

96 A.L.R.7th Art. 4 (Originally published in 2024)

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ALR7th

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Violation of Parent's or Child's Rights to Familial Association Under Fourth or Fourteenth Amendment Based on False Statements

Criminal defendants may attempt to argue that a search warrant or other type of probable cause showing rested on fabricated evidence or falsehoods proffered by the prosecution. There is a similar but smaller body of law where parents or guardians have lost custody of a child based on a petition, affidavit, evidence, or testimony that is arguably false or fabricated or misrepresents the truth or omits material facts. In these cases, the parents or guardians may argue that the fabrication or falsehood has resulted in the unjustified removal of the children from the parents' or guardians' custody, which has been characterized as a violation of one's right to familial association under the Fourth and Fourteenth Amendments. This article collects cases where parents or guardians or individuals with a close relationship to a child have brought Fourth or Fourteenth Amendment claims challenging the state's removal of their children based on arguably false or fabricated evidence.

For cases on this issue after the date of this article, use this query: ("judicial deception" (false falsif! fabricat! decei! decept! fraud! mislead! misrep! lied /15 court department report representation! information exculp! Warrant evidence statement affidavit) (misrep! /35 delib! reck! /5 disreg! truth /35 "judicial decision") /35 famil! parent! child! /5 liberty associat! integ! /35 "due process" constitution! "fourth amendment" "fourteenth amendment" seiz!) & DA(aft 07/12/2024)

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I. Preliminary Matters

§ 1. Scope

This article collects and analyzes all of the cases in which the courts discussed alleged violations of a child's, parent's, guardian's or other family member's rights to familial association under the Fourth or Fourteenth Amendment to the United States Constitution based on judicial deception or false statements.

Note

Some opinions discussed in this article may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this article. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed.

§ 2. Background and summary

Parents and guardians have a Fourteenth Amendment right in the care, custody, and control of their children, perhaps the oldest of the fundamental liberty interests recognized by or courts.¹ Courts have characterized the right to familial association as having both a substantive and a procedural component. While the right is a fundamental liberty interest, officials may interfere with the right if they provide the parents with fundamentally fair procedures.² Courts have recognized claims under the Fourteenth Amendment for unwarranted interference with the right to familial association.³ In addition, courts evaluate the claims of children who are taken into state custody under the Fourth Amendment right to be free from unreasonable seizures.⁴ Despite

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the different constitutional source of the right, it has been held that the same legal standard applies in evaluating Fourth and Fourteenth Amendment claims for the removal of children.⁵ Thus, the Fourth and Fourteenth Amendments provide a guarantee that parents will not be separated from their children without due process of law except in emergencies.⁶ Case law establishes that the rights of parents and children to familial association under the Fourth and Fourteenth Amendments are violated if state officials remove children from their parents without their consent, and without a court order, unless information at the time of the seizure, after reasonable investigation, establishes reasonable cause to believe that the children are in imminent danger of serious bodily injury, and the scope, degree, and duration of the intrusion are reasonably necessary to avert the specific injury at issue.⁷ This right to familial association is violated when officials acting under the color of state law rely on falsehoods, fabricated evidence and omissions to supply the reasonable cause to remove children from their families. A claim of judicial deception requires that the plaintiff (1) make a substantial showing of deliberate falsehood or reckless disregard for the truth and (2) establish that, but for the dishonesty, the challenged action would not have occurred.⁸ Under the second prong examining whether the warrant affidavit contained misrepresentations or omissions material to the finding of probable cause, the court determines the materiality of the alleged false statements or omissions.⁹

In cases related to the right to familial association, courts have both found (§ 4) and not found (§ 5) that parents and other family members have adequately set out allegations of falsehoods during abuse or custody proceedings, so as to withstand motions to dismiss, and have both found (§ 6) and not found (§ 7) that plaintiffs have presented sufficient evidence of judicial deception interfering with familial association to withstand a motion for summary judgment or judgment on the pleadings.

In a small number of cases, individuals who face criminal charges, or who were convicted or incarcerated, and later demonstrate that the charges rested, in part, on falsified evidence or testimony, may bring civil rights suits against those who made the falsehoods, asserting that the repercussions of being charged, convicted or incarcerated violated their rights to associate with their close family members (§§ 8, 9, 10).

A social worker or other state or municipal employee sued for engaging in judicial deception in an abuse or custody matter is likely to seek the protection afforded by qualified immunity (§§ 11, 12). Qualified immunity requires that defendants show that they did not violate the plaintiffs' constitutional right, or that the right was not "clearly established" at the time of the violation (§§ 13, 14), which often is not a difficult task since the delicate balance between parents' rights to raise their children and the state's interest in protecting children means that the parameters of the right to familial integrity are often ambiguous. Many of these cases turn on whether the plaintiffs can show that the falsehoods or other misrepresentations were material to the custody or dependency decisions made in state court, as materiality is a critical element of a judicial deception claim. Courts have both found (§ 15) and not found (§ 16) that parents and other family members have adequately set out allegations of materiality, so as to withstand a motion to dismiss, or have found (§ 17) or not found (§ 18) that plaintiffs have presented sufficient evidence of materiality gleaned during discovery to withstand a motion for summary judgment or judgment on the pleadings.

§ 3. Practice notes

Cases by parents and guardians against state, county or municipal actors, who allegedly misrepresented material facts in state custody or abuse proceedings, likely will be brought under 42 U.S.C.A. § 1983, a federal statute allowing persons whose federal constitutional rights have been violated by government officials to sue in federal court. In order to state a claim under § 1983, plaintiffs must demonstrate that the defendants acted under color of state law and deprived them of rights secured by the Constitution or federal statutes.¹⁰ Section 1983 does not allow such a claim to be brought against private parties who were not acting under color of state law; rather, a private party may be sued under § 1983 only if sufficient facts are alleged to show that the conduct of the private party is fairly attributable to the state or that there was an agreement between the state and the private party to deprive the plaintiffs of their constitutional rights.¹¹ Courts have consistently dismissed private hospitals, doctors, and attorneys in § 1983 claims for failing to have acted within the color of state law.¹²

A plaintiff must plead sufficient facts for the court to ascertain which defendant fabricated evidence or provided false testimony, what the specific evidence was that the defendant fabricated, and whether any allegedly false written statement the defendant

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gave was signed under penalty of perjury.¹³ In any complaint, the plaintiff must clearly set forth the specific facts that support the specific claims against each defendant.¹⁴

Additionally, judicial deception allegations must meet the heightened pleading standard of *Fed. R. Civ. P. 9(b)*.¹⁵

In these types of cases, as in any civil cases, the court will scrutinize whether the proper plaintiff has brought the case. Because of the requirement that each plaintiff have standing to bring suit, an individual who is not a biological or adoptive parent or legal guardian of a child should be prepared to show a sufficient connection with the child in order to bring a familial association claim. It has been stated that biological relationships are not the exclusive determination of the existence of a family.¹⁶ Even a biological father, if insufficiently involved in a child's life, might not be awarded the full panoply of constitutional protections.¹⁷ But many courts have recognized that step-parents and step-grandparents have standing to assert claims for a loss of familial association.¹⁸ In one case, the plaintiffs, although having brought a familial association claim, alleged no facts suggesting that they were the subject child's parents, foster parents, de facto parents, or custodial grandparents, but only claimed that they had formed a "strong bond" with the child in the year following his birth, when they "cared for" child and his mother.¹⁹ They did not allege that they raised the child, assumed responsibility for his upbringing, or had been otherwise involved with the child except for the year or so the child and his mother lived with the plaintiffs. Without more, the court ruled that the plaintiffs failed to state a claim for violation of a protected liberty interest, resulting in dismissal of this claim.

Note that pro se parents (those without an attorney) may not bring claims on behalf of their children.²⁰ Moreover, if a plaintiff's parental rights have been terminated, that parent does not have standing to bring claims on a child's behalf.²¹

It is preferable—and sometimes required under applicable court rules—to use fictitious initials rather than names to protect the identities of children in court filings.²²

Also critical to the success of any false-deception civil rights case is that the appropriate defendants are sued. Because vicarious liability is inapplicable to 42 U.S.C.A. § 1983 suits, a plaintiff must plead that each government-official defendant, through the official's own individual actions, has violated the Constitution.²³ Supervisory officials may be held liable under 42 U.S.C.A. § 1983 only if there exists evidence of either (1) their personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between their wrongful conduct and the constitutional violation.²⁴ Thus, the plaintiff must show that a supervising officer did more than play a passive role in the alleged violation or showed mere tacit approval of the goings on and must demonstrate personal involvement by each particular defendant.²⁵

Plaintiffs in these types of cases must choose the appropriate defendants to sue, keeping in mind the Eleventh Amendment to the United States Constitution, which provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign State." In other words, the Eleventh Amendment to the United States Constitution bars a person from suing a state in federal court without the state's consent. This broad grant of immunity also extends to federal suits against a state brought by the citizens of that state.²⁶ A state need not be named in a complaint in order to trigger the provisions of the Eleventh Amendment, as it bars any suit where a state is a "real, substantial party in interest."²⁷ Eleventh Amendment immunity covers state agencies that may be properly characterized as arms of the state; moreover, the Eleventh Amendment bars claims for damages when the claimant is suing state officers in their official capacities, and the damages would be paid out of the state treasury.²⁸ Relatedly, an official-capacity suit generally represents only another way of pleading an action against an entity of which an officer is an agent; as long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.²⁹ Eleventh Amendment immunity is not automatically waived in actions brought under 42 U.S.C.A. § 1983.³⁰ Further, a state is not a "person" subject to liability under 42 U.S.C.A. § 1983.³¹ A county or city department likely is not a separate legal entity, and as such, probably cannot be

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sued under 42 U.S.C.A. § 1983.³² Hence, a Department of Child and Family Services or analogous entity is a governmental agency that is an arm of the state and is not a person who can be sued under 42 U.S.C.A. § 1983.³³

Available immunity will also play a role in determining which potential defendants face liability for judicial deception which interferes with familial association. For instance, judges are entitled to absolute judicial immunity for acts performed in their official capacity.³⁴ Judges are not deprived of immunity because they take actions which are in error, are done maliciously, or are in excess of their authority but only lose absolute immunity when they act in the clear absence of all jurisdiction or perform an act that is not judicial in nature.³⁵ Likewise, state prosecutors are absolutely immune from 42 U.S.C.A. § 1983 actions when performing functions intimately associated with the judicial phase of the criminal process or, phrased differently, when performing the traditional functions of an advocate.³⁶ In the same vein, social workers are absolutely immune from civil liability for claims concerning their discretionary, quasi-prosecutorial decisions to institute court dependency proceedings to take custody away from parents.³⁷ Social workers may have absolute immunity when discharging functions that are critical to the judicial process itself, although they are not afforded absolute immunity for their investigatory conduct, discretionary decisions or recommendations.³⁸ Examples of such discretionary decisions include recommendations as to the particular home where a child is to go or as to the particular foster parents who are to provide care.³⁹ Social workers are also entitled to absolute immunity for activities or functions that are part of presenting the state's case as a generic advocate; conversely, social workers are not entitled to absolute immunity for their investigatory conduct, or if they have fabricated evidence during an investigation.⁴⁰ Hence, social workers are absolutely immune only when they are acting in their capacity as legal advocates—initiating court actions or testifying under oath—but not when they are performing administrative, investigative, or other functions.⁴¹ It has been held that absolute immunity applies even to social workers who falsely testify in judicial proceedings.⁴² Note that absolute immunity premised on state law immunities provided in the state's statutory law is inapplicable to claims of federal violations brought under 42 U.S.C.A. § 1983.⁴³

A federal court may be required to abstain from deciding certain child custody issues. For example, Younger abstention requires federal courts to refrain from exercising jurisdiction over claims that implicate ongoing state proceedings.⁴⁴ Specifically, abstention applies if the federal action involves ongoing: (1) state criminal prosecutions; (2) civil proceedings that are akin to criminal prosecutions; or (3) civil proceedings that implicate a state's interest in enforcing the orders and judgments of its courts.⁴⁵ A state-initiated proceeding to gain custody of children allegedly abused by their parents falls into the second category.⁴⁶

Relatedly, the domestic relations exception, encompassing cases involving the issuance of a divorce, alimony, or child custody decree, is applied as a judicially implied limitation on the diversity jurisdiction; federal courts lack the power to issue these types of decrees because of the special proficiency developed by state tribunals.⁴⁷ The domestic relations exception divests the federal courts of jurisdiction over a narrow range of cases implicating domestic relations issues, such as divorce, allowance of alimony, child custody, and child support.⁴⁸ Even when a cause of action closely relates to but does not precisely fit into the contours of an action for divorce, alimony or child custody, federal courts generally will abstain from exercising jurisdiction.⁴⁹

Relatedly, a number of civil rights claims stemming from state child abuse proceedings will trigger application of the Rooker-Feldman doctrine, under which the federal district courts lack jurisdiction to review alleged errors in state-court decisions.⁵⁰ The Rooker-Feldman doctrine derives its name from two Supreme court cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). To determine whether the Rooker-Feldman doctrine applies, a district court first must determine whether the action contains a forbidden de facto appeal of a state court decision, such when a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision.⁵¹ The doctrine directs federal courts to abstain from considering claims when four requirements are met: (1) the plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state court judgment; (3) the plaintiff invites district court review of that judgment; and (4) the state court judgment was entered before the plaintiff's federal suit commenced.⁵² The Rooker-

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Feldman doctrine bars such claims even where the party does not directly challenge the merits of the state court's decision but rather brings an indirect challenge based on constitutional principles.⁵³

Finally, note that a parent cannot challenge in federal court a state conviction for child abuse, under *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994).⁵⁴

II. Interference with Rights of Parent or Guardian or Child

§ 4. Nonincarcerated parent or guardian—Allegations sufficient

In the following, courts held, under the facts as presented, in full or in part, that parents or family members set forth adequate allegations to survive dismissal, where they claimed that their Fourth or Fourteenth Amendment right to familial association had been violated when state, county or municipal actors, such as social workers, introduced false or fabricated evidence or testimony into a child abuse or child custody action.

Third Circuit

Smith v. Philadelphia Dept. of Human Services, 2005 WL 525403 (E.D. Pa. 2005) Where a mother filed an action under 42 U.S.C.A. § 1983 against, inter alia, a Department of Human Services employee who was alleged to have knowingly falsified a report that the mother committed child sexual abuse and negligence, and where this led to her name being placed in the registry of child sexual abusers and the removal of her son from her custody, and where she stated she had been cleared of all charges of child abuse, the court determined that, viewing the facts alleged in the light most favorable to the plaintiff, the employee's conduct shocked the conscience and thus the complaint alleged a viable substantive due process claim.

Fourth Circuit

Stratton v. City of Kannapolis, 2024 WL 1383491 (M.D. N.C. 2024), report and recommendation adopted, 2024 WL 1374482 (M.D. N.C. 2024) The court denied a motion to dismiss a parent's claim that county employees interfered with her custody of her son by fraudulently creating a missing person report against the mother without cause, the court ruling that resolution would have to await a motion for summary judgment. The mother alleged that a social worker from the Department of Social Services created a fraudulent missing person report related to her adult special needs son which reported that the son was missing when he was not. This, in turn, arguably gave police officers the pretext to go to the mother's house and detain her despite arguably knowing that the missing person report was fraudulent, to prepare a false police report, and to enter the mother's vehicle information into the National Crime Information Center. This resulted in the mother's detention and arrest. The mother thereafter brought suit against a number of individuals involved in these state proceedings and raised a number of claims, including one asserting that her familial association rights had been denied by county employees involved in these acts. The defendants responded that they were entitled to qualified immunity because they acted reasonably. However, the court determined that this issue should await a motion for summary judgment rather than being decided on a motion to dismiss. Note that the court in *Stratton v. City of Kannapolis*, 2024 WL 1374482 (M.D. N.C. 2024), subsequently and fully approved of the reasoning and recommendations of the magistrate judge.

Ninth Circuit

Kirwin v. Kot, 2024 WL 911745 (D. Ariz. 2024) Where the parents of a transgender child filed a complaint alleging various constitutional violations stemming from the removal of their child from their custody, based on what they characterized as misrepresentations, the court denied the defendants' motion to dismiss the claims brought against them. The child's struggles culminated in a suicide attempt and they were admitted as a hospital patient. While there, the child disclosed that (1) they had been sexually abused by their brother between the ages of 7 to 13, (2) they wanted to kill themselves when they were living in the parents' home, and (3) they wanted to be removed from the family home. These allegations were reported to the state

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department hotline and an investigation was opened. The defendant investigator interviewed the child and informed the child that if they threatened to harm themselves if returned to the plaintiffs' home, the department could take them into custody and would support gender transition measures. Performing no further investigation, the investigator drafted an application for removal, listing as grounds for the seizure the parents' alleged failure to protect the child from abuse or neglect, mental health issues, and an unfit or unsafe home environment for the child. The judge approved the removal of the child from the parents' custody. The child subsequently announced their intent to sever all ties with the parents and directed their lawyer in the dependency case to accomplish that goal, prompting the parents' lawsuit. The federal court remarked that parents enjoy a constitutional right under the Due Process Clause of the Fourteenth Amendment to be free from judicial deception and fabrication of evidence in the context of civil child custody cases. The parents claimed that the department investigator falsely asserted in the state court petition that the parents disapproved of the LGBT community, terminated therapy believing that the therapist was siding with the child, and excessively punished, verbally abused, held "a negative perception of" and had "extremely unrealistic expectations for" the child which contributed to the child's making a suicide attempt. The investigator also purportedly misrepresented that the department had been investigating the child's allegations that their brother sexually abused them for six years, that the abuse was an ongoing concern because the brother remained in the home, and that the parents were unable to protect the child from the abuse, in part because they were unwilling to press charges against the brother, and that no appropriate relatives or kinship placement existed. The parents asserted that had the investigator followed mandated procedures and not omitted material facts, protective measures could have been taken and there would not have been probable cause to remove the child from the parent's home. The court explained that a judicial deception claim must establish that there was (1) a misrepresentation or omission (2) made deliberately or with a reckless disregard for the truth, that was (3) material to the judicial decision. It found that the parents sufficiently pleaded First and Fourteenth Amendment judicial deception violations. They alleged that the investigator had an affirmative duty to interview them prior to the submission of the removal application. Because the investigator failed to conduct these interviews, he did not obtain information that would have prevented the child's removal from the couple's custody. Additionally, he arguably submitted false statements about the child's safety and purportedly omitted material facts about the plaintiffs' parenting and their willingness and ability to protect the child. Taking the allegations as true, as required at the motion-to-dismiss stage, the investigator demonstrated a reckless disregard for the truth that was material to the judge's removal order. Therefore, the court declined to dismiss these claims against the investigator.

[Villasanti v. County of Riverside, 2024 WL 737303 \(C.D. Cal. 2024\)](#) Where siblings brought a 42 U.S.C.A. § 1983 suit against a county and county social workers for allegedly violating their Fourteenth Amendment rights due to the defendants' deception in presenting a defective custody evaluation to the juvenile court that resulted in their sibling being removed from their home, the federal court determined that the plaintiffs' claim for a violation of their right to familial association based on conduct that occurred before the children were returned to their mother was viable, although it dismissed that part of the claim based on conduct that occurred after the children were returned to their mother. During a custody dispute, the children's father arranged for a psychologist to evaluate the mother, who spoke little English. The psychologist extensively questioned the mother without an interpreter and his report was filed with the family court. A county social worker sought a protective custody warrant for the four children and in support of her request, recited information from the psychologist's report. This social worker arguably suppressed exculpatory evidence before the state court, including the plaintiffs' assertion that the children were not abused or neglected. After the state court placed the children with their father, the siblings brought suit against a number of individuals involved with the custody decision and alleged that the social worker presented false evidence in the warrant which resulted in the juvenile court's issuance of a warrant to seize the children from their mother's custody. Initially, the federal court commented that a child's right to be free from fabricated evidence in civil dependency proceedings is protected under the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment. Next, it remarked that in order to prevail on a judicial deception claim, the plaintiffs had to prove that (1) the defendants deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiffs' deprivation of liberty. The parties did not dispute that each defendant allegedly played a role in deliberately fabricating evidence. The court continued that to the extent that the plaintiffs alleged a Fourteenth Amendment claim based upon conduct that occurred after the children returned to the care of their mother, that claim was dismissed. However, to the extent that they made a claim for relief under the Fourteenth Amendments for conduct that occurred prior to their return to their mother, the defendants' motion was denied.

[Garnica v. County of Los Angeles, 2023 WL 6759360 \(C.D. Cal. 2023\)](#) The court determined that a mother adequately pled a claim against some defendants for judicial deception during a custody dispute, where her allegations plausibly suggested that county employees made misrepresentations that resulted in the mother's child being placed in the custody of her father, who was

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alleged to have abused her. The department began investigating the child's home life based on allegations of domestic violence and parental drug use. During a monitored visit, the four-year-old child stated that the father possessed guns and intended to harm the mother and also revealed that the father had abused her. Others, including an employee at the child's school and the child's therapist, supported these allegations of abuse. Nonetheless, during a custody dispute between the child's parents, a state court awarded the father custody of the child. It was recommended that the mother receive no parental rights and no visitation rights. Additionally, the department employees accused the mother of coaching the child and closed their investigation into the father with the disposition "Inconclusive for Allegations of Sexual Abuse for father" despite all witnesses except the father having given testimony supporting abuse. The mother then filed suit against a number of individuals involved in the custody case and alleged that they violated her right to familial association under the Fourteenth Amendment based on deception in the presentation of evidence and the unwarranted seizure of her child. She asserted that the defendants omitted critical information from their reports to state court, included false statements, and misrepresented what had occurred while interviewing the child. The federal court wrote that these allegations suggested that department officials were attempting to deprive the mother of custody of the child. While her allegations alone did not show any fabrication of evidence, the court commented that they were relevant in assessing whether the defendants had engaged in deliberate fabrication of evidence. It also noted that the mother alleged that a number of department officials fabricated evidence against her, either by lying, omitting key facts, or otherwise deliberately undermined the mother's evidence. For instance, when the child allegedly reported that the father had guns and intended to harm the mother, one department employee allegedly was aggressive to the mother and then discredited the child at the father's bail hearing. Another defendant was purported to have stated falsely in a report that no suitable guardian was available for the child. Drawing all inferences in favor of the mother, these specific factual allegations were deemed sufficient to state a claim that the defendants fabricated evidence in the custody proceedings. Additionally, the court noted that the allegedly fabricated evidence caused the mother to lose custody of the child and otherwise affected the disposition of various court proceedings, thus depriving the mother of a protected interest—her relationship with her child. To prevail on her claims, the mother eventually would need to show that her allegations of fabricated evidence were true and that the purportedly fabricated evidence was the cause of the custody decisions. But at this stage, drawing all inferences in favor of the mother, the court held that she had stated a claim against at least certain defendants.

[Jones v. County of San Bernardino, 2022 WL 2102966 \(C.D. Cal. 2022\)](#) A court denied a motion to dismiss filed by a county agency and several of its investigators who successfully petitioned for the removal of a mother's child based on arguably false statements. The mother of four children left them in the care of a shelter for children who were abused or were at risk of abuse. During the weekend that they were there, one child was taken to the hospital, and an x-ray revealed that the child's left arm was broken in two places. X-rays showed that a second child had a fractured left thigh. The department claimed it had received a phone call from a "family friend" who said that on at least one occasion, before the weekend the incident occurred, the mother had forcefully lifted up one infant girl by the hand and another by the leg, while in an argument with their father. Child abuse proceedings were initiated and the children were not returned to their mother for a year. The mother then brought suit against the department and others involved in the investigation. She alleged that the county defendants violated her First, Fourth and Fourteenth Amendment rights to familial association by presenting false information in the dependency hearing to remove the children from their mother's care. In response to the defendants' motion to dismiss the claims, the federal court explained that to support a [42 U.S.C.A. § 1983](#) claim of judicial deception, the plaintiff had to show that the defendants deliberately or recklessly made false statements or omissions that were material to the juvenile court's finding. The court assessed each of the alleged misrepresentations or fabrications and determined that the mother sufficiently alleged a judicial deception claim and thus denied the defendant's motion as to these claims.

[Rodriguez v. County of San Joaquin by and through San Joaquin County Human Services Agency, 2022 WL 956558 \(E.D. Cal. 2022\)](#) Where the plaintiff asserted that a county social worker made misrepresentations during a juvenile dependency proceeding which resulted in the state court ruling that the plaintiff was not the child's biological father, a federal court denied the defendants' motion to dismiss the father's due process claims against the county department and its employees. After the minor's mother was arrested for child cruelty and public intoxication, the department filed a petition on behalf of her child and instituted juvenile dependency proceedings. Despite arguably having the police report that included the parents' statements that the plaintiff was the child's biological father, the defendants allegedly withheld this information from the juvenile dependency court and misrepresented to that court that another man was the child's father. As a result, the plaintiff allegedly did not receive proper notice about the child's juvenile dependency hearings. Thereafter, the plaintiff petitioned the juvenile dependency court and requested it vacate all orders about the child's custody. The juvenile dependency court denied the plaintiff's petition, which decision was affirmed on appeal. The father then filed this civil rights suit and alleged that a county social worker committed

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judicial deception when she declared that the child's father was unknown; when she obtained the court order for publication stating that another man was the child's father, and when she prevented the plaintiff from obtaining the child's DNA sample which would have purportedly proven his paternity. The federal court wrote that a parent has a due process right to be free from deliberately false statements during juvenile court proceedings. However, it added that the right to be free from judicial deception is not a standalone constitutional claim, but simply one aspect of the right to familial association. Additionally, it determined that the plaintiff had sufficiently alleged that he was a potential parent with a liberty interest in the companionship, care, and custody of his children, even if lesser in magnitude than that of an established parent. Accepting all factual allegations as true, and resolving all reasonable inferences in favor of the father, the court found that the plaintiff sufficiently stated a claim for a constitutional deprivation of a liberty interest and adequately alleged that the defendants' actions were performed with deliberate indifference to his constitutional rights. Accordingly, the court denied the defendants' motion to dismiss this claim.

