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RACE, DISABILITY, AND POLICE MISCONDUCT: A DISCRIT APPROACH TO PRIVACY LAW AND THE KILLINGS OF RYAN GAINER AND SONYA MASSEY

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In March 2024, police killed Ryan Gainer, a Black teenager with autism, in his California home after his family sought help during a behavioral crisis. Several months later, police killed Sonya Massey, a Black woman experiencing a mental health crisis, in her Illinois home. This Comment examines the failure of U.S. privacy law to protect disabled people of color in their homes, using the deaths of Ryan Gainer and Sonya Massey as case studies. Through the lens of Critical Disability Studies (DisCrit), it exposes the systemic violations of both physical and decisional privacy that disproportionately impact affect disabled individuals of color. This Comment ultimately advocates for an abolitionist approach to privacy law reform, proposing a framework that explicitly addresses the intersections of race and disability to provide meaningful privacy protections for marginalized communities.

INTRODUCTION

On March 9, 2024, police officers killed Ryan Gainer, a Black teenager with autism,[1] in his own home after his family called 911 for help.[2] Gainer's family reported that he was experiencing a disability-related behavioral crisis, breaking things at home and hitting his sister, though she was

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1. See Emily Ladau, Demystifying Disability: What to Know, What to Say, and How to Be an Ally 10–13 (2021) (explaining that person-first language "is all about acknowledging that human beings who have disabilities are, in fact, people first, and they're seen not just for their disability"). The author prefers to use a mixed approach here, whereby person-first language is used for references to individuals (i.e., Gainer is teenage boy with autism) and disability-first language is used for references to groups (i.e. disabled people of color).

2. Sam Levin, 'A Talented, Goofy Kid': Family of Ryan Gainer, Autistic Teen Killed by Police, Speak Out, The Guardian (Mar. 21, 2024), https://www.theguardian.com/us-news/2024/mar/21/ryan-gainer-autistic-teen-police-killing-california [https://perma.cc/42Z9-LJUW]; Anthony Victoria, Ryan Gainer's Killing Reflects Concerns With Police Force Being Used on Neurodivergent People, NPR (Mar. 15, 2024), https://www.npr.org/2024/03/15/1238876778/ryan-gainers-killing-reflects-concerns-with-police-force-being-used-on-neurodive (on file with the *Columbia Law Review*).

unharmed.[3] The family later called, saying that Gainer had calmed down and help was no longer needed.[4] Still, within seconds of arriving, the San Bernardino County Sheriff's deputies shot and killed Gainer, who was holding a gardening hoe.[5] The police body camera footage shows a deputy immediately firing as Gainer appears to run toward him.[6]

This tragic death parallels another in Illinois just months later, where police fatally shot Sonya Massey, a thirty-six-year-old Black woman experiencing a mental health crisis in her home.[7] Despite her mother's urgent plea to the 911 dispatcher for noncombative officers, police arrived and killed Massey within minutes.[8] After weeks of seeking mental health support, officers shot Massey when she needed help the most.[9]

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3. See Press Release, The Arc, The Arc's Statement on the Killing of Ryan Gainer, (Mar. 14, 2024), https://thearc.org/blog/the-arcs-statement-on-the-killing-of-ryan-gainer/ [https://perma.cc/8EJD-VBQ8] ("In the face of Ryan's mental health crisis, his family called 911 for help. Instead of receiving the care he needed from a competent professional, he was killed."); see also Hannah Fry & Andrew J. Campa, Family of 15-Year-Old With Autism Fatally Shot by Deputies Files Claim Against San Bernardino County, L.A. Times (Mar. 21, 2024), https://www.latimes.com/california/story/2024-03-21/family-of-15-year-old-with-autism-fatally-shot-by-deputies-files-claim-against-san-bernardino-county (on file with the *Columbia Law Review*) ("A family member called 911 for help, asking dispatch to send deputies to 'take him in' because he was breaking glass and had hit his sister, according to a portion of the call released by the San Bernardino County Sheriff's Department."); Victoria, supra note 2.

4. Cindy Von Quednow, Bodycam Video Shows Fatal Shooting of Teen With Autism as He Approaches California Deputy With a Gardening Tool, CNN (Mar. 14, 2024), https://www.cnn.com/2024/03/14/us/ryan-gainer-shooting-san-bernardino-county-deputies/ [https://perma.cc/GWS7-CJ3L]; see also Fry & Campa, supra note 3.

5. See Ben Brasch, Police Fatally Shoot Autistic 15-Year-Old Who Charged With Garden Tool, Video Shows, Wash. Post (Mar. 14, 2024), https://www.washingtonpost.com/nation/2024/03/14/ryan-gainer-autistic-teen-police-shooting/ (on file with the *Columbia Law Review*) ("The first deputy was at the house less than 30 seconds before Gainer charged at him.").

6. See id. ("Gainer appears from behind a corner inside the home holding the hoe and runs toward the doorway where the deputy was standing. . . . As the deputy runs from Gainer, he twists and points his gun at the teen. That is when deputies fired their shots . . . .").

7. See Emma Tucker & Jillian Sykes, Sonya Massey's Mom Called 911 to Report Her Daughter Was Having a Mental Breakdown the Day Before She Was Killed, CNN, https://edition.cnn.com/2024/08/01/us/sonya-massey-mental-health-911-calls/index.html [https://perma.cc/XT42-Z3Z9] (last updated Aug. 1, 2024); see also Mawa Iqbal & Leila Fadel, Illinois Community Is Reeling Following the Killing of 36-Year-Old Sonya Massey, NPR (July 30, 2024), https://www.npr.org/2024/07/30/nx-s1-5056316/illinois-community-is-reeling-following-the-killing-of-36-year-old-sonya-massey (on file with the *Columbia Law Review*).

8. See Tucker & Sykes, supra note 7 ("[T]he day before the shooting, Massey's mother reported her daughter—who she identified as Sonya Massey—was being 'sporadic' and having a mental breakdown, but noted 'she's not a danger to herself, she's not a danger to me' . . . .").

9. See id. ("The dispatch record stated Massey had 'talked with mobile crisis' three times in the previous two weeks [before the shooting].").

These cases are not isolated. They reflect the broader, systemic issue of a shoot-first mentality in law enforcement, particularly when dealing with the Black community.[10] But these incidents also highlight a critical, yet often overlooked and unacknowledged, issue: the violation of the privacy rights of disabled individuals of color within their own homes. Scholars frequently tout privacy as a fundamental civil right,[11] yet its protections and benefits[12] are unequally distributed,[13] especially for marginalized groups like disabled people of color.[14] Despite the universal promises

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10. See "Shoot First, Think Later" Culture Claiming Innocent Lives, Equal Just. Initiative (Apr. 21, 2023), https://eji.org/news/shoot-first-think-later-culture-claiming-innocent-lives/ [https://perma.cc/NLP7-AXC9] (describing shoot-first culture as a product of stand-your-ground laws that are especially deadly for people of color).

11. The debate surrounding privacy as a civil right is contentious. Some scholars advocate for privacy to be recognized as a civil right, while others argue that the relationship between privacy and civil rights is more complex. See Danielle Keats Citron, The Fight for Privacy: Protecting Dignity, Identity and Love in the Digital Age 105–08 (2022) ("The recognition of a civil right to intimate privacy is urgent for women and minorities who suffer discrimination due to attitudes stigmatizing their bodies and intimate lives."); Alvaro M. Bedoya, Privacy as Civil Right, 50 N.M. L. Rev. 301, 306 (2020) (describing privacy as an important civil right that protects marginalized groups from surveillance); Tiffany C. Li, Privacy as/and Civil Rights, 36 Berkeley Tech. L.J. 1265, 1296 (2021) (listing the benefits of conceptualizing privacy as a civil right, noting that it would help close the privacy protection gap for marginalized groups). But see Anita L. Allen & Christopher Muhawe, Is Privacy Really a Civil Right?, 39 Berkeley Tech. L.J. (forthcoming 2025) (manuscript at 102–03) (on file with the *Columbia Law Review*) (warning that the relationship between privacy and civil rights is complex and that privacy does not necessarily merit being called a civil right).

