right to family integrity. Part II discusses the current circuit court split on the legal question of whether incidental or unintentional state interventions in the family unit violate the right to family integrity. Part III, using the Sixth Circuit case of *Chambers v. Sanders* as a case study, examines the specific intent requirement that circuit courts have imposed on incidental state interference with the family relationship. It then advances the proposition that intentional state conduct that negatively affects the family unit violates the right to family integrity so long as the state action "shocks the conscience."[35] Finally, Part IV discusses the implications of waiving the specific intent requirement, considers counterarguments, and concludes.

I. THE CONSTITUTIONAL RIGHT TO FAMILY INTEGRITY

The Supreme Court has repeatedly applied heightened scrutiny to state actions that infringe upon various personal liberty rights,[36] including the right of a family to operate without unwarranted state interference.[37] Indeed, the interests present in the parent-child relationship were among the first to be acknowledged by the Court in its cases defining constitutionally protected liberties.[38] Accordingly, the right

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[32] *See infra* section II.C, pp. 2374–77.

[33] *See infra* section II.C, pp. 2374–77.

[34] 142 S. Ct. 2228 (2022).

[35] *See* County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998) (quoting Rochin v. California, 342 U.S. 165, 172–73 (1952)).

[36] *See, e.g.*, Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) (right to procreate); Shapiro v. Thompson, 394 U.S. 618, 629 (1969) (right to travel); NAACP v. Alabama, 357 U.S. 449, 466 (1958) (right of association).

[37] M.L.B. v. S.L.J., 519 U.S. 102, 116 (1996) ("Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as 'of basic importance in our society,' rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." (quoting Boddie v. Connecticut, 401 U.S. 371, 376 (1971))).

[38] *See, e.g.*, Pierce v. Soc'y of Sisters, 268 U.S. 510, 534 (1925); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (citing, inter alia, The Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 36 (1873)).

to family integrity has come to be constitutionally protected by the Fourteenth Amendment[39] and falls under the liberty right to privacy, first acknowledged by the Supreme Court in *Meyer v. Nebraska*.[40]

In *Meyer*, the Supreme Court reversed the conviction of a teacher for instructing a ten-year-old child using German literature, in contravention of a Nebraska statute forbidding foreign-language education.[41] The Court held that the statute was unconstitutional, reasoning that the Nebraska statute unduly interfered with the parents' freedom to direct their child's education.[42] It further reasoned that the right to "establish a home and bring up children" was "[w]ithout doubt" a protected liberty under the Fourteenth Amendment Due Process Clause.[43] Later, in *Pierce v. Society of Sisters*[44] and *Wisconsin v. Yoder*,[45] the Court applied *Meyer* to affirm that parents had a constitutional interest in the educational and religious upbringing of their children.[46]

The Court further entrenched the right to family integrity in American jurisprudence with *Stanley v. Illinois*.[47] There, it considered the constitutionality of an Illinois statute that placed the child of an unwed mother in state custody upon the mother's death without considering the father's fitness to assume custody or the child's existing relationship with him.[48] In holding the statute unconstitutional, the Court reasoned that the state "spites its own articulated goals" of protecting "the moral, emotional, mental, and physical welfare of the minor and the best interests of the community" when it separates children from their parents, including their fathers, without due process.[49] *Stanley* extended the right to family integrity beyond the *Meyer-Pierce* framework, previously confined to parental decisions about education and religion, to encompass the preservation of family ties generally. This principle was reiterated twenty-eight years later in *Troxel v. Granville*,[50] in which the Court held that since "there is a presumption that fit parents act in the best interests of their children," there is "normally no

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39 *See* Stanley v. Illinois, 405 U.S. 645, 651 (1972) (citing *Meyer*, 262 U.S. at 399; *Skinner*, 316 U.S. at 541).

40 262 U.S. 390.

41 *Id.* at 396–97, 403.

42 *Id.* at 399, 403.

43 *Id.* at 399.

44 268 U.S. 510 (1925).

45 406 U.S. 205 (1972).

46 *See Pierce*, 268 U.S. at 534–35 ("Under the doctrine of *Meyer* . . . , we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."); *Yoder*, 406 U.S. at 232–33 (quoting *Pierce*, 268 U.S. at 534–35) ("This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Id.* at 232.).

47 405 U.S. 645 (1972).

48 *Id.* at 645, 658.

49 *Id.* at 652–53 (quoting ILL. REV. STAT., c. 37, § 701).

50 530 U.S. 57 (2000).

reason for the State to inject itself into the private realm of the family to further question" fit parents' ability to raise their children.[51]

Although the Court declined half a century ago to expand the definition of "family" to include contractual foster families,[52] it has otherwise resisted restricting the right to family integrity to traditional parent-child relationships. For example, in *Moore v. City of East Cleveland*,[53] the Court prohibited the state from applying a single-family-zoning statute to exclude plaintiff Moore's family — which consisted of Moore, Moore's son, and two of her grandchildren — from an area zoned for single-family occupancy.[54] The Court applied the *Meyer-Pierce* line of precedent to uphold Ms. Moore's right to family integrity despite the nontraditional structure of her family unit, reasoning that the Constitution requires a flexible definition of family in order to guarantee a faithful application of the Fourteenth Amendment.[55]

As illustrated above, the Supreme Court has spoken at length on a parent's right to the care, custody, and control of their children. But lower court recognitions of the right to family integrity have ventured beyond the context of cases concerning custody of children and the right to make decisions about raising them. Part II below explores these forays.

II. The Unsettled Boundaries of Family Integrity

This Part explores questions about the right to family integrity that remain unanswered by the Supreme Court and existing lower court jurisprudence. Section A examines the concept of a *reciprocal* right to family integrity, analyzing how the Supreme Court's jurisprudence implicitly supports a bilateral understanding of family integrity that encompasses both parents and their children. Section B then confronts the split among lower courts over whether, and to what extent, the right to family integrity extends to relationships involving adult children. Finally, section C delineates the procedural hurdles faced by family members seeking redress under 42 U.S.C. § 1983 for violations of their right to family integrity, particularly in the context of wrongful incarceration and wrongful death.

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[51] *Id.* at 68–69.

[52] *See* Smith v. Org. of Foster Fams. for Equal. & Reform, 431 U.S. 816, 845–47 (1977) (holding that the relationship between foster parents and foster children is legally inferior to the relationship between legal parents and their children due to the contractual nature of the former, and thus constitutional liberty interests are diminished if present at all).

[53] 431 U.S. 494 (1977).

[54] *Id.* at 495–96, 506.

