

BLACK AND BLUE IN “THE LAND OF THE FREE”: WRONGFUL INCARCERATION AND THE UNRECTIFIED CONSTITUTIONAL INJURIES TO FAMILY INTEGRITY

Abstract: Under 42 U.S.C. § 1983, courts widely recognize a wrongfully incarcerated person’s right to recover against state actors who participated in procuring their wrongful incarceration. By contrast, few courts allow a child of a wrongfully incarcerated parent to recover against those same state actors for depriving the child’s Fourteenth Amendment right to family integrity without due process. In *Chambers v. Sanders*—a case of first impression—the Sixth Circuit held that absent a showing of a state actor’s specific intent to destroy the child-parent relationship, a state actor cannot be liable to a child for wrongfully incarcerating their parent. This Comment argues that the Sixth Circuit erred in adopting the specific-intent requirement for three reasons. First, the Sixth Circuit overlooked the Supreme Court’s decision in *Kingsley v. Hendrickson*, where the Court applied an objective standard in determining whether a state actor intended to violate a Fourteenth Amendment right. Second, the specific-intent requirement fails to hold state actors accountable for not exercising every reasonable precaution available to prevent constitutional rights violations. Third, the specific-intent requirement fails to rectify the considerable economic and non-economic damages suffered by children incident to their parent’s wrongful incarceration.

INTRODUCTION

In “the Land of the Free,” the United States houses 16% of the world’s prison population despite comprising just 4.2% of the world’s total population.¹ As of this Comment, the U.S. has the largest prison population and the

¹ See *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <https://www.census.gov/popclock/> [<https://perma.cc/ZRU6-D37L>] (providing an up-to-date count of the U.S. population and the global population); HELEN FAIR & ROY WALMSLEY, *WORLD PRISON BRIEF*, *WORLD PRISON POPULATION LIST 2* (14th ed. 2024), https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_14th_edition.pdf [<https://perma.cc/8UMS-38PJ>] (reporting that as of April 2024, the U.S. prison population totaled approximately 1.8 million and the global prison population totaled approximately 10.99 million). See generally *The Star-Spangled Banner* (Doubleday, Doran & Co. 1942) (referring to the United States of America as “the Land of the Free”). “The Star-Spangled Banner” was written in 1814 and was adopted as the U.S. National Anthem in 1931. “*The Star-Spangled Banner*,” U.S. DEP’T OF VETERANS AFFS., <https://www.va.gov/opa/publications/celebrate/ssbanner.pdf> [<https://perma.cc/CD5P-SKZT>]. The irony is that even though “The Star-Spangled Banner” hails the U.S. as “the Land of the Free,” the U.S. has the largest prison population out of any country and has the sixth highest incarceration rate in the world. See *infra* note 2 and accompanying text (comparing U.S. population statistics and incarceration statistics with those of other countries).

sixth highest incarceration rate in the world, with about 538 out of every 100,000 Americans serving a term in prison.² In 2023, 153 U.S. inmates—nearly 84% of whom were Black, Indigenous, and People of Color (BIPOC)—were decarcerated after being exonerated of crimes they did not commit.³ Those exonerated in 2023 were wrongfully incarcerated for an average of 14.6 years and for a staggering combined total of 2,230 years.⁴ The time lost by these exonerees and other wrongfully incarcerated individuals has a devastating impact on their families, especially their children, who are secondary victims of wrongful incarceration.⁵

One such exoneree is Danny Burton, who was wrongfully convicted of murder in Michigan in 1987 and remained incarcerated until his exoneration in 2019.⁶ In 2023, Burton's children—Danny Lamont Chambers and Dontell Rayvon-Eddie Smith—sued Detective Ronald Sanders and the City of Detroit for violating their Fourteenth Amendment right to family integrity by engaging

² FAIR & WALMSLEY, *supra* note 1, at 2. The U.S. has a prison population of 1.8 million, followed by China with 1.69 million, and Brazil with 840,000. *Id.*

³ NAT'L REGISTRY OF EXONERATIONS, 2023 ANNUAL REPORT 3 (2024), <https://www.law.umich.edu/special/exoneration/Documents/2023%20Annual%20Report.pdf> [<https://perma.cc/N38Z-2EU8>]. The term "BIPOC" means "Black, Indigenous, (and) People of Color." *BIPOC*, MERRIAM-WEBSTER, INC., <https://www.merriam-webster.com/dictionary/BIPOC> [<https://perma.cc/U35N-GW9H>]. One hundred and twenty-seven out of the 153 exonerees were BIPOC. NAT'L REGISTRY OF EXONERATIONS, *supra*. Out of all 153 exonerees, however, 93 or roughly 61% were Black. *Id.* Seventy-seven percent of those exoneration cases involved misconduct by state actors, 28% involved false or misleading forensic evidence, and 21% involved false confessions. *Id.* at 4.

⁴ NAT'L REGISTRY OF EXONERATIONS, *supra* note 3, at 3. Between 1989 and February 25, 2024, exonerees were wrongfully incarcerated for an average of 9.1 years and a combined total of 31,678 years. *Id.* at 11. In this Comment, "wrongful incarceration," also known as "wrongful imprisonment," refers to an individual who was wrongfully convicted of a state or federal criminal offense and who fully or partially completed a term of imprisonment for the criminal offense. See *Wrongful Incarceration FAQs*, INTERNAL REVENUE SERV. (Nov. 13, 2023), <https://www.irs.gov/individuals/wrongful-incarceration-faqs> [<https://perma.cc/67E2-NMZW>] (defining a "wrongfully incarcerated individual" under the "wrongful incarceration exclusion" to the federal income tax); see also *Wrongful Conviction*, BLACK'S LAW DICTIONARY (12th ed. 2024) [hereinafter "BLACK'S"] (defining "wrongful conviction" as a person's conviction for a criminal offense that they did not perpetrate).

⁵ See Janani Umamaheswar, *The Relational Costs of Wrongful Convictions*, 31 CRITICAL CRIMINOLOGY 707, 709 (2023) (reporting that the children of wrongfully convicted persons often experience depressive symptoms and other hardships because of their parent's wrongful conviction); Joseph Murray & David P. Farrington, *Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency Through the Life-Course*, 46 J. CHILD PSYCH. & PSYCHIATRY 1269, 1276 (2005) (finding that boys who experienced parental imprisonment were more likely to develop anti-social traits and engage in delinquent behavior).

⁶ *Danny Burton*, NAT'L REGISTRY OF EXONERATIONS (June 23, 2022), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5648> [<https://perma.cc/B3L7-H2P4>]. In the same case, Burton was also wrongfully convicted of illegal use of a weapon. *Id.* Burton spent thirty-two years in prison for a murder that he did not commit. *Chambers v. Sanders*, 63 F.4th 1092, 1095 (6th Cir. 2023).

in misconduct that contributed to Burton's wrongful conviction and incarceration.⁷

Part I of this Comment provides an overview of the right to family integrity under the Fourteenth Amendment, explains the remedies available under 42 U.S.C. § 1983 when state actors infringe the right, and outlines the facts, procedural history, and holdings of *Chambers v. Sanders*.⁸ Part II discusses the circuit split regarding a child's ability to recover against state actors who wrongfully incarcerated their parent.⁹ Part III argues that under § 1983, a child of a wrongfully incarcerated parent should recover against state actors who procured the wrongful incarceration regardless of the state actors' specific intent to abridge the child's right to family integrity.¹⁰

I. THE LEGAL BACKDROP OF *CHAMBERS V. SANDERS*

Although the right to family integrity is not explicitly written in the Constitution, the Supreme Court has held that the Fourteenth Amendment implies the right.¹¹ Section A of this Part details the history of the right to family integ-

⁷ *Chambers*, 63 F.4th at 1095; see also *infra* notes 39–43 and accompanying text (summarizing the facts of Burton's case, detailing Sanders's misconduct, and outlining Chambers's and Smith's Fourteenth Amendment claims).

⁸ See *infra* notes 11–52 and accompanying text.

⁹ See *infra* notes 53–67 and accompanying text.

¹⁰ See *infra* notes 68–87 and accompanying text. A “state actor” is an entity or individual acting on behalf of a federal, state, or municipal government or governing body. *State Actor*, BLACK'S, *supra* note 4. “Specific intent” refers to a party's intent to (1) perform an action and (2) bring about specific consequences from that action. *Specific Intent*, CORNELL L. SCH. LEGAL INFO. INST. (June 2024), https://www.law.cornell.edu/wex/specific_intent [<https://perma.cc/8SLT-8TZC>].