[Deeths v. Lucile Slater Packard Children's Hosp. at Stanford, 2013 WL 2930651 \(E.D. Cal. 2013\)](#) The court declined to dismiss a mother's claims against a doctor arising from events culminating in juvenile dependency proceedings and removal of the mother's adopted children. The mother, a family physician, was the adoptive mother of two children, one of whom had tested positive for methamphetamine at birth, had required specialized medical attention and care, had been hospitalized multiple times, and allegedly had been diagnosed with failure to thrive and cystic fibrosis. On one occasion the mother brought the baby to the emergency room where medical professionals relayed allegedly false information that the mother "was possibly subjecting the child to unnecessary medical treatment and that the mother suffered from Munchausen's Syndrome by Proxy, a disorder where a parent purportedly induces real or apparent symptoms of a disease in a child." A child abuse report was filed against the mother, and the county Child Protective Services (CPS) became involved. The child was then taken into state custody. After the juvenile proceedings were eventually dismissed, the mother sued the doctor and others who allegedly conspired to falsify the baby's medical history, made a false referral to the county CPS, and violated her right familial association by presenting false allegations, false or coerced testimony, fabricated evidence, and/or suppressed exculpatory evidence before the juvenile court. Specifically, the mother maintained that the defendant doctor misrepresented that the child had had numerous negative cystic fibrosis tests, the mother restricted nurses who could treat the baby, the doctor had observed the mother use a compression vest "for punitive purposes," and that the infant never suffered from failure to thrive. The court reasoned that although the doctor was not a county employee, the complaint's allegations and inferences therefrom were that he along with county employees and others engaged in a concerted action to fabricate or coerce evidence to convince county employees to remove the mother's children without a warrant. The court determined that the complaint raised factual issues which could not be resolved at this pleading stage and therefore denied the doctor's motion to dismiss the claims against him.

[Suzuki v. County of Contra Costa, 2019 WL 2247829 \(N.D. Cal. 2019\)](#) The court declined to dismiss claims brought by a father who alleged that a social worker, employed by the county Children and Family Services, lied and fabricated evidence in connection with an investigation into claims of spousal and child abuse made by the father's then-wife and that, as a result, he lost custody of his children for over a year. The ex-wife purportedly was advised by the defendant social worker to request that the children be removed from their father's care because he had a DUI and a suspended license but continued to drive the children. The state court issued an order that temporarily granted the ex-wife custody of the children and prohibited the father from having contact with them. Later, he brought suit against a number of individuals involved in the child abuse investigation and alleged he had never been convicted of a DUI, his license has never been suspended, he had never driven the children while intoxicated, and the social worker had lied to his ex-wife about these matters. He contended that the social worker's fabrication of evidence resulted in interference with his rights to a familial association with his children. The defendants moved to dismiss all of the claims and urged that the complaint did not contain any factual allegations regarding any false statements made by the social worker to the state judge in order to obtain the protection order, only statements allegedly made by the social worker to the ex-wife. However, the court disagreed, reasoning that the plaintiff alleged that the social worker deliberately fabricated evidence and showed that evidence to the ex-wife in connection with directing ex-wife that she had to request a protection order. The court found that these allegations were sufficient to state a Fourteenth Amendment claim.

§ 5. Nonincarcerated parent or guardian—Allegations not sufficient

In the following cases, courts, under the facts as presented, dismissed Fourth or Fourteenth Amendment claims brought by aggrieved parents or other family members who asserted that social workers or others made falsehoods that resulted in the

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temporary or permanent loss of custody of the plaintiffs' children, thus interfering with their right to familial association, the courts ruling that the claims were inadequately pled or lacked the requisite particularity.

First Circuit

[Watterson v. Page, 987 F.2d 1, 25 Fed. R. Serv. 3d 424 \(1st Cir. 1993\)](#) The court rejected the argument of plaintiffs that their right to family integrity had been violated by a social worker who purportedly presented false testimony and withheld material evidence from the state court which heard charges of child abuse. The mother and grandparents of two minor children brought this action in federal court against, inter alia, a social worker who was involved in the state's investigation into reports that the children had been sexually abused, which resulted in the children's removal from their home. The state court ruled that it was "obvious" that the older child had been sexually abused and that the younger child had suffered some traumatic incident that could be classified as abuse. Nevertheless, after the department withdrew the abuse and neglect petitions, the plaintiffs brought this civil action against the department social worker who allegedly presented false testimony and withheld information from the state court. The federal court remarked that there is an abstract fundamental liberty interest in "family integrity," but emphasized that this interest is not absolute nor unqualified. It commented that the government has a compelling interest in the welfare of children, and the relationship between parent and child may be investigated and terminated by the state provided constitutionally adequate procedures are followed. Additionally, the right to family integrity does not include a constitutional right to be free from child abuse investigations. It continued that even assuming the social worker presented false testimony and withheld material evidence from the state court hearing on the abuse charges, she was immune from liability based on her testimony. Therefore, the claims against her were held to have been properly dismissed.

Third Circuit

[Dobrosky v. Lometti, 2024 WL 343168 \(E.D. Pa. 2024\)](#) It was held that a mother failed to show that a county social worker proffered falsehoods in a child custody matter so as to support a fabrication-of-evidence claim where, at the most, the social worker failed to investigate the underlying abuse allegations. The mother believed her then-husband sexually abused their four-year-old daughter almost 10 years prior. However, the county Children and Youth Social Services Agency investigated the report and labeled the allegations as unfounded. The couple separated and the mother then disregarded a state court joint custody order and took her daughter to Florida, prompting the police to obtain a warrant for the mother's arrest for interfering with the child's custody. The mother defended the charge by asserting her conduct was necessary to protect her child from the danger posed by the father. A state court jury found her guilty of interfering with the custody of a child by fleeing the Commonwealth, but the state appellate courts reversed the conviction. The mother then sued state officials, including a county social worker who had characterized the daughter's abuse allegation as unfounded nine months before the mother took the child out of state. The mother now alleged that the social worker never investigated the daughter's reports and fabricated having done any investigation, in violation of the family's due process rights. The federal court rejected the mother's theory that the social worker's alleged failure to perform an investigation deprived the mother of the custody of her child. Rather, it determined that nothing the social worker did or did not do before her trial testimony amounted to an unconstitutional interference with the parent-child relationship. The mother's allegations stemmed not from the social worker's accuracy of her trial testimony but instead on her failure to conduct an investigation at all. Additionally, despite the mother's allegations that the social worker perjured herself at trial, the court emphasized that the social worker was absolutely immune from a claim based on her trial testimony. Accordingly, the court dismissed the mother's familial association claim. It also dismissed the mother's Fourteenth Amendment fabrication-of-evidence claim. While the mother alleged that the social worker deprived her right to a fair trial by using fabricated evidence without procedural due process, the court emphasized that the mother failed to allege that the social worker's conduct was so significant that it could have affected the outcome of the criminal case. Although the mother maintained that the social worker fabricated inculpatory evidence and suppressed exculpatory evidence, she had not pleaded that fabricated, knowingly false evidence forwarded to the district attorney caused the criminal charge filed against the mother—interfering with the custody of a child—or her conviction. The court declined to find how the failure to investigate created a reasonable likelihood without the use of the evidence she would not have been convicted or charged. Accordingly, the court also dismissed the mother's Fourteenth Amendment fabrication-of-evidence claim against the social worker.

Sixth Circuit

[Dixon v. Department of Health & Human Services, 2017 WL 3457100 \(E.D. Mich. 2017\)](#) The court dismissed a claim that defendants submitted false evidence in a child neglect proceeding, finding that the parents had not adequately identified the purportedly fabricated information in their complaint. The plaintiffs' child was taken to the emergency room because she had ingested peroxide, and then was transferred to a pediatric psychiatric ward. There, two psychiatrists thought that the child needed inpatient care. But the parents wanted the child to have only outpatient care. Medical staff contacted the Department of Health and Human Services Children's Protective Services (CPS). Eventually the child was transferred to a private psychiatric and residential facility, prompting the parents' suit, naming over 40 defendants and asserting 19 counts, including a claim that the defendants breached their familial-association rights under the Due Process Clause and knowingly presented false allegations, false or coerced testimony, fabricated evidence, and/or suppressed exculpatory evidence during the CPS administrative proceedings. However, the court found that the parents' statements were wholly conclusory and based on pure conjecture. For instance, they asserted that CPS workers received their information from "Bull daggering Police Officers," who were gay and biased against the Black heterosexual couple. Because the plaintiffs had not specifically identified any fabricated evidence, the court dismissed this claim.

Eighth Circuit

[Lopez v. Kelly, 2016 WL 1555705 \(D. Neb. 2016\)](#) The court found that parents failed to sufficiently plead their claim that a county employee had relied on falsehoods in seeking removal of their children from their custody. Hospital staff, fearing that the parents would attempt to take the baby—who allegedly tested positive for a controlled substance—from the neonatal intensive care unit, communicated with a deputy county attorney, who filed an ex parte motion in juvenile court requesting that the child be removed from the parents' custody. The petition was granted. After a period of time, the juvenile court case was dismissed and the court ordered that custody of the child be returned to the parents. The couple thereafter brought suit against a number of individuals involved in the custody case and alleged that an employee of Children and Family Services "misrepresented evidence and made baseless accusations and [made] false statements" in her affidavit which resulted in the juvenile court judge granting the ex parte motion. The federal court acknowledged that the Fourteenth Amendment protects parents' liberty interests in the custody, care, and management of their children. It further remarked that to adequately plead a substantive due process claim, the parents had to allege facts showing that the defendants' actions were shocking to the contemporary conscience, a high standard. The court continued that the parents' general allegation that the agency employee misrepresented evidence and made false statements did not establish their entitlement to any relief. However, it granted leave to the parents to file an amended complaint, advising the parents that to state an actionable substantive due process claim, they had to allege that the agency employee was being sued in her individual capacity, state sufficient facts to satisfy the "conscience shocking" pleading standard, specifically identify which statements in the affidavit were contested by the parents, and explain why the agency employee knew or should have known the statements were false. Note that subsequently, in [Lopez v. Kelly, 2016 WL 3172749 \(D. Neb. 2016\)](#), the court found, upon further review, that the agency employee was entitled to absolute immunity with respect to her affidavit presented in state court.

Ninth Circuit

[A.H. v. Sacramento County Department of Child, Family, and Adult Services, 2023 WL 2938380 \(E.D. Cal. 2023\)](#) A mother and her three children filed a complaint under 42 U.S.C.A. § 1983, alleging that the minors had been removed from the mother's custody pursuant to a protective custody warrant that the defendants obtained based on allegedly false reports of abuse, but the court dismissed the claim, finding that it was insufficiently specific. The court explained that to successfully allege a violation of the constitutional right to be free from judicial deception, the plaintiffs had to make out a claim that includes (1) a misrepresentation or omission (2) made deliberately or with a reckless disregard for the truth, that was (3) material to the judicial decision. To determine the materiality of omitted facts, courts consider whether the affidavit, once corrected and supplemented, establishes probable cause. Additionally, a claim for judicial deception must meet the heightened pleading standard of [Fed. R. Civ. P. 9\(b\)](#) because the claim is one involving fraud. The court reasoned that the plaintiffs failed to allege the "who, what, when, and where" of the judicial deception. Nor had they alleged facts as to the specific portion of the affidavit submitted in support

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of the issuance of the warrant that was claimed to be false, nor had they included an offer of proof, as required. The court thus concluded that the minor plaintiffs failed to state a Fourth Amendment unlawful seizure claim predicated on judicial deception in the protective custody warrant and granted the defendants' motion to dismiss this claim.

[Stock v. Stanislaus County, 2020 WL 207157 \(E.D. Cal. 2020\)](#) A mother's claims that a dependency petition for her daughter rested on falsehoods was not sufficiently specific to withstand dismissal, ruled the district court. The plaintiff alleged that the county employees "dumped" her teenage daughter "off at a homeless shelter" and "allowed the homeless shelter to confiscate" the daughter's phone. The mother then went to court and received a "Juvenile Dependency Petition and Detention report," which contained allegedly fabricated and perjured evidence, falsely stating that the daughter "ran away" and that when the police brought her home to the mother's house, they found the mother "had been drinking heavily" and "locked herself in her room, and refused to talk to the police." The mother also averred that the report falsely stated that the defendant agency had a "concern" that the mother had an alcohol abuse problem. She brought suit against a number of county employees involved, alleging that her due process rights had been violated in the juvenile dependency proceedings. She claimed that the defendants violated (1) her right to familial association and (2) her right to be free from acts of dishonesty in juvenile court proceedings. The court explained that the Ninth Circuit generally has characterized the right to familial association as a liberty right under the Due Process Clause of the Fourteenth Amendment. However, it determined that the mother failed to plead sufficient facts to demonstrate that the defendants committed reckless, intentional or deliberate acts and omissions constituting an unwarranted interference with the rights of family members. It cautioned that she could be able to plead facts sufficient as to certain individual defendants that they fabricated evidence during an investigation or made false statements in the dependency petition affidavit that they signed under penalty of perjury, but she had to be more specific about which defendant committed each specific act and the details of what each defendant did. Accordingly, the court granted the plaintiff leave to amend to attempt to state a claim for violation of her due process rights.

[Bumagat v. Shillinger, 2019 WL 1382495 \(E.D. Cal. 2019\)](#), report and recommendation adopted without opinion, [2019 WL 2465138 \(E.D. Cal. 2019\)](#) Where a stepfather brought numerous causes of action against defendants who alleged that he had committed child sex abuse, which resulted in his arrest, detention, and separation from his stepson, and where he then brought suit against, inter alia, the social worker involved in the investigation, the court dismissed the father's claim that the social worker provided false information in the abuse proceedings. The child was interviewed by a county Child Protective Services social worker regarding the child's statement suggesting that his stepfather had performed oral sex on him and that the mother had knowledge of the incident but failed to protect the child. Subsequently, the stepfather was arrested. No charges ultimately were filed against him, and he brought suit against numerous individuals, including the social worker, who allegedly violated his rights to family integrity and association under the Fourteenth Amendment by knowingly providing false information in her investigation report, completing a risk assessment without reasonable grounds, and assigning custody of the child to the biological father without a court order. The court found no authority establishing that a stepparent enjoys the right to family integrity and association. However, even assuming, without deciding, that the plaintiff enjoyed such a right vis-à-vis his stepson, his claim failed as his allegations were found to constitute mere conclusions. The plaintiff had not explained how he knew that the social worker knowingly provided false information in her reports. According to the complaint, not even the biological father knew that these allegations were false at the time they were related. Thus, the complaint lacked sufficient factual matter to state a claim that was plausible on its face regarding the social worker's purported violation of the plaintiff's right to family integrity and association.

[Cotti v. Pa Chang, 2020 WL 2572771 \(N.D. Cal. 2020\)](#) The court dismissed parents' claims against a social worker who purportedly relied on falsehoods in order to remove two children from their parents' custody, the court ruling that the social worker had not misrepresented any evidence. Police officers responded to a report of domestic disturbance at the parents' home, arrested them for domestic violence, then contacted the county Department of Family and Child Services to request that a social worker respond at the scene for the children. The children were taken into custody and transported to a medical clinic to be assessed. A nurse there noticed a bruise on one child and ordered a skeletal survey, which indicated that she had a possible fracture of her left femur which was suspicious for nonaccidental trauma. The two children were removed from the family home and the parents filed this action, claiming that the removal was without adequate cause and that the social workers' allegations regarding domestic violence, substance abuse, and the child's leg fracture were without basis. The parents first alleged that the social worker inaccurately characterized domestic violence between the mother and the father as "severe," but the court wrote that, at most, the argument demonstrated a difference of opinion regarding the severity of the couple's altercation and did not

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demonstrate a falsehood. Next, the parents challenged the social worker's statement that they both had been arrested for domestic violence, then only the mother had been arrested; however, the court wrote that the parents alleged no facts showing that the social worker knew as much. Third, the parents maintained that the social worker falsely stated that the child's skeletal survey indicated a possible leg fracture which the radiologist found suspicious and that the parents had no reasonable explanation for the injury and that doctors determined the injury was caused by nonaccidental trauma. However, the federal court wrote that the parents' contentions that the child did not suffer the fracture while in their custody, or that the fracture was not serious, were entirely conclusory. Fourth, the parents challenged the social worker's statement that the mother had a substance abuse history and used marijuana on a daily basis, including while the children were in the home, and that this substance abuse problem interfered with her judgment, which placed the children at risk of physical harm. The parents alleged that these statements are false, because although the mother used marijuana every day, she "usually" waited until the father got home so that he could care for the children while she used. They also objected to the social worker's characterization of the mother's marijuana use as a "substance abuse problem." That the parents did not view the mother's daily marijuana use as a problem, and disagreed with the social worker's assessment that it impacted the mother's judgment, did not make the social worker's statement false, the court reasoned. Finally, the parents challenged the social worker's assertion that after the couple was arrested, they let the children remain home without a caretaker. Instead, the parents alleged that they had arranged for their licensed childcare provider to take charge of the children. However, the parents did not allege that the social worker was aware of this arrangement, the court noting that the social worker was not alleged to have been at the home when the parents were arrested. The court concluded that the parents failed to allege facts showing that social worker made deliberately false or reckless statements in the juvenile dependency petitions and thus the social worker's motion to dismiss was granted.

[Gonzalez v. San Mateo County, 2019 WL 5688346 \(N.D. Cal. 2019\)](#) The court dismissed a father's civil rights suit for failure to state a claim, where he contended that a county employee violated his Fourteenth Amendment right to familial association when he misrepresented to a state court that an inspection revealed that the home of the father's child's paternal grandmother did not qualify for the placement and that the defendant was emotionally unstable; however, the federal court declined to find that the county employee made any representation with respect to an inspection, and his description of the father's anxiety disorder closely tracked the complaint's own allegations.

[JQ.H by and through Thomas v. County of San Diego, 2020 WL 13178589 \(S.D. Cal. 2020\)](#) The court dismissed a claim brought by a mother who was alleged to have abused her child and rejected the mother's claim that investigators fabricated evidence in support of the charges. Investigators learned that the mother hit her eight-year-old child with a belt and caused bruising to his hip. Juvenile dependency proceedings followed and the mother lost custody of her children for a significant period. Thereafter, she sued a number of individuals involved in the investigation and alleged that some of them coached and coerced the children's interview responses and fabricated medical evidence. For instance, she theorized that a medical professional was engaged in a joint venture with other named defendants to conduct highly invasive physical examinations of minors without parental knowledge or consent and to manufacture cases of child abuse. The mother pointed out that the doctor reviewed examination notes made by a nondepartment nurse, provided her own commentary, and concluded that the child "had inflicted injuries" made by a belt, even though the nurse had only seen faint markings on the child. The court remarked that judicial deception is a violation of substantive due process under the Fourteenth Amendment. In order to prevail on a judicial deception claim, the mother had to prove that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused her deprivation of liberty. The county's liability was based on the doctor's actions, which constituted signing and making comments on a medical record after reviewing an unaffiliated nurse's notes. The only fact that went to deliberate fabrication was the purported inconsistency between the doctor's conclusion that the child had inflicted injuries "typical of belt marks" and the nursing notes stating the markings on the child were "faint." The mother did not refute the fact that there were markings on the child's body nor did she offer another explanation for why these marks were on his body. The court concluded that the mother had not pled facts supporting that the doctor deliberately fabricated evidence and thus it granted the defendants' motion to dismiss this Fourteenth Amendment claim.

[Coults v. Betts, 2024 WL 1348638 \(D. Haw. 2024\)](#) Where a mother brought suit under 42 U.S.C.A. § 1983 against 19 defendants, including the county police department, several police officers, and the State Department of Human Services (DHS) and alleged that officers illegally arrested her and removed her then-three-year-old daughter from her home, all without a warrant, court order, or exigent circumstances, the court dismissed her claim that a DHS worker submitted falsehoods in support of the removal of her child. These events began when a complaint allegedly was made to the Child Welfare Service's hotline alleging that the mother had abused her 14-year-old daughter, prompting the mother's suit against various individuals involved

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in the child abuse investigation. While the complaint alleged that a DHS social worker "aggressively" interrogated the mother to obtain "private information," "fra[ud]ulently manipulated" that information, and created a report with "false, perjurious statements and omissions," the court wrote that these constituted merely conclusory assertions that did not suffice to state a plausible claim, resulting in their dismissal.

[Varon v. Nevada, 2024 WL 624321 \(D. Nev. 2024\)](#) Where a mother filed suit against a number of defendants who allegedly violated her rights by taking away custody of her child and hospitalizing her against her will, purportedly by submitting falsehoods about her parenting, the court dismissed her claim relating to judicial deception finding that it had not been pled with the requisite precision. An investigation was opened when the mother had a mental breakdown, following which her child was removed from her custody. Thereafter, she sued a number of individuals involved in the case and contended she had been hospitalized based on a false report by her uncle that she was a danger and safety risk to her son. She claimed that the Department of Health and Human Services, Division of Child and Family Services illegally seized her son and sought the termination of her parental rights based on the false allegations. The court wrote that as part of the right to familial association, parents and children have a right to be free from judicial deception in child custody proceedings and removal orders. To state a violation of the constitutional right to familial association through judicial deception, the mother had to allege (1) a misrepresentation or omission (2) made deliberately or with a reckless disregard for the truth, that was (3) material to the judicial decision. The court wrote that while the mother theoretically stated claims for violations of her First or Fourteenth Amendment rights, her allegations were unclear and did not specifically tie the alleged wrongdoing to any particular defendants. She included only vague allegations of judicial deception, without sufficiently describing the factual events that led to it or naming how each defendant violated her rights. Accordingly, this claim was dismissed with leave to amend.

[Smith v. Auburn Police Department Officers, 2023 WL 423057 \(W.D. Wash. 2023\)](#) Where a father brought suit under 42 U.S.C.A. § 1983 for alleged violations of his constitutional due process rights and alleged that his child had been wrongfully removed from his care by Child Protective Services over false abuse allegations made by the child's mother, the court dismissed his Fourteenth Amendment due process claims. It emphasized that merely negligent conduct by a state official does not constitute a deprivation of due process rights. Further, although the Fourteenth Amendment protects parent from the deliberate government use of perjured testimony or fabricated evidence in family court proceedings where a parent's familial liberty interest is at stake, the court noted that the father did not allege that the purportedly perjured evidence against him was deliberately used by any governmental person or entity. Without further details—such as the nature of the allegations, details showing that the allegations were "false," or whether the defendants had any reason to suspect the truth of the allegations—the court could not conclude that the defendants lacked reasonable cause or otherwise acted with more than negligence in removing the father's child from his care. Thus, the court dismissed the complaint without prejudice.

§ 6. Nonincarcerated parent or guardian—Evidence sufficient

Courts in the following cases, under the facts presented, determined that the plaintiffs had presented sufficient evidence to withstand summary judgment or judgment on the pleadings, where they claimed that state officials—such as caseworkers—had presented falsehoods or misrepresentations in the process of child custody or abuse or neglect proceedings, thereby interfering with the plaintiffs' familial association with those children, under the Fourth or Fourteenth Amendments.

Ninth Circuit

[Wallis v. Spencer, 202 F.3d 1126 \(9th Cir. 2000\)](#) Where parents and their children sued a city and others, alleging that their constitutional rights had been violated when police officers removed the children from their parents and had them subjected to invasive medical examinations based, in part, on a mental patient's statements that the father intended to ritually sacrifice his son to Satan, the appellate court ruled that material disputes of fact remained as to the reasonableness of the officers' conduct, thus precluding summary judgment in their favor. The police officers, evidently acting on the basis of a nonexistent court order, seized the children, aged two and five, placed them in a county-run institution, and several days later, without obtaining judicial authorization and without notifying their parents, took them to a hospital for the performance of highly intrusive anal and vaginal physical examinations. The children were not returned to their parents for approximately two and one-half months. These events were precipitated when their aunt—a mental patient who had a long history of delusional disorders and was confined to a mental institution—told her therapist a fantastic tale of Satanic witchcraft within her family and an impending child sacrifice. After the

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children's return to their parents' custody, the couple brought suit against a number of individuals involved in the proceedings and argued that the seizure of the children violated their constitutional rights. The city contended that the children's removals were lawful, because the officers' information about the arguably impending Satanic sacrifice of one child provided "reasonable cause" to seize the children. However, the appellate court ruled that summary judgment in the city's favor was improper because material question of fact existed regarding whether (1) there was reasonable cause to believe, on the basis of the information in the possession of the police officers, that the couple's children faced an immediate threat of serious physical injury or death; or (2) the actions taken by the officers—removing the children from their mother and placing them in an institution—exceeded the permissible scope of the action necessary to protect them from that immediate threat. It thus held the parents produced sufficient evidence to defeat the defendants' motion for summary judgment.

[Olvera v. County of Sacramento, 932 F. Supp. 2d 1123 \(E.D. Cal. 2013\)](#) A couple and one of their children brought a [42 U.S.C.A. § 1983](#) action against a county, its child protective services, and various government employees, alleging constitutional violations related to an abuse investigation into the couple's in-home program for adopted children suffering from emotional, psychological, and behavioral disorders, and the related removal of a child from their home; the court declined to award the defendants summary judgment on the child's Fourth Amendment claim and found that the plaintiffs established a genuine issue of material fact as to whether the defendant social workers acted at least recklessly in making material misrepresentations or omissions in the warrant for removal. The couple, who were licensed marriage and family therapists, had a therapeutic program for children in their home. Child Protective Services (CPS) received a report from a mandatory reporter that a child claimed he had been subject to abuse when he resided in the couple's home. Based on this report, CPS began an investigation. A CPS social worker then sought a protective custody warrant for the removal of a second child, among others, from the home. The juvenile court issued the warrant and this second child was removed from the home and placed in foster care. Ultimately, a settlement agreement was reached in which this child was allowed to return to the couple's home under specified conditions. The couple then brought suit on their behalf and on behalf of the second child under [42 U.S.C.A. § 1983](#) claiming that the warrant contained misrepresentations and omitted exculpatory evidence in violation of the child's Fourth Amendment rights. The complaint alleged that the warrant had been misleading because it omitted information about the purportedly abused child's history of psychological and mental health issues, current and past treatment, and cognitive function, which would have been relevant in assessing the credibility of his accusations. At the time she drafted the warrant, the investigator purportedly knew that the child had a "history of aggressive behavior," was diagnosed as bipolar, identified as emotionally disturbed, was on four "psychotropic" medications, had a "history of hospitalizations," and was considered to have an intellect of an eight-year-old "with low average intellect" despite the fact he was 12 years old. The defendants moved for summary judgment. The court explained that to withstand summary judgment, the plaintiffs had to show that a neutral magistrate would not have issued the corrected warrant. It continued that what was most troubling about the cited omissions was that they related to the only allegations of mistreatment that were directly linked to the child. When the warrant was supplemented with more accurate information, the ability of a magistrate to find it fairly probable that the child's continued residence at the home endangered his health or welfare was significantly depleted. The plaintiffs therefore were held to have sufficiently established a genuine issue of material fact on the child's claim that the warrant was obtained through judicial misrepresentation in violation his Fourth Amendment rights. Accordingly, the court denied defendants' motion for summary judgment on the Fourth Amendment claim. Note that the court also ruled that because the plaintiffs' de facto parent status was insufficient to give rise to a liberty interest cognizable under the Fourteenth Amendment, the couple could not advance a Fourteenth Amendment claim for the defendants' alleged violation of their right to familial association caused by the continued detention of the child through the submission of false evidence and misrepresentations. (The couple had filed an incomplete adoption request for the adoption of this second child.) Moreover, even if a relationship akin to de facto parents could give rise to a liberty interest under the facts of this case, the court commented that the couple had not shown that any such right was clearly established at the time the second child was removed and detained, and thus the defendants would be entitled to qualified immunity under such a theory.