[55] *Id.* at 503–06. In addition to the nontraditional conception of a family in *Moore*, many courts have recognized liberty interests in familial relationships other than strictly parental ones. *See, e.g.*, Rivera v. Marcus, 696 F.2d 1016, 1024–25 (2d Cir. 1982) (half-sister who was also foster mother had protected interest in siblings); Drollinger v. Milligan, 552 F.2d 1220, 1226–27 (7th Cir. 1977) (deprivation of grandfather's relationship with grandchild actionable under § 1983).

A. The Reciprocal Right to Family Integrity

Though the Supreme Court has spoken "frequently and forcefully" about the *parental* right to family integrity,[56] it has not directly addressed the question of a *child's* right to family integrity. Despite this, legal scholars argue persuasively that both Supreme Court and lower federal court jurisprudence clearly support the reciprocal nature of the right to family integrity.[57]

For example, in *Smith v. Organization of Foster Families for Equality and Reform*,[58] in the course of discussing biological parents' unique liberty interest in the relationship with their children, the Court acknowledged the rights of members of the larger family unit by noting that the "importance of the familial relationship, *to the individuals involved* . . . stems from the emotional attachments that derive from the intimacy of daily association."[59] The individuals involved in these complex, intimate emotional attachments include parents and children alike.[60] Similarly, in his *Smith* concurrence, Justice Stewart noted that were a state to attempt to separate "a natural family, over the objections of the parents *and their children*, without some showing of unfitness," he would have "little doubt that the State would have intruded impermissibly on 'the private realm of family life which the state cannot enter.'"[61]

Justice Marshall, writing for the Court one year later in *Quilloin v. Walcott*,[62] adopted Justice Stewart's dictum: the Court had "little doubt that the Due Process Clause would be offended '[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents *and their children*.'"[63] And four years after *Quilloin*, the Court more explicitly articulated the reciprocal nature of the right to family integrity in *Santosky v. Kramer*,[64] explaining that "until the State proves parental unfitness, *the child and his parents* share a vital interest in preventing erroneous termination of their natural relationship."[65]

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[56] James G. Dwyer, *A Taxonomy of Children's Existing Rights in State Decision Making About Their Relationships*, 11 WM. & MARY BILL RTS. J. 845, 848 (2003).

[57] *See, e.g.*, Rachel Kennedy, Comment, *A Child's Constitutional Right to Family Integrity and Counsel in Dependency Proceedings*, 72 EMORY L.J. 911, 917–33 (2023); Trivedi, *supra* note 28, at 272–86.

[58] 431 U.S. 816 (1977).

[59] *Id.* at 844 (emphasis added).

[60] *See* Trivedi, *supra* note 28, at 279.

[61] *Smith*, 431 U.S. at 862–63 (Stewart, J., concurring in the judgment) (emphasis added) (quoting Prince v. Massachusetts, 321 U.S. 158, 166 (1944)); *see also* Kennedy, *supra* note 57, at 924–25; Trivedi, *supra* note 28, at 279–80.

[62] 434 U.S. 246 (1978).

[63] *Id.* at 255 (alteration in original) (emphasis added) (quoting *Smith*, 431 U.S. at 862–63 (Stewart, J., concurring in the judgment)).

[64] 455 U.S. 745 (1982).

[65] *Id.* at 760 (emphasis added); *see also* Kennedy, *supra* note 57, at 925; Trivedi, *supra* note 28, at 280.

This recognition of the right to family integrity as "running both from the child to the parent and the parent to the child . . . suggests that either party could invoke the right, not just the parent."[66]

Despite these "seemingly clear pronouncements of the child's right to family integrity,"[67] Justice Scalia's plurality opinion in *Michael H. v. Gerald D.*,[68] just seven years after *Santosky*, muddied the waters. He wrote that the Court had "never had occasion to decide whether a child has a liberty interest, symmetrical with that of her parent, in maintaining her filial relationship."[69] However, Professor Shanta Trivedi argues that "a close reading of *Michael H.* demonstrates that the Court was not actually making a decision about the child's relationship with her parent," but rather one with a nonlegal parental figure.[70] Thus, regarding the established right to family integrity, the Court did not foreclose the possibility that a child had a constitutional right to a relationship with her actual legal parent. Rather, in *Michael H.*, the Court concluded merely "that no parent-child relationship existed in that particular case."[71] Justice Stevens seemed to address the ambiguity wrought by *Michael H.* in a dissenting opinion in *Troxel v. Granville,*[72] noting that despite the Court's silence on the subject, it seems "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."[73]

Notwithstanding *Michael H.*, most circuit courts agree that children possess an independent right to family integrity. No circuit court has outright rejected children's right to family integrity,[74] and the First,[75]

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66 Frankel, *supra* note 13, at 319.

67 Trivedi, *supra* note 28, at 280.

68 491 U.S. 110 (1989).

69 *Id.* at 130.

70 Trivedi, *supra* note 28, at 281; *see also* Kennedy, *supra* note 57, at 926.

71 Susan Hazeldean, *Anchoring More than Babies: Children's Rights After* Obergefell v. Hodges, 38 CARDOZO L. REV. 1397, 1411 (2017); *see also* Trivedi, *supra* note 28, at 281.

72 530 U.S. 57 (2000).

73 *Id.* at 88 (Stevens, J., dissenting) (citations omitted).

74 Trivedi, *supra* note 28, at 282.

75 Suboh v. Dist. Att'y's Off., 298 F.3d 81, 91 (1st Cir. 2002).

Second,[76] Fourth,[77] Fifth,[78] Seventh,[79] Ninth,[80] and Tenth[81] Circuits have expressly recognized that children have an independent right to family integrity. The Sixth Circuit has not yet squarely decided whether children have an independent right to family integrity but, in *Chambers v. Sanders*, the court assumed for purposes of that particular case that the plaintiffs, in their capacity as the children of a wrongfully incarcerated parent, had identified a liberty interest protected by the Fourteenth Amendment.[82] Further, district courts within the Sixth Circuit have recognized this right as reposing in children.[83] And although the Third, Eighth, and Eleventh Circuits have not addressed the issue,[84] district courts within the Third[85] and Eleventh[86] Circuits have recognized children's right to family integrity.

Thus, the majority of circuit courts have determined that the right to family integrity is reciprocal, held by both parent and child, and protects both parties from "being dislocated from the 'emotional attachments that derive from the intimacy of daily association.'"[87]

B. Adult Children's Right to Family Integrity

Although most American courts have agreed that both parents and children have a right to family integrity, there continues to be vigorous

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[76] Duchesne v. Sugarman, 566 F.2d 817, 825 (2d Cir. 1977).

