



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,

GEOFFREY S. BERMAN
United States Attorney

By: _____/s/_____
Sidhardha Kamaraju
Matthew Laroche
Assistant United States Attorneys
Scott McCulloch
Special Assistant United States Attorney
(212) 637-6523/2420

Cc: Defense Counsel (via ECF)

Enclosure

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -	X	
	:	
UNITED STATES OF AMERICA	:	<u>SUPERSEDING INDICTMENT</u>
	:	
- v. -	:	S2 17 Cr. 548 (PAC)
	:	
JOSHUA ADAM SCHULTE,	:	
	:	
Defendant.	:	
	:	
- - - - -	X	

COUNT ONE
(Illegal Gathering of National Defense Information)

The Grand Jury charges:

1. In or about 2016, in the Eastern District of Virginia and elsewhere, JOSHUA ADAM SCHULTE, the defendant, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, copied, took, made, and obtained, a sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note connected with the national defense, to wit, SCHULTE took information (the "Classified Information") maintained by an intelligence agency of the United States (the "U.S. Intelligence Agency"), which concerned, among other things, the intelligence gathering capabilities of the U.S. Intelligence Agency and which had been determined by the United States Government pursuant to an

Executive Order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, for the purpose of providing it to, and causing it to be provided to, an organization that purports to publicly disseminate classified, sensitive, and confidential information ("Organization-1"), which posted the Classified Information on the Internet.

(Title 18, United States Code, Sections 793(b) and 2.)

COUNT TWO
(Illegal Transmission of Lawfully
Possessed National Defense Information)

The Grand Jury further charges:

2. In or about 2016, in the Eastern District of Virginia and elsewhere, JOSHUA ADAM SCHULTE, the defendant, lawfully having possession of, access to, control over, and being entrusted with information relating to the national defense, to wit, certain portions of the Classified Information, which information the defendant had reason to believe could be used to the injury of the United States and to the advantage of a foreign nation, did knowingly and willfully communicate, deliver and transmit, and cause to be communicated, delivered, and transmitted, that aforesaid information to a person not entitled to receive it, to wit, Schulte caused the Classified Information to be transmitted to Organization-1.

(Title 18, United States Code, Sections 793(d) and 2.)

COUNT THREE

(Illegal Transmission of Unlawfully
Possessed National Defense Information)

The Grand Jury further charges:

3. In or about 2016, in the Eastern District of Virginia and elsewhere, JOSHUA ADAM SCHULTE, the defendant, having unauthorized possession of, access to, and control over records containing information related to the national defense, which information the defendant had reason to believe could be used to the injury of the United States and to the advantage of a foreign nation, willfully retained the records and failed to deliver it to the officer or employee of the United States entitled to receive it, and willfully transmitted the same to a person not entitled to receive it, to wit, SCHULTE retained a portion of the Classified Information to which he did not have lawful access and caused it to be transmitted to Organization-1.

(Title 18, United States Code, Sections 793(e) and 2.)

COUNT FOUR

(Illegal Transmission and Attempted Transmission
of Unlawfully Possessed National Defense Information)

The Grand Jury further charges:

4. From at least in or about December 2017, up to and including at least in or about October 2018, in the Southern District of New York and elsewhere, JOSHUA ADAM SCHULTE, the defendant, having unauthorized possession of, access to, and control over records containing information related to the

national defense, which information the defendant had reason to believe could be used to the injury of the United States and to the advantage of a foreign nation, willfully retained the records and failed to deliver it to the officer or employee of the United States entitled to receive it, and willfully communicated, delivered, and transmitted, and attempted to communicate, deliver, transmit and caused to be communicated, delivered, and transmitted the same to a person not entitled to receive it, to wit, SCHULTE retained portions of the Classified Information and other national defense information maintained by the U.S. Intelligence Agency to which he did not have lawful access and caused to be transmitted, transmitted, and attempted to transmit this information to third parties not entitled to receive it.

(Title 18, United States Code, Sections 793(e) and 2.)