[Williams v. County of Monterey, 2021 WL 1966711 \(N.D. Cal. 2021\)](#) A mother sued a number of individuals involved with removing her children from her custody for three months, and claimed that material misstatements and omissions had been included in the investigation notes, and the court, having previously granted summary judgment for the defendants, now granted the mother's motion for reconsideration and allowed these claims to proceed. A social worker was dispatched to the elementary school attended by eight-year-old twins in response to a teacher's report of potential sexual abuse of one of them. After interviewing them, the social worker, believing sexual abuse had occurred, contacted law enforcement and asked that an officer come to the school. A second social worker took over the county's investigation and a decision was made to take the

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twins into protective custody. A third social worker drafted a petition to the juvenile court, relying on the delivered service log (DSL) investigation notes of the other investigating social workers. The children were removed from their mother's custody for three months, at which time juvenile proceedings were dismissed after a contested trial. The mother then filed this civil rights lawsuit against the social workers and others. After the court granted summary judgment on the due process claim for all the defendants, the mother sought reconsideration of that ruling with respect to the three social workers. In this claim, the mother asserted that the three social workers violated her Fourteenth Amendment substantive due process rights to familial association and the children's Fourth Amendment rights to be free from unreasonable seizures, by submitting documents containing material misrepresentations and omissions to the juvenile court. The court recognized that the Fourteenth and Fourth Amendments protect parents and children against deliberate government use of perjured testimony and fabricated evidence in the dependency court proceeding designed to rupture the familial relationship. It continued that the mother's judicial deception claim against the social workers stemmed from her allegations that they included material misstatements and omissions in their DSLs, knowing that the DSLs would be relied on in drafting of the petition submitted to the juvenile dependency court, and thus that their material misstatements and omissions would be presented to that court. The federal court found that liability against the social workers could be established by evidence that they included in the DSLs (1) a misrepresentation or omission (2) made deliberately or with a reckless disregard for the truth, that was (3) incorporated into the petition and was material to the judicial detention decision. It determined that the mother had presented sufficient evidence to satisfy this tripartite test. It cautioned the mother, however, that in order to establish judicial deception based on misrepresentation or omission in the DSLs, she had to show that those misrepresentations or omissions were reflected in the petition and material to the detention decision. It added that the plaintiffs' briefing was replete with assertions regarding alleged misrepresentations and omission in the DSLs that did not appear to be reflected in the petition, and it cautioned that misrepresentations and omissions in the DSLs, without more, could not support a claim for judicial deception, as the thrust of the claim is deception of the court. Nonetheless, the mother's motion for reconsideration was granted with respect to this claim, which was reinstated against the three social workers.

§ 7. Nonincarcerated parent or guardian—Evidence not sufficient

In the following cases, under the circumstances as presented, courts held that parents or guardians had not submitted sufficient evidence to support their claims that state actors violated their Fourth or Fourteenth Amendment right to familial association by submitting false information during child custody or abuse proceedings, and thus those state actors were entitled to summary judgment or judgment on the pleadings.

Second Circuit

Cox v. Warwick Valley Cent. School Dist., 654 F.3d 267, 272 Ed. Law Rep. 159 (2d Cir. 2011) The court granted summary judgment in favor of a principal sued under 42 U.S.C.A. § 1983 by parents of a middle school student who wrote a school essay that described committing suicide, prompting the principal's report to the State's Department of Child and Family Services for suspected abuse and neglect, the court finding that the principal's conduct was not sufficiently shocking so as to support a constitutional claim. The child's English teacher assigned the child to write an essay on what he would do if he had only hours to live. The resulting essay described getting drunk, smoking, doing drugs, and breaking the law. It ended with the child taking cyanide and shooting himself in the head in front of his friends. The principal believed that the parents were insufficiently concerned about the child's essay and emotional well-being and therefore contacted the State Department of Child and Family Services (CFS) and reported his concerns. That afternoon, a CFS worker met with the parents and insisted that they take the child to the hospital immediately to undergo a psychiatric evaluation and warned that if they did not, they could lose custody of him. The parents complied, and the child was evaluated that evening. After this incident, the parents home-schooled the child for the rest of the year. The CFS investigation eventually concluded the principal's concern was "unfounded," following which the parents filed a § 1983 suit against the principal who allegedly violated the parents' Fourteenth Amendment substantive due process right to custody by making an exaggerated or false report to CFS. The district court granted summary judgment to the principal and the parents appealed. The appellate court remarked that absent truly extraordinary circumstances, a brief deprivation of custody is insufficient to state a substantive due process custody claim. It continued that the principal's call to CFS and the resulting demands and threats from CFS to the parents may have been stressful or even infuriating, but they did not result in even a temporary loss of custody. Moreover, no reasonable jury could conclude that the principal's report to CFS, or the resulting requirement that the child be psychiatrically evaluated, was even remotely "outrageous" or "conscience-shocking." The parents alleged that the principal's report to CFS was exaggerated and misleading, but even in the light most favorable to

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them, nothing in the report was materially false: the child wrote violent journal entries, misbehaved in school, and expressed suicidal thoughts, albeit in a hypothetical, creative, and imagined way. Furthermore, the principal's actions were expressly aimed at protecting the child, and the principal had a legal obligation to report suspected neglect. The appellate court therefore affirmed the district court's grant of summary judgment in favor of the principal on this claim.

Third Circuit

B.S. v. Somerset County, 704 F.3d 250 (3d Cir. 2013) After the county's social worker removed a child from her mother's care, the mother brought suit against, inter alia, a social worker who allegedly offered misrepresented medical evidence, "concocted facts," and manipulated evidence as a basis for her recommendation to the court that the mother not regain custody of the child; but the appellate court held that the social worker's conduct did not "shock the conscience" because it did not exceed negligence or the deliberate indifference standard and thus the court rejected the mother's substantive due process claim. Starting at birth, the plaintiff's daughter had suffered a variety of medical problems that stunted her growth. A pediatric gastroenterologist diagnosed the child with failure to thrive. After running various tests to determine the cause of her condition, the gastroenterologist referred the daughter for inpatient treatment at a medical facility where she was treated for six days and gained some weight. However, upon returning to the mother's care, her weight gain slowed, which concerned the gastroenterologist, who feared that the daughter was being neglected by the mother. He contacted a child welfare caseworker for the county Children and Youth Services, and the caseworker filed a report with the court, following which the daughter was removed from her mother's care. The mother then initiated this lawsuit and asserted claims against the social worker and others for violating her substantive due process rights and claimed that the caseworker misrepresented the daughter's weight on the summary she prepared for the judge. The defendants responded with a motion for summary judgment. The court ruled that no rational jury could find that the caseworker's removal of the daughter violated the mother's substantive due process rights and her actions could not be said to "shock the conscience." When the caseworker removed the daughter, she acted quickly upon information from a physician who had been treating the daughter over the course of several months and who opined that medical evidence indicated serious neglect. Based on the caseworker's discussion with the gastroenterologist, it was reasonable to take the steps she did to protect the daughter from the mother until there had been time to investigate further. The caseworker's misstatement about the daughter's weight could not be viewed as more than mere negligence, especially because the material facts relayed by the gastroenterologist that led the caseworker to act were all accurately stated in her summary to the judge. The court concluded, therefore, that no rational jury could find that the caseworker's actions leading to the removal of the daughter infringed upon the mother's substantive due process rights and determined that the defendants were entitled to summary judgment.

J.R. v. Lehigh County, 534 Fed. Appx. 104 (3d Cir. 2013) (per curiam) Where the parents of children removed from their home sued the county, county officials, the child's teacher, and the teacher's assistant, asserting violations of due process, the appellate court approved the lower court's grant of summary judgment in the defendants' favor upon finding that the teacher's mandatory report of suspected sexual abuse was not so malicious or ill-conceived as to shock conscience, as required to violate due process. The claims arose from an incident in which the then 11-year-old child told her teacher and teacher's assistant that her father's attorney had fondled her and yet her father did nothing to protect her. The teacher and the assistant filed a report with the State's child abuse hotline, following which the Office of Children and Youth Services (OCYS) evaluated the complaint and sought an emergency court order to remove the child and her siblings from the parents' home. OCYS then took custody of the children, placing them in two separate foster homes. The allegedly abused child later admitted her claim was false. She had purportedly told the teacher's assistant that she wanted to live with her mother and he responded that she should make up a story to get out of her father's home. However, the child admitted that the teacher's assistant did not give her specifics about what to say and that it was solely her decision to make up the claim of sexual abuse. Her parents subsequently brought suit against, in part, the teacher and assistant and asserted that the fabricated tale of abuse and the responsive actions taken by the defendants violated their substantive due process rights. The court recognized that natural parents have a fundamental liberty interest in the care, custody, and management of their children. But this liberty interest must be balanced against the government's compelling interest to protect children, it continued, and does not include a right to remain free from child abuse investigations. Further, only the most egregious official conduct violates substantive due process. The district court had concluded that the child's decision to lie was her own and that there was no evidence that she had been compelled or coerced to do so. Moreover, accepting the child's version of events as true, the teacher's assistant did not initiate the intrusion into the child's family. Finally, the child knew that the ploy might work because she had a prior history of fabricating allegations of abuse that resulted in removal from her father's

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home. The court concluded that the child had not been compelled or coerced by the teacher or the teacher's assistant to lie and, therefore, their actions did not shock the conscience in the constitutional sense. Additionally, there was no evidence in the record suggesting that the defendants knew the report of abuse was false at the time they sought the court order. Accordingly, the district court was held to have appropriately granted summary judgment to the teacher and the teacher's assistant on these claims.

Fifth Circuit

[McCullough v. Herron, 838 Fed. Appx. 837 \(5th Cir. 2020\)](#) (per curiam) The court rejected a claim brought by a mother under 42 U.S.C.A. § 1983 in which she alleged that three employees from the Texas Child Protective Services (CPS) violated her constitutional rights by removing her children after submitting arguably false information to the state court. The department had received a report from the paternal grandmother of the plaintiff's children alleging that they were being subjected to neglect. The mother was asked to submit to a drug test: a hair follicle test was positive for cocaine, but her urinalysis test was negative. The mother confirmed to an investigator that she was behind on the children's vaccinations, failed to attend several doctor's appointments for her children, and tested positive for cocaine. The caseworker requested an emergency removal of the mother's three children from her custody. CPS submitted affidavits for removal based on medical neglect and neglectful supervision of the children but omitted reference to the negative urinalysis. The court granted an emergency order of removal; the children were returned to the mother 14 months later, following which the mother filed suit against a number of defendants. She brought four causes of action, including a claim for the defendants' purported violation of her substantive due process rights to familial association and integrity. The mother alleged that the investigator knowingly and intentionally included false information in her affidavits and testimony to the court, failed to properly investigate the allegations of medical neglect, misrepresented facts in the affidavit that the children were in imminent danger, and falsely stated that the mother failed a drug test, engaged in a domestic dispute, and drove with her baby on her lap. However, the court ruled that the investigator's actions did not violate the mother's substantive due process rights as the record failed to show that the investigator intentionally lied, misrepresented, or fabricated evidence to the state court. The record included no evidence of the predicate conscience-shocking behavior needed to support a substantive due process claim. Any inconsistencies in the caseworker's affidavit, along with anything more she should have done in her investigation beyond the many visits, phone calls, interviews, and investigations, were held not to amount to evidence of "arbitrary or conscience-shocking" conduct. Accordingly, the court held that the investigator did not violate the mother's Fourteenth Amendment substantive due process rights and affirmed the lower court's judgment in the defendants' favor.

Sixth Circuit

[Blythe v. Schlievert, 245 F. Supp. 3d 952 \(N.D. Ohio 2017\)](#) The court granted summary judgment in favor of a doctor sued by a mother, on behalf of herself and her children, who alleged that the physician fabricated evidence of child abuse, resulting in the temporary loss of custody of the minors, thus arguably depriving the plaintiffs of their constitutional rights relating to family relationships. One of the mother's premature twin daughters, who was not putting on weight and was vomiting, had been admitted to the hospital and placed in a pediatric intensive care unit. A cranial CT scan showed pressure on her brain but the mother could offer no explanation for the child's injuries. During an ensuing four-day hospital stay, the medical staff determined that the child had suffered a nonaccidental head trauma. In the absence of any other explanation, the doctors diagnosed the child with Shaken Baby Syndrome. Caseworkers were contacted and the mother's children were placed in the temporary custody of their maternal aunts. Thereafter, the mother brought suit, asserting, in part, that the defendant doctor violated her rights under the Fourteenth and First Amendments by fabricating inculpatory evidence of abuse, disregarding information in the child's clinical presentation showing an absence of abuse, and conclusively representing that the child had been abused. As a result of those alleged violations, the physician allegedly interfered with the plaintiffs' rights to familial association, thus giving rise to a substantive due process violation. Additionally, the mother's attorneys obtained reports from several nationally ranked abusive head trauma experts who stated that that physician's report was false, was contrary to evidence-based medicine, and failed to consider all possible explanations regarding the child's clinical presentation. However, the court determined that the mother pleaded no facts rising to the level of egregious behavior that shocked the conscience, as required for such a claim. The court noted that the medical staff that treated the child at the hospital—an entity with which the defendant doctor had no connection—reached the same conclusion as the doctor with respect to the cause of the child's injuries. Thus, even accepting the plaintiffs' allegations as true, the conduct alleged was not so severe that it "shocked the conscience," leading the court to grant the physician's motion for judgment on the pleadings.

Seventh Circuit

[McCormick v. Goebel](#), 655 F. Supp. 3d 748, 120 Fed. R. Evid. Serv. 1686 (N.D. Ind. 2023) The court rejected a claim brought by a father against the State Department of Child Services and others who allegedly violated his and his children's Fourth and Fourteenth Amendment rights in connection to the emergency removal of the children from his home, the court granting the defendants' motion for summary judgment and finding no evidence that the defendants intentionally misrepresented facts in the abuse proceeding. The department had removed five of the father's children from his care pursuant to a court order following a report that he had been abusing the children. After the state court dismissed the children's cases, returning them to their prior custody with their father, he filed this 42 U.S.C.A. § 1983 case. He alleged the children's emergency seizure violated their Fourth Amendment rights because it was based on misrepresentations by the defendants and his and his children's due process rights to family integrity because they were justified by misrepresentations. However, the court determined that the father's allegation that the defendants intentionally misrepresented facts in order to detain the children had not been properly supported. The father did not provide any evidence of a misrepresentation, nor did the evidence tendered by the defendants support a misrepresentation. Therefore, the court found that summary judgment was appropriate on all claims relying on alleged misrepresentations as the basis of liability.

Ninth Circuit

[Patterson v. Miller](#), 451 F. Supp. 3d 1125 (D. Ariz. 2020), summarily aff'd, 857 Fed. Appx. 282 (9th Cir. 2021) Where a mother brought a 42 U.S.C.A. § 1983 action against employees of a state child protective services agency, alleging that they violated her right to be free from deliberately fabricated evidence in a juvenile court dependency proceeding, the court granted summary judgment to the defendants, finding that they did not deliberately fabricate evidence in a report to juvenile court. The State Child Protective Services (CPS) Hotline received a report about the plaintiff and her then 16-year-old daughter. The daughter had been living with her adult sister. The mother wanted the child returned to her care; however, the daughter disclosed that she was extremely fearful to be in the mother's home because of the mother's ongoing mental health issues. Various reports were prepared about the family's situation, suggesting the mother's substance abuse and threats to kill herself. The mother then brought this suit and alleged that the state defendants deliberately fabricated evidence and suppressed exculpatory evidence in violation of her Fourteenth Amendment due process rights. The court remarked that the Fourteenth Amendment protects parents' fundamental right to participate in the care, custody, and management of their children. It also protects them from deliberately fabricated evidence in civil child dependency proceedings where their protected familial liberty interest is at stake. The court continued that to prevail on a claim of deliberate fabrication, a plaintiff must prove that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty. As to the first element, a plaintiff can introduce direct evidence showing that the defendant made actual misrepresentations, such as evidence that the defendant deliberately falsified statements in an investigative report. Additionally, there are two circumstantial methods of proving a falsification was deliberate: (1) establishing that the defendants continued their investigation of the plaintiff even though they knew or should have known that the plaintiff was innocent; or (2) establishing that the defendants used investigative techniques that were so coercive and abusive that they knew or should have known that those techniques would yield false information. Further, to establish causation, the plaintiff had to show that the defendant's act was the cause in fact of the deprivation of liberty, meaning that the injury would not have occurred in the absence of the conduct, and that the act was the proximate cause or legal cause of the injury, meaning that the injury was of a type that a reasonable person would see as a likely result of the conduct in question. Additionally, the court remarked that fabricated evidence does not give rise to a claim if the plaintiff cannot show the fabrication actually injured her in some way. Applying these principles, the court wrote that the mother had to prove the allegedly fabricated evidence caused that court to issue its dependency determination. Thus, any statements made by the defendants that were not made to the juvenile court (or made by nonparties to the juvenile court) were deemed irrelevant and would not be examined. However, the court went through all of the purported misrepresentations and found that the evidence did not support the mother's deliberate fabrication claim, thus justifying summary judgment in favor of the defendants on this Fourteenth Amendment claim. Note that subsequently, the appellate court in [Patterson v. Miller](#), 857 Fed. Appx. 282 (9th Cir. 2021), ruled that the district court properly had granted summary judgment on the mother's due process claim.

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[Daschke v. Hartenstein](#), 420 F. Supp. 3d 919 (D. Ariz. 2019) The court granted summary judgment in favor of defendants sued by parents and their children who claimed that the defendants—police officers and employees of the Arizona Department of Child Services—violated their Fourth Amendment and due process rights in connection with the removal of the children from their home, stemming from the defendants' purported inclusion of false information in a dependency petition related to the minors. Sherriff's department officers were investigating a series of break-ins at unoccupied homes listed for sale, began focusing on one juvenile, and ultimately obtained a warrant to search his home. Following that search, the Sherriff's Department contacted the Department of Child Services. It was learned that the juvenile had a history of substance abuse dating back at least three years and that the parents had been aware of his drug use. According to the department officials, removal was appropriate because the parents arguably were unwilling to take action in response to the juvenile's reported drug use and the younger brother's recent cutting of himself. After the agency took actions that resulted in the removal of the children from their parents' home, the family sued members of the Sherriff's Department and Department of Child Services and alleged, inter alia, that two detectives violated their due process rights, as well as their right to familial association. The defendants moved for summary judgment. The court reasoned that the only allegations in the complaint that could provide a basis for the family's due process claims were that one detective reiterated false or misleading information to the investigative case manager, prompting the department to launch an investigation into the juvenile's welfare at home, and that the detective was present for part of the meeting between the department and the family that culminated in the department's decision to remove the children from their home. However, the plaintiffs did not claim that the detective communicated with the department at any point. The court pointed out that this detective did not participate in the ultimate decision to remove either child, and the department decided to remove the younger brother and the juvenile based, in part, on information gleaned through the department's own interviews and the department's conversation with the parents at the family meeting. The court therefore granted the detectives' motion for summary judgment on these claims.

Eleventh Circuit

[Edwards v. County Bd. of Educ. of Richmond County](#), 2007 WL 2345239 (S.D. Ga. 2007) The court rejected a claim brought by parents against school employees who allegedly made falsehoods to the Department of Family and Children Services (DFACS) which precipitated an investigation into the couple's parenting. The plaintiffs' five-year old child was enrolled in a special education class. According to the school psychologist, the girl had significant developmental delays in a number of areas and also had medical diagnoses of autism and petit mal seizures. The parents, believing that the child had been mistreated in the classroom, aired their concerns, following which school officials made a report to the state about possibly child abuse of the student. Specifically, the school counselor reported that the mother would feed the child vinegar, straight lemon juice and popcorn, would lay on the child and squeeze her, purportedly to help her sleep, was trying to keep the child in the special education class, and was giving the child some unknown medication and would not allow the school nurse to administer the medication or disclose what kind of medicine it was. The parents then brought suit against the girl's special education teacher, a teacher's aide who served in the classroom, the principal of the school, and a school counselor, alleging that the defendants conspired to retaliate against them for their complaints about the perceived abuse in the classroom. However, the court wrote that there was no evidence that the allegations made by the school counselor to DFACS were false. Indisputably, the evidence established that the defendants were concerned about the mother's conduct toward the child and there was no evidence that these concerns were unwarranted or unfounded. Accordingly, the DFACS report was not false, even viewing the evidence in the light most favorable to the mother. Without evidence to support the claim that the defendants filed retaliatory and false reports against the parents, the defendants could not be held liable for a constitutional deprivation of the parents' rights and thus they were entitled to summary judgment on these claims.

§ 8. Incarcerated or criminally charged parent or guardian—Allegations sufficient

In the following, it was held, under the facts as presented, that where the state mounted an investigation, charged, or convicted individuals under the criminal law, that those individuals, having later had their charges dropped or convictions overturned, had set forth adequate allegations to either survive dismissal, where the plaintiffs claimed that their Fourth or Fourteenth Amendment right to familial association had been violated when state actors introduced false or fabricated evidence or testimony into the criminal actions.

Ninth Circuit

Ray v. Basa, 2013 WL 6502869 (N.D. Cal. 2013) Where a father was incarcerated on multiple robbery charges, following which the county Department of Children and Family Services initiated proceedings that resulted in his loss of custody of his four-year-old daughter, and where thereafter, he brought suit and alleged that a police sergeant and a county caseworker made several unfounded and unproven statements that were used to remove the child, the court found that the allegations were sufficiently pled and thus allowed the case to proceed. Specifically, the father alleged that the defendants made false statements that he was unable to provide care to his daughter, that he had a substance abuse problem, that he and his wife engaged in domestic violence in their daughter's presence, and that his trailer home had no running water, no working refrigerator, and no working toilet facilities. The court ruled that the complaint, liberally construed, stated a claim under 42 U.S.C.A. § 1983 for due process violations by the defendants for their alleged involvement prior to and during the child dependency proceedings in which the county and county agents sought the removal of the father's child based on arguably false information. Accordingly, the court granted the plaintiff's motion for reconsideration and vacated its previous dismissal order.

§ 9. Incarcerated or criminally charged parent or guardian—Allegations not sufficient

In the following cases, courts held, under the facts as presented, that parents had not set forth adequate allegations or presented sufficient evidence to survive dismissal, where parents or other family members claimed that their Fourth or Fourteenth Amendment rights to familial association had been violated when state actors introduced false or fabricated evidence or testimony into criminal cases that were either overturned or dropped, but not before the families had been separated.

Fourth Circuit

Booker v. Sullivan, 2011 WL 3704199 (D.S.C. 2011) A prisoner filed a civil rights action under 42 U.S.C.A. § 1983, alleging that child abuse investigators violated his constitutional rights in placing his child into protective custody, which interfered with the child's ability to visit him while he was incarcerated, but the federal court dismissed his due process claim, as the defendants' conduct was not found to "shock the conscience." The mother was being investigated by the Department of Social Services for neglecting her children and for her drug abuse. A caseworker visited the mother's home and discovered two minor children present without supervision, whereupon the children were placed in emergency custody; additionally, another child—the plaintiff's daughter—who was at school at the time, also was placed in emergency custody. The father thereafter brought suit, alleging that at the probable cause hearing on the removal petition, the caseworker misrepresented his daughter's location when she was taken into custody; failed to state that the grandmother arrived at the residence before the children were removed; and erroneously indicated that the father's address was unknown. The father alleged that these misrepresentations resulted in his daughter's placement, which arguably interfered with his right to family association and to be free of judicial deception. The court agreed that parents have a fundamental liberty interest in the care, custody, and management of their children, but this right is not absolute. At the most, the father's right to contact and have his daughter visit him at the father's place of incarceration was temporarily affected by the child's placement in state custody. The court found that the facts, as alleged by the father, were insufficient to indicate that the defendants intentionally infringed upon his liberty interest in a manner that shocked the conscience. Accordingly, the father's substantive due process claim based on interference with family association was dismissed.

Sixth Circuit

Chambers v. Sanders, 63 F.4th 1092 (6th Cir. 2023) Where children of a wrongfully convicted father, who spent 32 years in prison for a murder, sued the city and the investigating detective, who allegedly violated their substantive due process rights to family integrity, the appellate court affirmed dismissal of the claim, ruling that the plaintiffs had not sufficiently alleged that detective acted with a culpable state of mind directed at interfering with the parent-child relationship. A state court jury convicted a father of first-degree murder; decades later, he was released from prison and his conviction was vacated on the prosecutor's motion, after key witnesses recanted and details of witness manipulation and intimidation were revealed. The lead detective's investigative tactics allegedly included threats and physical violence against witnesses, to secure their testimony against the exonerated individual. His sons filed the suit against the detective and the city and claimed that the wrongful conviction and

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incarceration of their father throughout their childhood and into adulthood violated their constitutional right to family integrity. However, the court ruled that the right to family integrity is not implicated simply whenever the state deprives a child of routine interaction with a parent through wrongful incarceration. Furthermore, it wrote that the due process right of familial association does not protect against all forms of state action that impact parent-child relationships. Actions that collaterally impact the family relationship are insufficient to give rise to a substantive due process claim that the state has violated an individual's right to family integrity. The government official must have, at a minimum, acted with a culpable state of mind directed at the plaintiff's family relationship or a decision traditionally within the ambit of the family. The court clarified that its standard would not be met simply because a government official acted intentionally. The court concluded that the plaintiffs had not pled facts to state a claim that the detective's conduct was directed at interfering with their parent-child relationship, nor that the detective's investigative misconduct and deliberate indifference toward the ex-prisoner's federally protected rights also amounted to "conscience shocking" treatment of his children's federally-protected rights. The plaintiffs did not allege that their rights were targeted by the detective, but instead that violations of their rights were an inevitable byproduct of the detective's violation of their father's constitutional rights. These allegations were held not to state a due process claim, leading the appellate court to affirm the district court's dismissal of the plaintiffs' 42 U.S.C.A. § 1983 claim against the detective in his individual capacity.