¹¹ See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding that the Fourteenth Amendment protects the freedom to raise children and “establish a home”); *Stanley v. Illinois*, 405 U.S. 645, 657–58 (1972) (holding that the Due Process Clause of the Fourteenth Amendment requires that parents be given a hearing prior to the state depriving them of their children for lack of parental fitness); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (first citing *Wisconsin v. Yoder*, 406 U.S. 205, 231–33 (1972); then citing *Stanley*, 405 U.S. at 657–58; and then citing *Meyer*, 262 U.S. at 399–401) (holding that the parent-child relationship is protected by the Due Process Clause of the Fourteenth Amendment). The Supreme Court has held that the plainly written guarantees under the Bill of Rights also contain implied rights, known as “penumbras.” *Penumbra*, BLACK'S, *supra* note 4; see also *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) (citing *Poe v. Ullman*, 367 U.S. 497, 516–22 (1961) (Douglas, J., dissenting)) (holding that the Constitution contains implied rights known as “penumbras”); *Unenumerated Right*, BLACK'S, *supra* note 4 (defining “unenumerated right” as a constitutional right that the Bill of Rights does not explicitly mention). Congress passed the Fourteenth Amendment on June 13, 1866, and the Senate ratified the Amendment on July 9, 1868. *14th Amendment to the U.S. Constitution: Civil Rights (1868)*, U.S. NAT'L ARCHIVES & RECS. ADMIN. (Mar. 6, 2024), <https://www.archives.gov/milestone-documents/14th-amendment> [<https://perma.cc/92F3-TN9Y>]. The Fourteenth Amendment grants citizenship to all people born in the U.S., including persons previously enslaved, requires that the right to due process and the right to equal protection under the law apply to state governments in addition to the federal government, and bans individuals who participated in an insurrection against the U.S. from assuming any elected, civil, or military office absent a two-thirds majority approval from both houses of Congress. *Id.*; U.S. CONST. amend. XIV; *Landmark Legislation: The Fourteenth Amendment*, U.S.

rity.¹² Section B discusses how 42 U.S.C. § 1983 functions as a cause of action for individuals to sue state actors who violate constitutional rights, including the right to family integrity.¹³ Section C summarizes the facts, procedural history, and holdings of *Chambers v. Sanders*.¹⁴

A. A Brief Overview of the Fourteenth Amendment and the Constitutional Right to Family Integrity

The Due Process Clause of the Fourteenth Amendment prohibits state governments from depriving an individual “of life, liberty, or property, without due process of law.”¹⁵ The clause offers both procedural and substantive due process protections.¹⁶ Procedural due process requires the government to provide a “fair procedure” before depriving any individual of life, liberty, or property.¹⁷ By contrast, substantive due process requires the government to have a

SENATE, <https://www.senate.gov/about/origins-foundations/senate-and-constitution/14th-amendment.htm> [<https://perma.cc/B7M4-U42J>].

¹² See *infra* notes 15–23 and accompanying text.

¹³ See *infra* notes 24–38 and accompanying text.

¹⁴ See *infra* notes 39–52 and accompanying text.

¹⁵ U.S. CONST. amend. XIV, § 1. The Fifth Amendment’s Due Process Clause mandates that the federal government grant equal protection to all individuals under the law, whereas the Fourteenth Amendment’s Equal Protection Clause requires that state governments grant equal protection to all individuals under the law. *Equal Protection*, CORNELL L. SCH. LEGAL INFO. INST. (Nov. 2022), https://www.law.cornell.edu/wex/equal_protection [<https://perma.cc/TGU3-77A6>]; see, e.g., *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954), *supplemented sub nom.* *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (holding that states cannot segregate public schools based on race because segregation denies individuals equal protection under the laws assured by the Fourteenth Amendment’s Equal Protection Clause). The phrase “due process of law” is derived from the phrase “law of the land” as written in the Great Charter in reference to the jury trial, writ of habeas corpus, and other guaranteed rights meant to avert monarchical oppression. *Davidson v. City of New Orleans*, 96 U.S. 97, 101 (1877). See *generally* *Government*, BLACK’S, *supra* note 4 (defining “state government” as “[t]he government of a state of the United States”).

¹⁶ See *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012) (outlining the substantive and procedural due process protections of the Fourteenth Amendment); *infra* notes 17–18 and accompanying text (defining procedural due process and substantive due process).

¹⁷ *EJS Props., LLC*, 698 F.3d at 855 (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)) (citing *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1216 (6th Cir. 1992)). To be “fair,” a procedure must be both “meaningful” and “appropriate to the nature of the case.” *Bell v. Burson*, 402 U.S. 535, 541–42 (1971) (first quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); and then quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)). A procedural due process claim requires a plaintiff to show that (1) the Due Process Clause protected the plaintiff’s interest in life, liberty, property, or some other implied right; (2) the government deprived the plaintiff of the protected right; and (3) the government did not provide the plaintiff with sufficient procedural rights prior to the deprivation. *EJS Props., LLC*, 698 F.3d at 855 (quoting *Women’s Med. Pro. Corp. v. Baird*, 438 F.3d 596, 611 (6th Cir. 2006)). A “procedural right” is a right that either enforces or protects a substantive right. *Procedural Right*, BLACK’S, *supra* note 4. Examples of procedural rights include the right to legal representation, reasonable bail, a jury trial, a speedy trial, and a “fair and impartial administration of justice.” *Id.* By contrast, a “substantive right” is a right that can either be enforced or protected by a source of law, such as the common law, a statute, or the Constitution. *Sub-*

legitimate interest that justifies depriving an individual of life, liberty, or property.¹⁸ Thus, absent a legitimate government interest, substantive due process precludes the government from depriving a right protected by the Fourteenth Amendment, even if the procedures used to deprive the right were fair.¹⁹

In addition to protecting the enumerated rights of life, liberty, and property, however, the Fourteenth Amendment also protects rights embedded in American history and societal tradition, rights essential to liberty, and the right to be free from government actions that “shock the conscience.”²⁰ Examples of unenumerated rights in these categories include the right to privacy, the right to

stantive Right, id. Examples of substantive rights include the right to life, liberty, and property under the Fourteenth Amendment. *See* U.S. CONST. amend. XIV, § 1 (stating that the government may not deprive an individual “of life, liberty, or property, without due process of law”).

¹⁸ Erwin Chemerinsky, *Substantive Due Process*, 15 *TOURO L. REV.* 1501, 1501 (1999); *see, e.g., Santosky v. Kramer*, 455 U.S. 745, 769–70 (1982) (citing *Addington v. Texas*, 441 U.S. 418, 433 (1979)) (holding that a state government must prove that its legitimate concerns justify depriving individuals of a Fourteenth Amendment right by, at a minimum, clear and convincing evidence). Substantive due process applies to both the Fifth and Fourteenth Amendments. *Substantive Due Process*, CORNELL L. SCH. LEGAL INFO. INST. (June 2024), https://www.law.cornell.edu/wex/substantive_due_process [<https://perma.cc/H55B-S5VA>]. Substantive due process protection under the Fifth Amendment applies to federal government action, whereas substantive due process protection under the Fourteenth Amendment applies to state government action. *Id.*; *see also Colorado v. Connelly*, 479 U.S. 157, 170 (1986) (first citing *United States v. Washington*, 431 U.S. 181, 187 (1977); and then citing *Miranda v. Arizona*, 384 U.S. 436, 460 (1966)) (holding that the Fifth Amendment’s sole concern is government coercion, which in and of itself constitutes a substantive due process violation); *infra* notes 19–23 and accompanying text (explaining the jurisprudence of substantive due process protections under the Fourteenth Amendment). *See generally Evidence*, BLACK’S, *supra* note 4 (defining “clear and convincing evidence” as a standard of proof that is less than “beyond a reasonable doubt,” which is the standard used in criminal trials, but more than a “preponderance of the evidence,” which is the standard used in the majority of civil trials).

¹⁹ *Collins*, 503 U.S. at 125 (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). To prevail in a substantive due process claim, a plaintiff must show that (1) the plaintiff’s interest was protected by the Constitution and (2) the government deprived the interest through capricious and arbitrary means. *EJS Props.*, 698 F.3d at 855 (quoting *Braun v. Ann Arbor Charter Township*, 519 F.3d 564, 573 (6th Cir. 2008)); *see also County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)) (first citing *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972); and then citing *Daniels*, 474 U.S. at 331) (noting that substantive due process protects individuals from government authority wielded oppressively and arbitrarily).

²⁰ *Chambers v. Sanders*, 63 F.4th 1092, 1096 (6th Cir. 2023) (quoting *Range v. Douglas*, 763 F.3d 573, 588 (6th Cir. 2014)) (citing *Bell v. Ohio State Univ.*, 351 F.3d 240, 249–50 (6th Cir. 1992)). “Enumerated rights,” as mentioned in the Ninth Amendment, are those rights explicitly written in the Constitution. *See* U.S. CONST. amend. IX (stating that the Constitution’s enumeration of certain rights does not “deny or disparage” other rights not explicitly written in the Constitution and that are nonetheless held by the people). According to the U.S. Court of Appeals for the Tenth Circuit, an action shocks the conscience when a state actor intentionally and arbitrarily abuses their authority in an “egregious and outrageous” manner. *Halley v. Huckaby*, 902 F.3d 1136, 1155 (10th Cir. 2018) (quoting *Hernandez v. Ridley*, 734 F.3d 1254, 1261 (10th Cir. 2013)) (first citing *Lewis*, 523 U.S. at 847; and then citing *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957)). According to the Supreme Court, in the context of conduct by police officers, an action shocks the conscience when the motive behind the action was to cause injury beyond the good-faith reason for the arrest. *Lewis*, 523 U.S. at 836.

interracial marriage, and the right to refuse medical treatment.²¹ On numerous occasions, the Supreme Court has recognized that the right to family integrity is another such unenumerated right.²² Still, the Supreme Court has yet to decide when, if at all, a child's right to family integrity is infringed when a state actor wrongfully incarcerates their parent.²³

²¹ See *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) (holding that the right to privacy is a penumbra under the First, Third, Fourth, Fifth, and Ninth Amendments); *Loving v. Virginia*, 388 U.S. 1, 11–12 (1967) (holding that interracial marriage is a penumbra under the Fourteenth Amendment); *Obergefell v. Hodges*, 576 U.S. 644, 675–76 (2015) (holding that same-sex marriage is a penumbra under the Fourteenth Amendment); *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 278 (1990) (holding that the Fourteenth Amendment implies a mentally competent individual's right to refuse medical treatment).