[77] Jordan *ex rel.* Jordan v. Jackson, 15 F.3d 333, 346 (4th Cir. 1994) (noting that delay in reunification of family by state actors "implicates the child's interests in his family's integrity and in the nurture and companionship of his parents").

[78] *See* Hodorowski v. Ray, 844 F.2d 1210, 1212, 1217 (5th Cir. 1988).

[79] Berman v. Young, 291 F.3d 976, 983 (7th Cir. 2002), *as amended on denial of reh'g* (June 26, 2002) (stating that "children enjoy the corresponding familial right to be raised and nurtured by their parents").

[80] Smith v. City of Fontana, 818 F.2d 1411, 1418 (9th Cir. 1987) ("[C]onstitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents."), *overruled on other grounds by* Hodgers-Durgin v. De la Vina, 199 F.3d 1037 (9th Cir. 1999).

[81] J.B. v. Washington County, 127 F.3d 919, 925 (10th Cir. 1997); *see also* De Robles v. INS, 485 F.2d 100, 102 (10th Cir. 1973).

[82] 63 F.4th at 1097 (6th Cir. 2023).

[83] *See, e.g.*, O'Donnell v. Brown, 335 F. Supp. 2d 787, 820 (W.D. Mich. 2004) ("The fundamental constitutional right to family integrity extends to all family members, both parents and children."); Kovacic v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs., 809 F. Supp. 2d 754, 776 (N.D. Ohio 2011) (noting that "[c]ourts have held that [the right to family integrity] extends to both parents *and* their children" and the children in the case "met their burden of demonstrating [their] constitutionally protected interest"), *aff'd and remanded*, 724 F.3d 687 (6th Cir. 2013).

[84] Trivedi, *supra* note 28, at 282.

[85] *See, e.g.*, Doswell v. City of Pittsburgh, No. 07-0761, 2009 WL 1734199, at *14 (W.D. Pa. June 16, 2009) (holding that a "child has a protectible Fourteenth Amendment familial and associational right in the support, companionship and parenting of his father").

[86] Kenny A. *ex rel.* Winn v. Perdue, 218 F.R.D. 277, 297 (N.D. Ga. 2003) ("[T]his Court finds that once the state has removed a child from his or her family, it cannot deliberately and without justification deny that child the services necessary to facilitate reunification with his or her family, when safe and appropriate, without violating the child's right to family integrity.").

[87] Duchesne v. Sugarman, 566 F.2d 817, 825 (2d Cir. 1977) (quoting Smith v. Org. of Foster Fams. for Equal. & Reform, 431 U.S. 816, 844 (1977)).

disagreement on when, by whom, and in what contexts the right can be enforced. For example, although the Supreme Court has recognized constitutional protections of the parent-child relationship, those protections have been concerned with the right to retain custody of and make decisions about *minor* children.[88] Thus, the recognition of a constitutionally protected right to the *companionship* or *continued life* of one's children, outside the realm of custody or parental decisionmaking, is "a creature of the circuit courts."[89] Some courts have come to understand the *Meyer-Pierce* line of cases as implicitly creating, at minimum, "a 'fundamental liberty interest' in 'the companionship and society of [one's] child' for which '[t]he state's interference with that liberty interest without due process of law is remediable under [42 U.S.C. §] 1983.'"[90] Some courts have gone further, finding a similar interest in children in the continuing companionship of their parents.[91]

This liberty interest in "companionship" carries with it no obvious time restriction; consequently, lower courts are currently split as to whether the Due Process Clause affords a parental interest in companionship with an *adult* child and vice versa.[92] Of the circuits that have expressly considered the question, the First,[93] Third,[94] Seventh,[95]

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[88] *See* Sinclair v. City of Seattle, 61 F.4th 674, 684–85 (9th Cir.) (Nelson, J., concurring), *cert. denied*, 144 S. Ct. 88 (2023).

[89] *Id.* at 684 ("The recognition of a constitutionally protected right to the mere companionship of one's children is a creature of the circuit courts. The Supreme Court has never recognized such a right. When the Supreme Court has recognized constitutional protections of the parent-child relationship, those protections have been concerned with the right to retain custody of minor children and the right to make decisions about raising them.").

[90] *Id.* at 678–79 (alterations in original) (quoting Lee v. City of Los Angeles, 250 F.3d 668, 685 (9th Cir. 2001)); *see, e.g.*, Est. of Bailey by Oare v. York County, 768 F.2d 503, 509 n.7 (3d Cir. 1985), *abrogated on other grounds by* DeShaney v. Winnebago Cnty. Dept. of Soc. Servs., 489 U.S. 189 (1989); Kelson v. City of Springfield, 767 F.2d 651, 654–55 (9th Cir. 1985) (citing Santosky v. Kramer, 455 U.S. 745, 753 (1982)); Trujillo v. Bd. of Cnty. Comm'rs, 768 F.2d 1186, 1189 (10th Cir. 1985). *See generally* Stephanie L. Houston, Harry A. v. Duncan*: Do Parents Have a Constitutionally Protected Interest in the Companionship and Society of Their Children Under 42 U.S.C. § 1983?*, 29 AM. J. TRIAL ADVOC. 499 (2005).

[91] *See, e.g.*, Smith v. City of Fontana, 818 F.2d 1411, 1418 (9th Cir. 1987) ("[C]onstitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents."), *overruled on other grounds by* Hodgers-Durgin v. De la Vina, 199 F.3d 1037 (9th Cir. 1999).

[92] *Compare* Strandberg v. City of Helena, 791 F.2d 744, 748 (9th Cir. 1986), *and Trujillo*, 768 F.2d at 1188–89, *and* Bell v. City of Milwaukee, 746 F.2d 1205, 1245 (7th Cir. 1984), *with* McCurdy v. Dodd, 352 F.3d 820, 829 (3d. Cir. 2003), *and* Butera v. District of Columbia, 235 F.3d 637, 656 (D.C. Cir. 2001), *and* Valdivieso Ortiz v. Burgos, 807 F.2d 6, 7 (1st Cir. 1986). *See generally* Issac J.K. Adams, Note, *Growing Pains: The Scope of Substantive Due Process Rights of Parents of Adult Children*, 57 VAND. L. REV. 1883 (2004). The Supreme Court has had two opportunities to resolve this legal question, but opted not to do so both times. Jones v. Hildebrant, 550 P.2d 339 (Colo. 1976), *cert. dismissed*, 432 U.S. 183 (1977); Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981), *cert. dismissed*, 456 U.S. 430 (1982).

[93] *Valdivieso Ortiz*, 807 F.2d at 8–9.

[94] *McCurdy*, 352 F.3d at 829.