§ 10. Incarcerated or criminally charged parent or guardian—Evidence sufficient

In the following cases, under the circumstances presented, courts held that where incarcerated or criminally charged parents or guardians asserted that their Fourth or Fourteenth Amendment rights to familial association had been violated when social workers or other state actors introduced false or fabricated evidence or testimony in their criminal cases, thus resulting in a loss of family unity, that they had presented sufficient evidentiary support to withstand motions for summary judgment or judgment on the pleadings or judgment as a matter of law.

Ninth Circuit

[Estate of Brown v. Lambert](#), 478 F. Supp. 3d 1006 (S.D. Cal. 2020) The widow of a deceased crime lab employee, who committed suicide after he became the focus of a murder investigation, sued the lead detective on the investigation who assisted with the execution of a search warrant in the case, and who allegedly obtained that warrant through judicial deception, thus arguably violating her right to familial association under the Fourteenth Amendment; after a jury verdict in the wife's favor, the detective moved for a new trial, but the court held that a new trial was not warranted. Faced with a "cold case" for a 28-year-old murder case of a child, the police crime lab performed further tests in light of advancements in DNA technology. Those tests revealed DNA from a convicted rapist, in blood samples taken from the victim's clothing. In addition, a combined sperm fraction taken from a vaginal swab from the body revealed trace amounts of semen from a second individual, a former, longtime employee of the crime lab, who worked at that facility at the time of the murder. As the investigation progressed and began to focus on crime lab employee, including the execution of a search warrant at his home and retention of property seized with the warrant, he committed suicide. Thereafter, his widow filed a lawsuit. She argued at trial that the presence of her husband's DNA was the result of "cross-contamination" based on a common practice in the crime lab at the time of the murder where lab employees used their own semen samples to test the reliability of reagents in the lab used for detecting the presence of an enzyme to identify the presence of sperm on evidence taken from a crime victim. A jury returned verdicts for the widow on her claims for judicial deception and seizure beyond the scope of the warrant. The detective filed the motion for a new trial and argued that the findings on these claims were against the clear weight of the evidence. The court wrote that to prove judicial deception, the widow was required to show that: (1) the detective submitted to a judge a warrant affidavit that contained one or more misrepresentations or omissions material to the finding of probable cause; and (2) the detective made those misrepresentations or omissions either intentionally or with reckless disregard for the truth. Further, to show "materiality," she had to demonstrate that the judge would not have issued the warrant if the false information had been excluded (or redacted) or if the missing information had been included (or restored). The jury found that the detective made misrepresentations or omissions material to the finding of probable cause in his search warrant affidavit, that he did so intentionally or with reckless disregard for the truth, and that his conduct caused the widow to suffer injuries warranting damages. The court wrote that the detective's disagreement with the jury's interpretation of the evidence did not entitle him to a new trial on these claims. Accordingly, his motion for a new trial on these claims was denied. On the familial association claim, the jury awarded the widow \$3 million against the detective.

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The court first rejected the detective's argument that the right to familial association did not extend to spouses. Accordingly, the detective was not entitled to judgment as a matter of law on this claim.

Tenth Circuit

[McIntyre v. Unified Government of Wyandotte County and Kansas City, Kansas, 2022 WL 2072721 \(D. Kan. 2022\)](#), appeal dismissed without opinion, [2022 WL 17820087 \(10th Cir. 2022\)](#) Where a wrongly imprisoned son and his mother sued numerous individuals arguably responsible for the son's conviction, which rested on fabricated evidence, the court declined to grant summary judgment in favor of the defendant officer finding, instead, that the plaintiffs had presented sufficient evidence to allow a reasonable jury to determine that the officer acted in such an egregious manner as to violate the plaintiffs' constitutional rights. The defendant exploited his power as a police officer to exploit sex from vulnerable black women in the city. In addition, he used these women as informants to help him clear cases. The plaintiff/mother was one of the defendant officer's victims. The officer repeatedly demanded sex from her and she repeatedly rejected his advances, but the defendant officer's harassment did not stop. Following a murder, the officer framed the mother's 17-year-old son for the crimes that he did not commit. The officer and others arguably fabricated evidence, withheld exculpatory evidence, and deliberately chose not to take basic investigative steps which would have exonerated the son. Additionally, the officer had sexual relationships with two of the eyewitnesses to the murders and was able to force them to falsely identify the son in a photo array. The son was arrested and convicted. Twenty three years, later he was exonerated, prompting him and his mother to file a civil rights suit under [42 U.S.C.A. § 1983](#), asserting Fourth and Fourteenth Amendment evidence fabrication claims against the defendant officer and others. In assessing the officer's summary judgment motion, the court reasoned that viewing the evidence in a light most favorable to the plaintiffs, a reasonable jury could find that based on this exculpatory evidence and ignoring the evidence that the defendant officer falsified, a reasonable officer would not believe that probable cause existed to arrest, detain and prosecute the son. It therefore denied the defendant's motion for summary judgment on this ground. The officer also argued that he was entitled to qualified immunity on the son's due process claim based on fabrication of evidence because (1) the son had not shown that the defendant officer fabricated evidence and (2) in 1994, the law was not clearly established that the defendant officer's conduct constituted fabrication. The court explained that viewed in a light most favorable to the son, a reasonable jury could infer that the officer fabricated a narrative which implicated the son and coerced witnesses to give statements that corroborated a narrative that the defendant officer knew was false. Further, as of 1994, a due process right prohibiting fabrication of evidence had been clearly established, and thus the court denied the officer's motion for summary judgment on the son's due process claim based on fabrication of evidence. The son and the mother also asserted First and Fourteenth Amendment familial association claims against the officer. Despite the officer's response that he was entitled to qualified immunity on these claims, the court wrote that in 1994, the right to familial association was sufficiently clear that every reasonable official would have understood that what the officer was doing violated that right. And by 1985, the Tenth Circuit had made clear that intentionally and unlawfully interfering with familial relations was unconstitutional. Every reasonable officer would have understood that the egregious conduct in this case violated the plaintiffs' rights, the court concluded.

III. Defenses

§ 11. Qualified immunity—Generally—Granted

In qualified immunity cases, courts will not grant summary judgment if, resolving all disputes of fact and credibility in favor of the party asserting the injury, (1) the facts adduced show that the officer's conduct violated a constitutional right, and (2) that right was "clearly established" at the time of the violation. In the following cases, under the facts as presented, courts held that where plaintiffs claimed that state actors violated their Fourth or Fourteenth Amendment right to familial association by submitting false information during child custody or abuse proceedings, those state actors were entitled to qualified immunity because the allegations or evidence did not show that they had violated the plaintiffs' constitutional rights, the first prong of the applicable qualified immunity test.

Fourth Circuit

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[Martin v. Saint Mary's Dept. Social Services, 346 F.3d 502 \(4th Cir. 2003\)](#) The court determined that even if county social workers made misrepresentations to an out-of-state Department of Social Services (DSS) to support the removal of children from the home of their mother for one night without a court order, the social workers' conduct was, at most, negligent, thus not rising to the level of a constitutional violation and therefore entitled the social workers to qualified immunity from the claim that they violated the mother's rights to family integrity. A Maryland state agency received a referral stating that the mother had neglected one of her children by allowing him to stay home from school for half of the school year. The agency filed a petition in the circuit court seeking a finding that the child was a "Child in Need of Assistance" (CINA). Following a hearing, the court ordered that the legal custody of the child be with the Maryland state agency, but that both of the mother's children remain in her physical custody. The mother then moved with her children to Los Angeles, California. Members of both the Los Angeles Department of Child Services and the Los Angeles Police Department arrived at the mother's residence to remove the children to transport them to Maryland for the CINA hearing. When the mother refused to surrender custody, officers forcibly removed the children and held them overnight in a Los Angeles Department facility. The Maryland court then directed that the children be returned to their mother. Subsequently, the mother filed this [42 U.S.C.A. § 1983](#) action against the Maryland state agency and two social workers. After the district court granted the defendants' motion for summary judgment, the mother appealed. The appellate court commented that because of the complicated balance between parents' rights to raise their children and a state's interest in protecting its minor citizens, the contours of the right to familial integrity may not be sufficiently clear in certain situations. Even assuming that the right to familial integrity was clearly established at the time of the defendants' alleged conduct, the court continued that the evidentiary record in this case did not show that the defendants committed any intentional wrong-doing, much less intruded so vigorously into the family as to infringe the plaintiffs' constitutional right to family privacy. For instance, the record was devoid of evidence that set out the alleged misrepresentations made to the Los Angeles Department. Because the record did not indicate that the defendants made misrepresentations to the Los Angeles Department, and because any actions on the part of the defendants causing the removal of the children could have arisen from a mere misunderstanding, the court opined that the defendants' conduct was no more than negligent conduct, if that. Because a [§ 1983](#) claim cannot be sustained on mere negligent conduct, the court held that the defendants were entitled to qualified immunity and thus the district court's judgment granting the defendants' motion for summary judgment was affirmed.

Fifth Circuit

[Marks v. Hudson, 933 F.3d 481 \(5th Cir. 2019\)](#) A mother and her three minor children brought a [42 U.S.C.A. § 1983](#) action against social workers employed by the State's child protective services agency, who allegedly removed the children from their mother's custody based on misrepresentations, but the appellate court found no constitutional violation and thus concluded that the defendants were entitled to qualified immunity. One of the children contacted police to report that the mother hit him in the eye; the Department of Family and Protective Services then received a referral of physical abuse due to bruising on the child's eye. A state judge entered a temporary ex parte removal order for the children for a period of about four months. After the children were returned to the mother, she brought suit, claiming violations of her right to family integrity and to be free from "judicial deception," under the Fourth and Fourteenth Amendments, alleging that the social worker lied in her affidavit that led to the seizure. She further claimed that she did not hit the child, but that he slipped while throwing a "temper tantrum" as the mother was attempting to remove him from her baby's room. The federal court recognized that a constitutional violation occurs if an official makes a knowing, intentional, or reckless false statement or omission that causes the issuance of a warrant without probable cause that leads to the removal of a child from its parent's custody. Consequently, it wrote that an actionable Fourteenth Amendment claim exists for a false affidavit submitted to a court for the purpose of obtaining a child seizure order.

The court removed all plausibly claimed fabrications and inserted all plausibly claimed omissions to determine if the revised affidavit still would have allowed the magistrate's finding of probable cause to support removal of the children. The plaintiff claimed that the child never stated that his mother purposefully hit him but only that his mother hit him after saying he had better find his school paperwork. However, the court reasoned that whether the exact wording the child used was not significant to the removal order. The mother next challenged the social worker's statement that the mother would not cooperate with the family plan, but the court determined that the social worker's characterization of the conversation was not false. The mother also claimed that the affidavit's statement that reasonable efforts had been made to prevent the removal of the children was false because no efforts had been made, but the court wrote that this was not a false statement as the mother did not deny that the social worker attempted on multiple occasions to contact her and that the mother refused the social worker's plan for her to attend counseling. Similarly, the mother claimed that the statement that she was "physically abusing her son" was false because the child was

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known to be a problem at times and out of control which was known to the social worker. The court commented, however, that such evidence did not refute that the child had a black eye, which, contrary to the mother's assertion, could reasonably be interpreted by the social worker to be "evidence of abuse." Moreover, the child's prior instances of behavioral problems were held not to bear on the alleged conduct of the mother. The court acknowledged that there were some potentially false statements made by the social worker—that she swore she saw a light being turned off at the mother's home as evidence that whoever was there ignored the social worker's knocking at the door, that there was an agreement to allow the child to reside with his father, and that the child's injury was serious—but the court determined that probable cause did not turn on those allegedly false allegations. Removing these supposedly false statements did not undermine the finding of probable cause. Turning to what was allegedly omitted in the affidavit, the mother claimed that the social worker did not include in her affidavit that she had talked to one of the other children, who said his brother's bruise was the result of an accident stemming from the child's temper tantrum, that a doctor determined the injury was not "serious," that the child had prior behavioral problems, and that the father told an officer that the injury was an accident. The court appended the claimed omissions into what was properly before the magistrate and decided that the additions did not affect the finding of probable cause. A complete affidavit would have stated that the child called law enforcement concerning his black eye; Protective Services received a referral for physical abuse; and the mother was uncooperative, refusing to enroll in counseling. The mother also had allowed the child to be with his father for a short period of time, but then took the child back to her residence, refusing to allow that child to stay at his father's home any longer. The affidavit would note that the child had previously had behavioral problems and that a doctor stated the injury was not serious. Having reconstructed the affidavit, the court held that there was an adequate basis for the issuance of the temporary conservatorship order, and therefore there was no Fourth Amendment violation based on the social worker's affidavit.

[Wernecke v. Garcia, 452 Fed. Appx. 479 \(5th Cir. 2011\)](#) (per curiam) Where parents brought a civil rights action alleging that a social worker violated their Fourth and Fourteenth Amendment rights by seizing three of their children, based on a petitioner for removal that arguably omitted critical information, the appellate court affirmed the lower court's ruling that the social worker was protected by qualified immunity from the Fourth Amendment claim. A couple's young daughter was diagnosed with Hodgkin's disease and treated with chemotherapy; her physician recommended radiation treatment. Her parents refused, at least initially, to consent. The Texas Department of Family and Protective Services (TDFPS) received a report of medical neglect regarding the daughter and filed a petition seeking emergency temporary custody of the child. After a judge ordered that TDFPS be given temporary custody of the girl, a social worker observed allegedly "deplorable" conditions in the home and removed two other children who were present. Thereafter, the parents filed this [42 U.S.C.A. § 1983](#) action against the department, two deputies, and six department employees, including the social worker involved, claiming violations of the family's Fourth and Fourteenth Amendment rights. They contended that the social worker committed a constitutional violation by omitting before the county judge that they had requested the daughter be referred for radiation but the referral could not be made because the physician was not certified in pediatric radiology. The lower court awarded summary judgment to the social worker and the parents appealed. The court explained that social workers violate the Fourth Amendment when they knowingly and intentionally, or with reckless disregard for the truth, make a false statement or omission that results in the issuance of a warrant without probable cause. The court inserted the arguably omitted facts—that the parents had requested a referral, but were unable to obtain a certified physician to treat their daughter—but ruled that the reconstructed affidavit did not preclude a finding of probable cause. Therefore, the parents had not shown, for summary-judgment purposes, a genuine dispute as to whether the social worker's omissions resulted in the issuance of an order without adequate grounds. Accordingly, they were entitled to qualified immunity. In the alternative, the court determined that the parents failed to show a genuine dispute as to whether a reasonable official would have necessarily believed that omitting the exculpatory fact that a referral was requested, along with the inculpatory fact that the requested physician was not certified, would violate the Constitution. Accordingly, the lower court's decision granting summary judgment in favor of the defendant was affirmed.

Seventh Circuit

[Taylor-Doyle v. Poehls, 2010 WL 476700 \(C.D. Ill. 2010\)](#) The court granted summary judgment in favor of a high school dean sued by a student's mother after the dean made an abuse allegation against the mother, purportedly based on falsehoods, the court finding instead that the dean had not acted unreasonably. The plaintiff's daughter had sexual intercourse with a male student in a bathroom at their high school, and the mother and daughter then had a meeting with the dean about the appropriate punishment. During this meeting, the mother used profanities and directed the phrase "your ass" toward the daughter. The dean noticed that the student appeared "very upset" and had "a very shaken look about her." After the meeting ended and the mother

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departed from his office, the dean asked the daughter if the mother ever abused her. The daughter answered affirmatively and specifically stated that the plaintiff hit her in the head with a boot and dunked her head in dishwater. The dean noticed marks on the girl's forehead and neck. The Illinois Department of Children and Family Services suspected-abuse hotline was contacted and the mother was arrested for domestic battery and endangering the life and welfare of a child. After the charges against the mother were dropped, she commenced this action against, inter alia, the dean, alleging he had interfered with her right to familial relations under the Fourteenth Amendment. In assessing the defendant's motion for summary judgment, the court remarked that in order to determine whether an individual's right to familial relations has been violated by a government actor, it had to perform a balancing test between the fundamental right to the family unit and the state's interest in protecting children from abuse. The mother asserted that the dean had no articulable evidence to support a reasonable suspicion that the daughter was abused. However, the court wrote that the undisputed facts revealed an entirely reasonable basis which justified the dean's suspicion. A reasonable person would have suspected that the daughter had been or was in imminent danger of being abused. Furthermore, the plaintiff provided no evidence that the dean improperly influenced the daughter to make her abuse allegations. The court continued that, even assuming, arguendo, that the dean's actions violated the plaintiff's constitutional rights, he was entitled to qualified immunity, since the court could not conclude that the dean's conduct was so plainly egregious that he knew or should have known that he was violating the mother's constitutional rights. The court emphasized that the dean was a mandated reporter of suspected child abuse claims and his suspicions were reasonably based on the daughter's statements, the marks and bruises he observed on the girl's body, and the language he observed the mother direct toward the daughter during the meeting in his office. The dean's actions were objectively reasonable at the time they were taken. Accordingly, the dean was entitled to qualified immunity on this claim, and his motion for summary judgment was granted.

Eighth Circuit

[Collins v. Bellinghausen](#), 153 F.3d 591, 137 Lab. Cas. (CCH) ¶ 58522 (8th Cir. 1998) The court granted summary judgment in favor of defendants who investigated a granddaughter for potential elder abuse, upon finding that the defendants' actions were reasonable given their knowledge that the granddaughter had removed her grandmother from a nursing home under a pretext and without consulting with the medical staff, had violently resisted her grandmother's removal from the home, and had generally behaved in a way that would lead the defendants to believe she would again attempt to remove her grandmother from a treatment facility. The granddaughter had become dissatisfied with the care her grandmother was receiving at a nursing home and removed her grandmother from the facility without consulting the staff on the pretext of taking her for an automobile ride. The State Department of Human Services began an investigation, in which the granddaughter was largely uncooperative. A doctor opined that the grandmother was a possible victim of abuse, and it was decided to remove the grandmother from her home. Upon the officers' entrance into the home, the granddaughter vigorously resisted their attempts to remove her grandmother; she screamed at and struck the officers. Later that day, a local magistrate reviewed the officials' affidavits, found probable cause to believe that the granddaughter was seriously mentally impaired and was likely to injure herself or others if allowed to remain at liberty, and ordered the county sheriff to take the granddaughter into custody for involuntary commitment. She later was prevented from visiting her grandmother in the care center. The granddaughter then filed this action under 42 U.S.C.A. § 1983, alleging that the removal of the grandmother from her home violated both the grandmother's and the granddaughter's Fourteenth Amendment right to family integrity. The lower court denied the defendants' motions for summary judgment. The defendants appealed. The appellate court wrote that abuse investigators who have otherwise disrupted family integrity nevertheless are entitled to qualified immunity if their actions are properly founded upon a reasonable suspicion of abuse. Assuming that the removal of the grandmother from her home implicated the Fourteenth Amendment, the court concluded that the information available to the defendants was more than sufficient to support a reasonable suspicion that the granddaughter would constitute a danger to the grandmother or herself if she were allowed to remain at liberty. Accordingly, the defendants were entitled to qualified immunity.

[Doe v. Hennepin County](#), 858 F.2d 1325 (8th Cir. 1988) The federal court rejected a claim brought by parents against a county welfare agency and others who were purportedly responsible for removing the couple's children from their home, the court ruling that the officials were protected by qualified immunity despite the parents' claims that the defendants made falsehoods in the state court proceedings. The county Child Protection Division received a call informing them that the parents' two children, ages two and five, were involved in sexually precocious behavior and that the father, while under the influence of marijuana, had engaged in sexual behavior with one of the children. Subsequently, the county agency prepared an emergency petition and a judge issued a warrant removing the two children from their parents' home. Sixteen days later, the children were returned to their parents,

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after the allegations of abuse proved to be unfounded, prompting the parents to bring a civil rights claim under 42 U.S.C.A. § 1983. They contended that because of false allegations made by agency officials in the emergency removal hearing, they were deprived of their liberty interest in family unity. The district court dismissed certain claims and entered summary judgment on the others, ruling that there was no deprivation of the parents' constitutional rights and that many of the defendants were shielded by qualified immunity. The parents appealed. The appellate court explained that the essence of the alleged deceptions, according to the parents, were false statements by agency officials that the parents were planning to send the children to Chicago to avoid investigation and exaggerations of the children's' precocious sexual behavior. The parents maintained that this negated the inherent procedural safeguards of the ex parte emergency removal hearing. However, the appellate court determined that this claim was barred by qualified immunity in the absence of evidence of malice or improper motives on the part of the defendants. While the district court did note that certain allegations were exaggerated and that agency officials made false inferences at the hearing, these errors were held not to rise to the level of constitutional significance because there was no evidence of any motive to fabricate evidence or evidence of malice towards the parents. The appellate court affirmed the district court's grant of summary judgment in denying the parents' claims.

Ninth Circuit

Keates v. Koile, 883 F.3d 1228 (9th Cir. 2018). Where a mother brought suit after Child Protective Services (CPS) removed her child from her custody following the child's hospitalization for depression and suicidal ideations, the court concluded that the mother's judicial deception claim could not withstand the defendants' motion to dismiss. The 13-year-old child had been experiencing depression for four to six months, and on occasion, contemplated suicide. After the child was hospitalized, a hospital employee and a hospital social worker informed the mother that it had been decided that the child would not be permitted to go home with the mother and would be required to go to a mental hospital for inpatient treatment. After the mother stated that she lacked health insurance to pay for inpatient treatment, a CPS report was made suggesting that the mother might attempt to take her daughter and leave the medical center. The case worker issued a notice to place the child into CPS custody. The child then was delivered by ambulance to a psychiatric hospital. Although the intake nurse at this hospital found the child's suicide risk to be low, the child remained at the hospital despite her expressed desire to return home and her anger at not being able to have any contact with her mother. A dependency petition was prepared, and after the child was discharged from the hospital, she was placed in a foster home. After spending nearly four months outside of her mother's custody, the child finally returned home and the dependency petition was dismissed. The mother then filed this action and alleged that a number of individuals involved in the case had violated her and her child's constitutional rights to familial association under the First, Fourth, and Fourteenth Amendments and their right to be free from deliberately falsified evidence in dependency proceedings. After the district court dismissed the mother's constitutional claims on the ground that all defendants were entitled to qualified immunity, the mother appealed.

While the appellate court ruled that the allegations were sufficient to state a claim to relief on the theory that the case worker's exercise of authority over the child interfered with the mother's relationship with the child, it held that the plaintiff had not adequately alleged a claim of judicial deception. In order to prevail on a judicial deception claim, the plaintiffs had to prove that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty. If state officials submitted affidavits that contained statements they knew to be false or would have known were false had they not recklessly disregarded the truth, they could not be said to have acted in a reasonable manner, and the shield of qualified immunity was lost, the court wrote. It continued that, construed in the light most favorable to the mother and the child, the complaint made a single factual allegation supporting this claim, namely, that the dependency petition used to obtain the removal order falsely stated that the child attempted suicide even though the girl specifically told the case worker and hospital employees that she had not attempted a suicide at any time in the recent past. However, "someone" at the hospital had reported to CPS that the child was suffering severe depression and had attempted a suicide by strangulation; the court determined that a reasonable officer in the caseworker's position could have given more weight to this information from the hospital than to the denials from the mother and the child. Thus, this statement could not be characterized as a deliberate falsehood. As to whether the statement was made with a reckless disregard for the truth, the court remarked that by the time the dependency petition was filed, the caseworker should have been aware of the hospital's diagnosis that the child was at low risk for suicide. Nevertheless, the hospital's prediction of the child's suicide risk in the future did not directly contradict the statement from "someone" at hospital that the child had attempted suicide. The appellate court concluded that the complaint did not plausibly allege that the caseworker knew or recklessly disregarded the truth when he included this statement in the dependency petition and therefore the district court did not err in granting the motion to dismiss this claim.

[Dunkle v. Dale, 2017 WL 4750635 \(D. Alaska 2017\)](#), summarily aff'd, [729 Fed. Appx. 616 \(9th Cir. 2018\)](#) The court granted summary judgment in favor of a social worker on a parent's Fourteenth Amendment claim to familial association, which claim rested on the plaintiff's allegation that there existed a clearly established due process right not to be subjected to false accusations on the basis of false evidence. The mother argued that the defendant social worker lied during various points in the process that led to the termination of her parental rights to the child. The plaintiff identified eight statements made by the social worker that she alleged were false, while the social worker offered plausible explanations for each challenged statement. The court remarked that in order for the plaintiff's claim to survive, she had to (1) make a substantial showing of the social worker's deliberate falsehood or reckless disregard for the truth, and (2) establish that, but for her dishonesty, the outcome would have been different. The mother suggested that the social worker falsely testified that there was a "report of harm" in order to mislead the court into believing that the situation was worse than it actually was. However, the federal court found that the social worker's use of the statement "report of harm" rather than a "report of concern" did not rise to the level of a fabrication. Next, the mother conceded that her last use of illegal substances was five months into her pregnancy but complained that the social worker falsely suggested that she had used illegal drugs during her entire pregnancy. The court wrote that even if the social worker did make the challenged statement, the outcome unlikely would have been different, adding that the social worker had been informed by two physicians that the mother's positive opiate result was probably not due to any drugs prescribed to her, and thus the social worker's testimony was not objectively false. The mother next alleged that the social worker falsely testified that the mother did not participate in the plan created for the family. The mother contended that evidence of her participation in the programs just never made it into the case file. The court wrote that the mother's failure to keep documentation of her efforts did not render the social worker's testimony false. It also was alleged that the mother did not stay connected with the social worker. The mother now claimed in her briefing (citing only her own deposition) that she attempted to contact the social worker and left messages and sent letters by certified mail with no success. But the court pointed out that she provided no certified mail receipts as evidence. It found no evidence that the social worker's testimony in this regard was false. The court concluded that the mother failed to support her allegations that the social worker fabricated evidence against her. Even giving the mother the benefit of the doubt, she also failed to establish that the outcome would have been different. Accordingly, the court granted the defendant's motion to dismiss the case. Note that subsequently, in [Dunkle v. Dale, 729 Fed. Appx. 616 \(9th Cir. 2018\)](#) the appellate court affirmed the district court's grant of qualified immunity in favor of the defendants.

