

1. The mere presence of drugs, or prior use, does not pose the same threat to a child. As the Second Circuit has warned, “*if the mere ‘possibility’ of danger constituted an emergency, officers would ‘always’ be justified in making a forced entry and seizure of a child whenever the child was in the presence of a person who had.. a history that heightens the possibility of danger to the child.*” United States v. Venters, 539 F.3d 801, 808-09 (7th Cir. 2008)
2. In Walker, the Court noted, “*an existing ability or capacity of parents to adequately and properly care for their children is inconsistent with the status of dependency.*” Id.; see also In re the Welfare of Watson, 25 Wn. App. 508, 512-13, 610 P.2d 367 (1979).
3. Government action designed to prevent an individual from utilizing legal remedies may infringe upon the First Amendment right to petition the courts. In re Workers’ Compensation Refund, 46 F.3d 813, 822 (8th Cir.1995).
4. Although drugs are illegal, a parent’s criminal activity does not authorize the government to separate a family through child neglect statutes. Kozey v. Quarles, No. 3:04 CV 1724 MRK, 2005 WL 2387708
5. “*Such knee-jerk intervention signals a return to the discredited practice of focusing on the repugnance of parental conduct. Whether prior parental conduct is blameworthy or repulsive should not be of concern to the child welfare system.*” Robin-Vergeer, supra note 314, at 760
6. Finding no exigent circumstances among evidence of cluttered home, the developmental delays of the children, and the lack of educational and medical care for the children because there was no showing of “*imminent or likely harm*” to the children. Walsh v. Erie Cnty. Dep’t Job & Family Servs., 240 F. Supp. 2d 731, 740, 749-50 (N.D. Ohio 2003)
7. Although the federal circuit courts have developed different standards to identify exigent circumstances justifying seizure of a child from his home in the absence of a court order, parental drug use fails to constitute exigent circumstance under any of these standards. Because exigent circumstances require the immediate threat of

harm to the child, rather than a mere possibility of harm occurring to the child. Gates v. Texas Dep't Protective & Regulatory Servs., 537 F.3d 404, 428-29 (5th Cir. 2008)

8. Mere drug possession amounts to neither probable cause nor exigent circumstances. Therefore, neglect statutes that explicitly designate drug abuse as child neglect lead to unlawful seizures within the meaning of the Fourth Amendment and should be struck down as unconstitutional. Brokaw v. Mercer Cnty., 235 F.3d 1000, 1010 (7th Cir. 2000)
9. Cases in which parents misuse drugs or alcohol but do not neglect their child fail to justify such drastic state intervention. The lack of causation between parental drug use and harm to a child, the child's interest in staying with his natural family, and the bleak outlook for a child in the foster care system demonstrate that the government's interest does not outweigh the individual privacy interests of a child in cases involving drug use. *"The desire to avoid a domestic dispute cannot form a reasonable basis for depriving a child of his fourth and fourteenth amendment rights."* Wooley v. City of Baton Rouge, 211 F.3d 913, 925-26 (5th Cir. 2000)
10. Under any of these standards, however, parental drug use fails to constitute an exigent circumstance, for it does not put a child in *"immediate jeopardy,"* nor does it pose the threat that the child is *"likely to experience serious bodily harm."* Good, 891 F.2d at 1094.
11. The U.S. Supreme Court has repeatedly held that parents have a fundamental right to make decisions as to the companionship, care, custody, and management of their children, which right is a protected liberty interest under the due process clause of the Fourteenth Amendment. Troxel v. Granville, 530 U.S. 57, 65-66, 120 S.Ct. 2054, 2060 (2000)
12. The First Amendment also provides a possible cause of action. Courts have recognized that the First Amendment protects the fundamental right to intimate association, which includes the familial association between parents and children. Doe v. Fayette County Children and Youth Servs., No. 8-823, 2010 WL 4854070, *18-19 (W.D. Pa. Nov. 22, 2010); Behm v. Luzerne County Children and Youth, 172 F.Supp.2d 575, 585 (M.D. Pa. 2001).

