

THE 2019 CLAY AWARDS

The 23rd Annual California Lawyer Attorneys of the Year

CYBERSECURITY & CONSUMER PRIVACY

PROTECTING CONSUMERS' PRIVACY THROUGH THE FIRST AMENDMENT



RAYMOND O. AGHAIAN Kilpatrick Townsend & Stockton LLP

In the matter of the search of www.disruptj20.org

On Inauguration Day, protestors took to the streets in Washington, D.C., clashing with police in riot gear and vandalizing storefront windows. Six months later, the Trump administration demanded a Los Angeles-based technology company turn over IP addresses and emails in an effort to find protest coordinators.

The company, DreamHost LLC, resisted the demands, and in highly publicized litigation, a Kilpatrick Townsend & Stockton LLP team led by Raymond O. Aghaian ultimately got the search warrant dropped.

The Kilpatrick team also included partner Clay C. Wheeler and senior associate Byron R. Chin.

The warrant was related to the arrests of more than 200 Inauguration Day protesters. The federal government claimed protesters had organized through political advocacy website disruptJ20.com, which is hosted by DreamHost, and sought all information, including messages and identifiers, on the site's visitors. Aghaian argued the request was overly broad and infringed upon First Amendment and Fourth Amendment rights, noting it would have included 1.3 million Internet Protocol addresses.

"It would have essentially allowed the government to identify who had visited the website, when, what they had looked at," said Aghaian. "To me that was directly intruding on

the right to anonymous, expressive activity and anonymous association."

In response, the federal government argued the First Amendment did not protect "violent, criminal conduct" but eventually withdrew its request for the Internet Protocol addresses. The court narrowed the warrant even further, forcing the Department of Justice to delete all data not relevant to the protest arrests.

"While the government has the right to execute its warrant, it does not have the right to rummage through the information contained on DreamHost's website and discover the identity of, or access communications by, individuals not participating in alleged criminal activity," according to the order by Chief Judge Robert E. Morin. *In the matter of the search of www.disruptJ20.org*, special proceedings 17-CSW-3438 (D.C. Super. Ct., filed July 28, 2017).

Twenty-one defendants pled guilty to violent protest charges, and the last of the cases were dismissed last June. By October, the matter was resolved, and the government deleted all of the limited data it had.

The Department of Justice was represented by Assistant U.S. Attorneys Jennifer A. Kerkhoff and John W. Borchert.

The case was one of the first in the President Donald J. Trump era related to First Amendment issues. The website isn't active anymore, but DreamHost still stands by protecting the privacy of its customers, Aghaian said.

"Many companies may have chosen not to fight the government on this, but they were brave enough to do so," he said.

Aghaian added that the case had personal significance for him.

"Having come to the U.S. as a refugee myself, fleeing various things happening in Iran at the time with the political unrest and how individuals would be prosecuted for being on the wrong side of the fence, this stood out for me," he said.

— Erin Lee