Tenth Circuit

[Arguello v. Arguello, 2012 WL 13054707 \(D.N.M. 2012\)](#) The court ruled that a child's grandmother, an employee of the New Mexico Children, Youth and Families Department, was protected by qualified immunity on all federal law claims brought by the child's father, who alleged that the grandmother made a false allegation of child abuse against him. The parents were involved in a contentious divorce and child custody proceeding; the father was granted custody of the couple's child, and the mother was granted supervised visitation rights. The grandmother was appointed to supervise the mother's visits with the child. During one exchange of the child, the six-year-old was uncooperative and difficult to control and began to scream and struggle; the father picked up the child and handed her to the grandmother. Later that evening, the mother noticed a bruise in the shape of a hand on the child's left thigh. Police were called and the grandmother called to report suspected child abuse. An investigator conducted an interview of the child out of the presence of the parents and found no child abuse or neglect. The custody arrangement remained in place, and the investigation was closed. The father then brought suit and alleged that the grandmother made a false report of suspected child abuse, which violated his federal substantive due process right to familial integrity. The court wrote that the Fourteenth Amendment protects parents' rights to familial integrity, which includes the right to make decisions concerning the care, custody, and control of their children. However, courts also recognize that this right to custody is balanced against the countervailing state interest in protecting the child from abuse. Importantly, parents do not have a constitutional right to be free from child abuse investigations. The court continued that government officials who knowingly make false reports child abuse or who knowingly pursue false reports of abuse can be liable for violating parents' substantive due process right to familial integrity. Here, the grandmother contended that the father had not disputed the existence of a hand print on the child's thigh; thus, her report arguably was not false. The court agreed that the evidence showed that the grandmother did not make a false report. Nor had the father come forward with any evidence that the grandmother misrepresented or omitted important facts in her report. Therefore, the grandmother did not violate the father's right to familial integrity. Further, even though the child was separated from the father for the 50-minute interview, this brief separation was deemed insufficient to constitute a violation of

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the father's right to familial integrity. Hence, the grandmother was entitled to qualified immunity from the father's [42 U.S.C.A. § 1983](#) claims for violation of his Fourteenth Amendment right to familial integrity.

§ 12. Qualified immunity—Generally—Not granted

In the following cases, courts, under the facts as presented, declined to award qualified immunity to defendants sued under the Fourth or Fourteenth Amendment by aggrieved parents or other family members who asserted that social workers or others made falsehoods that resulted in the temporary or permanent loss of custody of the plaintiffs' children, thus interfering with their right to familial association.

Fifth Circuit

[Morris v. Dearborne](#), 181 F.3d 657, 136 Ed. Law Rep. 693 (5th Cir. 1999) It was held that a teacher was not entitled to qualified immunity on a parents' claim that the teacher fabricated an allegation of sexual abuse against a student's father, the court reasoning that the teacher's conduct shocked the contemporary conscience so as to violate the family's substantive due process rights and was not objectively reasonable. The plaintiffs enrolled their four-year old daughter—who had been diagnosed as having elective mutism—at a school to obtain speech therapy. Without the parents' permission or knowledge, the child's teacher had the child use a machine called a "Facilitative Communicator," in which a person known as a "facilitator" would support the arm of a developmentally disabled individual to allow the person to type. The process was known to be highly controversial at the time, in large part because of the fear that the facilitator, and not the typist, would control the output. Additionally, it was alleged that the machine, and the technique, about which the teacher had received one day of training, was not to be utilized with children as young as the plaintiffs' child. During the initial session with the child, which was also the teacher's first attempt to use the device with a student, the teacher guided the child's hand to type a printout containing allegations of sexual abuse against her parents. At that time, the child could not read or write, and did not even know all the letters of the alphabet. The teacher contacted the Texas Department of Protective and Regulatory Services (TDPRS) about her concerns about sexual abuse of the child. An employee of TDPRS and a sheriff's deputy came to the teacher's classroom, interviewed the child, and observed one of their sessions. Subsequently, the child was removed from her parents' custody, and TDPRS initiated proceedings to permanently terminate the plaintiffs' parental rights. Although examinations by two physicians revealed no evidence of sexual abuse, the parents lost custody of their daughter for almost three years. Following return of their child, the parents filed an action pursuant to [§ 1983](#), alleging that the teacher violated their substantive due process rights to maintain family integrity. The teacher responded that she was entitled to qualified immunity. The appellate court agreed with the district court that the teacher's conduct "shocked" the contemporary conscience and was not entitled to qualified immunity since her conduct was not objectively reasonable. Although the teacher contended that she merely reported abuse allegations, while it was a state court judge who actually made the decision to remove the child from her home, and that therefore the teacher did not cause any constitutional violations, the court emphasized that the teacher's role was not limited to that of a mere reporter of suspected abuse, but she allegedly created false evidence that was presented to the state court judge and to child welfare officials in the first instance, thereby compromising the integrity and independence of the state proceeding. The appellate court thus affirmed the district court's denial of summary judgment on the teacher's qualified immunity defense to the parents' claimed violation of their constitutional right of family integrity.

Sixth Circuit

[Tingay v. Michigan Dept. of Human Services](#), 2014 WL 4627135 (W.D. Mich. 2014) It was held that state officials were not protected by qualified immunity from claims that they had made falsehoods in the process of investigating a mother for abusing her children. The county Department of Human Services (DHS) received a complaint alleging that one of the couple's five children had been subjected to physical abuse. Specifically, it was alleged that the mother had slapped the child in the face causing marks to her left eye area. A Child and Protective Services investigator and a foster care licensing worker employed by the DHS interviewed the children and found a preponderance of evidence that the mother had subjected one or more of the children to maltreatment. This resulted in the mother's revocation of her foster care license, her placement on a child abuse registry, and loss of her work as a substitute teacher. After DHS was ordered to remove the mother's name from the state's central

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abuse registry, the couple initiated this action and asserted claims against the investigator, the licensing worker, and others for violating their parental rights, for failing to follow proper forensic interview techniques and for intentionally falsifying their reports. The court remarked that while the government may possess a compelling interest in investigating allegations of child abuse, it does not possess a compelling interest in intentionally falsifying the results of such investigations. Accordingly, the investigator and the licensing worker were not entitled to summary judgment or qualified immunity as to the plaintiffs' federal law claims for violation of their right to familial integrity and familial association.

[Abdulsalaam v. Franklin County Bd. of Com'rs, 637 F. Supp. 2d 561 \(S.D. Ohio 2009\)](#), *aff'd* on other grounds, [399 Fed. Appx. 62 \(6th Cir. 2010\)](#) Where a mother brought suit against a child services agency and a caseworker, among others, alleging that abuse and neglect allegations against the mother had been fabricated by the caseworker, resulting in the removal of her children, the court ruled that the caseworker was not entitled to qualified immunity. The mother had been separated from her three daughters for a year, during which time the children were placed in the custody of the county Children Services due to allegations of educational neglect and physical abuse. After the case was terminated, the mother filed a complaint against a number of individuals involved in the proceedings including the case supervisor and the caseworker who allegedly violated her First and Fourteenth Amendment rights to familial association by fabricating evidence of abuse and neglect and refusing to drop the case despite lack of substantiation of the abuse and neglect claims. The defendants moved for summary judgment. The court recognized the right to familial association but remarked that it is not absolute and must be balanced by an equally compelling governmental interest in the protection of children. Thus, a governmental investigation into allegations of child abuse normally does not violate the right to familial association. The result is different, however, where there is evidence that the investigation was undertaken in bad faith or with a malicious motive or if tactics used to investigate would shock the conscience. The court wrote that the plaintiffs produced evidence that, when viewed in the light most favorable to them, showed that the case worker fabricated evidence against them during the child abuse and neglect investigation. A reasonable case worker would have known that she was putting the familial rights of the mother and her children at risk when she invented evidence against the mother. This was especially true given that the fabrications were recorded in the official administrative file, which would foreseeably form the basis of a complaint against the mother. Moreover, the case worker would have been aware that she was the sole source of information about the family to the family court. As a result, the federal court held that the case worker was not entitled to qualified immunity with respect to the mother's familial association claim and summary judgment was denied on this claim. Note that subsequently, the appellate court in [AbdulSalaam v. Franklin County Bd. of Com'rs, 399 Fed. Appx. 62 \(6th Cir. 2010\)](#), held that it lacked jurisdiction to consider whether the district court correctly determined that genuine factual disputes precluded awarding the caseworker qualified immunity on the mother's substantive due process claims.

Ninth Circuit

[Benavidez v. County of San Diego, 993 F.3d 1134 \(9th Cir. 2021\)](#) Parents brought a civil rights action against county social workers and the county that employed them, alleging that they were liable under [42 U.S.C.A. § 1983](#) for violating the parents' due process right to a hearing free from judicial deception, which hearing resulted in the removal of the parents' children from their home, and the appellate court held that the complaint stated a plausible claim against the social workers, who were not qualifiedly immune from liability. The social workers had obtained a protective custody warrant and, with police assistance, removed the minors from their home. Three days later, a juvenile court held a detention hearing and issued an order authorizing a medical examination, although none of the social workers discussed the examinations with the parents before or after the hearing. Thereafter, the parents sued a number of individuals involved in the investigation, seeking to hold them liable under [§ 1983](#) for judicial deception during the state juvenile court proceedings. They alleged that the social workers procured the juvenile court orders through judicial deception, suggesting that the social workers misrepresented that "reasonable efforts" had been made to notify the parents about the children's medical examinations. The lower court dismissed the action and the parents appealed. The appellate court recognized a constitutional right under the Due Process Clause of the Fourteenth Amendment to be free from judicial deception and fabrication of evidence in the context of civil child custody cases. It determined that the orders—which stated that there had been an effort by the County to notify the parents, or the parents objected to medical examinations, or that the county made reasonable efforts to schedule the examination of the child for a time when the parents were available—in conjunction with the allegation that the parents did not learn of the medical examinations until after the minors were released from protective custody, set out a claim judicial deception and met the heightened pleading standard of [Fed. R. Civ. P. 9\(b\)](#). A plausible inference of a reckless disregard for the truth could be made, the court added. Additionally,

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the alleged misrepresentations were material to the granting of the juvenile court's orders. The complaint, therefore, alleged a constitutional violation by making out a claim based on violations of the parents' right to be free from judicial deception.

The claims also were deemed to be sufficient under [Rule 9\(b\)](#) because they alleged with particularity a claim involving fraud. The complaint contained allegations stating the who, what, when, and where of the judicial deception: the complaint identified the social workers who presented the detention report to the juvenile court, alleged specific omissions regarding failure to notify the parents of the medical examinations to the juvenile court, and made clear that the juvenile court did not discuss the medical examinations with the parents. The federal court also determined that qualified immunity did not protect the social workers from liability. It explained that precedent established the right to be free from judicial deception in child custody proceedings. Prior cases establishing this right in the context of protective custody had been decided well before the date of the alleged conduct. Therefore, the social workers had fair warning that material omissions and misrepresentations with a deliberate disregard for the truth to a juvenile court would violate the Constitution. It was reasonably foreseeable that unconstitutional misrepresentations to the juvenile court would result in medical examinations conducted on the children without their parents' knowledge or consent. Thus, a reasonable social worker would understand that providing false information concerning notification to parents when requesting a juvenile court order for a medical examination on minors in protective custody would violate or at least disregard a substantial risk of a violation of the parents' rights. Accordingly, the appellate court reversed the dismissal by the district court as to the claims against the social workers and held that the social workers were not entitled to qualified immunity.

[Patrick v. County of Los Angeles, 2023 WL 9100994 \(C.D. Cal. 2023\)](#), report and recommendation adopted without opinion, [2024 WL 54590 \(C.D. Cal. 2024\)](#) A father filed a civil rights case under [42 U.S.C.A. § 1983](#) and claimed that social workers involved in his children's dependency case maliciously included false information in their reports; the court declined to dismiss the claims against one of the social workers. A dependency petition was filed based on statements from the father's nanny and his roommate. The resulting dependency petition included allegedly deceptive claims, including allegations about his ex-wife, who had not been in the picture for the previous month; claims that he had had a "meth breakdown" when, in fact, the social worker had access to medical records showing that he only had marijuana in his system; claims relating to a "violent physical altercation" in the presence of the children, when the children were not, in fact, present during the argument between the father and the roommate; and suggestions that the plaintiff had untreated mental health issues, when, in fact, he had taken steps to receive treatment when necessary. The father filed three causes of action, including one based on purported violations of his right of familial association, against the social workers involved in the case. The court ruled that the social worker's conduct was not subject to qualified immunity and denied her motion to dismiss.

[Bliss v. Adewusi, 2024 WL 1912589 \(D. Or. 2024\)](#) Where a couple brought suit against individuals who allegedly instigated an unfounded criminal prosecution of the father for child abuse and wrongfully initiated custody proceedings with respect to the couple's two children, and where the parents claimed that the defendant officers fabricated evidence of abuse, the court ruled that the plaintiffs' allegations were sufficient to withstand the defendants' motion to dismiss. The court explained that to prevail on a [42 U.S.C.A. § 1983](#) claim of deliberate fabrication, the plaintiffs had to prove that (1) the defendant officials deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty. To establish the second element of causation, the plaintiffs had to show that (a) the act was the cause in fact of the deprivation of liberty, meaning that the injury would not have occurred in the absence of the conduct; and (b) the act was the proximate cause or legal cause of the injury, meaning that the injury was of a type that a reasonable person would see as a likely result of the conduct in question. Direct evidence of fabrication, such as misquoting witnesses, suffices to state a claim, the court continued. Absent direct evidence of fabrication, the plaintiffs had to point to evidence that either (1) the defendants continued the investigation of the couple although they knew or should have known that they were innocent, or (2) the defendants used investigative techniques that were so coercive and abusive that they knew or should have known that those techniques would yield false information. Under the latter standard, the coercive techniques had to be ones that shocked the conscience. The court noted that the complaint alleged that the sheriff officers "falsely reported statements that the father made during their interrogation[.]" The complaint also stated that the officers told the father "that the child would only get the medical care she needed if the father or the mother confessed to abusing the child." The court reasoned that a jury could conclude that this interrogation technique was sufficiently coercive that the defendant officers knew or should have known that it would yield false information. According to the complaint, the parents had rushed their injured baby to the hospital and were in the middle of seeking treatment for her. In that context, a threat to withhold medical treatment for the child could reasonably be viewed as coercive toward the parent. Likewise, the complaint alleged that the officers interrogated the mother "while she was distraught and had already been awake for over 36 hours, even

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though she asked to schedule the interrogation for another time." This conduct, in the context of the mother's known fear for the health of her child, also could reasonably be viewed as coercive. The complaint further alleged that the officers coerced statements from the plaintiffs and "twisted" them to support allegations that the father abused the child. The court ruled that the plaintiffs adequately alleged that the defendants' fabrications caused their injuries. While the defendants argued that they reasonably relied on medical professionals who stated that the child had been abused, the court noted that a lack of probable cause is not an element of a fabrication claim under the Fourteenth Amendment. Regardless, the plaintiffs alleged that the county defendants deliberately fabricated evidence of abuse alongside medical professionals and thus did not allege that the defendants innocently relied on the erroneous opinions of medical professionals. Accordingly, the court held that the defendants were not entitled to qualified immunity at this stage of the case.

Tenth Circuit

[Rinehart v. Smart, 2006 WL 1525939 \(W.D. Okla. 2006\)](#) The court denied a motion to dismiss filed by two counselors who purportedly provided false information to the district attorney who filed a petition seeking custody of the plaintiffs' children, thereby arguably interfering with the parents' right to familial integrity. According to the couple's complaint, the wife had a verbal altercation with one of the counselors on the phone, following which two of the defendants purportedly contacted the district attorney and filed a Safety Assessment Form alleging that the couple lacked parenting skills and self-control, were unemployed, that one of their children was "highly vulnerable to severe abuse," and that the couple was unwilling to protect their young daughter. As a result of these allegations, the district attorney filed a deprived-child petition against the couple alleging they were unfit parents and recommending the children be placed under Department of Human Services supervision. The petition was eventually dismissed, and the couple brought suit, claiming that two of the counselors violated their substantive due process right to familial integrity by providing false information to the district attorney who, in turn, filed the deprived-child petition. The court wrote that it had long recognized family relationships as one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. This right is not absolute or unqualified, however, as the state itself has a compelling interest in the health, education and welfare of children. The court added that parents have no constitutional right to be free from child abuse investigations. However, a state has no interest in protecting children from their parents unless it has some articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse. Accepting the allegations in the complaint as true, as the defendant had filed a motion to dismiss, the court concluded that the counselors were not entitled to qualified immunity, given the allegations that they made false accusations of abuse and neglect and caused a deprived child action to be filed against the couple based simply on a missed appointment and a verbal disagreement between the mother and one of the defendants. The facts as presented did not create an objectively reasonable suspicion that the couple's children were in danger of abuse or neglect and instead indicated that the counselors could have had some alternative motive in pursuing an investigation against the couple. As a result, the defendants' motion to dismiss the couple's claims against the counselors, in their individual capacities, on the basis of qualified immunity was denied.

§ 13. Qualified immunity—Right is clearly established

Courts generally apply a two-prong analysis in qualified immunity cases, under which summary judgment is improper if, resolving all disputes of fact and credibility in favor of the party asserting the injury, (1) the facts adduced show that the officer's conduct violated a constitutional right, and (2) that right was "clearly established" at the time of the violation. In the following cases, courts ruled, under the facts as presented, that parents and guardians had adequately demonstrated that it was clearly established, at the relevant time, that social workers and other county and state officials had violated the parents' or guardians' Fourth or Fourteenth Amendment rights to familial association by submitting misrepresentations to state court during abuse, dependency or custody proceedings and therefore the defendants were not shielded by qualified immunity.

Fifth Circuit

[James v. Walker-Smith, 2020 WL 3266560 \(S.D. Tex. 2020\)](#) Where a plaintiff alleged that a social worker knowingly, or at least recklessly, submitted a removal affidavit to the family court with false, misleading, and omitted information about the plaintiff's child's past medical care, the social worker's visit to the mother's residence, whether the child was in imminent danger, whether reasonable efforts had been made to prevent the removal of the child, and the credibility of statements from the child's

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father, thereby causing the family court to award the Texas Department of Family and Protective Services (TDFPS) temporary conservatorship of the child, the federal court declined to dismiss the claims, ruling that the social worker's conduct violated clearly established law. The mother gave birth to the child who was a "micro-preemie" and spent its first 16 weeks in an incubator with oxygen support. It took the child approximately five months to be discharged from the hospital. Although the child's first physician never raised any concerns about the mother's ability to care for her child, the Child Abuse Pediatrics team at the hospital speculated about potential medical child abuse. Medical staff recommended a therapeutic separation between the mother and child to help make the diagnosis of medical abuse. A hospital social worker made a referral to TDFPS, the department filed a petition in family court, and the department was appointed as permanent managing conservator for the baby. TDFPS eventually dismissed the case against the mother, although the child's grandparents, rather than the mother, continued to have primary conservatorship of the child. The mother then filed this complaint pursuant to 42 U.S.C.A. § 1983, alleging that a number of individuals involved in the case had violated her due process right to family integrity and her right to be free from the unreasonable seizure of her child. She contended that the referral contained significantly misleading statements and omissions, such as that she previously had the child in a helmet for 23 hours a day although the baby did not require it. Additionally, affidavit statements from the child's father seemed to corroborate allegations of medical abuse, but omitted crucial facts about his credibility, including that he and the mother had separated, he had minimal contacts with the child, he openly and regularly used drugs for a decade, he had an outstanding child support judgment, and he moved out of the country, likely to avoid paying child support.

The court wrote that a constitutional violation occurs if an official makes a knowing, intentional, or recklessly false statement or omission that causes the issuance of a warrant without probable cause that leads to the removal of a child from its parent's custody. To assess whether the mother stated a constitutional violation, the court accepted the well-pleaded claims of falsehood and omissions, and then removed all plausibly claimed fabrications and inserted all plausibly claimed omissions to determine if the revised affidavit would still have supported the same outcome. Here, the reconstructed affidavit was significantly different than the original. It contained information from the child's medical records allegedly indicating that her medications and past treatments were prescribed based on objective testing and medical examinations; it omitted statements from the initial referral that allegedly were refuted by the child's medical records; it described how, during the social worker's visit to the mother's residence, the child allegedly appeared healthy and happy and was no longer on oxygen per doctor's orders. So reconstructed, the affidavit provided not only grounds for questioning the thoroughness of the doctors' medical abuse diagnosis and the trustworthiness of the father's corroboratory testimony, but also did not support a finding of "immediate danger to the physical health or safety of the child," or a finding "that reasonable efforts were made to prevent the removal of the child," both of which were required for a temporary order of removal. Hence, the mother was found to have stated a claim that the social worker violated her rights under the Fourteenth Amendment by submitting a false and misleading affidavit to the family court for the purpose of obtaining the child's removal. Next, the court determined that the Fourteenth Amendment rights upon which the mother relied were clearly established at the time of the relevant events. Finally, it determined that no reasonable official would have believed it to be constitutional to obtain a seizure order by acting recklessly or dishonestly. Hence, the mother's allegations sufficed to state a claim that the social worker acted objectively unreasonably and the social worker was not entitled to qualified immunity on this Fourteenth Amendment claim.

Eighth Circuit

[Heartland Academy Community Church v. Waddle, 595 F.3d 798 \(8th Cir. 2010\)](#) Where the owners of a religious boarding school, along with students and parents, sued state officials who raided the school and seized a number of its students, the appellate court held that the officials' alleged conduct violated clearly established law, as they purportedly made false statements in order to obtain orders to remove the children. The officials were alleged to have participated in a conspiracy to harass and intimidate a Christian faith-based boarding school. The school educated and provided social services to children with behavioral and substance abuse problems. On the date in question, juvenile authorities and armed law enforcement officers, 30 total, arrived at the school's campus and removed 115 of its students. Two officials allegedly used false misrepresentations to obtain the ex parte removal orders. Allegedly, the juvenile court judges issued the ex parte orders under the false impressions that (1) all the school's students were in imminent danger of physical harm, (2) the school was unwilling to cooperate with the relevant juvenile authorities, and (3) no lesser alternative short of a mass removal was available to ensure the students' safety. The school subsequently sued the officials involved in the raid and brought a number of claims including one that the officials violated the students' and parents' Fourteenth Amendment rights to family integrity. The officials appealed the lower court's denial of

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qualified immunity. Accepting the plaintiffs' allegations as true, the appellate court reasoned that the officials knowingly worked with one another to effect the mass removal of the school's students without court orders, with court orders based upon lies, or court orders devoid of probable cause. The officials deprived the school of notice and an opportunity to be heard, and then tried to cover up the officials' wrongdoing—with false, misleading, and incomplete statements. Furthermore, all of the school's relevant constitutional rights were clearly established on the date of the incident. The state of the law on the date in question gave the officials fair warning that effecting or at least conspiring to effect the mass removal of school's students with bogus *ex parte* orders potentially would violate the plaintiffs' rights to family integrity, to be free from unreasonable seizures, to free association, and to procedural due process. The court rejected the officials' suggestion that various reports of child abuse at the school justified their actions, reasoning that the school alleged the officials fabricated and exaggerated the reports of child abuse to suit the officials' own ends. Accordingly, the district court's order denying summary judgment was affirmed.

Ninth Circuit

[Hardwick v. County of Orange](#), 844 F.3d 1112 (9th Cir. 2017) The court denied qualified immunity to social workers who were alleged to have deliberately submitted false testimony to a court during a custody proceeding that ultimately resulted in the removal of the minor plaintiff from her mother's custody, the court ruling that the child's due process and Fourth Amendment rights to be free from perjured testimony and deliberately fabricated evidence in civil child dependency proceedings had been clearly established in February 2000, the time of the events at issue. The mother lost custody of her two minor children, following which one child brought a civil rights action under 42 U.S.C.A. § 1983 against the county and employees of its Social Services Agency (SSA). She contended that the social workers, acting under the color of state law, maliciously used perjured testimony and fabricated evidence to secure her removal from her mother, and that this abuse of state power violated her Fourth and Fourteenth Amendment constitutional rights to her familial relationship. Specifically, the defendants purportedly told the dependency court that the mother had caused her daughters to skip a mandatory visit with their father, when in fact the problem was caused by a visitation monitor, advised the court that the mother was responsible for turning her children against the monitor, and informed the court that the mother had told her children that their father was trying to take them away from her, when in reality it was one defendant who had made inappropriate comments to the children, including the threat that if they did not visit their father, they would be put "in a home. On the basis of this alleged misinformation, the dependency court concluded that the mother was "using" her children. Accordingly, the state court immediately removed the girls from her custody and turned them over to the SSA and the defendants. This civil rights case followed. In a motion for summary judgment, the individual defendants unsuccessfully raised qualified immunity as a shield against this action. They claimed, among other things, that the law they were accused of violating was not "clearly established" at the time their allegedly wrongful conduct occurred. The appellate court disagreed. Rather, it determined that the state of the law as of February, 2000, when the conduct at issue allegedly occurred, gave these social workers fair warning that their alleged use of perjured testimony and fabricated evidence in court in order to sever the child's familial bond with her mother was unconstitutional. The court added that the qualified immunity doctrine exists to protect mistaken but reasonable decisions, not purposeful criminal conduct. Furthermore, it wrote that the social workers' alleged transgressions were not made under pressing circumstances requiring prompt action. The court concluded that the plaintiff produced more than sufficient admissible evidence to create a genuine dispute as to whether her removal from her mother's custody violated her constitutional rights, and the defendants' case for qualified immunity from these charges was not supported by the law or the record.

[Greene v. Camreta](#), 588 F.3d 1011, 251 Ed. Law Rep. 67 (9th Cir. 2009), vacated in part on other grounds, 563 U.S. 692, 131 S. Ct. 2020, 179 L. Ed. 2d 1118 (2011) and vacated in part on other grounds, 661 F.3d 1201 (9th Cir. 2011) It was held that a state official was not protected by qualified immunity from claims that he had made falsehoods in the process of investigating a father for sexually abusing his daughter. The father was arrested for abusing a seven-year-old boy. When the State Department of Human Services (DHS) heard of these allegations and learned that the father had been released and was having unsupervised contact with his daughters, a caseworker visited the father's daughter at school to interview her. She allegedly revealed that her father had inappropriately touched her sexually. Nevertheless, the parents denied any sexual abuse. The caseworker set out a safety plan whereby, pending an investigation, the father would have no unsupervised contact with his two daughters. However, the mother purportedly told the caseworker that she had no extra resources for the father to obtain alternative housing, which the caseworker understood to mean that the father would be returning home. This prompted the caseworker to petition the juvenile court for an order removing the children from the home and placing them in foster care. The juvenile court issued

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the requested order and DHS took protective custody of the children for 20 days. At a subsequent interview, the daughter said that her earlier statements to caseworker concerning the father were not true and that he had not abused her. Ultimately, the juvenile court ordered the children returned to their mother's custody. The mother then filed this action on behalf of herself and her daughters under [42 U.S.C.A. § 1983](#) alleging, inter alia, that the caseworker violated their rights under the Fourteenth Amendment by intentionally presenting false information to the juvenile court to obtain the removal order. Specifically, she claimed that in an affidavit provided to the juvenile court, the caseworker had stated that the mother would not bar contact between the father and the girls, while, to the contrary, the mother contended that she had agreed to caseworker's proposed safety plan, under which the father would not have any unsupervised contact with his daughters and that she had found a place where the father could stay. After the district court granted summary judgment to all defendants, the mother appealed. The appellate court reasoned that assuming that the mother's version of events was true, the caseworker's misrepresentations fell outside the scope of the absolute immunity. Furthermore, he was not entitled to qualified immunity as to the false representation claim, as the mother's right to be free from judicial deception in securing the removal order was clearly established at the time of caseworker's alleged misrepresentations to the court. There was conflicting evidence as to whether caseworker intentionally or recklessly misrepresented his conversations with the mother in an effort to persuade the court to remove the children from her custody. Furthermore, the alleged misrepresentation was material to the granting of the removal order since the juvenile court likely would have declined to issue the order had caseworker been truthful. The caseworker was thus not entitled to qualified immunity and the district court's grant of summary judgment to the caseworker on the Fourteenth Amendment claims stemming from the removal order was reversed.