[95] Russ v. Watts, 414 F.3d 783, 791 (7th Cir. 2005) (overruling *Bell*, 746 F.2d at 1205).

Eleventh,[96] and D.C.[97] Circuits have refused to extend the right to family integrity to adult children and their parents. Contrastingly, the Tenth and Ninth Circuits have recognized that adult children and their parents possess reciprocal constitutional rights to family integrity.[98]

Thus, despite some consensus on the fundamental nature of the right to family integrity within familial relationships, the extent to which it applies beyond the realm of minor children is unresolved. The resolution of this legal question is crucial in the contexts of wrongful incarceration and death, where victims and surviving family members are predominantly adults. The following section delves into how parents and children of all ages have leveraged 42 U.S.C. § 1983 to redress state actions that have shattered their familial bonds.

C. Section 1983 State of Mind Requirements in Wrongful Death and Incarceration

In recent years, parents and children have relied on the *Meyer-Pierce* jurisprudence to bring claims under § 1983 for state actions that *incidentally* affected their family unit, such as the wrongful incarceration or death of their family member at the hands of state actors.[99] Due to the current circuit split, these plaintiffs have enjoyed varying levels of success in court. The following section analyzes several illustrative cases involving such incidental interferences.

For example, in the landmark case of *Bell v. City of Milwaukee*,[100] the court held that a police-shooting victim's father "possessed a constitutional liberty interest in his relationship with his son."[101] A year later,

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[96] Robertson v. Hecksel, 420 F.3d 1254, 1259–60 (11th Cir. 2005).

[97] *Butera*, 235 F.3d at 656.

[98] Trujillo v. Bd. of Cnty. Comm'rs, 768 F.2d 1186, 1188–89 (10th Cir. 1985) (recognizing a constitutionally protected liberty interest in relationship with adult son); Sinclair v. City of Seattle, 61 F.4th 674, 679 (9th Cir.), *cert. denied*, 144 S. Ct. 88 (2023).

[99] *See, e.g.*, Chambers v. Sanders, 63 F.4th 1092, 1095–96 (6th Cir. 2023) (considering substantive due process right to family integrity claim by adult children of wrongfully convicted father); *Sinclair*, 61 F.4th 674, 678; Gorman v. Rensselaer County, 910 F.3d 40, 43 (2d Cir. 2018); Wheeler v. City of Santa Clara, 894 F.3d 1046, 1050 (9th Cir. 2018). The interplay between the constitutional right to family integrity and the doctrine of qualified immunity is beyond the scope of this Note. As Professor Rachel Kennedy notes, some courts have explicitly left open the possibility that a child could succeed on a civil rights family integrity claim, emphasizing that qualified immunity should be determined on a "case by case basis" and recognizing that in some cases, the state's interest may be so negligible compared to the "well developed" right to family integrity that a qualified immunity claim would fail. *See, e.g.*, Brokaw v. Mercer County, 235 F.3d 1000, 1023 (7th Cir. 2000); *see also* Kennedy, *supra* note 57, at 932. As Kennedy notes, qualified immunity is yet another area where lower courts could benefit from the Supreme Court shining a light on a child's right to family integrity. *Id.* *See generally* Nicole Stednitz, Note, *Ending Family Trauma Without Compensation: Drafting § 1983 Complaints for Victims of Wrongful Child Abuse Investigations*, 90 OR. L. REV. 1423 (2012) (discussing the impact of qualified immunity on § 1983 lawsuits brought against Child Protective Services).

[100] 746 F.2d 1205 (7th Cir. 1984), *overruled in part by* Russ v. Watts, 414 F.3d 783 (7th Cir. 2005).

[101] *Id.* at 1243.

in *Myres v. Rask*,[102] a Colorado federal district court permitted parents whose son was killed by police to bring a § 1983 action for violations of their constitutional rights.[103] The court noted that it would be "ironic indeed" on the one hand to recognize a constitutional remedy for state intrusions into lesser aspects of family life, such as the education of a child, but on the other to deny all legal recourse to parents when the state "destroy[s] the family relationship altogether" by wrongfully killing the child.[104]

In both *Bell* and *Myres*, the courts did not require the plaintiffs to prove that the police officers who killed their children *specifically intended* to disrupt their family unit. Rather, the incidental effect of the defendants' actions (the parents' loss of their children) was sufficient to support a finding under § 1983 that the parents' constitutional right to family integrity had been violated.[105] Apart from *Bell* and *Myres*, however, courts generally refuse to apply the family integrity doctrine in cases where the state incidentally interferes with the family unit without some showing of specific intent to interfere with the familial relationship. Based on Supreme Court precedent,[106] the First,[107] Second,[108]

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102 602 F. Supp. 210 (D. Colo. 1985).

103 *Id.* at 210–11.

104 *Id.* at 213.

105 *Id.* at 210–11, 213; *see Bell*, 746 F.2d at 1244.

106 Most holdings relied on *Daniels v. Williams*, 474 U.S. 327 (1986), in which the Supreme Court explained that "[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." *Id.* at 331.

107 Valdivieso Ortiz v. Burgos, 807 F.2d 6, 9 (1st Cir. 1986) ("We decline, on this record, to make the leap ourselves from the realm of governmental action directly aimed at the relationship between a parent and a young child to an incidental deprivation of the relationship between appellants and their adult relative.").

108 Gorman v. Rensselaer County, 910 F.3d 40, 48 (2d Cir. 2018) ("[A] claim under the Due Process Clause for infringement of the right to familial associations requires the allegation that state action was specifically intended to interfere with the family relationship.").

Third,[109] Fourth,[110] Sixth,[111] Eighth,[112] and Tenth[113] Circuits have held that plaintiffs asserting their right to family integrity must prove that the state actor had the specific intent to interfere with the parent-child relationship. In fact, in 2005, the Seventh Circuit partially overruled its decision in *Bell*, holding in *Russ v. Watts*[114] that a constitutional violation based on official actions that were not directed at the parent-child relationship would "stretch the concept of due process far beyond the guiding principles set forth by the Supreme Court."[115]

Though courts have admitted that it would be a "rare case in the wrongful incarceration context"[116] that establishes the requisite specific intent to constitute an infringement of the right to family integrity, infringement is not impossible. For example, in *McIntyre v. Unified Government*,[117] both Lamonte McIntyre and his mother Rose McIntyre defeated a summary judgement motion directed to their Fourteenth Amendment family integrity claims against Roger Golubski, a Kansas City detective.[118] They alleged that Golubski pursued the wrongful conviction and incarceration of Lamonte to punish Rose for repeatedly rebuffing his unwanted sexual and romantic advances.[119] To exact revenge on Rose, Golubski allegedly "coerc[ed] identifications, fabricat[ed] police reports and suppress[ed] exculpatory evidence" in an effort to frame her son for murder.[120] A Kansas federal district court held that a jury could reasonably infer that Golubski *specifically intended* to interfere with Lamonte and Rose's familial unit, and thus their § 1983

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109 McCurdy v. Dodd, 352 F.3d 820, 827–28 (3d Cir. 2003) ("In the context of parental liberty interests . . . the Due Process Clause only protects against deliberate violations of a parent's fundamental rights — that is, where the state action at issue was specifically aimed at interfering with protected aspects of the parent-child relationship." (citing *Burgos*, 807 F.2d at 8)).

