



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

October 31, 2018

Via ECF

The Honorable Paul A. Crotty
United States District Judge
Southern District of New York
United State Courthouse
500 Pearl Street, Courtroom 14C
New York, New York 10007

Re: *United States v. Joshua Adam Schulte*, S2 17 Cr. 548 (PAC)

Dear Judge Crotty:

The Government writes to request that the Court schedule an arraignment of the defendant on superseding indictment S2 17 Cr. 548 (PAC) (the "Superseding Indictment"), which is attached as Exhibit A. The new charges arise from the defendant's flagrant disregard for the Court's protective order (the "Protective Order"), entered on September 18, 2017, and his continued, brazen disclosure of classified information while incarcerated at the Metropolitan Correctional Center (the "MCC"). In particular, and as described in more detail below, the Superseding Indictment charges the defendant with two additional charges: (i) Count Four charges the defendant with an additional violation of 18 U.S.C. § 793(e), based on his unlawful transmission and attempted transmission of classified national defense information from the MCC, and (ii) Count Eleven charges the defendant with a violation of 18 U.S.C. § 401(3), based on his contempt of the Protective Order. In light of the new charges, and for the additional reasons set forth in the Government's *ex parte*, classified submission (the "Classified Supplement"), which the Government is also submitting to the Court today, the Government also requests a four-week extension of the November 12, 2018 deadline for the Government to complete discovery and file a motion pursuant to the Classified Information Procedures Act ("CIPA"). This additional time will allow the Government to, among other things, produce the discovery that underlies the new charges against the defendant, some of which also implicates classified information.

By way of background, in September 2017, the Government initially charged the defendant with receipt, possession, and transportation of child pornography (the "Child Pornography Charges"). In connection with those charges, the Government produced a substantial volume of discovery to the defendant. That discovery included, among other things, forensic images of dozens of electronic devices seized from the defendant's apartment, including the home desktop computer upon which child pornography was found and the defendant's cellphone (upon which the passwords that unlocked the child pornography on the desktop computer were located);

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electronic communications between the defendant and others pertaining to his interest in child pornography; the results of a search of the defendant's email and social media accounts; summaries of Federal Bureau of Investigation (the "FBI") interviews of the defendant; responses to grand jury subpoenas; and search warrant materials (the "Protected Search Warrant Materials"). Some of this discovery—including the Protected Search Warrant Materials—was produced pursuant to the Protective Order, and thus, could only be shared with those individuals involved in the preparation of the defense. By March 2018, the Government had produced all of the discovery in its possession that concerned the Child Pornography Charges.

In or about May 2018, the Government learned that Schulte had distributed the Protected Search Warrant Materials to his family members for purposes of dissemination to other third parties, including members of the media. At the Government's request, on or about May 21, 2018, the Court held a hearing, at which the Court emphasized to Schulte that the Court would enforce the terms of the Protective Order. The Government's investigation further revealed that the materials provided by Schulte to his family members included classified information.

On June 18, 2018, the Government filed the first superseding Indictment in this case. The first superseding Indictment added charges against the defendant based on, among other things, the defendant's unlawful theft and disclosure of classified information, his unauthorized access to computer systems maintained by the Central Intelligence Agency (the "CIA"), and his misrepresentations to the FBI. Immediately after the Government filed the superseding Indictment, the Government began producing unclassified and classified discovery related to the new charges.¹ In light of the defendant's detention at the MCC since December 14, 2017, the Government and the FBI also arranged for the defendant to review classified discovery at a secure work area controlled by the FBI (the "FBI Area"). The defendant has been able to regularly visit the FBI Area to review the classified discovery. Furthermore, on or about October 1, 2018, the Government understands that Schulte was placed in more restrictive detention conditions based on the conduct described below. Despite those heightened restrictions, Schulte still has full access to review his unclassified discovery. Schulte also remains able to visit the FBI Area upon request and, indeed, visited the FBI Area during the week of October 22.

In or about early October 2018, the Government learned that Schulte was using one or more smuggled contraband cellphones to communicate clandestinely with third parties outside of the MCC. The Government and the FBI immediately commenced an investigation into Schulte's conduct at the MCC. That investigation involved, among other things, the execution of six search warrants and the issuance of dozens of grand jury subpoenas and pen register orders. Pursuant to this legal process, in the weeks following the Government's discovery of Schulte's conduct at the MCC, the FBI has searched, among other things, the housing unit at the MCC in which Schulte was detained; multiple contraband cellphones (including at least one cellphone used by Schulte that is protected with significant encryption); approximately 13 email and social media accounts (including encrypted email accounts); and other electronic devices. These searched cellphones, email and social media accounts, and electronic devices were all used by Schulte. As a result of these searches and other investigative steps, the Government discovered that Schulte had, among

¹ The Government's classified discovery production is described in the Classified Supplement.

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other things, (i) transmitted classified information to third parties, including by using an encrypted email account, and (ii) transmitted the Protected Search Warrant Materials to third parties in direct contravention of the Court's Protective Order and the Court's statements at the May 21 conference.

Based on the defendant's conduct at the MCC, the Government sought and obtained the Superseding Indictment earlier today. The investigation into the defendant's conduct, however, has generated a significant volume of discovery material—including, among other things, the results of the searches of the MCC unit and various email and social media accounts, forensic images of seized electronics, and photographs and videos of Schulte using contraband cellphones in the MCC—that the Government has to prepare to produce to the defendant, including by appropriately accounting for the classified information that is contained in the materials Schulte disclosed and prepared for disclosure. The defendant's unlawful disclosure of classified information has also required the Government to prepare additional classified discovery and to revise its CIPA filing, as described in more detail in the Classified Supplement. As a result, the Government respectfully requests an additional four weeks to produce discovery and to file its CIPA motion.

The Government has communicated with defense counsel concerning this request and understands that defense counsel needs to confer with the defendant before providing his position.

Respectfully submitted,

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United States Attorney

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Cc: Defense Counsel (via ECF)

Enclosure