²² See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding that the Fourteenth Amendment implies a constitutionally protected interest in family integrity by granting parents the right to establish a place of residence and raise children); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (citing *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925)) (“It is cardinal with us that the 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.”); *Stanley v. Illinois*, 405 U.S. 645, 657–58 (1972) (holding that the Fourteenth Amendment requires the government to give all parents—regardless of marital status—a hearing prior to depriving them of their children); *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972) (holding that the Fourteenth Amendment protects the right for parents to control the educational decisions of their children); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–640 (1974) (holding that the Fourteenth Amendment protects the freedom to make decisions involving family life); *Moore v. City of East Cleveland*, 431 U.S. 494, 503–06 (1977) (holding that the Fourteenth Amendment protects the right of extended family members to live together); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (first citing *Yoder*, 406 U.S. at 231–33; then citing *Stanley*, 405 U.S. at 657–58; and then citing *Meyer*, 262 U.S. at 399–401) (holding that the Fourteenth Amendment protects the parent-child relationship); *Santosky*, 455 U.S. at 753 (holding that parents have a constitutionally protected interest in caring for, maintaining custody of, and managing their children).

²³ See, e.g., *Santosky*, 455 U.S. at 753 (failing to reach the question of whether a child's right to family integrity under the Fourteenth Amendment is infringed when the state wrongfully incarcerates their parent). The question of whether the right to family integrity applies to the child-parent relationship has not yet been decided by the Supreme Court and is not the focus of this Comment. See, e.g., *id.* (failing to reach the question of whether the right to family integrity applies to children in the same way it does to parents). Circuits that have heard the issue of whether a child's right to family integrity was violated because of their parent's wrongful incarceration assume that the right to family integrity applies to the child-parent relationship. See *infra* notes 53–67 and accompanying text (discussing the jurisprudence of the right to family integrity as it applies to children whose parents were wrongfully incarcerated). In this Comment, “child-parent relationship” refers to the child's constitutionally-protected right to have a relationship with their parent, whereas “parent-child relationship” refers to the parent's constitutionally-protected right to have a relationship with their child. See, e.g., *Chambers*, 63 F.4th at 1097 (assuming that the right to family integrity under the Fourteenth Amendment extends to children); *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987) (citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619–20 (1984)) (according the same constitutional protections of the parent-child relationship to the child-parent relationship under the Fourteenth Amendment), *overruled on other grounds by* *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc); *Santosky*, 455 U.S. at 753 (holding that the parent-child relationship is constitutionally protected).

*B. 42 U.S.C. § 1983: A Means to Recover Against State Actors
Who Violate Constitutional Rights*

When a state actor violates an individual's constitutional right, the individual may sue the state actor for infringement of that right under 42 U.S.C. § 1983.²⁴ Generally, a plaintiff seeking relief under § 1983 must show that (1) the defendant acted under color of local, state, or federal law, and (2) the defendant's act deprived the plaintiff of a constitutionally protected right.²⁵ For alleged substantive due process violations, however, the Supreme Court further requires a plaintiff to show that the defendant was more than negligent in depriving a Fourteenth Amendment-protected right.²⁶ In 1986, in *Daniels v. Wil-*

²⁴ See 42 U.S.C. § 1983 (allowing individuals to recover against state actors who violate their constitutional rights). Section 1983 provides that a person who acts "under color of law" and who infringes on another person's constitutional rights can be held liable for the infringement by the injured person. See *id.* ("Every person who, under color of any statute . . . subjects . . . any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights . . . shall be liable to the party injured . . ."). A person acts under color of law when they purport legal authority or a legal right, usually while wielding government authority. *Color of Law*, BLACK'S, *supra* note 4. Section 1983 actions can also extend to private actors who assist state actors in infringing constitutional rights. See *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970)) (holding that when a private actor works in concert with a government official, the private actor acts under color of law under § 1983). Specifically, the state-action doctrine provides that a private actor may become a state actor when (1) the private actor carries out a public function that is both exclusive and traditional; (2) the state actor persuades the private actor to execute a particular action; or (3) the state actor and private actor jointly execute a particular action. *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019); see also Justin Sells, *Hands Off My Post: Rethinking Section 230 and Private Online Platform Liability*, B.C. INTELL. PROP. & TECH. F. at *22–23 (Apr. 29, 2024), <https://lira.bc.edu/work/sc/9784536c-aed9-4e2e-b270-e72ed417505a/reader/05e86ca7-2b45-4a9e-b9d7-6d28541633ec> [<https://perma.cc/6XB8-BVAC>] (explaining the jurisprudence of § 1983 and state action in the context of constitutional rights violations, namely, infringement of an individual's First Amendment right on the Internet). See generally Andrea T. Traietti, "*Lifting the Legislative Rug*": A Proposal for Congressional Abrogation of State Legislative Privilege in Discrimination Cases Under § 1983, 66 B.C. L. REV. 1045, 1061–64 (2025) (explaining the function, history, and legislative purpose of § 1983).

²⁵ E.g., *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330–31 (1986); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978); *West v. Atkins*, 487 U.S. 42, 48 (1988) (first citing *Parratt*, 451 U.S. at 535; and then citing *Flagg Bros., Inc.*, 436 U.S. at 155); *Chambers*, 63 F.4th at 1096 (quoting *Fritz v. Charter Township of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010)).

²⁶ See, e.g., *Daniels*, 474 U.S. at 332–33 (holding that a state actor's mere negligence does not deprive an individual of Fourteenth Amendment-protected rights without due process under § 1983); *County of Sacramento v. Lewis*, 523 U.S. 833, 852–53 (1998) (holding that a state actor's deliberate indifference in depriving a Fourteenth Amendment right, coupled with conduct that shocks the conscience, rises to a substantive due process violation). The Supreme Court in *Lewis* held that deliberately indifferent conduct does not automatically rise to the level of conscience-shocking. 523 U.S. at 851–52. Specifically, the Supreme Court held that a substantive due process violation can occur with a showing that a state actor engaged in deliberately indifferent conduct, and separately, that the conduct itself shocked the conscience. *Id.* at 852–53. The Court reasoned that although the state actor's conduct in *Lewis* was done with deliberate indifference to the plaintiff's right to life, the state actor's conduct itself was not conscience shocking, and therefore did not result in a Fourteenth Amendment

liams, the Supreme Court held that a state actor's negligent conduct—even when causing injury—cannot constitute a substantive due process violation.²⁷ In 1998, in *County of Sacramento v. Lewis*, the Supreme Court upheld *Daniels*, but added that a state actor's conduct arising from “deliberate indifference”—the midway point between negligence and intentionality—must also “shock the conscience” to constitute a substantive due process violation.²⁸ Specifically, the Court in *Lewis* held that a state actor's deliberately indifferent conduct during a police chase does not violate substantive due process unless the conduct also shocks the conscience.²⁹

The Supreme Court defined “deliberate indifference” as a state actor's knowledge of a substantial risk of serious harm and a disregard of that risk by failing to implement all reasonable precautions to mitigate it.³⁰ Regarding state actor conduct generally, the Supreme Court held that an action is most likely to

substantive due process violation. *Id.* at 854–55. The Supreme Court interpreted “deliberate indifference” as being equivalent to “reckless disregard.” *Id.* at 854; *see infra* note 30 and accompanying text (defining “deliberate indifference” and “recklessness”). The Court also noted in *Daniels* that before *Parratt*, the Supreme Court never held that a state official's negligent act, even though causing harm, results in a due process violation. *Daniels*, 474 U.S. at 331; *cf.* *Davidson v. City of New Orleans*, 96 U.S. 97, 105 (1878) (holding that a due process violation does not occur when the government deliberately takes an individual's private property for public use but, before the taking, provides the individual with notice and a fair trial); *Rochin v. California*, 342 U.S. 165, 172–74 (1952) (holding that a police officer's intentional and forcible extraction of evidence of drug possession from a defendant's stomach shocked the conscience and amounted to a due process violation); *Bell v. Burson*, 402 U.S. 535, 539 (1971) (first citing *Sniadach v. Fam. Fin. Corp.*, 395 U.S. 337 (1969); and then citing *Goldberg v. Kelly*, 397 U.S. 254 (1970)) (holding that a state's denial of a hearing to a citizen before suspending the citizen's driver's license was a Fourteenth Amendment due process violation); *Ingraham v. Wright*, 430 U.S. 651, 682 (1977) (holding that the deliberate use of corporal punishment on students in public schools without a hearing is not a due process violation because the practice of corporal punishment is expressly permitted and guided by common law); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding that the unlawful intentional deprivation of an inmate's property by a state actor is not a violation of due process if a post-deprivation remedy exists). In *Daniels*, the Supreme Court overturned *Parratt*, where the Court previously held that a state actor's mere negligence may result in a Fourteenth Amendment due process violation. *Daniels*, 474 U.S. at 330–31.

²⁷ 474 U.S. at 330–31.

²⁸ *Lewis*, 523 U.S. at 852. *Lewis* further held that negligently inflicted harm does not shock the conscience. *Id.* at 848–49. The Supreme Court first defined “deliberate indifference” in the Eighth Amendment context. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994) (defining “deliberate indifference” under the Eighth Amendment). Under the Eighth Amendment, “deliberate indifference” is a subjective test that requires a state actor to have knowledge of a risk of serious harm and either act or fail to act despite their knowledge of the risk. *Id.* at 842.

²⁹ 523 U.S. at 854–55. The Supreme Court noted that a shocks-the-conscience standard should apply to alleged substantive due process violations during a police chase, which involve a state actor's hurried decisions under pressure. *Id.* at 853.