110 Shaw v. Stroud, 13 F.3d 791, 804–05 (4th Cir. 1994) (declining to extend substantive due process protection to deprivations of familial love, irrespective of intent).

111 Foos v. City of Delaware, 492 F. App'x 582, 592–93 (6th Cir. 2012) (explaining that even when state action that detains or kills an individual is reframed as a deprivation of his or her relation's right to familial association, no cause of action exists under § 1983).

112 Partridge v. City of Benton, 929 F.3d 562, 568 (8th Cir. 2019) ("Pleading a plausible familial-relationship claim under § 1983 requires an allegation that the state action was intentionally directed at the familial relationship. . . . Partridge and Schweikle did not allege in their complaint, or argue on appeal, that Ellison's shooting was directed at their relationship with Keagan. This forecloses their claims." (citations omitted) (citing, inter alia, Harpole v. Ark. Dep't of Hum. Servs., 820 F.2d 923, 927–28 (8th Cir. 1987))).

113 Lowery v. County of Riley, 522 F.3d 1086, 1092 (10th Cir. 2008) ("The conduct or statement must be directed 'at the familial relationship with knowledge that the statements or conduct will adversely affect that relationship.'" (quoting J.B. v. Washington County, 127 F.3d 919, 927 (10th Cir. 1997))).

114 414 F.3d 783 (7th Cir. 2005).

115 *Id.* at 790.

116 *See, e.g.*, Chambers v. Sanders, 63 F.4th 1092, 1101 (6th Cir. 2023).

117 2022 WL 2072721 (D. Kan. June 9, 2022), *appeal dismissed sub nom.* McIntyre v. Golubski, 2022 WL 17820087 (10th Cir. 2022).

118 *Id.* at *6.

119 *Id.*

120 *Id.*

family integrity claims could proceed.[121] Though Lamonte and Rose were successful, the specific intent requirement when applied to family integrity claims renders only a very narrow subset of state conduct actionable under § 1983.

The only exception among the federal courts of appeals is the Ninth Circuit, which allows both parents and children to claim that a state actor violated their right to family integrity even if the actor did not specifically intend to impact their familial relationship.[122] In *Smith v. City of Fontana*,[123] the court held that the use of excessive or deadly force by police officers can interfere with a parent or child's right to family integrity.[124] In fact, the court posited that such action is "the very sort of affirmative abuse of government power which the substantive protections of the due process clause are designed to prevent."[125]

Today, most courts mandate that § 1983 family integrity claims for "incidental" state interferences in the family unit may be brought only when a state actor specifically intends to change or control the relationship between a parent and child.[126] This requirement has no footing in Supreme Court precedent, and is questioned in the following Part.

III. Specific Intent: The Gatekeeper of Family Integrity Claims

This Part explores the thin line between permissible state action and unconstitutional infringement of the right to family integrity. Using the Sixth Circuit decision in *Chambers v. Sanders* as a case study, this Part critically assesses the judicial imposition of a specific intent requirement as a precondition for establishing a violation of the right to family integrity under § 1983. Ultimately, this Part uses the Supreme Court's rulings in *Daniels v. Williams*[127] and *County of Sacramento v. Lewis*[128] to argue against the necessity and appropriateness of this stringent requirement and advocate for the reevaluation of the criteria under which familial relationships are safeguarded against state interference.

Recall the facts of *Chambers v. Sanders*: when Danny Burton was released from prison after being wrongfully incarcerated for thirty-two years,[129] his sons brought § 1983 claims alleging that Detective Ronald

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121 *See id.*

122 *See* Smith v. City of Fontana, 818 F.2d 1411, 1417–20, 1470 n.12 (9th Cir. 1987), *overruled on other grounds by* Hodgers-Durgin v. De la Vina, 199 F.3d 1037 (9th Cir. 1999); Kelson v. City of Springfield, 767 F.2d 651, 655 (9th Cir. 1985).

123 818 F.2d 1411 (9th Cir. 1987).

124 *Id.* at 1419–20.

125 *Id.* at 1420.

126 *See, e.g.*, Valdivieso Ortiz v. Burgos, 807 F.2d 6, 8 (1st Cir. 1986) (citing Santosky v. Kramer, 455 U.S. 745 (1982) (termination of parental rights); Little v. Streater, 452 U.S. 1, 9 (1981) (determining paternity)).

127 474 U.S. 327 (1986).

128 523 U.S. 833 (1998).

129 Chambers v. Sanders, 63 F.4th 1092, 1095 (6th Cir. 2023).

Sanders and his employer, the City of Detroit, had infringed their right to family integrity by intentionally and maliciously framing their father for murder.[130] In its decision, the Sixth Circuit joined most other circuits in requiring that the Burton sons prove that Detective Sanders's actions were directed at their familial relationship with the specific intent that his conduct would adversely affect that relationship.[131]

The *Chambers* court reasoned that imposing strict liability upon state actors for incidental harms flowing from their actions would run contrary to the Supreme Court's holding in *Daniels v. Williams*.[132] In *Daniels*, the Court clarified that the "Due Process Clause is simply not implicated" by government acts "causing unintended loss of or injury to life, liberty, or property," even when a government official acts negligently with respect to the plaintiff's constitutionally protected interests.[133] From this portion of *Daniels*, the Sixth Circuit surmised that the Due Process Clause, and thus the right to family integrity, could not be implicated when a state actor "unintentionally" harms the family unit with no specific intent to do so.[134]

However, the specific intent requirement adopted by several circuits is a new requirement untethered to Supreme Court precedent. The first imposition of a specific intent requirement into the family integrity doctrine occurred in *Trujillo v. County Commissioners*,[135] in which the Tenth Circuit concluded that an intent to interfere with a particular familial relationship was required to state a family integrity claim under § 1983.[136] Though the *Trujillo* court acknowledged that thus far, "other courts ha[d] not imposed any state of mind requirement to find a deprivation of intimate associational rights,"[137] it reasoned that the family integrity doctrine needed a "logical stopping place" that would allow courts to dismiss claims challenging government action that was merely negligent.[138] The motivating principle behind the *Trujillo* court's state-of-mind requirement was its desire to avoid opening the floodgates to § 1983 negligence actions. Thus, the Tenth Circuit decided *Trujillo*, one year before *Daniels*, with judicial economy in mind,[139] and its sister circuits followed suit.