13. Neglect statutes that identify drug use or possession as forms of neglect justifying removal of a child from a home fail to constitute exigent circumstances. Drug use or possession does not cause direct harm to a child and is not a guarantee of direct harm to a child, but merely poses a possibility of harm to a child. This possibility of harm is not an exigency. Tenenbaum, 193 F.3d at 594
14. Children have standing to sue for their removal after they reach the age of majority. Children have a constitutional right to live with their parents without government interference. Brokaw v. Mercer County (7th Cir. 2000)
15. Courts should not accept the standard set by neglect statutes that mere possession, or even use, of narcotics constitutes neglect because it does not necessarily cause “*real physical or emotional harm*” to the child, nor does it mean that the child is in imminent danger. Furthermore, neglect statutes that incorporate drug use into their definitions of neglect do not fulfill their purpose of protecting children because the immorality of a particular behavior does not necessarily lead to harm. Roe v. Conn. 417 F. Supp. 769, 779 (M.D. Ala. 1976).
16. Unlike abuse, which involves some form of negative parental action, child neglect typically presents in the form of parental omissions, and therefore, cases of neglect are substantially less likely to warrant immediate action. New York v. Burger, 482 U.S. 691, 727 (1987)
17. Evidence of an increased likelihood of harm to a child does not constitute actual or imminent threat of harm to a child. “*Imminent danger must be near or impending, not merely possible.*” Nicholson v. Scoppetta (2004)
18. “*Consent*” that is the product of official intimidation or harassment is not consent at all. Citizens do not forfeit their constitutional rights when they are coerced to comply with a request that they would prefer to refuse. Florida v. Bostick (S. Ct. 1991)
19. Mother had a clearly established right to an adequate, prompt post-deprivation hearing. A 17-day period prior to the hearing was not a prompt hearing. Whisman v. Rinehart (8th Cir. 1997)
20. Coercion can be mental as well as physical. Blackburn v. Alabama 361 U.S. 199, 206 (1960)

21. If neglect statutes conflict with the Fourth Amendment, they must be deemed invalid
"[T]he State registers no gain towards its declared goals when it separates children from the custody of fit parents." Stanley v. Illinois, 405 U.S. 645, 652 (1972)
22. "A showing of harm to the child . . . as a prerequisite for coercive state intervention," statutes incorporating drug use focus on parental behavior and thus "subvert themselves." "By preserving references to parental misconduct as factors to consider in neglect determinations, statutory law, undermines the express requirement that harm to the child be a sine qua non of intervention." The result of this is that "such cases often begin to resemble criminal proceedings against errant parents." Dolgin, supra note 62, at 1227.
23. The assumption that drug use constitutes neglect inappropriately shifts the focus from the welfare of the child to the behavior of the parent. The parenting, not the supposed quality of the individual who is the parent, should be at issue. See Dolgin, supra note 62, at 1213, 1235-36; Wald, supra note 304, at 1034:
24. A trial court cannot terminate a parent's rights absent this finding of unfitness. Parental deficiencies alone do not render a parent currently unfit, "the proper inquiry is whether the existing parental deficiencies, or other conditions, prevent the parent from providing for the child's basic health, welfare, and safety." In re Parental Rights to K.MM., 186 Wn.2d 466, 493, 379 P.3d 75 (2016).
25. The court explained "absent some tangible evidence of abuse or neglect, the Courts do not authorize fishing expeditions into citizens' houses. Mere parroting of the phrase best interest of the child without supporting facts and a legal basis is insufficient to support a Court order based on reasonableness or any other ground." North Hudson DYFS v. Koehler Family (2001)
26. An officer who obtains a warrant through materially false statements which result in an unconstitutional seizure may be held liable personally for his actions under section 1983. Aponte Matos v. Toledo Davilla (1st Cir. 1998)
27. Defendants could not lawfully seize child without a warrant or the existence of probable cause to believe child was in imminent danger of harm. Where police were not informed of any abuse of the child prior to arriving at caretaker's home and found

no evidence of abuse while there, seizure of the child was not objectively reasonable and violated the clearly established Fourth Amendment rights of the child. Wooley v. City of Baton Rouge (5th Cir. 2000)

