

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION – FELONY BRANCH

In the Matter of the Search of www.disruptj20.org ) Special Proceeding No. 17 CSW 3438  
that Is Stored at Premises Owned, Maintained, )  
Controlled, Operated by DreamHost ) Chief Judge Morin  
)  
\_\_\_\_\_ ) Hearing: 10 AM August 24, 2017

**MOTION OF DOE 1, DOE 2, DOE 3, DOE 4, and DOE 5,  
FOR LEAVE TO INTERVENE TO FILE AN OPPOSITION  
TO THE ENFORCEMENT OF THE SEARCH WARRANT  
TO THE EXTENT THAT IT SEEKS IDENTIFYING  
INFORMATION ABOUT VISITORS TO [www.disruptj20.org](http://www.disruptj20.org)**

Doe 1, Doe 2, Doe 3, Doe 4, and Doe 5, each of whom visited the web site operated by the group called DisruptJ20 either in connection with their own political activism in opposition to then newly-elected President Donald Trump, or in a journalistic capacity, seek leave of court to intervene in this proceeding to oppose the order requested by the Government seeking to require DreamHost to disclose the Internet Protocol (“IP”) addresses of all visitors to the web site, for the following reasons.

1. As shown by the attached affidavits (from which the names and signatures have been redacted), the Does each viewed the web site located at [www.disruptJ20.org](http://www.disruptJ20.org), on several occasions in December 2016, January 2017, and since. Most of these visits were in connection with the Does’ political activism, but some were in connection with writing articles in a journalistic capacity. Consequently, each of the Does has every reason to expect that the IP addresses from which they viewed the web site are located on DreamHost’s servers, and that the execution of the warrant will show those visits and hence directly affect their personal interests. Compelled disclosure would likely lead to the loss of the anonymity that they enjoyed in visiting the web site.

2. None of the Does were engaged in any criminal activity during the January 2017

inauguration weekend, but rather devoted themselves to peaceful protests. But the Does object to having information that would lead to identifying them disclosed to a federal government that is increasingly hostile to dissent. Accordingly, the Does wish to ask the Court to protect their First Amendment right to read anonymously.

3. The Does first learned of the search warrant seeking their identifying information after the motion to enforce was first reported on DreamHost's blog on August 14, and thereafter in the press. They are submitting this motion for leave to intervene less than one week after learning that their anonymity was at risk.

4. Although the Does are grateful that DreamHost has hired counsel to oppose execution of the warrant, the Does are not DreamHost's own customers and believe that they are best able to articulate to the Court the reason why their identities should be protected against compelled disclosure. Moreover, although DreamHost argues for particularly exacting scrutiny because of the presence of "First Amendment issues" that affect the interest of third parties, it does not assert any First Amendment rights of its own, and it does not purport to represent the individuals whose First Amendment rights are at issue. The Does unquestionably have standing to raise their First Amendment rights in opposition to discovery that would take away their First Amendment right to read the DisruptJ20 web site anonymously, and DreamHost is not an adequate representative in presenting that question. *See In re Grand Jury Subp. No. 11116275*, 846 F. Supp. 2d 1, 4 (D.D.C. 2012) (Doe Twitter user allowed to intervene anonymously to oppose grand jury subpoena seeking identity of Twitter account owner). *See also Amazon.com LLC v. Lay*, 758 F. Supp. 2d 1154, 1166 (W.D. Wash. 2010) (allowing Internet users whose information was sought by state agency to intervene to protect First Amendment right to read anonymously even though company that held the

information was also opposing the discovery).

5. The D.C. Rules of Criminal Procedure have no express provision for intervention. but Rule 57(b) provides that, “when there is no controlling law[, t]he court may regulate practice in any manner consistent with applicable law and these rules.” Moreover, the D.C. Court of Appeals has authorized intervention in criminal proceedings by non-parties seeking to assert their First Amendment rights. *See In re Jury Questionnaires*, 37 A.3d 879 (2012).

6. Undersigned counsel Paul Alan Levy certifies that he attempted to confer with counsel for the United States about this motion for leave to intervene. He was unable to reach Assistant United States Attorney John Borchert by either telephone or email. He began a telephone conversation about the matter with Assistant United States Attorney Jennifer Kerkhoff, but she told Mr. Levy that she would not speak to him because he did not represent a party, and that she would respond if something were filed. As Mr. Levy was trying to tell Ms. Kerkhoff that he wanted to confer about a planned motion to **add** parties to the proceeding, she hung up the telephone.

### CONCLUSION

The motion for leave to intervene should be granted.

Respectfully submitted,

/s/ Paul Alan Levy  
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August 21, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 21st day of August, 2017, I caused copies of the foregoing motion for leave to intervene, affidavits and proposed brief in intervention to be served on counsel for the Government and counsel for DreamHost by first-class mail, postage prepaid, as well as by email, as follows:

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