³⁰ *Farmer*, 511 U.S. at 847; *see also Lewis*, 523 U.S. at 854 (equating “deliberate indifference” to “reckless disregard”); *Recklessness*, BLACK'S, *supra* note 4 (defining “recklessness” as conduct where an individual does not wish to bring about harm but foresees risk of harm and acts despite the foreseeable risk). Recklessness entails more fault than negligence but less fault than intentional wrongdoing. *Id.*

shock the conscience when a state actor's purpose behind the action was to inflict harm that was unjustified by any government interest.³¹

In 2015, however, the Supreme Court held in *Kingsley v. Hendrickson* that a state actor's purposeful or knowing application of force that was objectively unreasonable given the circumstances results in a Fourteenth Amendment due process violation.³² The Court's decision in *Kingsley* thus enables state actor liability under § 1983 regardless of the state actor's subjective intent

³¹ *Lewis*, 523 U.S. at 849 (citing *Daniels*, 474 U.S. at 331). For example, in the context of police conduct, an action shocks the conscience if the action's purpose was to inflict harm separate from the good-faith reason for the arrest. *Id.* at 836.

³² 576 U.S. 389, 396–97 (2015). In the Fourteenth Amendment context, when determining whether a defendant police officer's application of force was objectively unreasonable, a court decides based on a reasonable officer's perspective who was on the scene, which does not require that the defendant officer have knowledge of a substantial risk of the plaintiff's injury. *Id.* at 397. A court will consider as factors: (1) the proportion of the amount of force used and the amount of force needed; (2) the degree of the plaintiff's injury; (3) the officer's attempts to limit the force used; (4) the officer's reasonable perception of the threat; and (5) the plaintiff's active resistance. *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Although the Supreme Court's use of an objective test to determine a state actor's intent in *Kingsley* is tailored to Fourteenth Amendment excessive force claims, the objective test could be similarly applied to other Fourteenth Amendment due process claims, such as the deprivation of the right to family integrity. *See Miranda v. County of Lake*, 900 F.3d 335, 353–54 (7th Cir. 2018) (holding that in accordance with *Kingsley*, a pre-trial detainee who brings a medical care claim against a state actor under the Fourteenth Amendment must show that the state actor's conduct was more than negligent, and separately, that the conduct was objectively unreasonable to prevail under § 1983). The Seventh Circuit recognizes that under § 1983, in the context of state actor liability for Fourteenth Amendment substantive due process violations, "deliberate indifference" refers to acting with reckless disregard of the risk of violating a constitutional right. *Id.* After establishing that a state actor acted purposefully or with deliberate indifference, the plaintiff need only show that the state actor's actions were objectively unreasonable given the circumstances—not that the state actor subjectively intended to violate a constitutional right. *Id.* Additionally, the Second and Ninth Circuits also apply the objective state-of-mind test from *Kingsley* to claims of a state actor's deliberate indifference in depriving Fourteenth Amendment rights. *See Darnell v. Pineiro*, 849 F.3d 17, 34–35 (2d Cir. 2017) (holding that after the Supreme Court's analysis in *Kingsley*, "deliberate indifference" in the context of unconstitutional conditions of confinement claims brought by pre-trial detainees against state actors under the Fourteenth Amendment should be evaluated objectively as opposed to subjectively); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070–71 (9th Cir. 2016) (en banc) (holding that the objective state-of-mind test in *Kingsley* applies to Fourteenth Amendment failure-to-protect claims initiated by pre-trial detainees against state actors). Separately, in the context of a municipality's liability for a state actor's misconduct under § 1983, as seen in *Monell* claims, "deliberate indifference" refers to a municipality's deliberate or conscious choice to take a course of action over various alternatives—such as failing to adequately train its officers—that results in its employees violating a constitutional right. *City of Canton v. Harris*, 489 U.S. 378, 388–89 (1989); *see also infra* note 45 and accompanying text (explaining a *Monell* claim and its elements). In *Miranda v. County of Lake*, the Seventh Circuit further clarified that the deliberate indifference standard in the *Monell* context is satisfied when (1) a municipality fails to adequately train its officers when faced with foreseeable consequences or (2) a municipality fails to mitigate repeat complaints against its officers for committing constitutional rights violations. *Miranda*, 900 F.3d at 345 (quoting *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1029–30 (7th Cir. 2006)).

to violate a Fourteenth Amendment right.³³ The Court in *Kingsley* further clarified that *Lewis* does not support the use of a subjective test for determining whether a state actor intended to infringe on a Fourteenth Amendment right.³⁴

Neither the plain text of § 1983 nor the Supreme Court have explicitly required state actors to possess specific intent to face § 1983 liability.³⁵ Circuit courts are currently divided on what state of mind a state actor must possess to face liability under § 1983 for infringing on a child's right to family integrity.³⁶ In *Chambers*, the Sixth Circuit joined the First, Second, Third, Fourth, Seventh, Eighth, and Tenth Circuits in requiring a child to show that a state actor specifically intended to deprive the right.³⁷ In contrast, the Ninth Circuit remains the only circuit to not require a showing of specific intent.³⁸

³³ See *Kingsley*, 576 U.S. at 396–97 (holding that courts must apply an objective standard in determining whether a state actor intended to violate the Fourteenth Amendment by using excessive force).

³⁴ *Id.* at 401.

³⁵ See, e.g., 42 U.S.C. § 1983 (omitting the phrase “specific intent”); *Daniels*, 474 U.S. at 332–33 (refusing to explicitly require that state actors possess specific intent to face § 1983 liability); *Lewis*, 523 U.S. at 852–53 (holding that a state actor whose conduct shocks the conscience need only be deliberately indifferent in violating a constitutional right to face § 1983 liability).

³⁶ See *infra* notes 57–67 and accompanying text (discussing the circuit split on what state of mind a state actor must possess to face liability under § 1983 for depriving the right to family integrity without due process). “State of mind,” also referred to as “scienter,” “culpability,” or “*mens rea*” in the criminal context, is “[a] degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission.” *Scienter*, BLACK’S, *supra* note 4; see also *Mens Rea*, *id.* (defining “*mens rea*” as “[t]he state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime”).

³⁷ See, e.g., 63 F.4th 1092, 1101–02 (6th Cir. 2023) (adopting the specific-intent requirement); *Trujillo v. Bd. of Cnty. Comm’rs*, 768 F.2d 1186, 1190 (10th Cir. 1985) (originating the specific-intent requirement in the context of deprivation of family integrity claims under the Fourteenth Amendment); *Valdivieso Ortiz v. Burgos*, 807 F.2d 6, 9 (1st Cir. 1986) (first citing *Ealey v. City of Detroit*, 375 N.W.2d 435 (Mich. Ct. App. 1985); then citing *White v. Talboys*, 573 F. Supp. 49 (D. Colo. 1983); and then citing *Jackson v. Marsh*, 551 F. Supp. 1091 (D. Colo. 1982)) (declining to equate intentional government action aimed at depriving the right to family integrity with an incidental deprivation of the right under § 1983); *Gorman v. Rensselaer County*, 910 F.3d 40, 48 (2d Cir. 2018) (holding that a violation of due process claim for infringement of the right to family integrity requires that a state actor specifically intended to obstruct the family relationship); *McCurdy v. Dodd*, 352 F.3d 820, 827–28 (3d Cir. 2003) (citing *Valdivieso Ortiz*, 807 F.2d at 8) (holding that the Fourteenth Amendment’s Due Process Clause only precludes intentional infringement of a parent’s constitutional rights); *Shaw v. Stroud*, 13 F.3d 791, 803–04 (4th Cir. 1994) (holding that state actors are immune from substantive due process liability stemming from their negligence); *Russ v. Watts*, 414 F.3d 783, 790–91 (7th Cir. 2005) (holding that state officials cannot be liable for due process violations when they did not deliberately interfere with the parent-child relationship); *Partridge v. City of Benton*, 929 F.3d 562, 568 (8th Cir. 2019) (citing *Harpole v. Arkansas Dep’t of Hum. Servs.*, 820 F.2d 823, 927–28 (8th Cir. 1987)) (holding that a claim of deprivation of family integrity without due process must allege that state action deliberately targeted the family relationship); *Lowery v. County of Riley*, 522 F.3d 1086, 1092 (10th Cir. 2008) (quoting *J.B. v. Washington County*, 127 F.3d 919, 927 (10th Cir. 1997)) (holding that a state actor’s conduct must target the family relationship, and the state actor must know that their conduct will negatively impact the relationship to face § 1983 liability).

³⁸ See *Smith v. City of Fontana*, 818 F.2d 1411, 1416–18 (9th Cir. 1987) (holding that a substantive due process claim solely requires a showing that an officer’s conduct was objectively unreasonable given

C. The Facts, Procedural History, and Holdings of Chambers v. Sanders

In 1987, a Michigan jury convicted Danny Burton of first-degree murder and illegal firearm possession during the commission of a felony.³⁹ Burton was subsequently sentenced to life in prison without parole for the first-degree murder conviction and two years in prison for the firearm conviction.⁴⁰ But in 2019, Burton was exonerated after several key witnesses recanted their testimony, and evidence was presented that Detective Ronald Sanders—the arresting officer—used threats and physical violence to coerce the witnesses into falsely testifying against Burton.⁴¹ In total, Burton was wrongfully incarcerated

the circumstances, as opposed to a showing that the officer specifically intended to deprive a due process right), *overruled on other grounds by* *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc).