[Jimenez-Bencebi v. Arizona, 2024 WL 2923715 \(D. Ariz. 2024\)](#) The court declined to award qualified immunity to a caseworker who purportedly included misrepresentations in petitions to terminate the mother's rights to her children, one of whom was conceived following a rape. Police had been contacted because the mother purportedly had physically abused and neglected the children. A caseworker filed a petition in juvenile court to sever the mother's parental rights to the two children. Thereafter, the mother filed this lawsuit and asserted a claim for judicial deception against the caseworker. She alleged that the caseworker made the following misrepresentations and/or omissions to the state court: the mother was homeless for several months; the first child was so severely malnourished he was feeble and could barely sit up; the child had a flat head, distended stomach and nonaccidental bruising all over his back; the mother did not like the first child because he was a baby conceived by rape; the second child had scratches on her face evidencing abuse; the mother was aggressive; the mother had been convicted of felonious child abuse several years prior; on one occasion, the mother shouted at her therapist; on one occasion, while in labor in the hospital, the mother stated she would name the third child "Motherf*cker"; the mother had gender dysmorphic disorder; and the mother willfully neglected the first child because she hated boys. The complaint also provided factual allegations specifying why each statement was false. Furthermore, according to the complaint, the mother's home instability was brief, measured in weeks not months; the mother loved the first child as demonstrated by her taking the child for his one-year checkup and vaccinations; at that appointment, the medical professional noted nothing unusual about the child and did not report the mother; the first child's medical records from the day he was removed stated that he was active, crawling, playful and happy and had only one small scratch and one small bruise on his cheek and three small bruises on his thigh and had a normal shaped head; the first child lost weight after being in foster care and that his "mild or moderate malnutrition" was most likely attributable to a feeding issue rather than any neglect on the mother's part; the mother's previous conviction was a misdemeanor, not a felony; the mother's therapist never stated in her notes that the mother shouted at her or was aggressive towards her; that reports from the father's service providers were also positive; and that the mother was never diagnosed by any therapist with gender dysphoria. The court determined that these facts made it plausible that the caseworker's statements constituted misrepresentations. It continued that the allegations suggested that the caseworker made the challenged statements with at least reckless disregard for the truth. The factual allegations in the complaint also made it plausible that but-for the caseworker's statements, the second and the third child would not have been removed from the mother's care. Additionally, the court noted that clearly established law supported the mother's judicial deception claim, and thus the caseworker was not entitled to qualified immunity as to this claim.

[David v. Betts, 2024 WL 2214613 \(D. Haw. 2024\)](#) Where a mother claimed that an intervention coordinator assisted her ex-husband in obtaining custody of the couple's daughter by concealing evidence as to the established custody arrangement of the child, the court denied the defendant's motion for summary judgment finding that there were genuine issues of material fact that remained as to whether (or when) the intervention coordinator had knowledge that the father had no right to custody of the daughter. A family court had issued an order of protection to the mother that restrained the father from contact with the mother and the couple's 11-year-old daughter. That order also gave the mother sole legal and physical custody of the daughter. Subsequently, eight years later, there was a confrontation between the mother and the father and it was alleged that the mother

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struck the father with the daughter standing next to them. The mother was arrested and charged with assault following which the father sought assistance from an intervention coordinator to prepare a petition for an order of protection. A new family court granted this petition and barred the mother from having contact with the father or the daughter. Additionally, without the mother's knowledge, the daughter was taken from school and transported and placed in the father's custody. The mother reported to the police department that her daughter had been kidnapped and was in the custody of an allegedly abusive, noncustodial parent. But the intervention coordinator and other named defendants allegedly worked together to prevent the mother's allegations from being investigated. The mother then filed this federal action, not only requesting the return of the daughter to the mother's custody, but also claiming that the intervention coordinator and others had violated her constitutional rights by assisting the father with his petition. The intervention coordinator, in turn, moved for summary judgment, arguing that she was protected by qualified immunity and attesting that she had no knowledge of the earlier family court order barring contact between the father and daughter until this litigation began. The federal court wrote that it was clearly established at the time of the events in this case that as part of the right to familial association, parents and children have a right to be free from judicial deception in child custody proceedings and removal orders. It found significant evidence indicating that it had been reasonable for the intervention coordinator and others to believe the daughter was in imminent danger of harm when they petitioned for her removal. The mother threatened not only the father, but also his wife and children. Thus, there clearly was justification to file some sort of petition for order for protection, and there was sufficient evidence to remove the daughter from the mother's custody at that time, at least temporarily. Likewise, this evidence supported the view that the intervention coordinator was motivated by nothing more than a concern for the safety of the father, his family, and the daughter. Nevertheless, there were open questions of material fact about whether or when the intervention coordinator knew about the father's custody or other rights (or lack thereof) as to the daughter. Even if a jury could find that the intervention coordinator did not deliberately conceal information regarding custody in the petition, a jury could still find she acted with reckless disregard for the truth. Moreover, omitting such information about the child's custody appeared to the court to have been material for purposes of the judicial deception analysis. These disputes of fact precluded a grant of qualified immunity on summary judgment for the intervention coordinator.

Tenth Circuit

[Malik v. Arapahoe County Dept. of Social Services, 191 F.3d 1306 \(10th Cir. 1999\)](#) The appellate court affirmed a holding that county officials were not entitled to qualified immunity when they were alleged to have violated a mother's right to familial integrity by seeking a court order to remove her child based on misrepresentations and omissions of vital facts to the state court. An investigation began when a postal inspector discovered nude photographs of a child and determined that the film had been mailed for processing by the plaintiff. The postal inspector and a police officer began an investigation of possible violations of child pornography laws. The police officer learned that the child's mother's brother had taken the photographs four months earlier during a visit. The mother informed the officer that her brother lived in New York and took the photos for artistic reasons. The mother later agreed to allow the officer to interview the child, but only if the interview was videotaped, a condition requested by the mother's attorney. A few days after receiving the request for a videotaped interview, a police officer and a social worker with the county Department of Social Services (ACDSS) sought a court order requiring the mother to submit to an untaped interview of her child. To obtain an ex parte court order from a magistrate judge, the social worker omitted several important facts: (1) that the photos were taken five months prior by a person who did not live in the child's home; (2) that the authorities did not consider the child to be in imminent danger; and (3) that the mother had consented to an interview if it was videotaped, which was allowed and even encouraged under state statute. The magistrate judge entered an order placing custody of the child with the ACDSS. The child was removed from the mother's house and taken to a family crisis safehouse overnight. At a hearing the next day, the ACDSS and the mother agreed that the mother would retain custody of the child and that a videotaped interview would take place that day. The interview revealed no evidence of abuse, the child returned home with her mother, and no charges were filed. The mother then brought [42 U.S.C.A. § 1983](#) claims against the department, the social worker, and the police officer alleging violations of her Fourteenth Amendment right to familial integrity and violations of her Fourth Amendment right to be free from unreasonable searches and seizures. The district court denied the defendants qualified immunity, and the case was appealed. The appellate court found that the law at the time of the alleged constitutional violations had been clearly established that, except in extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate predeprivation procedures. An ex parte hearing based on misrepresentations and omissions did not constitute notice and an opportunity to be heard. The facts as found by the district court on summary judgment supported a conclusion that the defendants did not believe that the child faced such danger to justify seeking temporary protective custody in an ex parte proceeding. The appellate court continued that the officials' desire to circumvent an attorney's attempt to negotiate protective conditions for an interview did not rise to the level of an extraordinary circumstance dangerous to the child and did

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not allow deprivation of a parent's rights without notice and an opportunity to be heard. Furthermore, it was clearly established law that government officials' procurement, through distortion, misrepresentation and omission, of a court order to seize a child constituted a violation of the Fourth Amendment. The fact that the order was allegedly obtained by omissions, rather than affirmative misstatements, was irrelevant, the court commented, so long as the omissions were so probative they would vitiate probable cause. Therefore, the appellate court concluded that the district court did not err in determining that the facts, viewed in the light most favorable to the mother, made out violations of clearly established law. Accordingly, it affirmed the district court's denial of both defendants' motions for summary judgment on qualified immunity grounds.

Eleventh Circuit

[Crider v. Williams, 2022 WL 3867541 \(11th Cir. 2022\)](#) (per curiam) The appellate court vacated a lower court's grant of qualified immunity to a social worker who allegedly lied to state courts to obtain jurisdiction necessary to remove the parents' child from them. After the county Department of Human Resources received a report that the parents were smoking marijuana and had been arrested on drug charges, a social worker with the department investigated and, although recording in her notes that the child had no obvious bruises and appeared healthy, she later filed a petition for dependency for the child. In that petition, she alleged that the parents had been smoking marijuana, the child had not been vaccinated or taken to a doctor since he was six weeks old" (though not that the child had any illness or immediate need for medical attention), the parents were "swingers," and the parents suffered from various physical and mental-health conditions. Allegedly the investigator also misrepresented the whereabouts of the child so that the court would have jurisdiction over the petition. The juvenile court ordered that temporary physical and legal custody of the child be placed with the department. Thereafter, the parents filed suit against the investigator and included a claim under [42 U.S.C.A. § 1983](#) that the defendant had violated the parents' Fourteenth Amendment procedural due-process rights by depriving them of the care, custody, control, and religious upbringing of their child without due process. They claimed that they had been deprived of custody of their child for almost two years, which deprivation was possible only because of the investigator's alleged lies about jurisdictional facts to courts in two states. Due process of law may be lacking when proceedings are based on false statements. The federal court wrote that if the parents' allegations were accurate, then the child was removed from the parents based on the investigator's false statements, interfering with the parents' liberty interests in the care, custody, and management of their child, in violation of the Fourteenth Amendment. Additionally, the court determined that it was clearly established at the time of the investigator's alleged lies that presenting falsehoods to the court about jurisdictional facts to remove children from their parents would violate the parents' procedural-due-process rights. Accordingly, the court held that the investigator was not entitled to qualified immunity at this stage of litigation.

§ 14. Qualified immunity—Right is not clearly established

Most courts apply a two-prong analysis in qualified immunity cases, under which summary judgment is improper if, resolving all disputes of fact and credibility in favor of the party asserting the injury, (1) the facts adduced show that the officer's conduct violated a constitutional right, and (2) that right was "clearly established" at the time of the violation. In the following cases, courts ruled, under the facts as presented, that aggrieved parents failed to show that it was clearly established, at the time of the subject incident, that defendant, such as social workers, had violated the parents' Fourth or Fourteenth Amendment rights to familial association by including falsities in reports or petitions that resulted in the parents' temporary or permanent loss of custody of their child or children, and thus the defendants were found to be entitled to qualified immunity.

Fifth Circuit

[Kiser v. Garrett, 67 F.3d 1166 \(5th Cir. 1995\)](#) A father alleged that a social worker withheld exculpatory evidence and gave false testimony in state court child abuse proceedings resulting in the temporary removal of his child from his home, but the federal court granted the defendant qualified immunity. The father took his 10-week-old son to the child's regular sitter, who operated a registered day-care facility. Later that morning, he picked up the child from the babysitter's home for a scheduled medical appointment, the child was examined, and the doctor noted no distress or other evidence of injury. The father then returned the child to the babysitter's home. Two hours later, the child's mother picked the child up from the babysitter's home, discovered that his right arm was swollen, and took the child to a physician, who diagnosed a fresh fracture of the child's right forearm.

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The child was admitted to the hospital for evaluation and treatment; x-rays revealed evidence of a partially healed prior fracture of his left arm and an injury to his left leg. The physician reported the child's unexplained injuries to Department of Human Services. An ex parte court hearing was scheduled following which the State court ordered that DHS take temporary protective custody of the minor. After the child eventually was allowed to return home and a criminal investigation of the father was concluded—the social workers having made no final determination as to who was responsible for causing the child's injuries—the father filed suit against a number of individuals involved in the investigation and claimed a violation of his Fourteenth Amendment due process right not to be deprived of a liberty interest in his family. The district court entered summary judgment in the social workers' favor and the father appealed. He stressed that he did not challenge the social workers' actions in removing the child from his home but asserted, instead, that the social workers, by continuing their investigation of him after they had information that conclusively showed that he could not have been responsible for the child's injuries, violated his substantive due process right to family integrity. The father further acknowledges that the State had a compelling interest in taking custody of the child when his unexplained injuries were discovered but maintained that the defendants soon became aware through their investigation that he could not have caused the child's injuries and that the injuries were most likely to have occurred while the child was in the care of the babysitter. The court remarked that although a substantive due process right to family integrity has been recognized, the contours of that right are not well-defined, especially in the context of a state's taking temporary custody of a child during an investigation of possible parental abuse. Even assuming that such a right existed under the circumstances involved here, it was not clearly established when the social workers engaged in the conduct at issue. The court held, therefore, that the defendants were entitled to qualified immunity.

[Doe v. State of La., 2 F.3d 1412 \(5th Cir. 1993\)](#) The court rejected claims brought by a father, individually and on behalf of his two minor children, against various state employees and entities who allegedly violated the plaintiffs' Fourteenth Amendment rights during a child sexual abuse investigation, despite the assertion that the defendants made false representations during the abuse proceedings. The divorced parents shared custody of their two minor children. During a routine physical examination, the daughter's pediatrician made physical observations suggesting that the daughter may have been sexually abused. The doctor notified the State Department of Social Services Office of Community Services (OCS) of the suspected abuse. OCS began investigating, interviewed the child, and determined that she had been sexually abused. The father was criminally charged, but after the case against him was dismissed, he brought this action pursuant to [42 U.S.C.A. § 1983](#) and the Fourteenth Amendment, claiming that the defendants attempted to manipulate the child to give false evidence against him, withheld and ignored exculpatory evidence, made misrepresentations to the mother and two judges and the district attorney, and interfered with his right to family integrity under the Fourteenth Amendment. He pointed out that a psychologist interviewed and evaluated the child and found no evidence of sexual abuse. The district court dismissed all defendants, except the caseworker and her supervisor, who appealed the order denying them qualified immunity. The appellate court wrote that parents have an abstract liberty interest in the care and management of their children, but that interest is not absolute nor unqualified. It continued that the father failed to show that the caseworker or the supervisor violated any constitutional right that was sufficiently particularized so that reasonable officials would understand that what they were doing violated that right. Reasonable government officials, knowing only that they could not infringe on family integrity, would not necessarily know just what conduct was prohibited. Therefore, the appellate court held that the caseworker and the supervisor did not violate a constitutional right that was clearly established at the time of the alleged conduct and they were entitled to qualified immunity from liability.

[Schannette v. Doxey, 2013 WL 4516041 \(W.D. La. 2013\)](#) The plaintiffs alleged that Department of Children and Family Services and Sheriff's Office employees engaged in various unlawful actions in temporarily taking away custody of the couple's five minor children but the federal court ruled that the parents had not shown that the employees of the department violated any clearly established law and thus they were shielded by qualified immunity. A department case worker had received an anonymous report, which prompted her to interview the couple concerning one of their children who was having trouble at school. The caseworker then secured an ex parte order to take custody of the plaintiffs' five children, even though her report arguably was based on "hearsay" and without evidence of neglect or abuse. The family was separated for over a week. A judge ultimately ordered that the children be returned to the parents. After the department closed the case, the parents filed suit, alleging that the caseworker violated their constitutional rights by fabricating allegations of child abuse, including sexual abuse. But the court wrote that even taking all of the couple's allegations as true, they had now shown that the law was sufficiently clear so that reasonable social workers such as the department defendants would have known that they were violating the parents' rights by temporarily taking the children into custody, pending a child abuse investigation. Thus, since the couple could not meet their

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burden on the "clearly established" prong of the qualified immunity test, the department defendants were entitled to qualified immunity on these claims against them.

[Day v. Louisiana, 2013 WL 3894025 \(W.D. La. 2013\)](#) Although a stepmother, whose stepson accused her of child abuse, claimed that caseworkers mishandled potentially exculpatory evidence during "Child in Need of Care" (CNC) proceedings, the federal court ruled that the defendants were entitled to qualified immunity. The stepson, as well as two other children, were removed from the parents' home and placed into foster care after the abuse allegation was made. In a related criminal case, the parties learned of a foster care journal written by the stepson's foster mother which allegedly contained photographic and written accounts of the child's "bizarre, self-injurious and manipulative behavior." The stepmother asserted that the contents of the journal contradicted the prosecution's allegations of child abuse and averred that a social worker did not address the journal in her testimony during the dependency proceedings and was liable for failing to disclose the damning portions of the journal. The stepmother then brought this civil rights action, alleging violations of her constitutional rights. The court remarked that state child care workers are entitled to qualified immunity in the performance of discretionary, nonprosecutorial functions. It continued that, even taking the stepmother's allegations as true that the defendants knew that the journal contained exculpatory evidence, the plaintiff had not shown that the law was sufficiently clear that a reasonable social worker would have known that she would be violating the stepmother's constitutional rights by acting as she allegedly did. Furthermore, it was noted that courts in the circuit consistently have held that misrepresenting or deliberately withholding evidence during a child services investigation does not defeat qualified immunity. Thus, as the stepmother could not meet her burden on the "clearly established" prong of the qualified immunity test, the child care worker was entitled to qualified immunity on this claim.

[Tiemeyer v. Zaika, 947 F. Supp. 1012 \(N.D. Tex. 1996\)](#) A father brought an action against a case worker and the case worker's supervisor, alleging violation of his civil rights in connection with their submission of various reports to the district attorney containing allegedly false and slanderous statements to support a court-ordered separation of the father from his son; however, the court granted the defendants' motion to dismiss, finding that they were protected by qualified immunity. The father claimed that agents of the State Department of Protective and Regulatory Services fabricated and manufactured evidence to support their decision to remove the son from the father's custody. The federal court assumed the truth of the father's allegations—that the case worker and supervisor prepared false reports and manufactured evidence that the father had sexually molested his son—for the express purpose of separating him from his son. Thus, it was alleged in the complaint that state actors, acting under color of state law, used lies and deceit to intentionally deprive the father of legal custody of his son. The court articulated that a parent's liberty interest in family integrity and harmony includes the right to be free from false allegations of child sexual molestation knowingly made by state investigators in an effort to remove or retain a child from the parents. Moreover, state investigators do not enjoy absolute immunity for their conduct in making decisions regarding child welfare. Rather, child welfare investigators enjoy only qualified immunity, which does not protect officials who knowingly violate the law. Also, the state's interest in child safety and welfare is not served when an official knowingly and falsely charges a parent with sexual abuse. Nonetheless, the court could not find that the father had shown that the law was sufficiently clear so that reasonable state investigators would have known that they violated the father's rights by acting as the state investigators allegedly did in this case. Thus, the father's claims failed and the court granted the defendants' motion to dismiss.

Eighth Circuit

[Spencer v. Palumbo, 2013 WL 2434398 \(N.D. Iowa 2013\)](#) The court ruled that a case worker did not violate a mother's clearly-established constitutional rights, and thus she was entitled to qualified immunity, despite the mother's claim that the employee's misrepresentations contributed to a child abuse investigation. During a five-year period, the department engaged in six child abuse assessments regarding one or more of the mother's five minor children. These assessments resulted in the department's findings of sexual abuse, physical abuse, denial of critical care, lack of supervision, and failure to provide adequate shelter. After a juvenile court ordered the children to be removed from the mother's care, she sued a number of individuals involved including the case worker who, in turn, responded that she was entitled to qualified immunity. The mother alleged that the case worker violated her constitutional rights under the Fourth and Fourteenth Amendments through, inter alia, misrepresenting the children's wishes and the reasons behind the case worker's failure to complete home studies. The court acknowledged that the mother had a liberty interest in a familial relationship, adding that the deliberate falsification of evidence in a child abuse investigation violates a parent's constitutional rights. However, the court found that the case worker's actions did not amount to a violation of the mother's clearly established constitutional rights. Not only was the mother's liberty interest in a familial relationship not clearly established given the legitimate concerns that her children were abused or neglected, but additionally,

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the law regarding the misrepresentation of information in child in need of assistance proceedings was not clearly established in the Eighth Circuit at the time of the case worker's alleged wrongful conduct, the court commented. Furthermore, the mother's allegations that the case worker "misrepresented the true wishes and desires of the child" and falsely claimed "that the failure of potential placement families to return phone calls prevented her from completing court ordered home studies," did not amount to a deliberate fabrication of evidence of child abuse, leading the court to grant the defendant's motion to dismiss.

Ninth Circuit

[Nielson v. Legacy Health Systems](#), 230 F. Supp. 2d 1206, R.I.C.O. Bus. Disp. Guide (CCH) ¶ 10418 (D. Or. 2001) Where a father filed a civil rights suit against those who allegedly conspired to deprive him custody of his daughter and to pay child support to his former wife, the court granted the defendants' motions to dismiss and ruled that the defendants violated no clearly established law. The father alleged that his due process rights had been violated because the integrity of the relationship between him and his daughter was damaged by the child welfare employees during their investigation, and claimed that those employees provided false information to the state court. However, the federal court emphasized that the right to family integrity does not include a constitutional right to be free from child abuse investigations, even if the investigation fails to discover evidence of abuse. Additionally, the plaintiff's claims against the employees failed because the child-welfare employees were held to enjoy qualified immunity from claims brought under 42 U.S.C.A. § 1983 since their discretionary conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The court clarified that an investigation into reports of child abuse is discretionary and does not amount to a deprivation of constitutional rights unless the investigation clearly exceeds established legal norms. Even a grossly negligent investigation by a child-protective services-employee does not amount to deprivation of a clearly established right. Accordingly, the father failed to allege a claim upon which relief could be granted against the defendants.

Eleventh Circuit

[Edwards v. Mashego](#), 2020 WL 1847866 (N.D. Ala. 2020) The court found that county Department of Human Resources (SCDHR) employees who investigated potential child abuse by a father and then sought the removal of his two children from his home were entitled to qualified immunity on the parents' claim that the defendants had submitted false evidence in the child abuse proceedings. The employees learned that the father allegedly had slapped one child "on the face and hit her in the head because he was upset with her." The defendants then filed a dependency petition to remove the two children from the custody of the plaintiffs and placed them into a foster home. The couple thereafter brought suit against those involved in the case and alleged that the defendants made untrue, false, misleading, and fraudulent misrepresentations to the court during the dependency proceedings. Specifically, they alleged that such misrepresented statements included that: (1) they attempted to implement a safety plan which required the father to reside outside the home and that all contact between the children and their mother be supervised by the maternal grandmother; (2) the mother was not agreeable in taking a drug screen; (3) the mother was not suitably protective of the children; and (5) the maternal grandmother violated the safety plan. The federal court, assessing the defendants' claim that they were protected by qualified immunity, first determined that they had been acting within their discretionary authority as the filing of the dependency petition was reasonably related to the defendants' normal duties. This shifted the burden to the parents to show that the defendants were not entitled to qualified immunity. The court continued that the parents failed to demonstrate that the defendants violated their "clearly established" constitutional rights when they requested the emergency pick-up order and thereafter temporarily removed their children. Because of the concern that neither the mother nor the maternal grandmother was adequately protective of the children, the defendants believed it to be in the best interest of the minors that they be placed into temporary custody. The defendants' conduct could not be characterized as so egregious as to violate the parents' clearly established constitutional rights. Consequently, the defendants were entitled to qualified immunity on the plaintiffs' 42 U.S.C.A. § 1983 claim and the defendants' motion to dismiss was granted.

§ 15. Materiality—Allegations sufficient

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In the following cases, courts held, under the facts as presented, in full or in significant part, that plaintiffs set forth adequate allegations to survive dismissal or to permit the filing of an amended complaint, where parents or guardians claimed that their Fourth or Fourteenth Amendment right to familial association had been violated when state actors, such as social workers, introduced false or fabricated evidence or testimony into child abuse or child custody actions, which falsehoods were deemed to be material to the abuse or custody decisions.

Second Circuit

[LeClair v. Raymond, 2020 WL 5027278 \(N.D. N.Y. 2020\)](#) The court allowed a plaintiff to amend his complaint and found that his claim that state social workers presented false information to the state family court, resulting in the removal of his child from his custody, had merit. After a father and his wife had been arrested, their children were placed into protective custody, and the parents moved in with the child's maternal grandmother, who then attempted to obtain custody of the two children, which arrangement the couple opposed. This led to a months-long custody dispute, during which the father alleged that various employees of the county Department of Social Services (DSS), the Office of Child Protective Services (CPS), and attorneys violated his Fourteenth, Fourth and First Amendment rights. The parents then brought suit against a number of individuals involved in the investigation and alleged that two social workers fabricated CPS reports and falsely wrote that the father believed that the government implanted a chip in him to track him. Additionally, the social workers allegedly ignored medical evidence that the children never had any weight gain issues or been malnourished, refused to correct their reports, falsely stated that both children were mentally delayed, and framed the couple as mentally ill. The court wrote that the plaintiff plausibly alleged that these social workers engaged in extreme behaviors, including ignoring exculpatory evidence and manufacturing false evidence, implicating the father's due process rights. The defendants responded that this claim should be dismissed because there was no allegation that any false/fraudulent/coerced evidence was presented to the state court for evaluation of custody. But the federal court disagreed, noting that the social workers' statements were meant to be accepted as fact in court and that the DSS reports which allegedly contained fabrications were viewed and considered by the family court judge in his decisions to give temporary custody of the children to the maternal grandmother. Accordingly, the court granted the father's motion to amend as to his Fourteenth Amendment substantive due process claims against these social workers, because he stated a plausible claim for relief against them. However, the plaintiff also alleged that the two other CPS social workers "falsified records" by incorrectly stating, inter alia, that one child was not up to date on his wellness checkup. The court determined that this challenged action occurred after the couple obtained permanent full custody of their children and thus, there was no causal link between this purported conduct and any deprivations of the plaintiffs' constitutional rights.