28. Miller recognized the fundamental liberty interests by parents in the care, custody and management of their children, an interest which must be balanced against the State's interest in protecting children suspected of being abused. 174 F.3d at 373, 374. Citing Croft and Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).
29. To act "*under color of state law*" means the social workers acted beyond the bounds of lawful authority, but in such a manner that the unlawful acts were done while the official was purporting or pretending to act in the performance of their official duties. In other words, the unlawful acts must consist of an abuse or misuse of power which is possessed by the official only because they are an official. The social workers committed a misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law.
30. An unreasonable belief of imminent harm to a child will render a seizure unreasonable. Wallis v. Spencer, 202 F.3d 1126, 1140 (9th Cir. 2000)
31. Right to Procedural Due Process Violated: The state denied the plaintiff the fundamental right to a fair procedure before having their child removed by the intentional use of fraudulent evidence during the procedure. Morris v. Dearborne (5th Cir. 1999)
32. The forced separation of parent from child, even for a short time (in this case 18 hours), represents a serious infringement upon the rights of both. J.B. v. Washington County (10th Cir. 1997)
33. Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance, the burden of proving which rests on their government. Elrod v. Burns (96 S. Ct. 1976)

34. Parents and child had a clearly established liberty interest in associating together. This right was violated where the defendants allegedly had no indication of any physical neglect of the child, no indication of any immediate threat to his welfare, and no indication of any criminal activity by his mother, where they had only third-hand hearsay that the child's mother had gotten drunk and failed to pick up the child from his babysitter, and where defendants refused to return the child, had not investigated to determine whether it was necessary to remove the child in the first place, and had not investigated the possibility of returning the child to his mother, grandmother, or anyone designated by the mother. Whisman v. Rinehart (8th Cir. 1997)
35. In reversing the conviction of a teacher who violated the law, the court held that the Due Process Clause protected “*the power of parents to control the education of their own children.*” People V. Bennett (1923)
36. “This right to the preservation of family integrity encompasses the reciprocal rights of both parent and children.” See Duchesne v. Sugarman, 566 F.2d 817, 825 (2d Cir. 1977)
37. In 1923, the Supreme Court held that there was a constitutionally protected right of parents to “establish a home and bring up children.” in Meyer v. State of Nebraska (1923)
38. Protecting the right to live as an untraditional family under the due process clause; Lawrence v. Texas, 539 U.S. 558 (2003)
39. The Supreme Court reaffirmed, that “*choices about family life,*” and the rights of parents to raise their children, are rights of “*basic importance in our society.*” These rights, the court wrote, are to be protected from “*the State’s unwarranted usurpation, disregard, or disrespect.*” in M.L.B. v. S.L.J. (1996)
40. Plaintiff’s clearly established right to meaningful access to the courts would be violated by suppression of evidence and failure to report evidence. Chrissy v. Miss. Department of Public Welfare (5th Cir. 1991)
41. Child removals are “seizures” under the Fourth Amendment. Seizure is unconstitutional without court order or exigent circumstances. Court order obtained

based on knowingly false information violates fourth amendment. Brokaw v. Mercer County (7th Cir. 2000)

42. A child has a constitutionally protected interest in the companionship and society of his or her parent. Ward v. San Jose (9th Cir. 1992)

43. The social workers and court officials consisted of two or more persons who conspired to injure, oppress, threaten, and intimidate the mother and her minor child, in the free exercise or enjoyment of any right or privilege secured to the mother by the Constitution or the laws of the United States, (or because of his/her having exercised the same). Title 18, U.S.C., Section 242