However, as was explained by the Ninth Circuit in *Smith v. City of Fontana* and echoed by Judge Moore in her *Chambers v. Sanders*

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130 *Id.*

131 *Id.* at 1100.

132 *Id.* at 1106.

133 Daniels v. Williams, 474 U.S. 327, 328 (1986); *id.* at 330, 336 (discussing negligence).

134 *Chambers*, 63 F.4th at 1098.

135 768 F.2d 1186 (10th Cir. 1985).

136 *Id.* at 1190. Note that the *Trujillo* court concluded that the parental liberty interest arose from the First (rather than the Fourteenth) Amendment right to freedom of intimate association. *Id.* at 1188.

137 *Id.* at 1190.

138 *Id.*

139 *See Chambers*, 63 F.4th at 1106 (Moore, J., dissenting).

dissent, one year after *Trujillo*, the Supreme Court undermined the need for the specific intent requirement as a "logical stopping place" for due process claims by providing its own.[140] In *Daniels v. Williams*, the Court held that although § 1983 "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right[,] . . . in any given § 1983 suit, the plaintiff must still prove a violation of the underlying constitutional right; and depending on the right," a particular mental state may be required to establish a deprivation of that right.[141] Thus, in considering any claim under § 1983, "a court must examine closely the nature of the constitutional right asserted to determine whether a deprivation of that right requires any particular state of mind."[142] So when the particular constitutional right asserted is the liberty interest in the continuation of the companionship of a parent or child, what degree of intent is required to deprive a person of that liberty interest?

The *Daniels* Court held that the right to due process under the Fourteenth Amendment has historically been applied to "*deliberate* decisions of government officials to deprive a person of life, liberty, or property,"[143] and thus "the Due Process Clause is simply not implicated by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or property."[144] The Court directly addressed the negligence issue troubling the *Trujillo* court,[145] confirming that merely negligent conduct could not give rise to a Due Process Clause violation.[146]

Twelve years later, in *County of Sacramento v. Lewis*, the Court noted that under the Fourteenth Amendment, a state actor's conscience-shocking conduct that is "something more than negligence" likely constitutes a due process violation.[147] This includes not only intentional conduct, but also "less than intentional conduct, such as recklessness or 'gross negligence.'"[148] *Lewis* suggested that official acts that "violate[] the 'decencies of civilized conduct'" may shock the conscience,[149] especially if those acts are "so 'brutal' and 'offensive' that [they] do not comport with traditional ideas of fair play and decency."[150] *Lewis* also identified the amount of time a state actor has for deliberation as a

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[140] *Id.* (quoting *Trujillo*, 768 F.2d at 1190).

[141] Daniels v. Williams, 474 U.S. 327, 329–30 (1986) (citing Parratt v. Taylor, 451 U.S. 527, 532, 534–35 (1981)).

[142] *Trujillo*, 768 F.2d at 1189 (citing McKay v. Hammock, 730 F.2d 1367, 1373 (10th Cir. 1984) (en banc)).

[143] *Daniels,* 474 U.S. at 331.

[144] *Id.* at 328.

[145] *See Trujillo*, 768 F.2d at 1190.

[146] *Daniels*, 474 U.S. at 334.

[147] County of Sacramento v. Lewis, 523 U.S. 833, 849 (1998).

[148] *Id.* (quoting *Daniels*, 474 U.S. at 334 n.3).

[149] *See id.* at 846 (quoting Rochin v. California, 342 U.S. 165, 172–73 (1952)).

[150] *Id.* at 847 (quoting Breithaupt v. Abram, 352 U.S. 432, 435 (1957)).

relevant factor in determining whether their actions are sufficiently conscience-shocking to implicate substantive due process.[151]

Thus, both *Daniels* and *Lewis* addressed *Trujillo*'s judicial economy concerns by ensuring that government actors would not be strictly liable for merely negligent incidental harm; rather, they would be held responsible only where their intentional, reckless, or grossly negligent actions shocked the conscience of the court.[152]

Now that *Daniels* and *Lewis* have closed the potential floodgates, "*Trujillo*'s additional focus on the state actor's motivation is no longer necessary to serve its purpose,"[153] and may well "effectively nullify the right [to family integrity] altogether."[154] Nonetheless, a majority of circuit courts have eschewed the standards set forth by the Supreme Court in *Daniels* and *Lewis* in favor of *Trujillo*'s prohibitively difficult specific intent standard.[155]

One argument advanced by the *Trujillo* court and others employing the specific intent requirement is that most cases establishing the right to family integrity have done so in situations where the state "directly interfered with [familial] relationships,"[156] such as in the contexts of visitation or custody, or where the state attempted to regulate matters "within the ambit of parental control, such as educational decisions, the choice of living arrangements, and the choice to have children."[157] But conscience-shocking conduct, whether intentional, reckless, or grossly negligent, *does* interfere with these parental decisions. When family ties are permanently or even temporarily severed by state actors, parents are unable to make decisions regarding the education, rearing, custody, and size of their family, and children are unable to benefit from those decisions. Accordingly, the framing of the impact of wrongful incarceration and wrongful death on the right to familial integrity as "collateral" or "incidental" may well be a misnomer; these state actions directly affect familial relationships in a way that is in step with the *Meyer-Pierce* line of jurisprudence.

Turning back to *Chambers v. Sanders*, Judge Moore in dissent applied the "shocks the conscience" standard set forth in *Lewis* and supported by *Daniels*, concluding that Sanders clearly "engaged in conscience-shocking conduct when he intentionally and deliberately procured a wrongful conviction that incarcerated [Burton] for thirty-

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151 *Id.* at 853; *see also* Range v. Douglas, 763 F.3d 573, 590–91 (6th Cir. 2014) ("For assessing whether conduct indicates harmful purpose and, thus, constitutional culpability, both the substance of the risk and the time the official had to appreciate it matter.").

152 Chambers v. Sanders, 63 F.4th 1092, 1107 (6th Cir. 2023) (Moore, J., dissenting).

153 Smith v. City of Fontana, 818 F.2d 1411, 1420 n.12 (9th Cir. 1987), *overruled on other grounds by* Hodgers-Durgin v. De la Vina, 199 F.3d 1037 (9th Cir. 1999).