COUNT FIVE
(Unauthorized Access to a Computer To
Obtain Classified Information)

The Grand Jury further charges:

5. In or about 2016, JOSHUA ADAM SCHULTE, the defendant, in the Eastern District of Virginia and elsewhere, knowingly accessed a computer without authorization and exceeded authorized access and thereby obtained information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or

foreign relations, or any restricted data, as defined in paragraph y of section 11 of the Atomic Energy Act of 1954, with reason to believe that such information so obtained could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicated, delivered, transmitted, and caused to be communicated, delivered, or transmitted, and attempted to communicate, deliver, transmit and caused to be communicated, delivered, or transmitted the same to any person not entitled to receive it, and willfully retained the same and failed to deliver it to the officer or employee of the United States entitled to receive it, to wit, SCHULTE exceeded his authorized access on a computer to obtain the Classified Information and caused the Classified Information to be transmitted to Organization-1, which posted the Classified Information online.

(Title 18, United States Code, Sections 1030(a)(1) and 2.)

COUNT SIX
(Theft of Government Property)

The Grand Jury further charges:

6. In or about 2016, in the Eastern District of Virginia and elsewhere, JOSHUA ADAM SCHULTE, the defendant, did embezzle, steal, purloin, and knowingly convert to his use, vouchers, money and things of value of the United States, which exceeded the sum of \$1,000, and did receive, conceal, and retain the same

with intent to convert it to his own use and gain, knowing it to have been embezzled, stolen, purloined and converted, to wit, SCHULTE unlawfully obtained the Classified Information.

(Title 18, United States Code, Sections 641 and 2.)

COUNT SEVEN

(Unauthorized Access of a Computer to Obtain Information from a Department or Agency of the United States)

The Grand Jury further charges:

7. In or about 2016, in the Eastern District of Virginia and elsewhere, JOSHUA ADAM SCHULTE, the defendant, intentionally accessed a computer without authorization and exceeded authorized access and thereby obtained information from a department or agency of the United States, to wit, SCHULTE accessed a computer without authorization and in excess of his authorization obtained the Classified Information belonging to the U.S. Intelligence Agency.

(Title 18, United States Code, Sections 1030(a)(2)(B) and 2.)

COUNT EIGHT

(Causing Transmission of a Harmful Computer Program, Information, Code, or Command)

The Grand Jury further charges:

8. From at least in or about March 2016, up to and including at least in or about June 2016, in the Eastern District of Virginia and elsewhere, JOSHUA ADAM SCHULTE, the defendant, knowingly caused the transmission of a program, information, code, or command, and as a result of such conduct,

intentionally caused damage without authorization, to a protected computer, to wit, SCHULTE altered a computer system operated by the U.S. Intelligence Agency for the purpose of granting himself access to the system, deleting records of his activities, and denying others access to the system.

(Title 18, United States Code, Sections 1030(a)(5)(A) and 2.)

COUNT NINE
(Making False Statements)

The Grand jury further charges:

9. From at least in or about March 2017, up to and including at least in or about November 2017, in the Southern District of New York and elsewhere, JOSHUA ADAM SCHULTE, the defendant, in a matter within the jurisdiction of the executive branch of the government of the United States, knowingly and willfully falsified, concealed, and covered up by any trick, scheme, and device a material fact and made materially false, fictitious, and fraudulent statements and representations, to wit, during an interview with, among others, representatives of the Federal Bureau of Investigation, SCHULTE made misrepresentations in connection with the criminal conduct charged in Counts One through Three and Counts Five through Eight of this Indictment.

(Title 18, United States Code, Section 1001.)

COUNT TEN
(Obstruction of Justice)

The Grand Jury further charges:

10. From at least in or about March 2017, up to and including at least in or about November 2017, in the Southern District of New York and elsewhere, JOSHUA ADAM SCHULTE, the defendant, did corruptly obstruct, influence, and impede, and endeavored to obstruct, influence, and impede the due administration of justice in a federal grand jury in the Southern District of New York by making the material false statements charged in Count Nine of this Indictment.