³⁹ *Burton v. State*, 987 N.W.2d 879, 880 (Mich. Ct. App. 2022); *Chambers*, 63 F.4th at 1095. Burton was accused of murdering twenty-year old Leonard Ruffin, who was shot and killed on May 2, 1987, in an alley in Detroit, Michigan. *Danny Burton*, *supra* note 6. On May 3, 1987, law enforcement arrested Paul Young, who initially insisted that he was with David Owens, Clara Hill, and nineteen-year-old Danny Burton in a hotel room while the crime happened. *Id.* Later, however, Young—who was interviewed by Detroit Police Detective Ronald Sanders—told law enforcement that he was involved in the murder and implicated Burton and Owens, but not Hill, as accomplices. *Id.* Police arrested Burton on June 12, 1987, but Owens evaded arrest until January of 1988. *Id.* In August of 1987, however, Burton and Young went to trial. *Id.* The prosecutor argued that Ruffin, Young, Owens, and Burton were part of a crack cocaine ring where they transported crack and collected money from properties where members of the ring sold crack. *Id.* The prosecutor's theory of the murder was that Young, Owens, and Burton got into a dispute with Ruffin over Ruffin stealing money from the ring, that Owens killed Ruffin, and Young and Burton helped hide Ruffin's body. *Id.* The prosecutor's theory was based on testimony from four witnesses—Lula Gilchrist, Felicia Gilchrist, Andrew Williams, and Alfreda Jackson—who claimed they saw Ruffin's murder from inside a crack house and who were all interviewed by Sanders. *Id.* Before the trial, the court barred the prosecutor from using Young's confession because evidence suggested that Sanders “kicked Young in the groin” and forced Young to confess by detaining him in a room. *Id.* At trial, all four witnesses initially testified that they saw Ruffin get shot while walking from the crack house to a vehicle owned by Burton. *Id.* Additionally, Williams and Lula Gilchrist testified that they were with Burton, Owens, and Young as they dumped the body. *Id.* Felicia Gilchrist also testified that Young was upset at Ruffin for stealing \$1,000 worth of drug money on the same day of the shooting. *Id.* Young and Burton were convicted of first-degree murder on September 1, 1987, and sentenced to life in prison without the possibility of parole. *Id.* On November 18, 1988, Owens was convicted of illegal use of a weapon and second-degree murder and sentenced to prison for twenty-five years. *Id.*

⁴⁰ *Burton*, 987 N.W.2d at 880; *Chambers*, 63 F.4th at 1095. Following Burton's incarceration, Lula Gilchrist, Felicia Gilchrist, and Jackson wrote affidavits stating that Sanders coerced them to untruthfully incriminate Young, Burton, and Owens. *Danny Burton*, *supra* note 6.

⁴¹ *Chambers*, 63 F.4th at 1095. Felicia Gilchrist stated that on approximately ten occasions, Sanders paid her between \$40 and \$60, as well as threatened to deprive her of her children unless she became a government witness. *Danny Burton*, *supra* note 6. Lula Gilchrist stated that “Sanders threatened to charge her with murder until she implicated Young, Owens, and Burton.” *Id.* Jackson stated that “she was high on crack when Sanders wrote out a statement for her and she signed it without reading it.” *Id.* Following the overturning of his conviction, Burton filed a claim under 42 U.S.C. § 1983 and § 1988 against the City of Detroit and Sanders for fabrication of evidence, *Brady* violations, and malicious prosecution. *Chambers*, 63 F.4th at 1095. *See generally Brady Rule*, CORNELL L. SCH. LEGAL INFO. INST. (Jan. 2023), https://www.law.cornell.edu/wex/brady_rule [<https://perma.cc/JT7R-QH4R>] (explaining the *Brady* rule and outlining the components of a *Brady* violation). The trial court

for thirty-two years.⁴² After his exoneration, Burton's sons, Danny Lamont Chambers and Dontell Rayvon-Eddie Smith, filed suit against Sanders and the City of Detroit under § 1983, alleging that Burton's wrongful incarceration violated their constitutional right to family integrity.⁴³

The district court dismissed the § 1983 claim against Sanders, holding that a plaintiff cannot recover for the alleged deprivation of family integrity when the plaintiff claims injury resulting solely from the violation of a family member's constitutional rights.⁴⁴ The district court also dismissed the claim against the City of Detroit for the same reason.⁴⁵ Chambers and Smith appealed the district court's dismissals to the U.S. Court of Appeals for the Sixth Circuit.⁴⁶

In a 2-1 decision, the Sixth Circuit upheld the district court's decision, ruling that a child's substantive due process right to family integrity is not automatically violated when the state incarcerates their parent and deprives them of parental interaction.⁴⁷ The court also held that for a state actor to be liable for infringing the right to family integrity, the actor must act with a specific intent to disrupt the child-parent relationship.⁴⁸ Thus, because Chambers and Smith could not show that Sanders specifically intended to disrupt their right

dismissed Burton's claims against the city, but Burton's claims against Sanders were pending during the time that *Chambers* was decided. 63 F.4th at 1095.

⁴² *Danny Burton*, *supra* note 6.

⁴³ *Chambers*, 63 F.4th at 1095. Burton recovered \$1.6 million in compensation from the state of Michigan in 2020 for his wrongful conviction and incarceration. *Danny Burton*, *supra* note 6. Chambers's and Smith's complaint alleged that their right to family integrity was deprived without due process when Sanders and the City of Detroit wrongfully incarcerated Burton, but the complaint did not allege that Sanders intended to destroy their relationship with Burton. *Chambers*, 63 F.4th at 1095.

⁴⁴ *Chambers*, 63 F.4th at 1095.

⁴⁵ *Id.* The claim against the city of Detroit was a *Monell* claim, which holds a government agency vicariously liable for the actions of its employees. *Id.*; see also *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978) (holding that a government agency may not be held vicariously liable under § 1983 strictly because their employees were tortfeasors, but the agency may be liable if the agency's policy or custom inflicted the constitutional injury). A *Monell* claim must show (1) the deprivation of a constitutionally protected right; (2) that a government agency's policy or custom caused the deprivation; (3) that the government agency's policy or custom intended the deprivation or was deliberately indifferent to the deprivation; and (4) that an agent of the government agency initiated the deprivation. *E.g.*, *Dean v. Wexford Health Serv., Inc.*, 18 F.4th 214, 235 (7th Cir. 2021); Anne Updegraff, *Taming the Monell Monster*, MWH L. GRP. (Oct. 20, 2023), <https://mwhlawgroup.com/taming-the-monell-monster/> [<https://perma.cc/X3R6-QM29>]. "Vicarious liability," also referred to as "imputed liability" or "respondeat superior," is the principle of holding a principal or employer liable for an employee's or agent's conduct within the scope of their employment or agency. *Respondeat Superior*, BLACK'S, *supra* note 4; see also *Scope of Employment*, *id.* (defining "scope of employment" as the reasonably foreseeable actions of an employee while performing their employer's business).

⁴⁶ *Chambers*, 63 F.4th at 1095.

⁴⁷ *Id.* at 1101–02.

⁴⁸ *Id.* at 1100. The Sixth Circuit noted that dispensing with the specific-intent requirement would allow "every close family member of a wrongfully incarcerated individual" to have a due process claim. *Id.* at 1101.

to family integrity, the court affirmed the district court's dismissal of their § 1983 action.⁴⁹

Judge Karen Nelson Moore dissented, concluding that the specific-intent requirement lacks precedent and that the Sixth Circuit should instead apply a shocks-the-conscience standard to Sanders's conduct.⁵⁰ Judge Moore noted, however, that even when applying the specific-intent requirement, Detective Sanders—as an experienced detective—knew that incarceration separates the family unit, knew of Burton's children, and knowingly engaged in misconduct to wrongfully incarcerate Burton.⁵¹ Thus, Judge Moore reasoned that Sanders's knowledge of incarceration's effect on the family unit, knowledge of Burton's children, and purposeful misconduct proved Sanders's specific intent to deprive Burton, Chambers, and Smith of their respective rights to family integrity.⁵²

II. COURTS' SPLIT APPROACH TO A CHILD'S CLAIM OF DEPRIVATION OF THE RIGHT TO FAMILY INTEGRITY UNDER § 1983

Individuals who believe their right to family integrity was deprived by a state actor without due process can sue the state actor under 42 U.S.C. § 1983.⁵³ As of this Comment, there are two different approaches—the “majority approach” and the “Ninth Circuit approach”—to cases where children al-

⁴⁹ *Id.* at 1101–02.

⁵⁰ *Id.* at 1102 (Moore, J., dissenting). Judge Moore noted that § 1983 on its own does not contain a state-of-mind requirement. *Id.* at 1106 (quoting *Daniels v. Williams*, 474 U.S. 327, 328 (1986)) (citing *Monroe v. Pape*, 365 U.S. 167, 187 (1961)). Judge Moore further noted that the Supreme Court in *Lewis* contemplated whether a state actor's conduct shocked the conscience in deciding whether the state actor violated substantive due process, but did not require proof that the state actor specifically intended to violate due process. *Id.* The shocks-the-conscience standard that Judge Moore proposed was informed by the Supreme Court's shocks-the-conscience standard in *Lewis*. Compare *id.* at 1111 (stating that the factors considered in determining whether a state actor's conduct shocked the conscience include the type of harm caused, the risk of harm, the relationship between the plaintiff and the government, whether a legitimate government interest prompted the state actor's conduct, and the time the state actor had to deliberate before acting), with *County of Sacramento v. Lewis*, 523 U.S. 833, 853–55 (1998) (stating that the time a state actor had to deliberate before acting and the state actor's motive behind the action are factors in determining whether conduct shocks the conscience).

⁵¹ *Chambers*, 63 F.4th at 1104 (Moore, J., dissenting). The complaint noted that Sanders fabricated evidence, withheld exculpatory evidence, and used threats and mental, physical, and emotional abuse to coerce witnesses into providing false testimony. *Id.* at 1103.