12. One of the key benefits of privacy is its crucial role in protecting and promoting democratic discourse. See Scott Skinner-Thompson, Agonistic Privacy & Equitable Democracy, 131 Yale L.J. Forum 454, 458 (2021), https://www.yalelawjournal.org/pdf/F7.Skinner-ThompsonFinalDraftWEB_uwu5tvzq.pdf [https://perma.cc/WWS4-U9VF] (arguing that privacy can help democracy by decreasing polarization within a society). See generally Julie E. Cohen, What Privacy Is For, 126 Harv. L. Rev. 1904 (2013) (explaining how privacy relates to the democratic process and discourse).

13. See Scott Skinner-Thompson, Privacy at the Margins 2 (2021) [hereinafter Skinner-Thompson, Privacy at the Margins] (stating that "those who are already in the most precarious social positions are disproportionately vulnerable to privacy violations, while the privacy of the privileged is more protected").

14. See Lydia X.Z. Brown, Ridhi Shetty, Matthew U. Scherer & Andrew Crawford, Ctr. for Democracy & Tech., Ableism and Disability Discrimination in New Surveillance Technologies: How New Surveillance Technologies in Education, Policing, Health Care, and the Workplace Disproportionately Harm Disabled People 7 (2022), https://cdt.org/wp-content/uploads/2022/05/2022-05-23-CDT-Ableism-and-Disability-Discrimination-in-New-Surveillance-Technologies-report-final-redu.pdf [https://perma.cc/P8AD-VBB7] ("The surveillance tools can have a disproportionate impact on disabled students and students of color—and likely on disabled students of color in particular."); Privacy and Racial Justice, Elec. Priv. Info. Ctr., https://epic.org/issues/democracy-free-speech/privacy-and-racial-justice/ [https://perma.cc/8MHJ-XW72] (describing how people of color are disproportionately harmed by privacy abuses); see also Simone Browne, Dark Matters: On the Surveillance of Blackness 10 (2015) (describing surveillance and privacy infringements as a type of anti-Blackness); Anita L. Allen, Dismantling the "Black Opticon": Privacy, Race Equity, and Online Data-Protection Reform, 131 Yale L.J. Forum

of the Fourth and Fourteenth Amendments, the physical and decisional privacy of disabled individuals of color is too often breached by those meant to protect them.[15]

This Comment advocates for an intersectional[16] approach to privacy law,[17] grounded in Critical Disability Studies (DisCrit),[18] to highlight and address the compounded physical privacy harms disabled people of color face during police interactions. By applying DisCrit, this Comment reveals how the intersections of race and disability lead to physical and decisional privacy violations routinely overlooked within the traditional legal framework. The central thesis of this Comment is that the current privacy law framework in the United States fails to protect the rights of marginalized individuals, especially racial minorities and disabled people. Through a DisCrit lens, this Comment demonstrates that these groups experience significant breaches of their privacy rights with limited avenues for recourse. Consequently, this Comment calls for urgent reform of privacy law to explicitly account for the intersections of race and disability, ultimately proposing an abolitionist approach to reshape the privacy law framework.

Part I underscores the need to integrate a DisCrit perspective into privacy law, arguing that the current framework inadequately protects racial minorities and disabled people. This Part begins with an overview of privacy law, then examines its shortcomings through two key lenses: an evidentiary lens, which exposes pervasive privacy violations against disabled Black and Brown people, and a theoretical lens, which critiques

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907, 917–28 (2022) https://www.yalelawjournal.org/pdf/F7.AllenFinalDraftWEB_6f26iyu6.pdf [https://perma.cc/PWM3-SQMQ] [hereinafter Allen, Black Opticon] (discussing various privacy harms that African Americans face online).

15. See Abigail Abrams, Black, Disabled and at Risk: The Overlooked Problem of Police Violence Against Americans With Disabilities, Time (June 25, 2020), https://time.com/5857438/police-violence-black-disabled/ [https://perma.cc/R7GF-FRPJ] (estimating that one-third to one-half of the total number of people killed by police every year have disabilities or are experiencing episodes of mental illness).

16. See Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 Stan. L. Rev. 1241, 1244 (1991) (explaining the concept of intersectionality "to denote the various ways in which race and gender interact to shape the multiple dimensions of Black women's employment experiences" (footnote omitted) (citing Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139, 140)).

17. This Comment builds on the intersectional approach to privacy that scholars, such as Mary Anne Franks, have applied. See Mary Anne Franks, Democratic Surveillance, 30 Harv. J.L. & Tech. 425, 431 (2017) (coining the term "intersectional surveillance" to describe the ways in which surveillance affects those at the intersection of identities).

18. See Subini Ancy Annamma, David Connor & Beth Ferri, Dis/ability Critical Race Studies (DisCrit): Theorizing at the Intersections of Race and Dis/ability, 16 Race Ethnicity & Educ. 1, 10 (2013) ("DisCrit recognizes the shifting boundary between normal and abnormal, between ability and disability, and seeks to question ways in which race contributes to one being positioned on either side of the line.").

the ableist and racist foundations of privacy law. The Part concludes by introducing DisCrit as a critical framework for reimagining privacy law to ensure more inclusive protections. Part II applies DisCrit to two case studies—the recent killings of Ryan Gainer and Sonya Massey—surfacing how privacy law in the United States systematically fails to protect the privacy rights of individuals who are disabled, racial minorities, or both, and argues that these two killings were not mere mistakes by law enforcement but are indicative of a privacy law framework that inherently excludes disabled people of color. Lastly, Part III argues for a privacy law regime that explicitly accounts for the intersections of race and disability, advocating for the systemic upheaval of the current privacy law framework and proposing an abolitionist approach to comprehensive reform.

I. WHY PRIVACY LAW NEEDS DISCRIT

This Part establishes the critical need for integrating a DisCrit perspective into privacy law, arguing that the existing privacy law framework fails to sufficiently protect those on the margins, particularly racial minorities and disabled people. This Part begins by analyzing different conceptualizations of privacy law and examines their shortcomings from two critical perspectives: first, through an evidentiary analysis; and second, through a theoretical critique. Both approaches reveal how privacy law continues to marginalize and exclude vulnerable groups. This Part concludes by introducing DisCrit as a vital framework for analysis of privacy law and underscoring the importance of reimagining privacy law to ensure more inclusive and equitable protections.

A. *Defining Privacy*

When discussing privacy harms, it is important to specify the type of privacy at issue. Privacy law scholars propose a framework that breaks privacy into five distinct dimensions: physical, informational, decisional, proprietary, and associational.[19] This approach helps clarify the multifaceted nature of privacy concerns.[20] For example, intrusions into physical privacy include nonconsensual intimate touching or unauthorized entry into someone's home.[21] This aspect of physical privacy is especially relevant in instances in which disabled individuals of color are killed in their homes because the physical, tangible violation is particularly severe. Decisional privacy, on the other hand, protects an individual's ability to make choices about how they live their life without unjustifiable interference from

19. Anita Allen, Privacy Law and Society 4–5 (2007) (laying out the various types of privacy protected in the United States).

20. See id.

21. Id.

others or the state.[22] Examples of decisional privacy intrusions include state bans on medically safe birth control, abortions, interracial marriages, and same-sex relationships and marriages.[23] This dimension of privacy is also implicated in the killings of Ryan Gainer and Sonya Massey because these killings clearly interfered with their ability to manage their personal disabilities independently of state intervention.

