

2021

Netflix's *The Trials of Gabriel Fernandez*

Charlotte Hinkamp

Follow this and additional works at: <https://lawcommons.luc.edu/clrj>



Part of the [Family Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Charlotte Hinkamp, *Netflix's *The Trials of Gabriel Fernandez**, 41 CHILD. LEGAL RTS. J. 68 (2021).

Available at: <https://lawcommons.luc.edu/clrj/vol41/iss1/8>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Children's Legal Rights Journal by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

Review:
Netflix's *The Trials of Gabriel Fernandez*

Charlotte Hinkamp*

I. INTRODUCTION

Parents and families have unique protections and rights in the United States, but the idea of children's rights is relatively new. As a result, the State has a responsibility and right to intervene in family matters when necessary. In Gabriel Fernandez's case, the State's interest in protecting Gabriel outweighed his mother's parental rights. Yet, the State failed to exercise its power to protect Gabriel and remove him from his home.

Netflix's six-part series, *The Trials of Gabriel Fernandez*, details the torture, abuse, and murder of Gabriel Fernandez by his mother and her boyfriend, as well as the media and government's response. In the months preceding Gabriel's death, his teacher and family members reported signs of abuse to social services and the sheriff's office. Nonetheless, Gabriel was never removed from his home. The tragedy of Gabriel Fernandez highlights two important questions: how to ensure that the State properly uses its power to protect abused children and who pays when the State's failure to act leads to a child's death?

II. SUMMARY OF *THE TRIALS OF GABRIEL FERNANDEZ*

The Trials of Gabriel Fernandez is a limited series that premiered on Netflix in 2020. The six-part series details Gabriel's life from birth to his heartbreaking death. Gabriel was born on February 20, 2005 to Pearl Fernandez and Arnold Conteras. Shortly after his birth, Pearl gave him away and he was raised by his grandparents and his uncle. Gabriel was raised by his uncle and his uncle's husband for the first four years of his life, until his grandfather decided that two gay men should not be raising a child. Gabriel's grandparents then raised him until 2012, when Pearl decided to seek custody of Gabriel to obtain welfare money. Gabriel lived with Pearl and her boyfriend, Isauro Aguirre, for eight months until his murder on May 23, 2013.

Gabriel's first grade teacher, Jennifer Garcia, became concerned for Gabriel's welfare after he asked her if it was normal to be beaten with a belt and bleed. After school, Garcia called the child welfare hotline and reported the incident. The next day, Stephanie Rodriguez, an emergency response worker, called Garcia and informed her that she was assigned to the case. When an incident of child abuse is reported, case workers must bring the child to a special child abuse doctor partnered with the Los Angeles Department of Child and Family Services (DCFS) to be evaluated. Gabriel was never taken to a doctor.

A few weeks later, Gabriel arrived at school with a fat lip and chunks of hair missing. He told Garcia that his mom punched him in the mouth. Garcia called Rodriguez to report the incident. A few days later, Gabriel came to school and told his teacher that his

* Charlotte Hinkamp is a 2022 J.D. candidate at Loyola University Chicago School of Law.

mom shot him in the face with a BB gun. Garcia called Rodriguez to report the incident. Each time, there was no medical follow up, and Gabriel's abuse kept getting worse.

Three weeks before Gabriel's murder, a security guard at the Department of Social Services noticed Gabriel's horrifying injuries when Pearl came into the office with her children. The security guard observed cigarette burns all over the back of Gabriel's head. Some were fresh and some were healing. Gabriel also had bruises around his eyes and marks covering his body. The security guard wanted to report the incident but was told by supervisors not to so that they did not have to work overtime. He eventually called the sheriff's department who said they would send someone to Pearl's house, but still, Gabriel was never removed.

Once the murder trial began, details of the horrifying abuse that Gabriel endured for eight months came to light. Gabriel was forced to sleep in a cupboard, tied up, blindfolded, and handcuffed. Sometimes, Pearl and Isauro put a sock in his mouth to keep him quiet. Gabriel was also forced to go to the bathroom in the cupboard. Additionally, they beat Gabriel with a baseball bat and their fists and attacked him with pepper spray. He was not fed, and when he was, he was forced to eat cat litter.