⁵² *Id.* at 1104. Judge Moore noted that parental incarceration incidentally impacts children. *Id.* at 1102. Children lose companionship, the “ability to hug their parent,” to “cry on their shoulder,” and to seek parental guidance. *Id.* Loss of companionship and parental guidance are non-economic damages that are often found in loss of consortium cases. See, e.g., *Ward v. County of Cuyahoga*, 721 F. Supp. 2d 677, 695–96 (N.D. Ohio 2010) (quoting *Gallimore v. Children's Hosp. Med. Ctr.*, 617 N.E.2d 1052, 1060 (Ohio 1993)) (holding that a minor child has a loss of parental consortium claim “against a third-party tortfeasor who negligently or intentionally causes physical injury to the child's parent,” and that “consortium” includes guidance, counsel, affection, comfort, companionship, and society).

⁵³ See 42 U.S.C. § 1983 (allowing individuals to recover against state actors who violate their constitutional rights); *supra* notes 24–38 and accompanying text (explaining the jurisprudence of § 1983 actions).

lege that their right to family integrity was violated by state actors who wrongfully incarcerated their parent.⁵⁴ Section A of this Part discusses the majority approach, which requires a plaintiff to prove that a state actor specifically intended to deprive the right to family integrity.⁵⁵ Section B summarizes the Ninth Circuit's approach, which follows a "reasonable acts" test and does not require proof of a state actor's specific intent to violate the right.⁵⁶

A. The Majority Approach

Most circuits require that a child prove a state actor's specific intent to violate their right to family integrity for the state actor to face liability under § 1983.⁵⁷ In 1985, in *Trujillo v. Board of County Commissioners*, the U.S. Court of Appeals for the Tenth Circuit became the first court to establish and apply the specific-intent requirement to deprivation of family integrity claims.⁵⁸ The Tenth Circuit's principal concern was that courts would be flooded with Fourteenth Amendment substantive due process claims arising from state actor negligence.⁵⁹ Thus, the Tenth Circuit adopted the specific-intent requirement to

⁵⁴ See *infra* notes 57–67 and accompanying text (explaining what this Comment classifies as the "majority approach" and the "Ninth Circuit approach" to due process claims regarding the right to family integrity).

⁵⁵ See *infra* notes 57–62 and accompanying text.

⁵⁶ See *infra* notes 63–67 and accompanying text.

⁵⁷ See, e.g., *Chambers*, 63 F.4th at 1100 (holding that mere negligent conduct does not give rise to a due process violation and that a state actor must intend to violate a constitutionally protected interest to be liable for a due process violation); *Halley v. Huckaby*, 902 F.3d 1136, 1155 (10th Cir. 2018) (holding that a state actor must specifically intend to infringe the right to family integrity to face § 1983 liability). The circuits following this approach do not contemplate the reasonableness of the state actor's conduct under the circumstances or whether the state actor's conduct that led to injury was intentional. See, e.g., *Chambers*, 63 F.4th at 1100 (holding that for a state actor to face § 1983 liability, the state actor must have acted with a culpable state of mind directed at depriving a constitutionally protected right); *Halley*, 902 F.3d at 1155 (adopting a "shocks-the-conscience" test, where a state actor is liable for depriving the right to family integrity only when (1) the state actor intended to deprive the plaintiff of a protected familial relationship and (2) the government's interest in the family member's safety and health did not warrant the deprivation); *supra* note 37 and accompanying text (listing the circuits that follow the majority approach). Rather, a state actor must have specifically intended to infringe a child's right to family integrity to be liable to the child for violating substantive due process under § 1983. See, e.g., *Chambers*, 63 F.4th at 1100 (requiring a plaintiff to show that a state actor intended to deprive their right to family integrity without due process to establish § 1983 liability in the Sixth Circuit); *Halley*, 902 F.3d at 1155 (requiring that a plaintiff prove that a state actor intended to deprive their right to family integrity without due process to establish § 1983 liability in the Tenth Circuit).

⁵⁸ See *Trujillo v. Bd. of Cnty. Comm'rs*, 768 F.2d 1186, 1190 (10th Cir. 1985) (citing *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984)) ("We realize that other courts have not imposed any state of mind requirement to find a deprivation of intimate associational rights.").

⁵⁹ *Chambers*, 63 F.4th at 1106 (Moore, J., dissenting); *Trujillo*, 768 F.2d at 1190. *Trujillo* also likened a deprivation of familial integrity under the Fourteenth Amendment to a deprivation of freedom of speech under the First Amendment, which requires a plaintiff to show that a state actor intended to violate the First Amendment to face liability under § 1983. 768 F.2d at 1189–90.

bar plaintiffs from bringing Fourteenth Amendment due process claims stemming from state actor negligence.⁶⁰ The First, Second, Third, Fourth, Sixth, Seventh, and Eighth circuits followed suit.⁶¹ The majority approach therefore requires a plaintiff to prove that a state actor acted intentionally with a separate intent to destroy the family relationship.⁶²

B. The Ninth Circuit Approach

In *Smith v. City of Fontana*, the U.S. Court of Appeals for the Ninth Circuit held that the right to family integrity protects children from unjustified government actions that interfere with their parental relationships.⁶³ In determining whether the wrongful incarceration of a parent violated a child's right to family integrity, however, the Ninth Circuit evaluated whether the officer's actions leading to the wrongful incarceration were reasonable under the circumstances.⁶⁴ The Ninth Circuit noted that prior to *Daniels*, a minimum state of mind requirement did not exist for state actors to face liability for alleged Fourteenth Amendment due process violations.⁶⁵ Thus, circuits adopted the

⁶⁰ *Trujillo*, F.2d at 1190 (first citing *Bell*, 746 F.2d at 1205; and then citing *Parratt v. Taylor*, 451 U.S. 527, 544 (1981)); *Smith v. City of Fontana*, 818 F.2d 1411, 1420 n.12 (9th Cir. 1987) (citing *Trujillo*, F.2d at 1190), *overruled on other grounds by* *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc); *Chambers*, 63 F.4th at 1106–07 (Moore, J., dissenting) (quoting *Trujillo*, F.2d at 1190).

⁶¹ See *supra* note 37 and accompanying text (identifying circuits that apply the specific-intent requirement when hearing deprivation of family integrity claims brought by children).

⁶² See, e.g., *Chambers*, 63 F.4th at 1100 (observing that most circuits require a state actor to act intentionally “with a culpable state of mind directed at the family relationship”).

⁶³ 818 F.2d at 1418. The court accorded the same constitutional value to the child-parent relationship as the parent-child relationship. *Id.* (citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619–20 (1984)). Additionally, most other circuits assume that children have the same right to family integrity as their parents under the Fourteenth Amendment. See, e.g., *Chambers*, 63 F.4th at 1097 (assuming that children have a Fourteenth Amendment-protected interest in family integrity, specifically, the child-parent relationship).

⁶⁴ *Smith*, 818 F.2d at 1416–18. The Ninth Circuit's “reasonableness” test considers the following factors: (1) whether the application of force was needed; (2) whether the amount of force used was proportional to its need; (3) the severity of the inflicted harm; and (4) whether the force was used in good faith to maintain order or maliciously for the sole aim of inflicting harm. *Id.* at 1417. The Ninth Circuit does not require a state actor to intend to deprive the right to family integrity to face § 1983 liability. See *id.* (implying that the Ninth Circuit's “reasonableness” test, when applied to officers accused of violating constitutional rights, does not contain a subjective state of mind requirement). The Ninth Circuit's approach is notably similar to the Supreme Court's approach in *Kingsley*, which applied an objective test to determine whether a state actor intended to violate a Fourteenth Amendment right. Compare *id.* (adopting an objective test that considers the reasonableness of a state actor's actions when evaluating a child's claim that their right to family integrity was violated by the wrongful incarceration of their parent), with *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015) (holding that an officer's objectively unreasonable application of force results in a due process violation under the Fourteenth Amendment after considering factors such as the proportion of the amount of force used and the amount of force needed, the degree of the plaintiff's injury, and the officer's reasonable perception of the threat).

⁶⁵ *Smith*, 818 F.2d at 1420 n.12; *Chambers*, 63 F.4th at 1106–07 (Moore, J., dissenting).

specific-intent requirement to create a floor for Fourteenth Amendment due process claims.⁶⁶ The Ninth Circuit reasoned that the specific-intent requirement was no longer necessary once the Supreme Court decided *Daniels*, which established a minimum state of mind requirement by barring Fourteenth Amendment due process claims arising from state actor negligence.⁶⁷

III. A FAILURE OF ACCOUNTABILITY: WHY SPECIFIC INTENT SHOULD NOT BE REQUIRED TO HOLD STATE ACTORS LIABLE FOR DEPRIVING A CHILD'S RIGHT TO FAMILY INTEGRITY

The Sixth Circuit's requirement that a state actor must specifically intend to deprive a child of the right to family integrity to face § 1983 liability is misguided for three reasons.⁶⁸ First, the Sixth Circuit erred in failing to consider the Supreme Court's decision in *Kingsley v. Hendrickson*, which applied an objective test to determine whether state actors intended to violate a pretrial detainee's Fourteenth Amendment right by using excessive force.⁶⁹ Similar to the corrections officers in *Kingsley*, where the officers had ample time to deliberate about their actions to abuse a pretrial detainee, Sanders had months to investigate Burton, learn about Burton's family, and consider the unconstitutional actions that would lead to Burton's wrongful incarceration.⁷⁰ The Sixth Circuit relied in part on *County of Sacramento v. Lewis* to adopt a specific-intent requirement, but *Lewis* involved a high-speed police chase where the officer had a "split second" to make a decision.⁷¹ The circumstances of a high-speed chase were not present during Sanders's monthslong investigation.⁷²

⁶⁶ *Smith*, 818 F.2d at 1420 n.12; *Chambers*, 63 F.4th at 1106–07 (Moore, J., dissenting).