Although several amendments to the U.S. Constitution imply a right to privacy, its strongest legal protections are rooted in the Fourth and Fourteenth Amendments.[24] The Fourth Amendment protects against unreasonable searches and seizures, safeguarding privacy in one's home, possessions, and person.[25] The Fourteenth Amendment extends these protections by broadly securing substantive liberties and equalities, establishing privacy as a fundamental right.[26] Together, these amendments affirm the existence of an underlying right to physical privacy. The right to decisional privacy has been affirmed in numerous Supreme Court Cases, including *Loving v. Virginia*, which upheld this right in matters of personal lifestyle and interracial marriage,[27] and *Eisenstadt v. Baird*, which upheld it in matters of family planning and contraception.[28]

B. *Gaps in Privacy Jurisprudence: Evidentiary and Theoretical*

The inadequacy of current protections for the privacy rights of disabled people of color is glaringly evident. This issue can be analyzed through two lenses: evidentiary shortcomings and theoretical biases.

1. *Evidentiary Shortcomings.* — The widespread violations of disabled people of color's privacy rights highlight the systemic failure of the current privacy law framework. The statistical data is grim: "In the United States,

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22. See Anita L. Allen, Taking Liberties: Privacy, Private Choice, and Social Contract Theory, 56 U. Cin. L. Rev. 461, 461 (1987) [hereinafter Allen, Taking Liberties] (describing decisional privacy as "freedom from coercive interference with decisionmaking affecting intimate and personal affairs").

23. See Anita L. Allen, Coercing Privacy, 40 Wm. & Mary L. Rev. 723, 724 (1999) (listing various types of decisions that fall under decisional privacy).

24. See Allen & Muhawe, supra note 11 (manuscript at 140–42) (recounting the Supreme Court's declaration that "[h]aving once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States . . . we can no longer permit that right to remain an empty promise," along with *Loving v. Virginia*'s "profound privacy . . . implications" for the Fourteenth Amendment (internal quotation marks omitted) (quoting Mapp v. Ohio, 367 U.S. 643, 659 (1961))).

25. U.S. Const. amend. IV.

26. Id. amend. XIV; Allen & Muhawe, supra note 11 (manuscript at 140–42).

27. See 388 U.S. 1, 12 (1967) ("The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State.")

28. 405 U.S. 438, 453 (1972) ("If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.").

50 percent of people killed by law enforcement are disabled, and more than half of disabled African Americans are arrested by the age of 28."[29] This is double the rate of white nondisabled people.[30] These figures likely understate the true scope of the problem due to insufficient federal recordkeeping.[31]

The lack of comprehensive data on police violence against disabled individuals presents a significant barrier to addressing the disproportionately high rate of deaths among disabled people of color resulting from police killings. The Ruderman Family Foundation's report emphasizes this data gap, noting that estimates of the percentage of police shooting victims who are disabled vary widely—from twenty-five percent to over forty percent.[32] Given that over twenty-five percent of adults in the United States are disabled, these figures are disproportionately high.[33]

2. *Theoretical Shortcomings.* — Discussions of privacy harms for disabled people of color must acknowledge that the historical development of privacy rights in the United States did not prioritize their protection. In fact, the origins of American privacy rights were significantly shaped by racism and ableism.[34] Such prejudices were used to justify the systemic violation of African Americans' privacy rights during slavery, underpinned by the erroneous belief that enslaved individuals were intellectually and morally inferior.[35] Early American property laws further reinforced this dehumanization by treating enslaved people as private property, denying

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29. Vilissa Thompson, Understanding the Policing of Black, Disabled Bodies, Ctr. for Am. Progress (Feb. 10, 2021), https://www.americanprogress.org/article/understanding-policing-black-disabled-bodies/ (on file with the *Columbia Law Review*).

30. Erin J. McCauley, The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender, 107 Am. J Pub. Health 1977, 1978 (2017).

31. Id.

32. See David M. Perry & Lawrence Carter-Long, The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability: A Media Study (2013–2015) and Overview 7 (2016), https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability_final-final.pdf [https://perma.cc/3SDM-557P].

33. Press Release, CDC, CDC Data Shows Over 70 Million U.S. Adults Reported Having a Disability (July 16, 2024), https://www.cdc.gov/media/releases/2024/s0716-Adult-disability.html [https://perma.cc/QNR7-TGZM].

34. See Allen & Muhawe, supra note 11 (manuscript at 134) (explaining the relationship between slavery and the loss of privacy for African Americans); Amy Gajda, What if Samuel D. Warren Hadn't Married a Senator's Daughter?: Uncovering the Press Coverage that Led to "The Right to Privacy", 2008 Mich. St. L. Rev. 35, 42 (tracing the origins of privacy law as a push to protect the reputation of elite Americans, who were presumably white, wealthy, and able bodied).

35. See Allen & Muhawe, supra note 11 (manuscript at 121) ("Legal restrictions and societal norms denied [Black people] the physical privacy of the body, subjected their personal communications to constant monitoring, enforced continuous surveillance at home, and stripped away protections for privacy in matters such as residence, travel, courtship, and child-rearing privileges.").

them any autonomy or right to privacy due to their perceived racial and intellectual inferiority.[36]

The late nineteenth century brought about efforts to formalize privacy rights, most notably through Samuel Warren and Louis Brandeis's seminal 1890 article, *The Right to Privacy*, which proposed a definition of privacy as the "right 'to be let alone.'"[37] These efforts were primarily aimed at shielding the elite[38]—predominantly white, wealthy, and able-bodied individuals—from the intrusions of the press.[39] This focus on protecting the privileged few largely ignored the severe privacy violations endured by marginalized groups at the time, such as the horrific infringements of lynching and the ongoing genocide of Native Americans.[40]

As privacy legislation evolved throughout the twentieth century, it continued to largely overlook the rights and needs of those outside the societal majority, particularly in terms of race, disability, gender, and power. The definition of privacy as the "right to be let alone," as articulated by Warren and Brandeis, became widely accepted and was eventually recognized by the Georgia Supreme Court in 1905.[41] Yet the broadness of this definition left significant ambiguity regarding what constitutes a privacy violation and failed entirely to provide protections for marginalized individuals.[42] Scholars also put forward other definitions of privacy.

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36. Id.

37. Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193, 195 (1890) (quoting Thomas M. Cooley, A Treatise on the Law of Torts or the Wrongs Which Arise Independent of Contract 29 (2d ed. 1888)).

38. See Anita L. Allen & Erin Mack, How Privacy Got Its Gender, 10 N. Ill. U. L. Rev. 441, 457 (1990) (explaining how Warren's elite social life might have influenced his decision to write the article).

39. See Allen & Muhawe, supra note 11 (manuscript at 132); Samantha Barbas, Saving Privacy From History, 61 DePaul L. Rev. 973, 983 (2012) (explaining how Warren's article was motivated by discussions about his family in the newspaper); Gajda, supra note 34, at 38.

40. See Anthony V. Alfieri, Lynching Ethics: Toward a Theory of Racialized Defenses, 95 Mich. L. Rev. 1063, 1080, 1088 (1997) (arguing that defenders of lynching characterized Black victims as "undeserving of privacy or dignity"); Allen & Muhawe, supra note 11 (manuscript at 132); Michele Estrin Gilman, The Class Differential in Privacy Law, 77 Brook. L. Rev. 1389, 1426–27 (2012) (arguing that the history of privacy rights explains their failure to protect the poor).

41. See, e.g., Pavesich v. New Eng. Life Ins. Co., 50 S.E. 68, 78–81 (Ga. 1905) (finding a violation of the right to privacy when an insurance company published the plaintiff's picture in an advertisement without his consent).

42. See Scott Skinner-Thompson, Privacy Without the State?, 104 B.U. L. Rev. 1043, 1044 (2024) (arguing that the intersection of privacy loss and material harms to marginalized groups should be expanded and further researched). But see Dorothy J. Glancy, The Invention of the Right to Privacy, 21 Ariz. L. Rev. 1, 35 (1979) (arguing that Warren and Brandeis's definition of privacy was not necessarily elitist).