Ninth Circuit

[Kohlmann v. Larsen, 2023 WL 1782023 \(D. Ariz. 2023\)](#) The court determined that department employees were not entitled to qualified immunity against claims that they had made misrepresentations about parents' purported neglect and abuse of their children, which resulted in removal of one of the minors from their home. A couple had two adopted daughters, one who, when 17 years old, ran away from home and reported her adoptive parents to the Department of Child Safety on charges including neglect and sexual abuse by her father. The department investigated these allegations and removed a 14-year-old sibling from the household. The parents then filed a complaint against those involved in the investigation and sought relief under [42 U.S.C.A. § 1983](#), for violations of their constitutional rights, alleging that a case manager related false reports of abuse and neglect to the department and that the department was aware that the 17-year-old had run away on multiple occasions. They also alleged that two case managers misrepresented the parents' testimony delivered in a videoconference meeting, when writing up a report of that meeting that was submitted to the juvenile court in the child dependency proceedings. The defendants moved to dismiss. The federal court ruled that the complaint's allegations were sufficient to demonstrate a violation of the parents' constitutional due process right to be free from deliberately fabricated evidence in civil child dependency proceedings where their protected familial liberty was at stake. Although the parents did not explicitly aver that the statements were fabricated deliberately or ultimately used in their juvenile court proceedings, the complaint had to be construed liberally, and the court was able to reasonably infer these specific allegations from the pleadings. Additionally, while the complaint did not specify which parts of the testimony were fabricated, it nonetheless identified the relevant report, the meeting at which the testimony was given, the portion of the report that was fabricated, and who should have known that the statements were false—the two case managers. Note, however, that the court went on to dismiss the plaintiffs' complaint under abstention principles.

[McCoy v. State of Hawaii Department of Human Service, 2021 WL 5040197 \(D. Haw. 2021\)](#) The court denied a motion to dismiss a claim brought by a father who lost custody of his child and ruled that he sufficiently alleged a claim of judicial deception on the part of a state social worker who arguably made misrepresentations to the family court. It was alleged that, after the child's birth, the child's mother informed medical staff that she wanted the child to be placed in foster custody, believing that the child's biological father was a man with whom she had an affair, and she did not know how to explain the infidelity to her partner. The partner did not know that the mother was pregnant with the child. Allegedly, once the mother made the request, a medical center social worker told her that, if she claimed domestic abuse, the state would take care of the baby. The mother allegedly followed the social worker's advice and fabricated a story of abuse. The child was then taken by state employees and placed into foster custody, the mother was discharged from the hospital, but before the hearing on the child's custody, the mother allegedly informed a Department of Human Service, Child Welfare Branch (DHS) social worker that she had changed her mind and did not want to relinquish custody of the child. This statement purportedly was not reported to the family court, which awarded temporary custody of the child to DHS. DHS filed a motion to terminate the parental rights of the mother and the unknown biological father, and the family court granted the motion when neither parent attended the termination hearing. The mother then informed the plaintiff for the first time that he could be the child's parent, and he immediately attempted to contact DHS. Although he filed a motion to set aside the default judgment granting custody of the child to DHS, his motion was denied, prompting his suit brought under [42 U.S.C.A. § 1983](#) against a number of individuals involved in the proceedings. He argued that the defendants violated his rights pursuant to the Fourth and Fourteenth Amendments by deliberately presenting false or perjured evidence and/or suppressing exculpatory evidence at the termination hearing. The federal court explained that a claim for judicial deception must satisfy the heightened pleading standard of [Fed. R. Civ. P. 9\(b\)](#). It continued that a parent has a constitutional right under the Due Process Clause of the Fourteenth Amendment to be free from judicial deception and fabrication of evidence in the context of civil child custody cases. To successfully allege a violation of this right, the plaintiff had to make out a claim that included (1) a misrepresentation or omission (2) made deliberately or with reckless disregard for the truth, that was (3) material to the judicial decision. The father's factual allegations, taken as true, attempted to address the three elements. First, he claimed that the DHS social worker falsely stated in the petition filed with the family court that the mother was unable to care for the child, that the social worker had attempted to locate the child's father, and that she had investigated the domestic violence allegations. Second, the father alleged that the social worker deliberately included false statements about the mother's intention to keep the child and about the mother's parenting skills. Third, he claimed that the misrepresentations were material because, had it not been for the defendants' deliberate false statements and/or omissions of exculpatory material, the family court would not have adopted DHS's recommended findings and the child's continued detention would not have occurred. The father was held to have pled sufficient facts to plausibly allege that the social worker acted with at least reckless disregard for the truth by not changing the petition to reflect the mother's statement before the family court. The father stated that had the DHS social worker not omitted the mother's statement, the family court would have decided differently. Thus, the materiality of the omission was plausibly alleged and this claim survived dismissal.

§ 16. Materiality—Allegations not sufficient

In the following cases, courts, under the facts as presented, dismissed claims brought against defendants sued under the Fourth or Fourteenth Amendment, by aggrieved parents or other family members who asserted that social workers or others made falsehoods that resulted in the temporary or permanent loss of custody of the plaintiffs' children, thus interfering with their right to familial association, where the courts determined that no arguable misrepresentations were material to the custody or abuse decisions made in state court.

Fifth Circuit

[Welch v. Texas Department of Family & Protective Services, 2018 WL 8805956 \(S.D. Tex. 2018\)](#) The court dismissed a couple's claim that child abuse investigators violated their constitutional rights by relying on misrepresentations to secure the removal of children from their family home. After a child was shot and killed at his home while in the mother's custody, the Department of Family and Protective Services (TDFPS) received a referral regarding physical neglect of three other children in the home. Two of the children were removed from their parents' custody pursuant to a court order. Subsequently, the department nonsuited the case against the father, and the two children were permanently placed with him. The couple then filed this lawsuit and contended that the children's Fourth Amendment right to be free from unreasonable seizures was violated because they were

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removed from their home pursuant to a state court order based on false allegations the department's investigators made. The defendants responded that they were entitled to qualified immunity. The court remarked that the Fourth Amendment applies to social workers' civil investigations; officials violate the Fourth Amendment when they make false statements or omissions that are material to the issuance of the court order. Furthermore, a statement is considered material if the court would not have issued the order absent such a statement or omission. Construing the complaint in the light most favorable to the plaintiffs, it was alleged that the defendants misrepresented to the state court that the father was uncooperative during the investigation. They further conducted that there was no evidence of child abuse or neglect. However, the federal court ruled that the parents failed to allege sufficient factual allegations to show that the state court would not have granted the order absent the defendants' alleged false statements and misrepresentations and the defendants thus were shielded by the defense of qualified immunity. Accordingly, the defendants' motion to dismiss was granted as to the plaintiffs' Fourth Amendment claim regarding the children's seizure.

Sixth Circuit

[Kolley v. Adult Protective Services, 725 F.3d 581 \(6th Cir. 2013\)](#) Where a 19-year-old developmentally disabled woman and her family members sued individuals and organizations that took part in investigating the woman's allegations that her mother had abused her, the appellate court affirmed the lower court's rejection of the plaintiffs' substantive due process claim despite the arguable deprivation of the woman's mother and father of their parental liberty interest. Counselors from the County Adult Protective Services began an investigation when the young woman told her teachers on two occasions that her mother had hit her. According to her parents, the daughter communicated at the level of a child between the ages of five and seven and had the social skills of a child between four and eight. After the daughter was interviewed, agency employees filed a Petition for Appointment of a Guardian for the daughter in the county probate court. That same day, the court entered an order authorizing the young woman's removal from the family home to a shelter. It later was alleged that several individuals involved in the proceedings offered false testimony that when the father visited the daughter at the shelter, he made sexual connotations towards the daughter and requested that staff shave the daughter's pubic hair. The court scheduled another hearing at which the daughter's family members became embroiled in an altercation with one of the caseworkers which resulted in one defendant filing an emergency petition seeking to suspend any visitation by the father or the rest of the daughter's family. The daughter and her family then brought suit and named a number of individuals involved in the proceedings, alleging that the defendants deprived them of their right to familial association in violation of the First and Fourteenth Amendments. The defendants responded with motions to dismiss, which the lower court granted; the plaintiffs appealed. The family alleged that the defendants petitioned for an ex parte order when no emergency existed; failed to notify the father of the hearings; falsely testified about the father's actions and statements; and took advantage of the daughter's disability to make allegations against the mother, all resulting in the father being denied custodial rights. The court acknowledged the existence of a constitutional right to the maintenance of a parent-child relationship, but clarified that that right is neither absolute nor unqualified. Thus, a government investigation of child abuse will not automatically implicate the right to familial association absent evidence of bad faith, improper motive, or investigational tactics that shock the conscience. The court continued that Michigan courts have the ultimate decision-making power on custody and guardian appointment for developmentally disabled persons and can determine that such persons may need to be placed in a facility. Each of the allegations in the complaint had to do with the defendants' actions before the court decided to deny the father visitation rights. Despite the alleged misrepresentations, the state court was the final decision-maker regarding the daughter's custody decisions, leading the federal court to reject the plaintiffs' substantive due process claim.

Seventh Circuit

[Rangel v. Reynolds, 607 F. Supp. 2d 911 \(N.D. Ind. 2009\)](#) The federal court dismissed a claim brought by parents that a social worker presented misleading courtroom testimony and submitted false documentation to the family court which resulted in the loss of custody to their child. A couple took their daughter to the County Health Department for a regular medical examination. Once there, they were informed that the appointment was not free of charge, as they previously had been told. The parents informed health clinic staff that they did not want the child examined at that time. However, later that day, a caseworker for the Department of Child Services arrived at the family's residence and transported the child to the health clinic to be examined. A nurse there allegedly diagnosed the child with failure to thrive and stated that the baby was starving. A probable cause hearing was held in state court and a judge determined that the child should remain in the department's custody. This prompted the parents' suit under [42 U.S.C.A. § 1983](#) in which they claimed that the caseworker submitted false and misleading courtroom

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testimony and false documentation to the state court that culminated in the removal of their child. However, the federal court reasoned that any deprivation arose not from the caseworker's allegedly falsified evidence, but from the state court's reliance upon that evidence. It added that writing a false probable cause affidavit, without more, did not deprive the parents of any constitutional right. Rather, it was the judge's action in relying upon that affidavit that ultimately stripped the parents of custody of their child. Accordingly, the federal court granted the caseworker's motion to dismiss the claims against her.

Ninth Circuit

[Sigal v. County of Los Angeles, 2021 WL 4061120 \(9th Cir. 2021\)](#) A father appealed a district court's dismissal of four of his 42 U.S.C.A. § 1983 claims against the county and several of its employees in connection with the removal of his children from his home during dependency proceedings in state court, but the appellate court rejected the father's allegations that a social worker obtained a warrant for the removal of two siblings through "fraud, misrepresentation, and the exclusion of exculpatory and/or explanatory evidence," and concluded instead that the district court properly granted summary judgment for the social worker on these claims. The appellate court remarked that to survive summary judgment on a claim for judicial deception in obtaining a warrant, the plaintiff was required to show that any misrepresentations or omissions were (1) material to the finding of probable cause and (2) made intentionally or with reckless disregard for the truth. It continued that "materiality" means that, had the social worker been truthful, the warrants would not have issued. The appellate court continued that probable cause exists to remove a child when the child faces a "substantial risk of harm." The relevant risk of harm that underlay the warrant to remove the children was that each child had threatened suicide if she or he were to remain with their father. There was no dispute that both children made such threats, but the plaintiff contended that the respective warrant applications contained misrepresentations and omissions that, if corrected, would have undermined the findings of probable cause. The appellate court disagreed. Many of the alleged misrepresentations and omissions had no real bearing on the credibility of the children's suicide threats, such as the asserted misrepresentation about the number of cases that the social worker had handled and her failure to mention that the children's mother had died of a drug overdose. As such, these purported deficiencies were deemed not to be material as to whether a substantial risk of suicide existed. The plaintiff also presented evidence that the warrant applications omitted information that arguably could have undermined the credibility of the children's suicide threats. However, the court determined that, even if the warrant applications' omissions and misstatements were corrected, any resulting reduction in the credibility of the children's suicide threats would still have been outweighed by the remaining unchallenged information in those applications. In other words, even if the children's credibility issues had been fully disclosed, the state court would have had probable cause to remove them based on their suicide threats, the federal court reasoned. Thus, it was held that the father failed either to plead or prove that any of the individual defendants violated his constitutional rights.

[Kitaj v. Van Handel, 2023 WL 5932856 \(D. Ariz. 2023\)](#) Where grandparents sued several employees of the Department of Child Safety alleging constitutional violations arising under the First, Fifth, and Fourteenth Amendments, the court dismissed the claim, holding that any alleged falsehoods that arguably resulted in their grandchild's removal were not shown to be material. The plaintiffs' son and his partner lived with the paternal grandparents in their home after discovering the mother was pregnant. When the grandparents learned the mother was an active drug user, they helped her enter a drug rehabilitation program, oversaw her medical care, and secured other services for her. After the mother gave birth, the plaintiffs cared for the family, forming a strong bond with the child. Subsequently, someone called the department Hotline and "made some sort of report." Investigators came to the house but the grandparents would not allow them in, although they brought the child to the door. The investigators allegedly could see into the house and its condition, and arguably ascertained that the infant was healthy, happy, and well-adjusted. Nonetheless, later that day, caseworkers procured a court order authorizing the child's removal by purportedly misrepresenting that they had not been allowed to see the child and that the grandparents had been "aggressive." The child was removed from the home. The grandparents then brought suit, alleging that the department employees had falsely documented the couple as mentally unstable, dangerous, abusive and neglectful to the child. They claimed that the defendants secured the court removal order by making material misrepresentations and omitting exculpatory evidence. The defendants responded with a motion to dismiss. The federal court commented that the Fourteenth Amendment prohibits state officials from deliberately fabricating evidence. To establish a judicial deception claim, a plaintiff must show (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty. To succeed on the second element, a plaintiff must show that (a) the act was the cause in fact of the deprivation of liberty, meaning that the injury would not have occurred in the absence of the conduct; and (b) the act was the "proximate cause" or "legal cause" of the injury, meaning that the injury

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was of a type that a reasonable person would see as a likely result of the conduct in question. A plaintiff must also state with particularity the circumstances constituting the fraud. The court determined that the grandparents had not sufficiently shown that the misrepresentations caused the alleged deprivation. Simply stating that the defendants' misrepresentations were the sole reason the state court authorized the removal was deemed to be conclusory. The couple alleged no facts showing that the misrepresentations were material to the removal and did not allege what the juvenile court did and did not consider in making its decision, resulting in dismissal of their civil rights claims.

[Murphy v. Hayes, 681 F. Supp. 3d 1043 \(D. Ariz. 2023\)](#) Although a couple sued a social worker with the State Department of Social Services for violating their First, Fifth, and Fourteenth Amendment rights to familial association, claiming that after their daughter alleged that her father abused her, the social worker included falsehoods in a safety action plan, the court dismissed the parents' complaint finding that they failed to state a claim of judicial deception as they did not identify any adverse action that resulted from the allegedly false statement. The couple lived with the mother's three biological children. They discovered that the cell phone they provided to their 12-year-old daughter contained social media accounts created without their permission. When they took her cell phone away, the daughter became angry and told her mother that "[y]our husband touched me, and I am going to put one of you in jail." A social worker with the State Department of Social Services became involved in the case and prepared a safety action plan that did not allow the stepfather to move back into the family home and which plan erroneously stated that the stepfather "was charged with a sex offense" even though criminal charges were never filed. After the daughter withdrew the allegations of abuse in an interview with law enforcement, the couple sued a number of state officials for violating their constitutional rights to familial association. They claimed that the safety plan falsely stated that the husband was charged with a crime, that the plan required husband to move out of the family home for a period of months, and that his absence from the home caused marital difficulties, financial stress, and trauma for the children. The court wrote that the Ninth Circuit has held that false statements made in connection with a child abuse investigation, without more, do not rise to the level of a constitutional violation. Rather, to make a claim of judicial deception, it explained, a plaintiff must show that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty. Here, the plaintiffs did not allege that the claimed false statement in the plan was ever submitted as evidence in a court proceeding or caused either the parents to be deprived of liberty. Their purported injuries were not attributable to the defendants' actions. Accordingly, the court granted the defendants' motion to dismiss the plaintiff's First and Fourteenth Amendment claims.

[G.L. by and through Greene v. Catanio, 2023 WL 3076978 \(E.D. Cal. 2023\)](#) Where a police officer and the city were sued for various constitutional violations under 42 U.S.C.A. § 1983, allegedly committed in the course of investigating a mother for child sexual abuse and where the mother ultimately was acquitted of those charges, the federal court dismissed the mother's judicial deception claim against an officer since she failed to show that any purported falsehoods were material to the order that removed the child from her custody. The plaintiff alleged that the officer intentionally suppressed exonerating evidence from the first interview of the child and misrepresented its contents to the court so as to obtain a No-Contact Order, separating the child from his mother for a period of two years. The officer also allegedly fabricated a story about the child's older brother who reportedly observed their mother sexually assault the younger child. The court wrote that the plaintiff enjoyed a due process right to be free from deliberately false statements during the court proceedings. However, it reasoned that this claim failed because the mother identified no constitutional injury resulting from the purported judicial deception. It noted that the plaintiff alleged that but for the officer's misrepresentations to the state court, the child would not have been illegally seized without a warrant; however, the court reasoned that the very fact that the officer had no warrant proved that there was no causation between any misrepresentations and the seizure. A claim for judicial deception requires the plaintiff to show that the deception was the but-for and proximate cause of the judicial action. The plaintiff also alleged that but for the officer's misrepresentation to the state court, the court would not have issued a No-Contact Order, which the plaintiff contended violated the right to familial association. However, the court found no authority to support the plaintiff's theory that a No-Contact Order gives rise to a familial association claim or a claim for judicial deception. Accordingly, the court granted the defendants' motion to dismiss.

[Hamilton v. County of Solano, 2021 WL 1614413 \(E.D. Cal. 2021\)](#) It was held that a mother failed to adequately allege a judicial deception claim, stemming from her assertion that Child Protective Services (CPS) employees had made misrepresentations in the process of having her children removed from her care, the court finding that no such falsehoods were material to the removal decision. Four years previously, CPS employees had responded to investigate the children's housing conditions and determined that the home was unlivable, lacked running water, was infested with insects and pests, and was dangerous and unsanitary. Although the mother allegedly told investigators that they did not live in the home, CPS personnel nonetheless took custody of five of the children without a warrant. On a second occasion, one of the children informed the mother that her father had

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been sexually abusing her for several months, after which the mother and daughter confronted the father. Apparently enraged, the father attacked the mother with a knife, stabbing her in the neck, and stabbing the child during the melee. The father then threatened to kill everyone in the home, poured gasoline around the house, set it on fire, and fled the scene. The mother and all of the children were able to escape the burning building. The father was killed. The police and Child Protective Services (CPS) personnel responded to the scene. Officials took all the children to foster homes. Thereafter, the mother brought suit against CPS employees, asserting that their report was flawed because it omitted the fact that her husband no longer posed a threat and that various adults had offered to take the children, among other arguable falsehoods and omissions. She asserted a claim under [42 U.S.C.A. § 1983](#) for the defendants' purported violation of her rights of familial association under the Fourth and Fourteenth Amendments. The defendants moved to dismiss the complaint. The federal court wrote that at the time of the children's removal on the second occasion, given the facts surrounding the stabbings, arson, and hospitalizations of the mother and one of her children, there clearly was an emergency that justified the defendants' taking temporary custody of the minors. Further, no evidence suggested that the county defendants were aware of the father's death when they took the children. Accordingly, the mother was held to have failed to state a claim as to how the defendants actually or proximately caused any of their injuries. The court continued that any falsehoods in the report were not shown to have been material to the granting of a removal order. Additionally, none of the "deceptions" purportedly identified by the mother appeared to the court to be either false or material. Finally, the mother referred only generally to the existence of unidentified "material misrepresentations or omissions" but did not allege any facts to indicate that individual defendants had any interactions with a court. Accordingly, the defendants' motions to dismiss the mother's claims associated with judicial deception were granted.

[Schindler v. Contra Costa County, 2023 WL 2414864 \(N.D. Cal. 2023\)](#) In a civil rights action arising out of state juvenile dependency proceedings, which resulted in the termination of the mother's parental rights over her daughter, the federal court dismissed the mother's claim that county employees made misrepresentations that culminated in the removal order. The Department of Children and Family Services (DCFS) filed a juvenile dependency petition in county court against the mother alleging she was responsible for the child's failure to thrive, for missing an appointment with a nutritionist, and for over-medicating the child. DCFS requested custody of the child, which the juvenile court granted. The child was placed in her father's custody. Another social worker later reported to the state court in the dependency proceedings that the child was "thriving in the care of her father," "was not on any medication and has continued to do extremely well" and had "the ability to advocate for herself." The mother then filed this action, including a cause of action under [42 U.S.C.A. § 1983](#) for judicial deception. She alleged that the juvenile dependency petition did not fully inform the state judge of the child's actual conditions, failed to report exculpatory evidence and two psychological evaluations of the child that determined the mother acted reasonably in dealing with her child's mental health issues and posed no danger to her child, and suggested that the child was improving in her father's care although the child's medical records during that period arguably contradicted those findings. The defendants moved to dismiss. The court wrote that the plaintiff's judicial deception claim was deficient since her allegations did not establish that the social worker lied or recklessly disregarded the truth when she reported to the court that the child was thriving in the care of her father. Furthermore, the complaint established the child's history of medical issues and trauma, and thus the logical inference from the allegations was that the child continued to grapple with trauma and ongoing medical issues while living with her father. Regardless, even assuming these statements were false, the mother had not alleged that but for these statements, the court's determination in the dependency proceedings would have been different. The matter before the state court was whether the plaintiff had failed to provide the child with appropriate medical care. The mother failed to allege how statements about the child's condition during the time she spent in department custody and under the care of her father would have been relevant to the court's determination about the mother's suitability to provide future care to the child, which was the issue before the court. Accordingly, her judicial deception claim based on this theory failed.

The mother also alleged that an agency social worker failed to produce medical, psychological, and school records to the court during the judicial dependency proceedings, which records arguably would have exculpated the mother. However, the federal court pointed out that the mother had not clearly identified what information was not provided to the state court. Additionally, she seemed to suggest that the records would have revealed that the child was underweight, continued to suffer from constipation, was doing worse in school, and had recurring psychiatric issues after being removed from the mother's care. However, that information, even if true, did not exculpate the mother of the allegations in the dependency petition that she failed to provide the child with appropriate medical care placing the child at substantial risk of harm, the court reasoned. Furthermore, the complaint offered only conclusory allegations, but no facts, establishing that the omission of the alleged exculpatory evidence caused the judge's decision to enter a detrimental finding against the plaintiff. It was not enough to allege that the allegedly false or omitted evidence "could have contributed" to the judicial officer's decision; rather the mother had to establish but-for causation.

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Accordingly, her claim failed to the extent it was based on the failure to provide the dependency court with records containing allegedly exculpatory information.

Comment

The facts are in part taken from [Schindler v. Contra Costa County, 2022 WL 1002464 \(N.D. Cal. 2022\)](#).

§ 17. Materiality—Evidence sufficient

In the following cases, under the circumstances presented, courts held that where parents or guardians asserted that their Fourth or Fourteenth Amendment rights to familial association had been violated when social workers or other state actors introduced false or fabricated evidence or testimony in child abuse or custody proceedings, that they presented sufficient evidentiary support to withstand motions for summary judgment or judgment on the pleadings and that they had shown that any falsehoods or misrepresentations were likely material to the challenged custody decision.

Second Circuit

[Simuro v. Shedd, 176 F. Supp. 3d 358 \(D. Vt. 2016\)](#) Where a grandfather had been arrested for sexually assaulting his grandchild and where he thereafter sued a police officer, on behalf of himself and his grandchild, asserting claims pursuant to [42 U.S.C.A. § 1983](#) for, inter alia, deprivation of the right to family association, the court denied the officer's motion for summary judgment, holding that a reasonable jury could find that the sergeant's alleged misrepresentations could have affected the family court's order removing the child from his grandfather's care. The police sergeant was involved in investigating the grandfather for child abuse, which culminated in the child's placement in foster care for nearly a month before the Department for Children and Families (DCF) permitted him to resume living with the grandfather when criminal charges were dismissed. The officer responded to the grandfather's civil rights suit with a motion for summary judgment on the grandfather's familial association claims and the unlawful seizure claim brought on behalf of the child. The federal court determined that a reasonable jury could conclude that the police sergeant both ignored significant exculpatory evidence and manufactured false evidence when preparing her probable cause affidavit, which was attached to and incorporated into a social worker's affidavit, which provided the factual basis for the petition that the State submitted to family court. The family court relied on the affidavits of the police sergeant in granting the State's request to transfer temporary legal custody of the child to DCF. The federal court wrote that contrary to the police sergeant's argument, the family court's approval of the State's petition did not insulate the officer from liability. Both the "Child in Need of Care or Supervision" petition and the family court's temporary custody order relied on the police sergeant's affidavit. And because a reasonable jury could find that misstatements and omissions in the sergeant's affidavit were sufficiently egregious so as to shock one's conscience, the police sergeant could not prevail as a matter of law. The court therefore denied the sergeant's motion for summary judgment with respect to this claim. It continued that children may assert a claim under the Fourth Amendment that their seizure was unreasonable. The removal of children from their parents' or guardians' custody is generally considered to be reasonable when it is executed pursuant to a court order. However, when caseworkers, in their petition for removal, make intentionally or recklessly false statements that are necessary to a court's finding of probable cause, they are subject to Fourth Amendment liability. Here, the grandfather was held to have presented sufficient evidence to allow a reasonable jury to find that the police sergeant intentionally omitted and misstated facts in her probable cause affidavit, which was incorporated into the State's petition. Further, because the temporary custody order specifically mentioned the allegations of sexual assault as one of the bases for removal, the federal court could not find, as a matter of law, that the sergeant's affidavit was not material to the family court's decision to seize the child. Accordingly, it denied the police sergeant's motion for summary judgment with respect to this claim.