154 Greene v. City of New York, 675 F. Supp. 110, 115 (S.D.N.Y. 1987).

155 *See supra* pp. 2375–76.

156 Trujillo v. Bd. of Cnty. Comm'rs, 768 F.2d 1186, 1190 (10th Cir. 1985).

157 *Chambers*, 63 F.4th at 1096–97.

two years, directly depriving [Burton's sons] of their family association,"[158] regardless of whether Sanders's primary motivation was to harm the Burtons' familial relationship.[159] In making this determination, she examined the full scope of Sanders's conduct, determining that as alleged it was at least grossly negligent and possibly intentional[160] (and thus within the range set forth in *Daniels* and *Lewis*), that the risks and consequences of depriving an innocent person of their family and their family of them were "self-apparent,"[161] and that Sanders had ample time to appreciate those harms but "stayed the course."[162] This analysis aligns with *Daniels* and *Lewis*, and has more grounding in precedent than *Trujillo*'s specific intent requirement.

IV. THE FUTURE OF FAMILY INTEGRITY

This Part explores the prospective trajectory of the right to family integrity. Section A delves into the potential impact of the Supreme Court's landmark decision in *Dobbs v. Jackson Women's Health Organization*[163] on the longstanding right to family integrity. It offers an examination of the historical underpinnings that have solidified the right to family integrity as a core component deeply rooted in America's legal and cultural heritage, challenging the notion that the jurisprudential shift wrought by *Dobbs* could undermine the right's significance. Section B transitions to a forward-looking analysis, addressing the practical consequences of the judiciary's evolving stance on family integrity rights and advocating for a balanced legal framework that adequately protects familial bonds against state interference. It then addresses counterarguments and concludes.

*A. The Right to Family Integrity in a Post-*Dobbs *Landscape*

The Supreme Court's holding in *Dobbs v. Jackson Women's Health Organization* changed the burden of proof required for plaintiffs to demonstrate whether an unenumerated right is protected by the Fourteenth Amendment. Returning to the methodology previously used in *Washington v. Glucksberg*,[164] the *Dobbs* Court held that substantive due process rights would be protected only if they were "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty."[165] Similarly, the Court cautioned that when interpreting

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158 *Id.* at 1113 (Moore, J., dissenting).
159 *Id.*
160 *Id.* at 1111–12.
161 *Id.* at 1112.
162 *Id.*
163 142 S. Ct. 2228 (2022).
164 521 U.S. 702 (1997).
165 *Dobbs*, 142 S. Ct. at 2242 (quoting *Glucksberg*, 521 U.S. at 721).

the term "liberty," lower courts must not "ignore[] the '[a]ppropriate limits' imposed by 'respect for the teachings of history.'"[166]

Justice Alito, writing for the majority, insisted that the Court's decision in *Dobbs* did not implicate other substantive due process rights.[167] He wrote that the right to abortion is fundamentally different from the right to marriage, intimacy, or procreation because the former deals with "potential life."[168] However, any right that is not "deeply rooted in this Nation's history" can now be questioned using *Dobbs*'s rationale, and Justice Thomas's concurrence in *Dobbs* specifically calls for the reconsideration of other substantive due process rights such as the right to same-sex marriage, contraception, and same-sex sexual intimacy.[169]

The right to family integrity is a substantive due process right that is unenumerated in the Constitution.[170] Moreover, its foundational cases, such as *Meyer*, *Pierce*, and *Moore*, all articulate other unenumerated rights.[171] However, the right to family integrity *is* deeply rooted in this nation's history, perhaps more deeply than any other right.[172]

The right to family integrity has existed in English and American common law for hundreds of years.[173] Common law recognizes the family as the "basic social, economic, and political unit of society,"[174] and dictates that parents are presumptively entitled to the custody of their children[175] and have a right to enjoy their children's services,[176] to share their children's companionship,[177] and to supervise their children's religious and academic education.[178] In the twentieth century, constitutional adjudication "clarified and reaffirmed the fundamental role of

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166 *Id.* at 2248 (second alteration in original) (quoting Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977) (plurality opinion)).

167 *See id.* at 2258.

168 *Id.* (quoting Roe v. Wade, 410 U.S. 113, 159 (1973)).

169 *See id.* at 2301 (Thomas, J., concurring).

170 *See supra* Part I, pp. 2367–69.

171 *See supra* Part I, pp. 2367–69.

172 Troxel v. Granville, 530 U.S. 57, 65 (2000) (noting a parent's due process right in the care, custody, and control of her children is "perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court").

173 *See* Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (citing, inter alia, The Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1872)) (describing the parental right to "establish a home and bring up children" as among the "privileges long recognized at common law as essential to the orderly pursuit of happiness by free men"); *see also* Pamela Dru Sutton, *The Fundamental Right to Family Integrity and Its Role in New York Foster Care Adjudication*, 44 BROOK. L. REV. 63, 65 (1977).

174 Sutton, *supra* note 173, at 66.

175 *See* People *ex rel.* Kropp v. Shepsky, 113 N.E.2d 801, 803 (N.Y. 1953).

176 WALTER C. TIFFANY & ROGER W. COOLEY, HANDBOOK ON THE LAW OF PERSONS AND DOMESTIC RELATIONS 354–57 (3d ed. 1921).

177 Mattis v. Schnarr, 502 F.2d 588, 594 (8th Cir. 1974) (quoting *Psalm* 127:3–5 (King James)).

178 Sutton, *supra* note 173, at 67. According to Pamela Dru Sutton, a parent's right to guide and control their child's education can be traced back to mid–eighteenth century England, and its creation was largely motivated by the courts' refusal to "enforce the anti-Catholic laws enacted during the religious strife of the previous century." *Id.* n.19 (citing 4 WILLIAM BLACKSTONE, COMMENTARIES *57).

[the right to family integrity] in our society and . . . restricted the authority of government to interfere with the parent-child relationship."[179]

The Supreme Court has, for over a century, "emphasized the importance of the family,"[180] and has consistently recognized the right of a parent "in the companionship, care, custody, and management of his or her children."[181] The Court in *Wisconsin v. Yoder* held that "[t]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."[182] And the Court in *Smith v. Organization of Foster Families for Equality & Reform* reasoned that, "the liberty interest in family privacy has its source . . . not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'"[183]

In addition to the constitutional protection afforded to familial relationships, some courts have also allowed § 1983 claims for deprivation of the right to family integrity to proceed due to the legislative history of § 1983's precursor, the Ku Klux Klan Act of 1871.[184] As one Congressman described the Act, it was a "remedy for wrongs, arsons, and murders done. This is what we offer to a man whose house has been burned, as a remedy; to the woman whose husband has been murdered, as a remedy; *to the children whose father has been killed, as a remedy*."[185]

This history supports the claim that family integrity long predates the Fourteenth Amendment and is a fundamental part of our common law tradition. And in fact, some scholars see *Dobbs*'s "deeply rooted" historical approach to substantive due process as entirely consistent with parental rights.[186] Speculating on the future of substantive due process is beyond the scope of this Note, but if the Court continues to approach constitutional rights with an eye toward the nation's history and traditions, it should be solicitous of the right to family integrity in wrongful death and wrongful incarceration cases as well.