Professor Alan Westin defined privacy as control over personal information.[43] While influential, Westin's definition faced criticism for its narrow scope, particularly as it failed to account for physical and digital intrusions that are increasingly prevalent.[44] Professor Ruth Gavison offered an alternative perspective by characterizing privacy as a limitation on others' access to individuals and information as part of a privacy "complex" made up of three "irreducible elements: secrecy, anonymity, and solitude."[45] But some similarly critiqued Gavison's approach for excluding critical personal decisions, such as those related to reproductive rights, from its scope.[46] Philosopher Helen Nissenbaum proposed the concept of "contextual integrity," positing that privacy is inherently normative, involving judgments about the appropriateness of information flows within specific contexts.[47] But this framing is not without its drawbacks, particularly the risk of becoming overly recursive, such that privacy is seen as a state of affairs dependent on contextual judgments. Moreover, this definition likely fails to protect disabled people of color because privacy norms can be shaped in ways that overlook their interests. Similarly, the Supreme Court's interpretation of privacy as a "penumbra" of rights[48] under the Bill of Rights is inadequate for disabled people of color.[49] The penumbra approach neglects the unique needs of disabled people of color, leading to definitions of privacy that inadequately protect their rights and interests.

Most relevant for acknowledging the privacy needs of disabled people of color is Professor Anita Allen's "critical facilitation" definition of privacy.[50] This definition emphasizes understanding and addressing the

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43. Alan F. Westin, Privacy and Freedom 7 (1967) (defining privacy as "the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others").

44. See, e.g., Anita L. Allen, Uneasy Access: Privacy for Women in a Free Society 8 (1988) [hereinafter Allen, Uneasy Access] (describing Westin's definition of privacy as "too narrow").

45. Ruth Gavison, Privacy and the Limits of Law, 89 Yale L.J. 421, 428–36 (1980).

46. See, e.g., Allen, Uneasy Access, supra note 44, at 33 (placing decisional privacy, "the freedom of choice whether to terminate or not terminate pregnancy," within the larger discussion of privacy).

47. Helen Nissenbaum, Privacy as Contextual Integrity, 79 Wash. L. Rev. 119, 136–43 (2004).

48. Griswold v. Connecticut, 381 U.S. 479, 484 (1965); see also Nissenbaum, supra note 47, at 137–47; Daniel J. Solove, Conceptualizing Privacy, 90 Calif. L. Rev. 1087, 1128 (2002) ("A pragmatic approach to the task of conceptualizing privacy should not, therefore, begin by seeking to illuminate an abstract conception of privacy, but should focus instead on understanding privacy in specific contextual situations.").

49. Nissenbaum, supra note 47, at 137–47.

50. Anita L. Allen, Privacy, Critical Definition, and Racial Justice, *in* The Oxford Handbook of Applied Philosophy of Language 349, 349, 360 (Luvell Anderson & Ernie Lepore eds., 2024) [hereinafter Allen, Privacy, Critical Definition] (encouraging a critical facilitation of privacy, as even scholarly efforts to neutrally "define" privacy inevitably involve political debates).

specific privacy needs of at-risk communities.[51] This approach advocates for moving away from prescriptive definitions and toward a more inclusive dialogue that centers the voices and concerns of marginalized individuals.[52] In doing so, it fosters a substantive understanding of privacy that reflects the lived experiences of those most vulnerable to privacy violations.[53] For example, community members in predominantly minoritized areas might view the overuse of stop-and-frisks as privacy violations.[54] Similarly, debates on reproductive rights often face dismissive critiques that separate privacy from liberty. These critiques weaken the privacy claims of women, especially women of color.[55] Recognizing these concerns as legitimate privacy issues, the critical facilitation approach offers a more equitable and comprehensive understanding of privacy that serves all individuals.

When discussing privacy and the specific breaches of privacy affecting disabled people of color, this Comment focuses on the physical and decisional dimensions of privacy, as defined by the Fourth and Fourteenth Amendments. This Comment adopts Professor Allen's nonmainstream "critical facilitation" definition of privacy because it more effectively captures the unique privacy harms experienced by disabled people of color.

C. *Introduction to DisCrit*

Current legal frameworks fail to protect the privacy rights of disabled people of color, highlighting the need for approaches[56] that address the intersecting impacts of racism and ableism.[57] DisCrit provides a helpful methodological framework for this analysis, drawing from both Critical Race Theory (CRT) and disability studies.

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51. Id. at 359–61.

52. Id.

53. Id.

54. See Press Release, ACLU, Stop and Frisk Found Unconstitutional (Aug. 12, 2013), https://www.aclu.org/press-releases/stop-and-frisk-found-unconstitutional [https://perma.cc/46CJ-MGPV]; see also Does Newark's Stop-And-Frisk Stop Crime, Violate Privacy, or Both?, NPR (Mar. 20, 2014), https://www.npr.org/2014/03/20/291896446/does-newarks-stop-and-frisk-stop-crime-violate-privacy-or-both [https://perma.cc/Q2ME-TEBS] (featuring a Newark school principal describing stop-and-frisk policies as privacy intrusions).

55. See Allen, Privacy, Critical Definition, supra note 50, at 359–60.

56. Legal scholars have been exploring the intricate challenges involved in addressing claims of intersectional discrimination. See Serena Mayeri, Intersectionality and Title VII: A Brief (Pre-)History, 95 B.U. L. Rev. 713, 730 (2015).

57. Current legal frameworks do not adequately acknowledge intersectional concerns. Id. ("[L]egal theory and scholarship on intersectionality continue to vastly outpace actual Title VII doctrine. To this day, there is no robust canon of intersectionality case law." (footnote omitted)).

CRT posits that race is a social construct, with the law historically playing a central role in defining racial categories.[58] It argues that racism is not just a matter of individual prejudice, but a pervasive force shaping legal systems and policies.[59] Similarly, disability scholars like Arlene Kanter contend that disability is socially constructed.[60] Drawing on these two fields, DisCrit specifically examines how societal norms label certain traits as disabilities, focusing on societal and environmental barriers over individual limitations.[61]

DisCrit builds on an expanded social model of disability, positing that disabled individuals often face challenges due to societal barriers rather than their impairments.[62] By integrating additional critical perspectives, DisCrit acknowledges that the social model alone cannot fully capture the complexities at the intersections of race and disability.[63] This framework uniquely addresses the compounded discrimination that disabled people of color face, highlighting how racism and ableism interconnect to perpetuate exclusion and systemic injustice.[64]

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58. See Introduction to Critical Race Theory: The Key Writings That Formed the Movement, at xiii (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995) ("[A] regime of white supremacy and its subordination of people of color ha[s] been created and maintained in America, and . . . [CRT] examine[s] the relationship between that social structure and professed ideals such as 'the rule of law' and 'equal protection.'").

59. See id. at xiv ("Racial justice was embraced in the American mainstream in terms that excluded radical or fundamental challenges to status quo institutional practices in American society by treating the exercise of racial power as rare and aberrational rather than as systemic and ingrained.").

60. See Arlene S. Kanter, The Law: What's Disability Studies Got to Do With It or An Introduction to Disability Legal Studies, 42 Colum. Hum. Rts. L. Rev. 403, 404 (2011) ("[Disability Studies] explores disability as a social and cultural construct and as a phenomenon reflecting and constituting identity formation by incorporating the 'real-lived' experiences of people with disabilities.").

61. See Sami Schalk, Critical Disability Studies as Methodology, Lateral (Spring 2017), https://doi.org/10.25158/L6.1.13 [https://perma.cc/F5A8-EAJQ] ("[D]isability studies . . . scrutiniz[e] not bodily or mental impairments but the social norms that define particular attributes as impairments, as well as the social conditions that concentrate stigmatized attributes in particular populations." (internal quotation marks omitted) (quoting Julie Avril Minich, Enabling Whom? Critical Disability Studies Now, Lateral (Spring 2016), https://csalateral.org/issue/5-1/forum-alt-humanities-critical-disability-studies-now-minich/ [https://perma.cc/722X-NMN7])).