Ninth Circuit

Scanlon v. County of Los Angeles, 92 F.4th 781 (9th Cir. 2024) Where parents brought a civil rights action against numerous entities and individuals involved in seizing their child, in purported violation of their right to be free from unlawful interference in their familial relationship, the appellate court ruled that the district court erred in granting summary judgment for the defendants on the couple's judicial deception claim, holding that triable issues of fact remained as to whether the warrant application for the removal prepared by the defendants materially misrepresented information and omitted material facts. The parents had a young child, with severe autism. After consultation with medical professionals, the parents received a recommendation that the daughter begin medical marijuana therapy. Following an anonymous report, social workers from the Department of Child and Family Services investigated the child's marijuana use, obtained a judicial order authorizing them to remove the child and a sibling, and placed the two in foster care. The parents then brought suit against the department and individual social workers under 42 U.S.C.A. § 1983 and included claims under the Fourth and Fourteenth Amendment for the defendants' procuring the children's removal by an arguably fraudulent or misleading warrant. The trial court granted summary judgment in favor of the defendants on this claim and the parents appealed. The district court had reviewed the alleged misrepresentations, omissions, and false statements listed in the complaint and concluded that they were not material to finding that there was probable cause to remove the minors from parents' custody. But the appellate court disagreed. It explained that to state a violation of the constitutional right to familial association through judicial deception, a plaintiff must allege (1) a misrepresentation or omission (2) made deliberately or with a reckless disregard for the truth, that was (3) material to the judicial decision. The defendants claimed that the parents had not consulted with a medical professional who dealt with autism. And yet, the court pointed out that evidence indicated that the parents had consulted with at least two doctors and were on an extended waiting list to see a third doctor who was known for treating autistic children with cannabis oil. A reasonable trier of fact could find that the defendants' misrepresentations were material to the judicial decision. A reasonable jury therefore could find the social worker's assertions that the parents had not obtained supervision to be material. Hence, the court found that the parents stated a cognizable claim for judicial deception. The parents also claimed that the social worker mischaracterized and misattributed statements made by the child's teacher, who denied telling the social worker that the child had appeared to be under the influence. This misstatement also could reasonably be held to have been material to the magistrate's issuance of a warrant to detain the children, the court wrote. The court also observed that the defendants were not entitled to qualified immunity since the right to be free from judicial deception was clearly established prior to 2016 and before the events of this case. Accordingly, the appellate court held that the district court erred in granting summary judgment to the defendants on the judicial deception claim.

§ 18. Materiality—Evidence not sufficient

In the following, under the facts as presented, courts ruled that parents or guardians failed to present sufficient evidence to survive motions for summary judgment or judgment on the pleadings, on their claims that social workers or other state actors introduced false or fabricated evidence or testimony in child abuse or custody proceedings, thus arguably violating the parents' or guardians' Fourth or Fourteenth Amendment rights to familial association, where there was a lack of evidence that the purported falsehoods or misrepresentations were material to the underlying custody decisions.

Second Circuit

Kennedy v. Caruso, 2021 WL 5415262 (D. Conn. 2021), summarily aff'd, 2023 WL 2564026 (2d Cir. 2023) The court granted summary judgment in favor of individuals involved in a father's loss of child custody and ruled that purported misrepresentations made by the defendants did not impact the decision to remove his children. During a contentious custody dispute, the father claimed that a detective and a guardian ad litem conspired to draft a false incident report which resulted in the removal of his children. Thereafter, he sued several individuals involved in the family court action, claiming he had been deprived of the ability to associate with his children. Specifically, he alleged that two defendants conspired to draft and send a false incident report to the family court overseeing the custody dispute between him and his ex-wife. The federal court acknowledged that the Fourteenth Amendment guarantees a substantive right under the Due Process Clause to intimate familial association. However, a claim for infringement of the right to familial association requires conduct so shocking, arbitrary, and egregious that the Due

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Process Clause would not countenance it even were it accompanied by full procedural protection. The federal court continued that the family court's decision to issue the ex parte order was not caused by the incident report which it did not even have before making its decision; nor did the state judge know the contents of the report. Therefore, the federal court granted the defendants' summary judgment motion on the father's claims of interference with his right to familial association because the father had not presented any evidence that he was deprived of his rights by the defendants' conduct. Note that subsequently, the appellate court in [Kennedy v. Hirsch, 2023 WL 2564026 \(2d Cir. 2023\)](#), affirmed the district court's grant of summary judgment in favor of the defendants on the fathers' federal civil-rights claims finding he had not presented evidence of a connection between the alleged false statement—the contents of the incident report—and the alleged alteration of rights that occurred in the family court.

Sixth Circuit

[Teets v. Cuyahoga County, Ohio, 460 Fed. Appx. 498 \(6th Cir. 2012\)](#) A mother and a stepfather brought a 42 U.S.C.A. § 1983 action against a county, a department of children and family services, and a social worker, alleging that their substantive and procedural due process rights had been violated as a result of the department's and social workers' alleged misstatements and material omissions in connection with an investigation of sexual-abuse allegations by their daughter against the stepfather; after the district court granted the defendants' motion for summary judgment, the appellate court affirmed, agreeing that there was no evidence that the social worker undertook the investigation in bad faith or with a malicious motive in violation of the mother's and stepfather's rights under the Fourteenth Amendment. A middle-school guidance counselor reported a case of possible sexual abuse to the county child-abuse hotline. The call was based on a written statement from a 12-year old child that described sexual abuse by her stepfather. A social worker from the county department began investigating the child's allegations and concluded that sexual abuse was "indicated." A magistrate judge later determined by clear and convincing evidence that the child had been abused by her stepfather and awarded temporary custody to the county department. Thereafter, the parents sued those involved in the abuse investigation and argued that a social worker included falsehoods in her report. However, the lower court granted summary judgment to the defendants and the appellate court affirmed. It noted that while the parents contended that the counselor failed to include information gleaned from the girl's journal in the report, they had not presented any evidence to suggest that the social worker knew or had reason to know about the journal or any discrepancies between the girl's statements to investigators and what she wrote in her diary. The court continued that other evidence gathered during the investigation generally supported the findings in the social worker's report. A medical report, for example, concluded that the child's case was "[v]ery suspicious for sexual abuse." The appellate court added that the right to familial association is not implicated merely by governmental investigation into allegations of child abuse. Absent evidence of bad faith, improper motive, or investigation tactics that "shock the conscience," such investigations will not infringe on a family's fundamental rights. Even taking all facts in their favor, the parents' arguments amounted to no more than allegations of negligence that fell far short of showing the requisite bad faith or intentional misrepresentation needed to sustain their claim, the court wrote. Finally, even intentional misrepresentations by a social worker during an investigation leading up to Ohio custody proceedings do not violate a parent's substantive due process rights because a social worker has no independent ability to institute the alleged deprivation. Accordingly, the parents were held to have failed to state a constitutional violation, and the district court properly granted summary judgment on their substantive due process claims.

[Pittman v. Cuyahoga County Dept. of Children and Family Services, 640 F.3d 716 \(6th Cir. 2011\)](#) Where a father alleged that a social worker for the county Department of Children and Family Services violated his constitutional rights by impeding his ability to participate in child custody proceedings, the court ruled that no actions of the social worker caused the claimed harm to the father and thus she was shielded by qualified immunity. The department began investigating a mother's care of her two children, one of whom was the plaintiff's biological child. The department assumed custody of the two children. After the child was adjudicated to be neglected, the county court granted legal custody of him to his maternal great aunt and uncle. The mother died, and the father sought custody of the child. The juvenile court found that it lacked subject-matter jurisdiction to consider the father's request, as more than one year had elapsed since the conclusion of the custody proceedings and the aunt and uncle had since moved with the children out of suit. This prompted the father's suit in which he maintained that he wished to take custody of the child and asserted that the social worker misrepresented his desire and ability to parent the child to the department and the juvenile court. He alleged that the social worker falsely stated that the father: refused to provide her with his new address or financial records, expressed an unwillingness to allow the mother to have any contact with the child should the child be placed with him, and would not agree to assume care of a second child (by another father) despite the department's

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policy that siblings be placed together whenever possible. As a result, the father claimed that his fundamental right to maintain a parent-child relationship with the child was compromised in violation of the Fourteenth Amendment guarantee of substantive and procedural due process. The federal district court concluded that the social worker was not entitled to absolute or qualified immunity, but the appellate court disagreed. While the father premised both his substantive and procedural due process claims on an alleged deprivation of his fundamental liberty interest in family integrity, the appellate court remarked that because the social worker's conduct neither caused that deprivation nor interfered with the process due upon that deprivation, the father could not show that she violated his constitutional rights. The father contested the social worker's representations to the juvenile court and the basis for her decision to discount him as a potential custodian of the child. However, the appellate court reasoned that any deprivation was perpetrated by the juvenile court, not by the social worker. Even if the social worker's actions led the department to conclude that he was an unfit caregiver, this did not result in the failure to award or to even consider the father for placement or custody. Rather, under state law, it is the juvenile court which decides whether to grant permanent custody to the department or to grant legal custody to a relative. Similarly, though a department caseworker makes an initial determination as to the appropriate placement for a child in department custody, that determination is not binding on interested parties, including the parents, until the juvenile court approves and journalizes the child's case plan, the federal court emphasized. Because the juvenile court has the ultimate decision-making power with respect to placement and custody, it alone could deprive the father of his fundamental right. Therefore, the social worker's conduct did not violate the father's substantive due process rights, and she was entitled to qualified immunity against that claim.

Ninth Circuit

[Suzuki v. County of Contra Costa, 820 Fed. Appx. 577 \(9th Cir. 2020\)](#) A father brought an action against a social worker and her county employer after he lost joint custody of his children, but the court ruled that the social worker's actions in allegedly fabricating evidence to cause the plaintiff's ex-wife to seek a restraining order against him were not a proximate cause of the restriction on the father's constitutional right to access to his children. The father alleged that the social worker used fabricated evidence to cause his ex-wife to seek a restraining order, which was granted and which restricted his constitutional right to access to his children. This prompted his suit brought under [42 U.S.C.A. § 1983](#). However, the court wrote that the father had to state facts plausibly alleging that the social worker's fabricated evidence was both the cause in fact and the proximate cause of his injury. While the father's allegations established cause in fact, they did not establish proximate cause, the court determined. The proximate cause of any injury the father suffered was the state judge's issuance of restraining orders restricting the father's access to his children. The state judge's exercise of independent judgment in the course of his official duties was a presumptively superseding cause, which cut off the social worker's liability. Furthermore, there was no indication that the social worker pressured or caused the judge to act contrary to his independent judgment. Accordingly, the social worker was entitled to qualified immunity.

[O'Neel v. City of Folsom, 2024 WL 1676723 \(E.D. Cal. 2024\)](#) It was held that a social worker's purported misrepresentations or omissions during a child abuse investigation were not material to the decision to remove the children from their mother's care and thus the social worker was not liable for violating the mother's constitutional rights. The mother had disciplined one child who then told his sister that his mother had choked him with both hands and carried him by the neck. Police were contacted, and they interviewed the children; police then removed the mother's four children from the home without a warrant. Further interviews revealed additional allegations that the parents physically punished two children, including smacking them in the face and hitting them with a belt. The children were placed in the custody of the county Child Protective Services Department (CPS) following which the mother brought suit against a number of individuals involved in the child abuse investigation and alleged that the defendants engaged in judicial deception in the warrant application in violation of the plaintiffs' constitutional right to familial association. Initially, the court wrote that it was undisputed that the social worker was responsible for the preparation of the warrant application. The social worker's supervisor did not sign the warrant application but only reviewed it, though it appeared that she did not review the underlying evidence or documentation. No evidence suggested that the supervisor had reason to doubt the accuracy of the representations made by the social worker's warrant application. Her reliance on the social worker's representations thus could not form the basis for a judicial deception claim. Accordingly, the court granted summary judgment on the judicial deception claim in favor of the supervisor.

The mother claimed that the social worker omitted several pieces of information from the warrant application including that the child told the social worker he felt safe at home and wanted to remain with his mother; one child had no physical marks

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or bruises; and the police did not remove the children when they first responded to the home and interviewed the children. But the court wrote that even if these pieces of information tended to be exculpatory, they were overshadowed by the specific allegations of physical abuse against multiple children in the home, which were deemed to be far more salient to the finding of probable cause. According to the warrant application, the children reported a history of being physically abused by the mother and the father, which included being choked, spanked with a belt, and slapped in the face. Accordingly, the court concluded that the alleged omissions were immaterial. Even if the facts pointed to by plaintiffs had been included, the judge most likely would have granted the warrant. Accordingly, the court granted summary judgment on this claim in favor of the social worker.

The court continued that even if any or all of the allegedly false statements in the warrant application or the alleged omissions from that application were found to constitute judicial deception, the defendants would be entitled to qualified immunity on the plaintiffs' Fourteenth Amendment claim unless the plaintiffs could establish that the defendants acted in violation of clearly established law, such that any reasonable officer in the employees' position would understand that their conduct violated the plaintiffs' constitutional rights. A statement or omission may support a judicial deception claim only if the allegedly deceived court would have declined to issue the order had the statements not been made or the omitted facts been included, the court remarked. Accordingly, in determining qualified immunity the appropriate inquiry was whether the employees made false statements which they knew to be materially false or would have known to be materially false if they had not recklessly disregarded the truth. The court determined that none of the alleged misrepresentations or omissions, considered individually or collectively, were material because they did not influence the juvenile court judge in his decision. It emphasized that juvenile dependency petitions and the applications for protective custody warrants are typically drafted under exigent circumstances and often considered and granted by a judge the same day they are submitted. CPS officials cannot be expected to include every fact that may or may not be potentially exculpatory in a protective custody warrant application. Accordingly, even if the court were to conclude that defendants' conduct violated the Fourteenth Amendment, at the very least the defendants would be entitled to qualified immunity. Thus, the court granted the defendants' motion for summary judgment on the claim for judicial deception.

[Ward v. Estes, 2018 WL 4559008 \(D. Or. 2018\)](#), report and recommendation adopted, [2018 WL 4558980 \(D. Or. 2018\)](#) Where the Department of Human Services (DHS) removed a newborn from the parents' custody, prompting the couple's lawsuit against the department employees who were alleged to have intentionally, or with reckless disregard for the truth, submitted false information to the county court, resulting in the removal of their child, the court granted summary judgment in favor of the employees, ruling that the DHS acted reasonably in seeking removal of the baby and that the hospital's actions were not the legal cause of the plaintiffs' alleged harm. The mother, who had two children from a prior relationship, began a live-in relationship with her paramour. DHS was contacted when a child was treated for a broken arm and then later for a leg fracture. Medical personnel determined that the child's injuries were likely attributable to physical abuse. DHS removed the two children from the mother's custody. During the child abuse investigation, DHS learned that the mother was pregnant. After avoiding prenatal care, the mother delivered the newborn who immediately was placed in protective custody. The initial report submitted by DHS to the county court included the newborn's presumptively positive test for methamphetamine. Subsequently, the parents brought suit and included a number of claims under [42 U.S.C.A. § 1983](#) including one for the defendant's purported violation of the newborn's Fourth Amendment right to be free from unlawful seizure; for violation of the parents' Fourteenth Amendment right to familiar association; and for providing false information to the county court. The federal court ruled that the state defendants were entitled to qualified immunity because exigent circumstances justified removing the newborn from the parent's custody, noting that both parents were under indictment for crimes related to the child abuse, and until the agency placed the child in protective custody, the parents would have been free to leave the hospital with the infant. Therefore, the court held that DHS's removal of the newborn did not constitute a violation of the plaintiffs' constitutional rights and the state defendants were entitled to qualified immunity on the removal claims. Furthermore, even if exigent circumstances did not exist, the defendants were entitled to qualified immunity because they reasonably believed their actions were lawful.

The parents' claims against the hospital stemmed from allegations that the newborn was removed from their custody because the hospital reported a false positive methamphetamine test to DHS. However, the court determined that this purportedly false positive test did not cause DHS to remove the newborn from the parent. Rather, the newborn was placed in protective custody because the parents had committed physical abuse of another child and had performed none of the steps that DHS required before they could be reunited with their children. In fact, several months prior to the birth and the allegedly false positive drug test, DHS had already sent letters to area hospitals indicating their intent to take protective action of the infant based on the previous abuse of the sibling. Accordingly, the plaintiffs could not establish one of the essential elements of a [§ 1983](#) claim: causation. As a result, the court granted summary judgment in favor of the hospital on the wrongful removal claim. In addition,

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the court held that all defendants were entitled to summary judgment as to the judicial deception claims because the false positive drug test was not the but-for cause of the county court's decision regarding removal. Note that subsequently, in [Ward v. Estes, 2018 WL 4558980 \(D. Or. 2018\)](#), the court adopted the magistrate's recommendation in full and found that the child protective services workers' decision to remove the baby from the parents' custody was due to the threat of abuse from both parents, and not because of the presumptively positive methamphetamine test. In any event, the defendants were entitled to qualified immunity because they reasonably believed their actions were lawful.

[Fregosi v. Department of Health and Human Services, 2019 WL 2502039 \(W.D. Wash. 2019\)](#) The court granted summary judgment to two social workers for the Department of Health and Human Services who allegedly violated a father's due process rights when they purportedly falsely testified and/or filed pleadings in state court that the father had a prior felony child abuse conviction related to another child, which resulted in his children being placed in foster care. The federal court wrote that parents and children have a well-elaborated constitutional right to live together without governmental interference. That right is an essential liberty interest protected by the Fourteenth Amendment's guarantee that parents and children will not be separated by the state without due process of law except in an emergency. Further, the Fourteenth Amendment prohibits the deliberate fabrication of evidence by a state official. The court continued that to prevail on a [42 U.S.C.A. § 1983](#) claim of deliberate fabrication, a plaintiff must prove that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty. Although the father raised a due process claim for the deliberate fabrication of evidence, the court determined that he failed to show that either social worker deliberately fabricated evidence, nor pointed to any evidence of causation, since he did not demonstrate that any arguably false statements in the dependency proceeding led to the deprivation of his parental rights. There was nothing in the record to suggest that the information the plaintiff claimed was false was introduced at the juvenile dependency fact-finding hearing, and the state court judge did not discuss any of the father's alleged convictions in her finding of dependency. Therefore, the federal court granted the defendants' motion for summary judgment on this claim.

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[Starkey ex rel. A.B. v. Boulder County Social Services, 569 F.3d 1244 \(10th Cir. 2009\)](#) The appellate court affirmed the lower court's grant of summary judgment in favor of defendants who, inter alia, allegedly presented knowingly fabricated evidence to the state court which resulted in a court order depriving a father of custody of his children. A father brought suit in federal court under [42 U.S.C.A. § 1983](#) against the county Department of Social Services and six department employees who allegedly deprived him of contact with his children in violation of his Fourteenth Amendment substantive-due-process rights to family integrity. Specifically, he claimed that the court orders were fraudulently induced by the defendants. However, the federal court ruled that if there was any interference with the parent's constitutional rights, the defendants did not cause it. The state court made every significant decision about custody, visitation and treatment. The federal court assumed it would be a constitutional violation for the defendants to have obtained the state-court orders through the presentation of fabricated evidence. The evidence relied upon by the parents, however, did not create a genuine issue that the state court's decisions were based on evidence knowingly falsified by the defendants. The couple had not shown that anything the defendants may have reported had any effect on the state court's order. In sum, the father failed to raise a genuine issue that the state-court orders were fraudulently induced by the defendants, and thus the appellate court affirmed summary judgment for the individual defendants on the family-integrity claim.

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- 15 [Kirwin v. Kot](#), 2024 WL 911745 (D. Ariz. 2024).
- 16 [Murphy v. Hayes](#), 681 F. Supp. 3d 1043 (D. Ariz. 2023). See also [Duncan v. County of Humboldt](#), 2024 WL 869650 (N.D. Cal. 2024) (where state removed child from custody of her aunt, following which aunt sued for deprivation of her right to familial association and fabrication of evidence, court noted that relatives who share long-standing custodial relationship with closely related children that constitutes "existing family unit" possess liberty interest in familial association, although foster parents do not enjoy same constitutional protections, continuing that though biological aunt and child had lived together as family unit for more than half of child's life, aunt had not met her burden of showing she had constitutionally protected liberty interest in familial association with child).
- 17 See, e.g., [Rodriguez v. County of San Joaquin by and through San Joaquin County Human Services Agency](#), 2022 WL 956558 (E.D. Cal. 2022) (where plaintiff was putative biological father, court commented that mere existence of biological link did not merit equivalent constitutional protection and person who brings familial association claim requires "more enduring" relationship which reflects some assumption of parental responsibility, adding that person with only "potential" parental rights enjoys liberty interest that is lesser in magnitude; here, plaintiff tried to assert his biological connection with child and attempted to prove paternity with DNA test, suggesting that he was attempting to assume parental responsibility).
- 18 See, e.g., [Murphy v. Hayes](#), 681 F. Supp. 3d 1043 (D. Ariz. 2023) (ruling that mother's partner had standing to claim loss of familial association despite not being blood relative nor prospective adoptive parent to any of mother's three children, but where they all had lived together as family unit and he provided parental care, such as making discipline-related decisions, providing financial support, and supplying health insurance, court adding that he functionally was children's stepfather).
- 19 [Kitaj v. Van Handel](#), 2023 WL 5932856 (D. Ariz. 2023).
- 20 [McClain v. SBC Sheriff Dept.](#), 2018 WL 6118516 (C.D. Cal. 2018).
- 21 [Cleveland v. Schenectady County](#), 2018 WL 11540911 (N.D. N.Y. 2018).
- 22 [Starkey ex rel. A.B. v. Boulder County Social Services](#), 569 F.3d 1244 (10th Cir. 2009).
- 23 [Keates v. Koile](#), 883 F.3d 1228 (9th Cir. 2018).
- 24 [Keates v. Koile](#), 883 F.3d 1228 (9th Cir. 2018).
- 25 [Tingay v. Michigan Dept. of Human Services](#), 2014 WL 4627135 (W.D. Mich. 2014).

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- 26 Schannette v. Doxey, 2013 WL 4516041 (W.D. La. 2013).
- 27 Schannette v. Doxey, 2013 WL 4516041 (W.D. La. 2013).
- 28 Schannette v. Doxey, 2013 WL 4516041 (W.D. La. 2013) (where plaintiffs sued department defendants in their official capacities, and thus were actually suing the state itself, court indicating that department is "arm of the state" and enjoys Eleventh Amendment immunity, resulting in dismissal of official capacity claims against department defendants).
- 29 McClain v. SBC Sheriff Dept., 2018 WL 6118516 (C.D. Cal. 2018) (dismissing official capacity claims against individual defendants); Stock v. Stanislaus County, 2020 WL 207157 (E.D. Cal. 2020) (noting that 42 U.S.C.A. § 1983 claims against government officials in their official capacity are really suits against government employer because employer must pay any damages awarded and real party in interest is the entity for which official works; where plaintiff has sued both employees in their official capacities and sued their employers, individual capacity suit are ordinarily dismissed as redundant).
- 30 Fregosi v. Department of Health and Human Services, 2019 WL 2502039 (W.D. Wash. 2019).
- 31 Harris v. McKay, 2016 WL 7227557 (D. Ariz. 2016).
- 32 Smith v. Philadelphia Dept. of Human Services, 2005 WL 525403 (E.D. Pa. 2005).
- 33 Varon v. Nevada, 2024 WL 624321 (D. Nev. 2024).
- 34 Varon v. Nevada, 2024 WL 624321 (D. Nev. 2024).
- 35 Smith v. Auburn Police Department Officers, 2023 WL 423057 (W.D. Wash. 2023).
- 36 Varon v. Nevada, 2024 WL 624321 (D. Nev. 2024).
- 37 Stock v. Stanislaus County, 2020 WL 207157 (E.D. Cal. 2020).
- 38 Stock v. Stanislaus County, 2020 WL 207157 (E.D. Cal. 2020).
- 39 Stock v. Stanislaus County, 2020 WL 207157 (E.D. Cal. 2020).
- 40 Kohlmann v. Larsen, 2023 WL 1782023 (D. Ariz. 2023).
- 41 Pittman v. Cuyahoga County Dept. of Children and Family Services, 640 F.3d 716 (6th Cir. 2011) (where social worker made alleged misrepresentations in three filings in her capacity as legal advocate, and therefore was found to be entitled to absolute immunity).
- 42 Milchtein v. Milwaukee County, 42 F.4th 814 (7th Cir. 2022).
- 43 Patrick v. County of Los Angeles, 2023 WL 9100994 (C.D. Cal. 2023), report and recommendation adopted without opinion, 2024 WL 54590 (C.D. Cal. 2024).
- 44 Cleveland v. Schenectady County, 2018 WL 11540911 (N.D. N.Y. 2018) (citing Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)).
- 45 Cleveland v. Schenectady County, 2018 WL 11540911 (N.D. N.Y. 2018) (citing Sprint Communications, Inc. v. Jacobs, 571 U.S. 69, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013)).
- 46 Cleveland v. Schenectady County, 2018 WL 11540911 (N.D. N.Y. 2018) (citing Moore v. Sims, 442 U.S. 415, 99 S. Ct. 2371, 60 L. Ed. 2d 994 (1979)).

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- 47 [Williams v. Nebraska](#), 2020 WL 1914931 (D. Neb. 2020) (where mother claimed her children were wrongfully removed from her custody, leading court to rule it did not have jurisdiction over the claim because of doctrine); [Nielson v. Legacy Health Systems](#), 230 F. Supp. 2d 1206, R.I.C.O. Bus. Disp. Guide (CCH) ¶ 10418 (D. Or. 2001) (where parent claimed defendants deprived him of due process under Fourteenth Amendment because he was not able to see his daughter during investigation of possible child abuse, court commented it had no authority to overturn or otherwise review state-court child custody decision, a doctrine that applies even when challenge to state court decision involves federal constitutional issues, since child-support and child-custody issues are matters to be decided solely by state courts).
- 48 [Williams v. Nebraska](#), 2020 WL 1914931 (D. Neb. 2020).
- 49 [Williams v. Nebraska](#), 2020 WL 1914931 (D. Neb. 2020); [Cleveland v. Schenectady County](#), 2018 WL 11540911 (N.D. N.Y. 2018).
- 50 [Harris v. McKay](#), 2016 WL 7227557 (D. Ariz. 2016).
- 51 [Negrete v. Los Angeles County](#), 2022 WL 4390462 (C.D. Cal. 2022), report and recommendation adopted without opinion, 2022 WL 4381010 (C.D. Cal. 2022).
- 52 [Cleveland v. Schenectady County](#), 2018 WL 11540911 (N.D. N.Y. 2018).
- 53 [Harris v. McKay](#), 2016 WL 7227557 (D. Ariz. 2016).
- 54 [Grae-El v. City of Seattle](#), 2022 WL 3597408 (W.D. Wash. 2022).

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