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179 *Id.* at 65–66.

180 Stanley v. Illinois, 405 U.S. 645, 651 (1972).

181 *Id.*; *see also* Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 27 (1981) (quoting *Stanley*, 405 U.S. at 651); Santosky v. Kramer, 455 U.S. 745, 753 (1982).

182 406 U.S. 205, 232 (1972).

183 431 U.S. 816, 845 (1977) (footnote omitted) (quoting Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977) (plurality opinion)).

184 Ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. §§ 1983, 1985–1986).

185 CONG. GLOBE, 42d Cong., 1st Sess. 807 (1871) (statement of Rep. Benjamin Butler) (emphasis added), *quoted in* Smith v. City of Fontana, 818 F.2d 1411, 1419 (9th Cir. 1987).

186 *See, e.g.*, Michael Toth, Opinion, *Parental Authority Gets a Boost from* Dobbs, WALL ST. J. (July 27, 2022, 6:49 PM), https://www.wsj.com/articles/parental-authority-gets-a-boost-from-dobbs-justice-alito-glucksberg-unenumerated-rights-history-tradition-education-meyer-pierce-11658941498 [https://www.perma.cc/9DAL-Z5PL].

B. Implications

It is very rare for state actors, even those acting intentionally and maliciously toward an individual, to act with the specific intent of severing familial ties. Consequently, family members of persons wrongfully incarcerated or killed outside the Ninth Circuit have been left with few avenues for recovery. In cases of wrongful incarceration or death at the hands of the state, irreparable damage is done to the family unit regardless of the actor's motivations. Just as the victim of the state's unwarranted action is gravely harmed, so too are the family members who must now cope with the prolonged or even permanent deprivation of their loved one's companionship.

However, the concerns voiced by circuit courts across the country are undeniably compelling: due to the Supreme Court's silence on the precise contours and limitations of the right to family integrity, lower courts have been tasked with preventing a flood of litigation. Because most individuals are members of one or more family units, recognizing an overly expansive right to family integrity would grant "every close family member of a wrongfully incarcerated individual . . . a constitutional claim based on the incidental, even unknowing, impact of that individual's incarceration on the family relationship."[187] Such an expansive interpretation could imply that a wide array of family members (siblings,[188] grandparents,[189] and others) are entitled to claim violations stemming from wrongful incarceration or police shootings, exposing defendants to multiple claims whenever a single individual is harmed.[190]

A legal stopgap is needed. However, it should not be the specific intent requirement. Neither Supreme Court precedent nor the text of § 1983 mandate application of this requirement in the context of wrongful incarceration or wrongful death. The majority of circuits have already recognized a reciprocal, constitutionally protected interest in the

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[187] Chambers v. Sanders, 63 F.4th 1092, 1101 (6th Cir. 2023).

[188] Siblings generally do not have a constitutionally protected liberty interest in familial companionship and society sufficient to support a claim under § 1983. *See* Valdivieso Ortiz v. Burgos, 807 F.2d 6, 7 (1st Cir. 1986) (siblings of inmate beaten to death by guards did not have constitutionally protected liberty interest in companionship of adult brother); Sager v. City of Woodland Park, 543 F. Supp. 282, 290 (D. Colo. 1982) (quoting Sanchez v. Marquez, 457 F. Supp. 359, 363 (D. Colo. 1978)); Ascani v. Hughes, 470 So. 2d 207, 211–12 (La. Ct. App. 1985); Bell v. City of Milwaukee, 746 F.2d 1205, 1248 (7th Cir. 1984). *But see* Trujillo v. Bd. of Cnty. Comm'rs, 768 F.2d 1186, 1190 (10th Cir. 1985) (siblings entitled to sue under § 1983 for intentional deprivation of rights); Danese v. Asman, 670 F. Supp. 729, 737–39 (E.D. Mich. 1987) (same), *rev'd on other grounds*, 875 F.2d 1239 (6th Cir. 1989).

[189] *See, e.g.*, Est. of B.I.C. v. Gillen, 710 F.3d 1168, 1175 (10th Cir. 2013) (assuming arguendo that grandparents may bring constitutional claims for loss of familial relationship); Drollinger v. Milligan, 552 F.2d 1220, 1226–27 (7th Cir. 1977) (deprivation of grandfather's relationship with grandchild actionable under § 1983).

[190] This Note refrains from prescribing definitively which family units and structures merit protection under the right to family integrity. As the Supreme Court explained in *Moore*, the Constitution requires a flexible definition of family in order to guarantee a faithful application of the Fourteenth Amendment. Moore v. City of East Cleveland, 431 U.S. 494, 504–05 (1977).

companionship of family members,[191] and should find official conduct that "shocks the conscience" in depriving parents or children, minor or adult, of that interest cognizable as a violation of due process.[192] This approach, supported by Supreme Court precedent,[193] balances the scales, providing plaintiffs with a viable path to recovery against powerful state actors without exposing the state to excessive liability. This standard may also increase the viability of the right to family integrity in other contexts, such as the immigration, welfare, and criminal law systems.[194]

Wrongful deaths and wrongful incarcerations sever the family ties that bind. In cases where the state's actions are so egregious that they shock the conscience of the court, victims' families should be able to recover regardless of the defendant's specific intent.

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[191] *See supra* Part II.A, pp. 2370–72.

[192] Wilkinson v. Torres, 610 F.3d 546, 554 (9th Cir. 2010) (quoting Porter v. Osborn, 546 F.3d 1131, 1137 (9th Cir. 2008)).

[193] *See supra* Part III, pp. 2377–81.

[194] Trivedi, *supra* note 28, at 269. Trivedi argues that in criminal, immigration, and family court proceedings, the ability of parents to cite the constitutional right to family integrity may potentially persuade the court to preserve their family. *Id.* This endeavor will only be made easier if such plaintiffs have legal recourse against the state for actions that "shock the conscience" and destroy their family units. *Wilkinson*, 610 F.3d at 554 (quoting *Porter*, 546 F.3d at 1137).