The coroner took two full days to complete the autopsy and document all injuries. He discovered multiple rib fractures at different ages on both sides of Gabriel's chest, various marks and bruises, and bleeding inside his head caused by blunt force trauma. All injuries pointed to severe physiological and emotional distress endured over a long period of time. It was not a one-time event that led to Gabriel's death, it was months of torture. The official autopsy declared Gabriel's cause of death to be a sequelae of blunt force trauma and child neglect.

Given the extensive evidence of Gabriel's abuse, it was shocking that DCFS did not remove Gabriel from the house. Gabriel's aunt spoke with sheriffs twice and called social services three times to report the abuse. Gabriel's teacher also reported injuries and incidents of abuse at least three times.

When DCFS' mishandling of Gabriel's case was reported, there was public outrage. Protestors demanded justice for Gabriel, and Jackie Lacey, Los Angeles County District Attorney, took the unexpected step of charging the social workers. In doing so, Lacey stated, "we believe these social workers were criminally negligent and performed their legal duties with willful disregard for Gabriel's well-being. They should be held responsible for their actions." Two social workers and two supervisors were charged with child abuse and falsifying public record. They were all fired from DCFS.

Isauro Aguirre was found guilty of first-degree murder with special circumstances of torture and was sentenced to death. Less than 1% of Los Angeles County cases that seek the death penalty actually result in the defendant receiving the death penalty as punishment. After Isauro was sentenced to death, Pearl pled guilty to first-degree murder with special circumstances of torture to avoid potentially receiving the death penalty as well. She is currently serving a sentence of life in prison without the possibility of parole.

In January 2020, the charges against the social workers and supervisors were dismissed after the California Court of Appeals found that the social workers were not required to control the abusers and did not have custody over Gabriel. The case against the social workers depended on the extent of their legal duty to exert control over Gabriel's

abusers, and the court ruled that although the social workers and supervisors may have failed their duties, the consequences for that failure does not include criminal liability for child abuse.

III. THE RIGHTS OF PARENTS

For the last 100 years, the United States Supreme Court has held that parents have substantive due process rights to the care, custody, and control of their children, grounded in the Fourteenth Amendment liberty interest. *Meyer v. Nebraska* was one of the first Supreme Court cases to declare these parental rights. In *Meyer*, the Court held that under the Fourteenth Amendment, parents have the right to control the upbringing of their child as they see fit. Parental rights were further established in subsequent cases like *Wisconsin v. Yoder* and *Pierce v. Society of Sisters*, in which the Supreme Court held that parents can control the education of their child, and parental rights sometimes outweigh the State's interest.

Most recently in 2000, in *Troxel v. Granville*, the Supreme Court held that fit parents have a fundamental right to control the upbringing of their children and a constitutional right to make basic determinations for the child's welfare. However, parents do not have absolute rights over the care, custody, and control of their children.

IV. THE INTEREST AND DUTY OF THE STATE

Parents have a right to bring up their children as they see fit, but family life is not beyond regulation in the public interest. Rights of religious freedom are not beyond this limitation as well. The State can step in to protect children when necessary under the *parens patriae* doctrine, which empowers states to intervene against an abusive or negligent parent or legal guardian and to act as the parent of any child or individual who is in need of protection. This doctrine grants states the power to limit parental freedom when a child's welfare is in danger, such as by requiring school attendance and regulating or prohibiting child labor. This power extends to abused and neglected children.

The social workers charged in Gabriel's case had both a duty and the power to protect Gabriel. Social workers are supposed to maintain a body chart and document each time they witness an injury. Rodriguez started a chart for Gabriel but failed to maintain it. Given Gabriel's injuries and the numerous mandated reporters who called DCFS, removing Gabriel from Pearl and Isuaro's reach was well within the social workers' scope of power. Even though DCFS policy is to keep the child with the parent if possible, the evidence is clear that Gabriel was not safe at home.