62. See Annamma et al., supra note 18, at 21 ("DisCrit rejects any attempt to offer an account of the life and experience of all people with dis/abilities without their voices. Instead, it encourages understanding about ways in which society limits access and embodiment of difference.").

63. See id. at 5 ("[B]y analyzing multiple dimensions within a specific context, researchers are able to see how they can mesh, blur, overlap, and interact in various ways to reveal knowledge . . . .").

64. There is now a deeper understanding of how intersectionality shapes unique experiences for individuals with intersecting identities. See Alice Abrokwa, "When They Enter, We All Enter": Opening the Door to Intersectional Discrimination Claims Based on Race and Disability, 24 Mich. J. Race & L. 15, 17–18 ("We now better appreciate that people

For example, DisCrit examines how the law has marginalized disabled people of color. Historically, racial ideology justified the enslavement of Black people and the dispossession of Indigenous land, with ableism playing a significant role.[65] The United States economy valued enslaved Black individuals primarily for their physical and mental abilities, with disabilities lowering their value and often sparking disputes at slave auctions.[66] DisCrit thus surfaces how racism and ableism together shaped and reinforced norms of whiteness.

DisCrit is grounded in a set of guiding questions outlined in the foundational text by Subini Ancy Annamma, David Connor, and Beth Ferri, titled *Dis/ability Critical Race Studies (DisCrit): Theorizing at the Intersections of Race and Dis/ability*.[67] This text lays out the theoretical underpinnings of DisCrit and introduces seven key tenets:

> 1. DisCrit focuses on ways that the forces of racism and ableism circulate interdependently, often in neutralized and invisible ways, to uphold notions of normality.
>
> 2. DisCrit values multidimensional identities and troubles singular notions of identity such as race *or* dis/ability *or* class *or* gender *or* sexuality, and so on.
>
> 3. DisCrit emphasizes the social constructions of race and ability and yet recognizes the material and psychological impacts of being labeled as raced or dis/abled, which sets one outside of the western cultural norms.
>
> 4. DisCrit privileges voices of marginalized populations, traditionally not acknowledged within research.
>
> 5. DisCrit considers legal and historical aspects of dis/ability and race and how both have been used separately and together to deny the rights of some citizens.
>
> 6. DisCrit recognizes Whiteness and Ability as Property and that gains for people labeled with dis/abilities have largely been

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of color with disabilities can experience complex forms of discrimination distinct from those experienced by either people of color or people with disabilities more broadly."); see also Sumi Cho, Kimberlé Williams Crenshaw & Leslie McCall, Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis, 38 Signs 785, 787 (2013) ("Intersectionality's insistence on examining the dynamics of difference and sameness has played a major role in facilitating consideration of gender, race, and other axes of power in a wide range of political discussions and academic disciplines . . . .").

65. See Reginald Horsman, Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism 137 (1981) ("Those who hated slavery at times found hope for black improvability, and friends of the Indian still hoped that through education the Indians would become . . . Americans; but the idea of distinct races with innately different capabilities was firmly engrained in American scientific thinking . . . ."); see also infra note 66 and accompanying text.

66. See Dea H. Boster, African American Slavery and Disability: Bodies, Property, and Power in the Antebellum South, 1800–1860, at 76 (2012) (discussing the "[d]ebates over value and 'defect' in slave bodies" in the American slave trade).

67. Annamma et al, supra note 18, at 11.

made as the result of interest convergence of White, middle-class citizens.

7. DisCrit requires activism and supports all forms of resistance.[68]

These tenets coalesce into a guiding question: "How might DisCrit further expand our knowledge (or understanding) of race and dis/ability?"[69]

DisCrit provides a practical framework that uncovers systemic inequalities often overlooked by other methodologies. DisCrit's effectiveness has led scholars to apply it across a range of legal and societal contexts. Race and disability scholar Jamelia Morgan takes up this question in her work *Toward a DisCrit Approach to American Law*,[70] and disability law scholar Katherine Perez similarly explores it in *A Critical Race and Disability Legal Studies Approach to Immigration Law and Policy*.[71] Additionally, Annamma and Morgan apply DisCrit to issues of youth incarceration and abolition, revealing how policing and enforcement disproportionately target Black and Latinx students and how Black parents face systemic disadvantages in advocating for their children under the Individuals with Disabilities Education Act.[72] These examples demonstrate that ableism, especially when combined with racial bias, can manifest differently across systems and situations. But DisCrit reveals a core similarity: Legal systems often assume that people of color are less capable of thinking, learning, and behaving—and are therefore more dangerous.

D. *Applying DisCrit to Privacy: Analyzing the Intersection of Disability and Race in Privacy Contexts*

This Comment applies the DisCrit methodology to privacy issues affecting disabled people of color in their homes, focusing specifically on the recent killings of Ryan Gainer and Sonya Massey. DisCrit's value lies in its ability to illuminate the intersections of race and disability in ways that

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68. Id.

69. Id. at 6.

70. See Jamelia N. Morgan, Toward a DisCrit Approach to American Law, *in* DisCrit Expanded: Reverberations, Ruptures, and Inquiries 13, 16 (Subini A. Annamma, Beth A. Ferri & David J. Connor eds., 2022) ("As the foregoing suggests, what has yet to be fully explored is how race and disability were co-constituted . . . .").

71. See Katherine Perez, A Critical Race and Disability Legal Studies Approach to Immigration Law and Policy, UCLA L. Rev.: L. Meets World (Feb. 2, 2019), https://www.uclalawreview.org/a-critical-race-and-disability-legal-studies-approach-to-immigration-law-and-policy/ [https://perma.cc/9VQS-G9KZ] ("Because our immigration system functions under and perpetuates systems of racism and ableism, immigration law requires the merging of a critical race and disability studies . . . .").

72. Subini Ancy Annamma & Jamelia Morgan, Youth Incarceration and Abolition, 45 N.Y.U. Rev. L. & Soc. Change 471, 480, 489–91, 496–502 (2022) (applying DisCrit to expose how youth incarceration disproportionately harms disabled Black and Latinx youth, reflecting systemic inequities in policing, punishment, and education).

traditional models cannot. By integrating DisCrit into the analysis of privacy issues within legal frameworks, advocates can contribute to more inclusive and equitable decisional and physical privacy protections for disabled people of color. A DisCrit lens identifies gaps in privacy jurisprudence and challenges underlying assumptions, exposing both who is and is not afforded privacy rights and the reasons behind these disparities.[73]

Most importantly, a DisCrit framework demonstrates that privacy violations against disabled people of color are not isolated incidents resulting from inadequate training programs or individual misconduct by "bad apple" police officers. Instead, it shows that these infringements are systemic, functioning as expected within an ableist and racist privacy system, and can only be addressed through comprehensive, systemic reform. It strengthens the case for the abolition of privacy regimes by underscoring how deeply entrenched ableism and racism are within the privacy system.

While employing a DisCrit perspective in examining privacy offers significant insights, it is not a panacea. DisCrit shines a light on how prevailing privacy practices often fail to protect the compounded experiences of those navigating both racial and disability discrimination. But DisCrit, with its focused lens, might not encapsulate the full breadth of issues permeating privacy law. History has repeatedly shown that infringements on privacy rights in the United States span beyond the intersection of race and disability to many other marginalized groups.[74] Admittedly, this Comment does not fully engage with the intricate challenges of privacy's overlap with additional factors such as socioeconomic status, sexual orientation, gender, religion, and transgender experiences.[75] Consequently, this DisCrit study can offer only a segmented solution to the comprehensive challenges within privacy law.

Nonetheless, a DisCrit approach to privacy marks a necessary step in the push for comprehensive reform of privacy laws. This Comment lays a foundation, advocating for further nuanced, intersectional, and critical evaluations of privacy. It builds on and broadens the academic dialogue initiated by legal scholars such as Anita Allen,[76] Khiara Bridges,[77] Danielle

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73. See, e.g., Devon W. Carbado, (E)racing the Fourth Amendment, 100 Mich. L. Rev. 946, 969 (2002) ("[P]eople of color are more likely than whites to experience the Fourth Amendment as a technology of surveillance rather than as a constitutional guardian of property, liberty, and privacy.").