44. It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder her free exercise or enjoyment of any rights so secured. 18 U.S. Code § 241 - Conspiracy against rights

45. Absent extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures. Malik v. Arapahoe Cty. Department of Social Services (10th Cir. 1999)

46. The Court held that where abusive government action by a member of the executive branch is alleged, "only the most egregious official conduct 522*522 can be said to be arbitrary in the constitutional sense." .Id. at 375, quoting County of Sacramento v. Lewis. 523 U.S. 833, 846. 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

47. State employee who withhold a child from their family may infringe on the family's liberty of familial association. Social workers could not deliberately remove children from their parents and place them with foster caregivers when the officials reasonably should have known such an action would cause harm to the child's mental or physical health. K.H. through Murphy v. Morgan (7th Cir. 1990)

48. Under this standard, executive action will not expose the official to liability unless it is "so ill-conceived or malicious that it `shocks the conscience.'" Id. The Court emphasized that Croft was simply an application of the traditional substantive due process "shocks the conscience" standard. Miller, 174 F.3d at 376.

49. Stating that only in rare circumstances can allegations of neglect be so severe or credible that an investigation into the allegations is not required for removal; Brokaw, 235 F.3d at 1011
50. A defendant in a civil rights case is not entitled to any immunity if he or she gave false information either in support of an application for a search warrant or in presenting evidence to a prosecutor on which the prosecutor based his or her charge against the plaintiff. Young v. Biggers (5th Cir. 1991)
51. The Court held that the CYS caseworker, acting on an anonymous tip with multiple layers of hearsay, without any corroborating evidence, and without any evidence that convinced her one way or another that there was any sexual abuse involved, had insufficient justification for such a drastic infringement on parental and children's rights (familial integrity), and so was an arbitrary abuse of government power.
52. Fourth Amendment protection against unreasonable searches and seizures extends beyond criminal investigations and includes conduct by social workers in the context of a child neglect/abuse investigation. Lenz v. Winburn (11th Cir. 1995)
53. Court held that an anonymous tip standing alone never amounts to probable cause. H.R. v. State Department of Human Resources (Ala. Ct. App. 1992)
54. Defendant should've investigated further prior to ordering seizure of children based on information he had overheard. The mere possibility of danger does not constitute an emergency or exigent circumstances that would justify a forced warrantless entry and a warrantless seizure of a child. Hurlman v. Rice (2nd Cir. 1991)
55. In context of a seizure of a child by the State during an abuse investigation, a court order is the equivalent of a warrant. 193 F.3d 581, 602 (2nd Cir. 1999) and F.K. v. Iowa district Court for Polk County. Id. Tenenbaum v. Williams (2nd Cir. 1999) and F.K. v. Iowa
56. Child protection workers are subject to the 4th and 14th Amendment in the context of an investigation of alleged abuse or neglect as are all "government officials". The court ruled "*despite the defendant's (child protection worker) exaggerated view of their powers, the Fourth Amendment applies to them, as it does to all other officers and agents of the state whose request to enter, however benign or well-intentioned,*

are met by a closed door." *"The Fourth Amendment's prohibition on unreasonable searches and seizures applies whenever an investigator, be it a police officer, a DCFS employee, or any other agent of the state, responds to an alleged instance of child abuse, neglect, or dependency"*. 3:01-cv-7588. Walsh v. Erie County Department of Job and Family Services.

57. The Constitution also protects *"the individual interest in avoiding disclosure of personal matters"* Federal Courts (and State Courts), under Griswold can protect, under *the "life, liberty and pursuit of happiness"* phrase of the Declaration of Independence, the right of a man to enjoy the mutual care, company, love and affection of his children, and this cannot be taken away from him without due process of law. There is a family right to privacy, which the state cannot invade, or it becomes actionable for civil rights damages. 381 US 479 Griswold v. Connecticut. 1965

58. The Court focused on *"whether the information available to the defendants at the time would have created an objectively reasonable suspicion of abuse justifying the degree of inference with the parents' rights as the child's parents."* In the absence of such reasonable grounds, the governmental intrusions of this nature *"are arbitrary abuses of power."* Due process requires the trial court to explicitly or implicitly find by clear, cogent, and convincing evidence that the parent is currently unfit. A.B., 168 Wn.2d at 918-19.