⁶⁷ *Smith*, 818 F.2d at 1420 n.12; *Chambers*, 63 F.4th at 1106–07 (Moore, J., dissenting) (citing *Smith*, 818 F.2d at 1420 n.12).

⁶⁸ See *infra* notes 69–87 and accompanying text (arguing that the specific-intent requirement contradicts the Supreme Court's ruling in *Kingsley v. Hendrickson*, incentivizes state actors to remain negligent, and fails to remedy the economic and non-economic damages experienced by children whose parents were wrongfully incarcerated).

⁶⁹ See 576 U.S. 389, 396–97 (2015) (holding that courts must use an objective standard in determining a state actor's state of mind in violating the Fourteenth Amendment by using excessive force). In *Kingsley*, the Supreme Court explored two questions: (1) whether the defendant intended the physical acts in question, and (2) whether through those physical acts the defendant intended to violate a constitutional right. *Id.* at 395–96. Regarding the second question, the Supreme Court requires courts to apply an objective standard rather than a subjective standard. *Id.*

⁷⁰ Compare *id.* at 392–93 (noting that four officers approached the detainee's cell, handcuffed the detainee, tased him, and left him handcuffed in his cell for fifteen minutes before returning to remove the handcuffs), with *Chambers v. Sanders*, 63 F.4th 1092, 1104 (6th Cir. 2023) (Moore, J., dissenting) (noting that Sanders "spent months investigating Burton for first-degree murder," most likely knew of Burton's family, and knew that wrongful incarceration destroys the family unit).

⁷¹ See *Chambers*, 63 F.4th at 1107 (Moore, J., dissenting) (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 853–54 (1998)) (noting that *Lewis* provides some leniency in determining whether a state actor's conduct shocks the conscience because of the conditions and speed of a high-speed chase); *Lewis*, 523 U.S. at 853 (quoting *Whitley v. Albers*, 475 U.S. 312, 320 (1986)) (noting that a

Additionally, the Supreme Court clarified in *Kingsley* that *Lewis* does not support the application of a subjective test to determine whether a state actor intended to violate a constitutional right.⁷³ On the contrary, the Court held that *Lewis* only supports using a subjective test to determine whether the state actor intended to perform the physical acts in question.⁷⁴ To these ends, the Sixth Circuit should have applied *Kingsley*'s objective state-of-mind test to determine whether Sanders—through his intentional misconduct—intended to deprive Chambers and Smith of their rights to family integrity.⁷⁵

Second, the specific-intent requirement's high burden of proof incentivizes state actors to remain negligent instead of exercising every reasonable precaution available to prevent violations of constitutional rights.⁷⁶ Specifically, absent a

police officer who is engaged in a high speed chase must make decisions under pressure—often without a second chance—while balancing both the need to seize the suspect and the threat to the safety of others within the range of the chase).

⁷² *Chambers*, 63 F.4th at 1112 (Moore, J., dissenting) (citing *Range v. Douglas*, 763 F.3d 573, 590–91 (6th Cir. 2014)) (“Further, Sanders had months between Ruffin’s death and Burton’s trial ‘to deliberate’ and ‘fully consider the potential consequences of [his] conduct,’ but Sanders stayed the course.” (alteration in original) (quoting *Range*, 763 F.3d at 590)).

⁷³ *Kingsley*, 576 U.S. at 401.

⁷⁴ *Id.* Thus, the subjective determination of whether a state actor acted negligently, in reckless disregard, or intentionally should only apply to the question of whether the state actor intended their physical acts, but not to the question of whether the state actor intended through those acts to violate the right to family integrity under the Fourteenth Amendment. *See id.* (clarifying that *Lewis* applies a subjective test to determine a state actor’s intent in performing physical acts but does not support applying a subjective test to determine their intent to violate a Fourteenth Amendment right).

⁷⁵ *See id.* at 397 (outlining a non-exclusive list of considerations under the objective state-of-mind test); *Chambers*, 63 F.4th at 1103–04 (Moore, J., dissenting) (noting that Sanders knowingly coerced witnesses, fabricated evidence, and suppressed exculpatory evidence to wrongfully convict and incarcerate Burton). Additionally, the Sixth Circuit overlooked the fact that other circuits have applied *Kingsley*'s objective standard to other Fourteenth Amendment due process claims. *See supra* note 32 and accompanying text (outlining cases where the Second, Seventh, and Ninth circuits have applied *Kingsley*'s objective standard to Fourteenth Amendment claims). In accordance with *Kingsley*, where a state actor intended their physical acts, the shocks-the-conscience standard should not apply to the separate question of whether the state actor intended through those acts to violate a Fourteenth Amendment right. *See Kingsley*, 576 U.S. at 401 (omitting any mention of the shocks-the-conscience standard); *Lewis*, 523 U.S. at 854–55 (using the shocks-the-conscience standard to determine solely whether the deliberately indifferent physical acts of a police officer during a high-speed chase gave rise to liability under the Fourteenth Amendment).

⁷⁶ *See Negligence*, CORNELL L. SCH. LEGAL INFO. INST. (July 2023), <https://www.law.cornell.edu/wex/negligence> [<https://perma.cc/H2G2-TH43>] (stating that a social contract exists between members of society, that each member has a duty to act reasonably to not cause harm to others, and that the social contract is enforced in part by holding members liable for negligence). This harms judicial economy because when defendants like Burton are wrongfully convicted and incarcerated, the state spends money prosecuting them, housing them in prison, and remedying their wrongful conviction and incarceration post-conviction. *See National Registry of Exonerations' Annual Report Finds Majority of Exonerees Are People of Color and Official Misconduct Is the Main Cause of Wrongful Convictions*, DEATH PENALTY INFO. CTR. (Sept. 25, 2024), <https://deathpenaltyinfo.org/national-registry-of-exonerations-annual-report-finds-majority-of-exonerees-are-people-of-color-and-official-misconduct-is-the-main-cause-of-wrongful-convictions> [<https://perma.cc/PVA9-FS9L>] (reporting that since 1989, governments have paid nearly \$4 billion to exonerees). To make matters worse, the true perpetrator is

state actor's express showing that they desired to destroy the child-parent relationship, children alleging deprivation of family integrity have few other ways to prove a defendant's intent.⁷⁷ Proving a state actor's intent becomes even more difficult where a parent was incarcerated for decades and the evidence against the state actor who helped procure the wrongful incarceration is no longer ripe.⁷⁸ The specific-intent requirement thus contradicts § 1983's intended purpose, which is to deter and remediate violations of constitutional rights.⁷⁹

still free after the wrongful conviction and incarceration. *Beneath the Statistics: The Structural and Systemic Causes of Our Wrongful Conviction Problem*, GA. INNOCENCE PROJECT, <https://www.georgiainnocenceproject.org/general/beneath-the-statistics-the-structural-and-systemic-causes-of-our-wrongful-conviction-problem/> [https://perma.cc/UA6Z-WNTN] (reporting that approximately 5% of individuals are innocent of their convictions, suggesting that one out of every twenty criminal cases will likely result in a wrongful conviction). The specific-intent requirement is difficult to meet. *See State v. Eastman*, 913 P.2d 57, 67 (Haw. 1996) (citing *State v. Batson*, 831 P.2d 924, 934 (Haw. 1992)) (holding that circumstantial evidence of *mens rea* is sufficient to show intent behind a defendant's conduct given the difficulty of proving one's state of mind).

⁷⁷ *See Eastman*, 913 P.2d at 67 (citing *Batson*, 831 P.2d at 934) (holding that "[t]he mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances").

⁷⁸ *See* Evan Fisher, *Criminal Statutes of Limitations: Time Limits for State Criminal Charges*, LAWINFO (Oct. 18, 2024), <https://www.lawinfo.com/resources/criminal-defense/criminal-statute-limitations-time-limits.html> [https://perma.cc/S4EW-4NFT] (noting that statutes of limitations exist to prevent evidence from deteriorating with time, such as when a witness's memory fades, a witness relocates or passes away, or when physical evidence is lost or destroyed). Moreover, the majority opinion in *Chambers* claims that holding a state actor liable "for incidental harms" stemming from their conduct would impose strict liability, but this is incorrect. *See Chambers*, 63 F.4th at 1107 (Moore, J., dissenting) (citing *Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 608 (6th Cir. 2007)) (noting that a state actor would only face liability "when their conduct shocks the conscience"); *see also Savino v. Paterson Hous. Auth.*, 616 A.2d 930, 932 (N.J. Super. App. Div. 1992) (citing *Ma-honey v. Carus Chem. Co., Inc.*, 510 A.2d 4, 12 (N.J. 1986)) (holding that an individual can be held liable for "willful and wanton misconduct" that creates a hazard and injures a third party); *Liability*, BLACK'S, *supra* note 4 (defining "strict liability" as "[l]iability that does not depend on proof of negligence or intent to do harm but that is based instead on a duty to compensate the harms proximately caused by the activity or behavior subject to the liability rule"). As the Supreme Court stated in *Kingsley*, state actors cannot be held liable for constitutional rights violations stemming from negligent acts, which negates the majority opinion's conclusion that state actor liability for incidental harms would impose strict liability. *See* 576 U.S. at 396 (quoting *Lewis*, 523 U.S. at 849) (stating that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process"). In other tort claims not involving the Constitution, an individual can be held liable for incidental harms stemming from their negligent acts. *See, e.g., Miles v. Rich*, 347 S.W.3d 477, 483 (Mo. Ct. App. 2011) (citing *Savory v. Hensick*, 143 S.W.3d 712, 717–18 (Mo. Ct. App. 2004)) ("In causes of action for harm caused by domestic animals based on common law negligence, the negligent act is the failure to use reasonable care in exercising control of the animal.").