74. See Annamma & Morgan, supra note 72, at 483 (recognizing that "race-, gender-, class-, and ability-based subordination and oppression are rooted in histories and legacies of chattel slavery and Indigenous genocide, and that dispossession are foundational logics central to the operation of the American carceral state").

75. Id.

76. See Allen, Black Opticon, supra note 14, at 907, 908–09 (discussing digital privacy for African Americans).

77. See Khiara M. Bridges, The Poverty of Privacy Rights 51–55 (2017) (discussing the privacy rights of poor mothers in America).

Citron,[78] Mary Anne Franks,[79] Jasmine Harris,[80] and Scott Skinner-Thompson,[81] who have explored the intersections of privacy and identity. This Comment encourages deeper examinations of how privacy intersects with various identities, steering us toward more equitable and just legal privacy protections for all. Although this Comment alone does not solve every privacy concern, it plays an important role in shaping a privacy framework that better meets the needs of diverse individuals. Adopting a DisCrit approach to privacy is an important first step toward advocating for significant reforms that will make privacy protections more meaningful for everyone—especially for disabled people of color like Ryan Gainer and Sonya Massey.

II. APPLYING DISCRIT: CASE STUDIES

Applying a DisCrit methodology to American privacy law reveals that disabled minorities experience privacy breaches in their homes with limited recourse. This Part conducts a DisCrit analysis of the 2024 killings of two disabled individuals of color: Ryan Gainer and Sonya Massey.

A. *Ryan Gainer*

1. *Gainer's Killing*. — A DisCrit analysis of the tragic death of Ryan Gainer, a disabled Black teenager, uncovers the profound and often overlooked privacy violation that occurred during his killing. Police killed Gainer, a fifteen-year-old boy with autism, in his own home in Apple Valley, California.[82] The incident started when Gainer, experiencing a behavioral crisis aggravated by his disability, broke the glass in the front door of his family home during an argument with his parents about chores.[83] Although he had calmed down by the time police arrived, the situation escalated rapidly when officers entered the Gainer family home aggressively, shouting, "[W]here's he at?"[84] Startled, Gainer—holding a

78. See Danielle Keats Citron, Sexual Privacy, 128 Yale L.J. 1870, 1874 (2019) (discussing privacy and gender and how they relate to "sexual agency, intimacy, and equality").

79. See Franks, supra note 17, at 441 (discussing privacy and its impact on marginalized populations).

80. See Jasmine E. Harris, Taking Disability Public, 169 U. Pa. L. Rev. 1681, 1748–49 (2021) (challenging the norm of treating disability as a matter to be kept private).

81. See Skinner-Thompson, Privacy at the Margins, supra note 13, at 5 (describing how privacy can be a legal tool for liberation for marginalized communities).

82. Brian Day & Thao Nguyen, Family of Autistic California Teen Killed by Deputies Files Wrongful Death Claim, USA Today (Mar. 22, 2024), https://www.usatoday.com/story/news/nation/2024/03/22/ryan-gainer-autistic-wrongful-death-claim-san-bernardino-county/73063641007/ [https://perma.cc/58M4-VJJE].

83. Von Quednow, supra note 4.

84. Fry & Campa, supra note 3 ("Deputies had been out to the home five other times this year and the family's attorneys argue they should have been familiar with Ryan. . . . Ryan

gardening tool—charged at the officers.[85] Within seven seconds of seeing Gainer, the police shot and killed him.[86]

The Gainer family had regularly relied on law enforcement for help with Gainer's behavioral crises and believed that the officers understood his disability.[87] Despite local police's familiarity with Gainer's family and possible awareness of his condition, the police rapidly opened fire on Gainer.[88]

This shoot-first response to a behavioral crisis reflects a broader societal bias that frequently erases the needs of disabled individuals, particularly disabled people of color, during law enforcement encounters.[89] The officers immediately chose to use lethal force instead of employing de-escalation techniques, failing to recognize and accommodate Gainer's disability. They misinterpreted behaviors often observed in autistic individuals—such as difficulty maintaining eye contact or responding to commands—as defiance or aggression rather than understanding these behaviors as behavioral or communication differences.[90] Racial stereotypes likely further compounded a misinterpretation based on disability, framing Gainer, a young Black boy, as inherently dangerous and justifying the officers' use of excessive force.[91]

2. *Privacy Violations.* — How Ryan Gainer was killed represents a significant violation of multiple aspects of his privacy rights within the context of the Fourth and Fourteenth Amendments. First, the use of lethal force against Gainer violated his physical bodily privacy. The officers' immediate resort to lethal force showed a complete disregard for Gainer's personhood and physical privacy, particularly considering his disability. Second, the intrusion into Gainer's home—a space where he had a

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had been taken to a mental health facility several times during law enforcement's previous visits to the home . . . .").

85. Sam Levin, California Sheriff Releases Video Showing Killing of Boy, 15, Holding Garden Tool, The Guardian (Mar. 13, 2024), https://www.theguardian.com/us-news/2024/mar/13/california-sheriff-bodycam-footage-police-killing-ryan-gainer [https://perma.cc/3UTS-GPBM].

86. Id. ("Both deputies shot Ryan less than a minute after arriving, and within roughly seven seconds of him appearing in their view.").

87. Fry & Campa, supra note 3 (reporting that deputies had visited their house multiple times in the previous year).

88. Id.

89. Id.; see also Thompson, supra note 29 ("Law enforcement's tendency and desire to control all variables in a situation can have devastating effects in situations where an individual may be struggling to communicate or respond due to their disability, whether physical, psychological, or otherwise.").

90. See Thompson, supra note 29 ("Autistic people who are not able to maintain eye contact or repeat the statements given to them may be perceived as displaying hostile or uncooperative behaviors."); supra note 3.

91. See "Shoot First, Think Later" Culture Claiming Innocent Lives, supra note 10 ("[Y]oung Black men . . . are seen as inherently or presumptively threatening based on their race.").

heightened expectation of privacy—constituted a severe breach of his physical privacy. The officers' aggressive entry, marked by shouting and threats, transformed what should have been a safe, private space into one of danger, reflecting intersectional biases that devalue the Fourth Amendment protections and the privacy rights of disabled Black individuals in their own homes.[92] Lastly, the killing infringed upon Gainer's decisional privacy, stripping away his right to manage his disability and behavioral crisis within the safety of his home.

Professor Devon Carbado's critique of the "reasonable person" standard in Fourth Amendment jurisprudence supports this analysis.[93] Carbado argues that the reasonable person standard is a normative construction that fails to account for the lived experiences of marginalized individuals.[94] Just as Carbado argued that the "reasonable person" standard burdens people of color,[95] it also burdens those with intellectual, developmental, or physical disabilities, effectively holding them to a potentially unachievable standard. The police officers' failure to consider Gainer's disability within this standard underscores the systemic flaws in legal protections for disabled individuals of color. Police officers may not consciously apply the legal standard, but Carbado's analysis provides a guide for understanding how normative assumptions about reasonableness might still shape officers' decisions in practice. In Gainer's case, the police officers exhibited an expectation of compliance that was disconnected from his identity as a person with a disability.

Applying a DisCrit lens to Ryan Gainer's case not only highlights the racial and ableist prejudices that led to his death but also reveals the privacy violations that often go unnoticed in discussions of police brutality. DisCrit brings into focus the stark invasion of Gainer's privacy as a disabled Black teenager experiencing a mental health crisis, who was fatally shot within his home after possibly struggling to understand or comply with police commands.[96] This incident represents both an intersectional harm and a profound breach of privacy.