59. A due-process violation occurs when a state-required breakup of a natural family is founded solely on a "best interests" analysis that is not supported by the requisite proof of parental unfitness. Quilloin v. Walcott (1978) 434 U.S. 246, 255

60. The Supreme Court ruled that testing without maternal consent for the purposes of criminal investigation violated the mother's Fourth Amendment rights. (Lester, 2004) In Ferguson v Charleston, SC. 532 US 67 (2001)

61. A parent's interest in custody of their children is a liberty interest which has received considerable constitutional protection; a parent who is deprived of custody of his or her child, even though temporarily, suffers thereby grievous loss and such loss deserves extensive due process protection. In the Interest of Cooper (Kansas 1980)

62. A finding of dependency requires proof of present parental deficiencies. *In re the Matter of the Welfare of Walker*, 43 Wn.2d 710, 715, 263 P.2d 956 (1953).
63. A parent's right to the custody of his or her children is an element of "liberty" guaranteed by the 5th Amendment and the 14th Amendment of the United States Constitution. *Matter of Gentry* (1983)
64. Children have a Constitutional right to live with their parents without government interference. Child's four-month separation from his parents could be challenged under substantive due process. Sham procedures don't constitute true procedural due process. *Brokaw v. Mercer County* (7th Cir. 2000)
65. Although it is accurate that a trial court may consider prior parenting history, a finding of dependency must be based on proof of a parent's present inability to care for her children. *Walker*, 43 Wn.2d at 715; *Watson*, 25 Wn. App. at 512-13.
66. Accordingly, the Department had to prove Ms. W. was presently unable to adequately care for her baby son, "*such that the child is in circumstances which constitute a danger of substantial damage to his psychological or physical development.*" RCW 13.34.030(6)(c); accord *In re Dependency of Brown*, 149 Wn.2d 836, 72 P.3d 757
67. When a judge knows that he/she lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him/her of jurisdiction, judicial immunity is lost. *Rankin v. Howard* (1980) 633 F.2d 844, cert den. *Zeller v. Rankin*, 101 S. Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.
68. Federal Tort Law: judges cannot invoke judicial immunity for acts that violate litigants civil rights. *Robert Craig Waters*. *Tort & Insurance Law Journal*, Spr. 1986 21 n3, p509-516.
69. A law repugnant of the Constitution is void, and that courts, as well as other departments, are bound by that instrument. *Maybury v. Madison*, 1 Cranch 137 (1803)
70. Some defendants urge that any act of a judicial nature entitles the judge to absolute judicial immunity, but in a jurisdictional vacuum (that is absence of all jurisdictions)

the second prong necessary to absolute judicial immunity is missing. Stump v. Sparkman, id., 435 U.S. 349

71. Where there is no jurisdiction there can be no discretion for discretion is incident to jurisdiction. Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed 646 (1872)

72. The claim and exercise of a constitutional right cannot be converted into a crime a denial of them would be a denial of due process of law. Simmons v. United States, 390 U.S. 377 (1968)

73. Hence the act of filing a lawsuit against a government entity represents an exercise of the right to petition and thus invokes constitutional protection. City of Long Beach v. Bozek, 31 Cal.3d 527, at 533-534 (1982)

74. The right to petition for redress of grievances is 'among the most precious of the liberties safeguarded in the bill of rights.' Inseparable from the guaranteed rights entrenched in the 1st amendment, the right to petition for redress of grievances occupies a 'preferred place' in our system of representative government and enjoys a 'sanctity and a sanction not permitting dubious intrusions.' Thomas v. Collins, 323 US 516; 65 S.Ct 315, 322.