⁷⁹ *See Pitzer v. City of East Peoria, Ill.*, 597 F. Supp. 2d 806, 813 (C.D. Ill. 2009) (first citing *Robertson v. Wegmann*, 436 U.S. 584, 590–91 (1978); and then citing *Spence v. Staras*, 507 F.2d 554, 558 (7th Cir. 1974)) (stating that § 1983 is based on the policies of deterring constitutional rights violations and compensating individuals whose constitutional rights were violated); *see also* Michael Wells, *Constitutional Remedies, Section 1983 and the Common Law*, 68 MISS. L.J. 157, 190 (1998) (noting that § 1983 exists to vindicate and deter constitutional rights violations); Jon O. Newman, *Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers' Misconduct*, 87 YALE L.J. 447, 453 (1978) (noting that § 1983 possesses the potential to be an

Third, the specific-intent requirement fails to rectify the economic and non-economic damages incurred by children whose parents were wrongfully incarcerated.⁸⁰ Specifically, the children of wrongfully incarcerated parents do not benefit financially from the labor of their parents—the state or the private prison does.⁸¹ When parents are incarcerated, they are often put to work for the state or private prison at below minimum wage, their products and services are often sold for profit, and the state pays the private prison to incarcerate the parent.⁸² The state or private prison thus deprives children of the money the children otherwise would have received from their wrongfully incarcerated parent's labor.⁸³ A parent's lost income is an economic damage often found in wrongful death cases brought by children—whose damages also include loss of inheritance and medical expenses incurred from their parent's death—against police officers who wrongfully killed their parent.⁸⁴

effective compensatory remedy and deterrent to constitutional rights violations, “but must be substantially restructured to afford the injured victim a better chance of success”).

⁸⁰ See *infra* notes 81–87 and accompanying text (outlining the economic and non-economic damages that children suffer due to their parent's wrongful incarceration).

⁸¹ See SENT'G PROJECT, PRIVATE PRISONS IN THE UNITED STATES 1 (2024), <https://www.sentencingproject.org/app/uploads/2024/02/Private-Prisons-in-the-United-States.pdf> [<https://perma.cc/6Q2Y-7BDX>] (reporting that in 2022, 90,873 American residents were incarcerated in private for-profit prisons, representing approximately 8% of the total U.S. prison population); *infra* note 82 and accompanying text (providing state and private prison labor statistics).

⁸² Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, PRISON POL'Y INITIATIVE (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/> [<https://perma.cc/5CE6-AG52>] (reporting that inmates who work for businesses owned by the state earn on average between \$0.33 and \$1.41 per hour); *Captive Labor: Exploitation of Incarcerated Workers*, ACLU (June 15, 2022), <https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers> [<https://perma.cc/KEU3-WEV6>] (reporting that the U.S. prison population generates \$9 billion in maintenance services for prisons and \$2 billion in goods each year); *Pros and Cons of Private Prisons*, CRIM. JUST. PROGRAMS, <https://www.criminaljusticeprograms.com/articles/private-prisons-vs-public-prisons> [<https://perma.cc/9AJK-9JRA>] (reporting that for-profit private prisons earn money from government contracts based on the total number of incarcerated inmates and the average length of time of an inmate's sentencing).

⁸³ See Sawyer, *supra* note 82 (reporting the wages of incarcerated persons in each state).

⁸⁴ See, e.g., *Jones v. Maryland*, 348 F.3d 1014, 1018 (D.C. Cir. 2003) (holding that a child of a motorist who was wrongfully killed by police possessed Article III standing to sue the police officers for her parent's wrongful death, and that her parent's wrongful death deprived her of emotional and financial support); *Estate of Cornejo ex rel. Solis v. City of Los Angeles*, 618 Fed. App'x 917, 919–21 (9th Cir. 2015) (holding that children may recover against police officers for the wrongful death of their parent where police officer negligence caused the death); *Milby v. Underwood*, 713 F. Supp. 3d 383, 393 (W.D. Ky. 2024) (allowing children to recover against a state actor for negligently causing their parent's wrongful death and imposing vicarious liability on the state actor's municipality); *Clayton v. U.S. Xpress, Inc.*, 538 F. Supp. 3d 707, 711 (N.D. Tex. 2021) (quoting *Davis v. Bills*, 444 S.W.3d 752, 757 (Tex. Ct. App. 2014)) (holding that a decedent's surviving children are the statutory beneficiaries in a wrongful death action, which aims to compensate children for loss of support, future care, and maintenance). Children—not the state or private prison—should be entitled to the greater of the money produced by their wrongfully incarcerated parent while in prison, or the money their parent would have produced in the civilian labor force absent their wrongful incarceration. See *N. Pac. Ins. Co. v. Stucky*, 338 P.3d 56, 65 (Mont. 2014) (holding that children in loss of consortium cases can recover

Concerning non-economic damages, children experience emotional distress, loss of parental companionship, and loss of parental guidance from their parent's wrongful incarceration.⁸⁵ These non-economic damages are also found in loss of parental consortium cases brought by children against police officers who wrongfully killed their parent.⁸⁶ Thus, following precedent from loss of parental consortium cases, children whose parents were wrongfully incarcerated must also be able to recover non-economic damages regardless of a state actor's specific intent to deprive the right to family integrity.⁸⁷

CONCLUSION

In *Chambers v. Sanders*, the U.S. Court of Appeals for the Sixth Circuit held that a state actor must specifically intend to deprive a child's Fourteenth Amendment right to family integrity to be liable to the child under § 1983. The Sixth Circuit erred in its decision to adopt a specific-intent requirement for three reasons. First, the Sixth Circuit overlooked the Supreme Court's decision

lost benefits from the loss of a relationship with their parent). Just like in wrongful death cases, the child-parent relationship in wrongful incarceration cases is destroyed. *See Chambers v. Sanders*, 63 F.4th 1092, 1102 (6th Cir. 2023) (Moore, J., dissenting) (stating that Chambers and Smith were deprived of their relationship with their father after the state wrongfully incarcerated him for thirty-two years).

⁸⁵ *See, e.g., Stucky*, 338 P.3d at 65 (finding that when a child loses a parent, the child also loses parental guidance, time, affection, love, and support). A claim for loss of parental consortium includes (1) tortious injury by a third party that causes permanent, disabling, and serious physical or mental injury to the parent and (2) the parent's injury "destroyed or nearly destroyed" the parent-child relationship. *Id.* at 64.

⁸⁶ *See, e.g., Greene v. City of New York*, 675 F. Supp. 110, 114–16 (S.D.N.Y. 1987) (allowing children to sue police officers for loss of parental companionship stemming from the wrongful death of their parent under § 1983); *Milby*, 713 F. Supp. 3d at 393 (allowing children to bring loss of consortium claims against police officers in addition to wrongful death claims and *Monell* claims); *see also Stucky*, 338 P.3d at 65 (outlining the non-economic harms of losing a parent in a child's loss of consortium case); *Gallimore v. Children's Hosp. Med. Ctr.*, 617 N.E.2d 1052, 1060 (Ohio 1993) (holding that a minor child can sue for loss of parental guidance, counsel, affection, comfort, and companionship against a third-party tortfeasor whose conduct either intentionally or negligently physically injures the child's parent). "Loss of consortium" refers to the "loss or impairment of the intangible benefits of a relationship." *Loss of Consortium*, CORNELL L. SCH. LEGAL INFO. INST. (June 2023), https://www.law.cornell.edu/wex/loss_of_consortium [<https://perma.cc/Z9LL-F5H8>]. Like children whose parents are the subject of wrongful incarceration cases, children whose parents are the subject of loss of parental consortium cases also experience emotional distress, lose the physical connection with their incarcerated parent, and lose the ability for their parent to provide parental guidance. *Compare Stucky*, 338 P.3d at 65 (finding that children experience non-economic damages such as loss of parental guidance, time, affection, love, protection, and support), *with Chambers*, 63 F.4th at 1102 (Moore, J., dissenting) (stating that non-economic losses of a parent's wrongful incarceration include "companionship, the child's ability to hug their parent, cry on their shoulder, celebrate an accomplishment, or turn to their parent for advice").

⁸⁷ *See, e.g., Greene*, 675 F. Supp. at 115 (rejecting the specific-intent requirement); *Milby*, 713 F. Supp. 3d at 393 (permitting children to recover for loss of consortium against state actors who acted negligently); *Stucky*, 338 P.3d at 64 (neglecting to require that a plaintiff prove a third-party tortfeasor acted with specific intent when recovering against the tortfeasor for loss of consortium).

in *Kingsley v. Hendrickson*, where the Court applied an objective test to determine whether a state actor intended to deprive a Fourteenth Amendment right. Second, the high burden of proof associated with the specific-intent requirement discourages state actors from exercising all reasonable precautions available to prevent violations of constitutional rights. This defies § 1983's intended purpose, which is to deter and remediate constitutional rights violations. Third, the specific-intent requirement denies children recovery for the economic and non-economic damages caused by their parent's wrongful incarceration. Concerning economic damages, wrongfully incarcerated parents forfeit the ability to earn income for their children but may generate income for the state or a private prison. Thus, as in wrongful death cases, children should recover for their parent's lost earnings. Regarding non-economic damages, children should recover for emotional distress, loss of parental companionship, loss of parental guidance, and other non-economic injuries as in loss of consortium cases. For the foregoing reasons, the Supreme Court must eliminate the Sixth Circuit's specific-intent requirement in cases where children allege deprivation of their Fourteenth Amendment right to family integrity.

JUSTIN SELLS