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92. Carbado, supra note 73, at 969 ("[P]eople of color are burdened more by, and benefit less from, the Fourth Amendment than whites.").

93. Id. at 996 ("Justice Rehnquist's unmodified reasonable-person approach is fictional. Specifically, it creates the misimpression that there is a neutral identity position from which to ask the seizure question.").

94. See id.

95. See id. at 975 ("[R]eading [two Fourth Amendment cases] as cases that are actively engaged in constructing race helps to make the point that colorblindness is not in fact race neutral, but instead reflects a particular racial preference that systematically burdens nonwhites.").

96. See Nat'l Inst. on Deafness & Other Commc'n Disorders, HHS, Autism Spectrum Disorder: Communication Problems in Children, https://www.nidcd.nih.gov/health/autism-spectrum-disorder-communication-problems-children [https://perma.cc/VEW2-27PT] (last updated Apr. 13, 2020) ("Children with [autism spectrum disorder] may have difficulty developing language skills and understanding what others say to them.").

Some may assert that Gainer's privacy rights were revoked when his family called the police onto their property. But this perspective overlooks the police's inherent responsibility to respect individuals' privacy rights, regardless of the circumstances that led to police involvement.[97] The fact that Gainer's parents sought help does not absolve the officers of their responsibilities to assess the situation with care and to protect, rather than violate, Gainer's rights. Gainer's parents' call for assistance was not an invitation for an invasion of privacy or an endorsement of lethal force to kill their son; it was a request for help in managing a disability crisis, a request that does not grant a license to kill.

DisCrit shows how race and disability combined to exacerbate the threat officers perceived. A truly intersectional analysis would demand that the law recognize how racial biases and ableism interact, leading to a heightened risk of violence against disabled people of color. This claim would challenge law enforcement to consider not just the visible signs of disability but also how racial stereotypes amplify perceptions of danger, resulting in disproportionate infringements of privacy. DisCrit uncovers the privacy issues embedded in such incidents and calls for the development of legal frameworks that address the compounded harms faced by individuals at the intersection of race and disability.

B. *Sonya Massey*

1. *The Killing.* — Applying DisCrit to the killing of Sonya Massey, a disabled Black woman, highlights the profound and often overlooked violations of privacy that occur at the intersection of race and disability. Police fatally shot Massey, a Black woman with a documented mental health disability, on July 6, 2024, in her Springfield, Illinois, home.[98] The incident began when Massey, experiencing a mental health crisis, called the police, fearing an intruder.[99] Despite pleading with the officers not to harm her, Massey was killed by officer Sean Grayson within thirty minutes of her original 911 call.[100]

The killing occurred when Officer Grayson misinterpreted Massey's routine act of boiling water in her kitchen due to racial biases.[101] As a Black

97. Calling the police during a disability crisis should not automatically strip Gainer of his bodily or decisional privacy rights. Rather, the call was a desperate attempt by Gainer's parents to secure help, not a voluntary waiver of Gainer's fundamental rights.

98. Tucker & Sykes, supra note 7.

99. Id.

100. See Charles M. Blow, Opinion, Sonya Massey's Killing Is Black America's Sorrow, N.Y. Times (July 31, 2024), https://www.nytimes.com/2024/07/31/opinion/sonya-massey.html (on file with the *Columbia Law Review*).

101. See Dhanika Pineda & Sabina Ghebremedhin, Illinois Deputy Charged in Fatal Shooting of Woman Who Reported Intruder, ABC News (July 18, 2024), https://abcnews.go.com/US/illinois-deputy-charged-fatal-shooting-sonya-massey-woman/story?id=112058957 [https://perma.cc/CMG4-L3DV] ("Grayson allegedly shot Massey in the face after the deputy 'aggressively yelled' at her to put down a pot of boiling water.").

woman engaged in a routine task in her own home, Massey was perceived as a threat, reinforcing harmful stereotypes that depict Black women as inherently violent even within their own homes.[102] Grayson aggressively ordered Massey to turn off the boiling water, and as she attempted to comply, he yelled, "You better f**king not or I swear to God I'll f**king shoot you in the f**king face."[103] He then fired at her, killing her on the spot.[104] His use of lethal force underscores how racial prejudice can have deadly consequences for disabled people of color, even within the privacy of their own homes. Grayson later made derogatory remarks, referring to Massey as "crazy,"[105] reflecting both his biased view of her disability and racial stereotypes that dismiss mental health issues in people of color as character flaws rather than serious conditions requiring proper care.[106]

The officers also neglected to employ appropriate mental health interventions—such as de-escalation techniques or the involvement of mental health professionals—signaling a systemic disregard for disability rooted in ableism. Officer Grayson only inquired about previous mental health calls to Massey's home after the incident, and initial radio traffic wrongly described her gunshot wound as "self-inflicted," further exposing a deep-seated mishandling of mental health disabilities.[107] Officer Grayson considered Massey's mental health disability as an afterthought, only after she was already dead. This ableist policing system denied Massey the care her disability warranted.

2. *Privacy Violations*. — Sonya Massey's case exemplifies the compounded privacy violations experienced by disabled individuals of color during encounters with law enforcement in their own homes. When officers surveyed the perimeter of Massey's home, they insisted on entering

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102. See Tatyana Tandanpolie, Sonya Massey Killing Underscores Disproportionate Police Violence Against Black and Disabled People, Salon (July 27, 2024), https://www.salon.com/2024/07/27/sonya-massey-underscores-disproportionate-police-violence-against-black-and-disabled-people/ [https://perma.cc/G94U-LSL8] ("[T]he threat that was perceived was simply the threat of a Black woman and not anything else . . . ." (internal quotation marks omitted) (quoting Professor Christen Smith)).

103. Tucker & Sykes, supra note 7 (alterations in original) (internal quotation marks omitted) (quoting Deputy Sean Grayson).

104. Id.

105. Onyeka T. Otugo & Adaira I. Landry, Sonya Massey's Death: How to Prevent More Killings of Defenseless Black Women, STAT (July 26, 2024), https://www.statnews.com/2024/07/26/sonya-massey-death-prevent-more-killings-black-women/ [https://perma.cc/FKU7-VWRK] (internal quotation marks omitted) (quoting Deputy Sean Grayson).

106. See Elyse Wanshel, Police Violence Against Black Disabled People Can't Be Ignored Anymore, HuffPost (July 23, 2020), https://www.huffpost.com/entry/ignoring-police-violence-black-disabled-people_n_5f06164cc5b63a72c33c3f3e [https://perma.cc/MWL9-QZRK] (explaining how police officers misinterpret the speech patterns or behaviors of those with disabilities, especially when interacting with Black individuals, and citing the example of an officer interpreting as drunkenness the speech pattern of someone with cerebral palsy).

107. Id.

despite her visible distress, thereby violating her decisional privacy—a right particularly vital for individuals with mental health disabilities, who often require safe, controlled environments.[108] The officers' insistence on entry disregarded Massey's heightened need for privacy in her home, ignoring the specific vulnerabilities associated with her disability.

Once inside, the officers failed to consider Massey's disability, even when she expressed fear by saying, "Please don't hurt me."[109] Instead of addressing her concerns with empathy, they responded with the disingenuous reassurance, "Why would I hurt you? You called us,"[110] a statement that minimized her legitimate fear and failed to acknowledge her specific anxieties as a woman of color with disabilities whose privacy was being violated. This response reveals a systemic disregard for the unique privacy vulnerabilities of disabled individuals of color, who are often subject to invasions that dismiss or invalidate their needs. By entering her home and taking control of her space, the officers stripped Massey of her decisional privacy—the ability to manage her own mental health needs and maintain control over her environment. This invasion ultimately escalated to the point where Massey lost not only her privacy but her life, the most extreme violation of her physical and decisional privacy.