75. It was not by accident or coincidence that the rights to freedom of speech and press were coupled with the rights of the people to peaceably assemble and petition for redress of grievances. A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938)

76. No judicial process whatever form it may assume can have any lawful authority outside of the limits of the jurisdiction of the court or judged by whom it is issued and an attempt to enforce it beyond these boundaries is nothing less than lawless violence. Ableman v. Booth, 21 Hoard 506 (1859)

77. The essential elements of due process of law are notice, an opportunity to be heard, and the right to defend in orderly proceeding. Fiehe v. R.E. Householder Co., 125 So. 2, 7(Fla. 1929)

78. No man/woman in this country is so high that he/she is above the law no officer of the law may set that law at defiance with impunity all the officers of the government from the highest to the lowest are creatures of the law and are bound to obey it.

*United States v. Lee, 106 U.S. 196, 220, 1 S.Ct. 240, 27 L.Ed 171 (1882) Buckles v. King County 191 F.3d 1127, *1133 (C.A.9(Wash.), 1999)*

79. Purpose of statute that mandates that any person who under the color of law subjected it another to deprivation of his constitutional rights, would be liable to the injured party in action at law was not to abolish communities available at common law but to ensure the federal courts would have jurisdiction of constitutional claims against state officials. *Act March 3, 1875, 18 Stat. 470 Butz v. Economou 438 U.S. 478, 98 S.Ct 2894 (U.S.N.Y., 1978)*

80. Acts in excess of judicial authority constitutes misconduct particularly where a judge deliberately disregards the requirements of fairness and due process. *Canon v. Commission of Judicial Qualifications 91975) 14 Cal. 3d 678, 694.*

81. The 11th amendment was not intended to afford them freedom from liability in any case where, under the color of their office they have injured one of the state's citizens to grant them such immunity would be to create privileged class free from liability from wrongs inflicted or injuries threatened public agents must be liable to the law unless they are to be put above the law. *Old Colony Trust Company vs City of Seattle et al. (06/01/06) 271 U.S. 426, 46 S Ct. 552, 70 L. Ed at page 431*

82. Not every action by a judge is in the exercise of his/her judicial function it is not a judicial function for a judge to commit an intentional tort occurs in the courthouse when a judge acts as a trespasser of the law when a judge does not follow the law the judge loses subject matter jurisdiction and the judge's orders are void of no legal force or effect. *Yates v. Village of Hoffman estates, Illinois, 209 F. Supp. 757 (N.D. Ill. 1962)*

83. Absent conditions presenting an "imminent risk of serious bodily harm," removing children from their home without obtaining judicial authorization is a violation of a parent's established Fourth and Fourteenth Amendment rights. *Rogers v. Cty. of San Joaquin, 487 F.3d 1288, 1297-98 (9th Cir. 2007).*

84. "In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Troxel v. Granville, 530 U.S. 57, 66 (2000).

85. A court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interests. Nicholson v. Scoppetta, 820 N.E.2d 840, 852 (N.Y. 2004)

86. The innocent individual who is harmed by an abuse of governmental authority is assured that she will be compensated for her injury. Owen v. City of Independence

87. The US Supreme Court stated that "When a state officer acts under a state law in a manner violative of the federal constitution, he/she comes into conflict with the superior authority of that Constitution, and s/he is in that case stripped of her/his official or representative character and is subjected in her/his person to the consequences of her/his individual conduct. The state has no power to impart to her/him any immunity from the responsibility to the supreme authority of the United States." Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974)

88. When a judicial officer acts entirely without jurisdiction, or without compliance with jurisdiction requisites, she may be held civilly liable for abuse of process even though her act involved a decision made in good faith that she had jurisdiction. U.S. Fidelity & Guaranty Co., 217 Miss. 576, 64 So. 2d 697

89. Washington State statute does not authorize Children's Administration (CA) to accept referrals for CPS investigation or initiate court action on an unborn child. Guidelines for Testing and Reporting Drug Exposed Newborns in Washington State (July 2015)