V. THE RIGHTS OF CHILDREN

Adult rights are more extensive and delineated than children's rights in the United States. Unlike adults, whose rights have been clearly established by Supreme Court rulings and statutes, there are few cases and laws addressing children's rights. Children are an extremely vulnerable population in part because they legally do not have a voice. They

have no choice but to rely on adults and the State to protect them and their interests. Children's rights are also controversial to some who believe that expanding the scope of State intervention infringes on parents' rights to raise their children as they see fit.

The United States has not fully adopted the United Nations Convention on the Rights of the Child (UNCRC) but has ratified the optional protocols that prevent child sales, child pornography, and child soldiers. There are state laws regarding child abuse and federal laws that grant funds to States for child abuse or neglect programs, but children are not afforded all the rights in the UNCRC. Instead, children are only afforded the basic rights embodied by the Constitution, and even those are limited in some circumstances.

The lack of defined children's rights in the United States only further demonstrates the need for the State to step in to protect abused children. In Gabriel's case, his teacher and family members reported abuse multiple times. Social workers checked on Gabriel, knew what was going on, and deliberately chose to do nothing about it. When a child is in danger and the State does not exercise its power to remove the child from the harmful environment, there is no other entity who can protect the child, thus leaving the child at the hands of his or her abuser. Because children are a vulnerable population, it is essential that the State be their advocate.

VI. CONCLUSION

Almost 700,000 children are abused and neglected in the United States each year. Although parents have substantive due process rights grounded in the Fourteenth Amendment regarding the custody, care, and control of their children, the State still has the power to intervene when necessary. Had the Los Angeles Department of Child and Family Services acted appropriately within their power as a State entity, Gabriel might be alive today. When weighing Pearl's rights as a parent with the State's interest to intervene, it is clear, based on all the reports and details of Gabriel's abuse, that the State's interest and duty to protect Gabriel outweighed Pearl's parental rights.

Because children do not have the same rights as adults and cannot speak up for themselves when they are in trouble, they rely on the State to protect them. When the State does not exercise its power to intervene in cases where a child is clearly being abused, there can be devastating consequences, as displayed in *The Trials of Gabriel Fernandez*. The State has a clear duty to intervene and act in the best interest of the child to protect this vulnerable population. When a child is abused by their parent and when State entities such as DCFS fail to intervene when necessary, the child is left without protection. Therefore, the state should be held legally accountable when they fail to take action.

SOURCES

Minyvonne Burke, *Case Dismissed Against Social Workers Charged in Death of 8-year-old California Boy*, NBC NEWS, (July 16, 2020), <https://www.nbcnews.com/news/us-news/case-dismissed-against-social-workers-charged-death-8-year-old-n1234089>.

Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a (2018).

Alexandra Gardiner, *Children's Rights: Why the United States Should Ratify the United Nations Convention on the Rights of the Child*, Bank Street College of Education (May 1, 2017) (M.S. Ed., Bank Street College of Education).

Meyer v. Nebraska, 262 U.S. 390 (1923).

National Statistics on Child Abuse, NAT'L CHILD'S ALL., <https://www.nationalchildrensalliance.org/media-room/national-statistics-on-child-abuse> (last visited October 8, 2020).

Pierce v. Society of Sisters, 268 U.S. 510 (1925).

Prince v. Massachusetts, 321 U.S. 158 (1994).

Alejandra Reyes-Veladare, *Charges Dismissed Against Social Workers Linked to Gabriel Fernandez's Killing*, L.A. TIMES, (July 15, 2020), <https://www.latimes.com/california/story/2020-07-15/charges-against-the-social-workers-linked-to-gabriel-fernandez-killing-will-be-dropped>.

THE TRIALS OF GABRIEL FERNANDEZ (Netflix 2020).

Troxel v. Granville, 530 U.S. 57 (2000).

Amy Wilkinson-Hagen, *The Adoption and Safe Families Act of 1997: A Collision of Parens Patriae and Parent's Constitutional Rights*, 11 GEO. J. ON POVERTY L. & POL'Y 137 (2004).

Wisconsin v. Yoder, 406 U.S. 205 (1972).