Privacy law must more effectively address the intersecting impacts of race and disability, with DisCrit providing a valuable framework for this analysis. Sonya Massey's case reveals the urgent need for systemic upheaval within privacy law to respect the decisional and physical privacy of disabled people of color. DisCrit critiques not only the officers' immediate actions but also the broader structures that allow such violations to occur, advocating for a reimagined privacy system that fully recognizes and respects the privacy of disabled people of color in their homes.

III. ARGUING FOR A PRIVACY LAW REGIME THAT EXPLICITLY ACCOUNTS FOR THE INTERSECTIONS OF RACE AND DISABILITY

The case studies of Ryan Gainer and Sonya Massey highlight how DisCrit reveals privacy concerns by focusing on the intersectional vulnerabilities faced by disabled individuals of color. These examples expose the invisibility that often exists where race and disability intersect—a critical

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108. See, e.g., Creating a Healthy Home Environment, Mental Health Am., https://mhanational.org/surroundings/healthy-home-environment [https://perma.cc/CJK4-9348] (last visited Aug. 29, 2024) ("Optimizing your space to improve your mental health is something that anyone can benefit from. For those living with mental health conditions, it is one tool of many that can be used to improve and support your mental well-being.").

109. See Blow, supra note 100 (internal quotation marks omitted) (quoting Sonya Massey).

110. Otugo & Landry, supra note 105 (internal quotation marks omitted) (quoting Deputy Sean Grayson).

issue that DisCrit addresses directly.[111] DisCrit not only deepens our understanding of the privacy violations experienced by disabled people of color in their homes but also points to broader implications for privacy law. Building on this, Part III explores the benefits of applying a DisCrit approach to privacy and advocates for a legal framework that explicitly considers the intersections of race and disability. It ultimately calls for a systemic overhaul of the current privacy regime and proposes an abolitionist approach to fundamentally reshape privacy law.

A. *Benefits of a DisCrit Approach*

First, a DisCrit framework reveals that disabled people of color are particularly vulnerable to privacy infringements, thereby exposing the urgent need for legal reforms that comprehensively address these issues. Empirical evidence shows that disabled people of color face privacy violations more frequently,[112] reflecting patterns of marginalization that are consistent with other forms of discrimination, such as those based on gender, sexual orientation, or socioeconomic status.[113] Such recognition is crucial for driving legal reforms that genuinely protect the privacy rights of these especially vulnerable groups.

But what kinds of reforms are necessary? The need goes beyond incremental adjustments to current privacy laws; it calls for a rethinking of the privacy framework itself. DisCrit prompts us to question whether existing privacy protections are sufficient for disabled people of color and whether these protections address the root causes of privacy violations within an ableist and racist privacy regime. Historical[114] and contemporary[115] case studies demonstrate that current laws often fail to account for the unique ways in which privacy is breached for marginalized individuals, particularly during encounters with law enforcement. For example, though both of

111. See, e.g., Annamma et al., supra note 18, at 5 ("[F]or students of color, the label of dis/ability situates them in unique positions where they are considered 'less than' white peers with or without dis/ability labels, as well as their non-disabled peers of color. . . . [This] reveals ways in which racism and ableism inform and rely upon each other . . . .").

112. See supra note 29.

113. Skinner-Thompson, Privacy at the Margins, supra note 13, at 2; see also Allen, Taking Liberties, supra note 22, at 472 ("Procreative rights do not automatically entail privacy and self-determination for women. . . . This is why privacy and decisional privacy cannot be dismissed as mere male ideology.").

114. See, e.g., Carbado, supra note 73, at 995–96 ("While Justice Rehnquist may want us to believe . . . that he is applying a race neutral standard, in fact he is not. . . . [F]raming the seizure analysis without identity specificity is tantamount to framing it from a non-Latina/o perspective." (footnotes omitted)).

115. See id. at 969 ("[P]eople of color are more likely than whites to experience the Fourth Amendment as a technology of surveillance rather than as a constitutional guardian of property, liberty, and privacy.").

the recent police killings discussed above spawned ensuing cases, neither of them incorporates an explicit privacy analysis.[116]

Second, integrating DisCrit into privacy law offers a critical lens for assessing and critiquing existing legal doctrines. This perspective questions the sufficiency of current privacy protections and urges us to explore ways to enhance state and federal laws to remedy these shortcomings. DisCrit facilitates a critical review of whether privacy law equitably protects all individuals. It challenges the narrative that privacy violations against disabled people of color are isolated incidents resulting from insufficient police training or the misconduct of a handful of rogue officers. Instead, DisCrit emphasizes that these acts of law enforcement are entrenched in a privacy system designed to uphold ableist and racist principles. This insight strengthens the case for systemic reform, if not abolition, of current privacy frameworks that fail to adequately protect disabled people of color.

Third, DisCrit equips privacy scholars and practitioners with essential tools for understanding the specific challenges encountered by disabled people of color and advocating for solutions. This approach highlights how the intersectionality of disability and race influences an individual's privacy rights, fostering a more inclusive and justice-oriented dialogue on privacy issues. By expanding the traditional definitions of privacy, DisCrit criticizes the narrow interpretations that have historically overlooked or invalidated the experiences of marginalized groups. It advocates for a broader understanding of privacy that includes issues such as police violence, thereby pushing for a privacy framework that more accurately reflects and addresses the multifaceted nature of privacy breaches across diverse populations. Further, a focus on disabled people of color's specific privacy needs is imperative, as without it generic calls for privacy reform will not be able to meet their needs.[117]

Fourth, DisCrit challenges the broader structures that enable privacy violations, advocating for a privacy regime that acknowledges and respects the humanity of disabled people of color. This approach dismantles the notion that privacy violations are mere exceptions within the legal system. Instead, it argues that these issues are intrinsic to the system itself, functioning as expected within an ableist and racist framework. Thus, the DisCrit approach not only challenges law enforcement's immediate actions but also calls for the abolition of the privacy law framework that allows for such practices.

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116. See Complaint at 8, Gainer v. County of San Bernardino, No. 5:24-cv-01438 (C.D. Cal. filed July 10, 2024) (suing the defendants for violations of Plaintiffs' federal civil rights under 42 U.S.C. § 1983 (2018) and the Fourth and Fourteenth Amendments, and federal disability rights under 42 U.S.C. § 12132); Indictment at 3–5, People v. Grayson, No. 24-CF-909 (Ill. Cir. Ct. filed July 18, 2024) (charging the defendant with first degree murder, aggravated battery with a firearm, and official misconduct).

117. See Allen, Black Opticon, supra note 14, at 912 ("[G]eneric calls on behalf of all population groups are insufficient to shield the African American community from the Black Opticon.").

Fifth, incorporating a DisCrit perspective enriches our understanding of privacy doctrine and promotes a more inclusive definition of privacy. By extending privacy beyond traditional definitions, DisCrit encourages a deeper understanding of privacy concerns and criticizes the narrow interpretations that have historically failed to address the experiences of marginalized groups. This approach pushes for a more equitable legal system, one that fully acknowledges and respects the privacy rights of all individuals, particularly those from marginalized racial backgrounds and with disabilities. By advocating for systemic reform, DisCrit offers a pathway toward a privacy framework that is truly just and inclusive.

CONCLUSION

This Comment has argued that privacy violations against disabled people of color are not anomalies arising from insufficient training or the misconduct of a small number of officers. By applying DisCrit, this Comment shows that these violations are systemic, embedded within an ableist and racist privacy regime that inherently devalues the privacy of marginalized individuals. By exposing the deep-rooted intersections of race and disability, DisCrit reveals that the killings of Ryan Gainer and Sonya Massey embody fundamental flaws in the current privacy regime.

The analysis presented in this Comment strengthens the call for the abolition of the existing privacy law regime, urging for comprehensive reform. Only by dismantling the current system's ableist and racist underpinnings can we envision a future privacy regime that genuinely protects individuals like Ryan Gainer and Sonya Massey. The path forward requires not merely reform but a radical reimagining of privacy law—one that is abolitionist and that centers the experiences of disabled people of color and ensures their privacy rights are recognized and upheld.