(Title 18, United States Code, Section 1503.)

COUNT ELEVEN
(Contempt of Court)

The Grand Jury further charges:

11. From at least in or about April 2018, up to and including at least in or about October 2018, in the Southern District of New York and elsewhere, JOSHUA ADAM SCHULTE, the defendant, did willfully and knowingly disobey and resist a lawful order of a Court of the United States, to wit, an order issued by the Honorable Paul A. Crotty, United States District Judge, on or about September 18, 2017, in the Southern District of New York in the case of *United States v. Joshua Adam Schulte*,

17 Cr. 548 (PAC), by communicating documents and information to others in violation of the aforementioned order.

(Title 18, United States Code, Sections 401(3) and 2.)

COUNT TWELVE
(Receipt of Child Pornography)

The Grand Jury further charges:

12. From at least in or about 2009, up to and including at least in or about March 2017, in the Southern District of New York and elsewhere, JOSHUA ADAM SCHULTE, the defendant, knowingly did receive and attempt to receive material that contained child pornography that had been mailed, and using a means and facility of interstate and foreign commerce shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, to wit, SCHULTE downloaded from the Internet electronic files depicting child pornography.

(Title 18, United States Code, Sections 2252A(a)(2)(B), (b)(1) and 2.)

COUNT THIRTEEN
(Possession of Child Pornography)

The Grand Jury further charges:

13. From at least in or about 2009, up to and including at least in or about March 2017, in the Southern District of New York and elsewhere, JOSHUA ADAM SCHULTE, the defendant, knowingly did possess and access with intent to view, and attempt to possess and access with intent to view, a book,

magazine, periodical, film, videotape, computer disk, and other material that contained an image of child pornography that had been mailed, shipped and transported using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer, and that was produced using materials that had been mailed, shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, to wit, SCHULTE accessed with intent to view and possessed images and videos of child pornography at his residence in New York, New York.

(Title 18, United States Code, Sections 2252A(a) (5) (B), (b) (2) and 2.)

COUNT FOURTEEN
(Transportation of Child Pornography)

The Grand Jury further charges:

14. In or about November 2016, in the Southern District of New York and elsewhere, JOSHUA ADAM SCHULTE, the defendant, knowingly did mail and transport and ship using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer, child pornography, to wit, SCHULTE transported and caused to be transported from Virginia to New York, New York, a computer containing images and videos of child pornography.

(Title 18, United States Code, Section 2252A(a) (1).)

COUNT FIFTEEN
(Criminal Copyright Infringement)

The Grand Jury further charges:

15. From at least in or about September 2015, up to and including at least in or about August 2017, in the Southern District of New York and elsewhere, JOSHUA ADAM SCHULTE, the defendant, unlawfully, willfully, and knowingly did infringe copyrights by the reproduction and distribution, including by electronic means and by making it available on a computer network accessible to members of the public, during a 180-day period, of ten and more copies and phonorecords, of one and more copyrighted works, which had a total retail value of more than \$2,500, to wit, without authorization, SCHULTE maintained a computer server that housed thousands of copyrighted movies, television shows, and audio recordings, which SCHULTE shared with others by electronic means and using the Internet.

(Title 17, United States Code, Section 506(a)(1)(A) and Title 18, United States Code, Section 2319(b)(1).)

FORFEITURE ALLEGATIONS

16. As a result of committing the offenses alleged in Counts One, Two, Three, and Four of this Indictment, JOSHUA ADAM SCHULTE, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 793(h), any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government,

or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of the commission of the offenses charged in Counts One, Two, Three, and Four of this Indictment.

17. As a result of committing the offenses alleged in Counts Five, Seven, and Eight of this Indictment, JOSHUA ADAM SCHULTE, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 1030(i), any interest in any personal property that was used or intended to be used to commit or to facilitate the commission of the conduct alleged in Counts Five, Seven, and Eight of this Indictment; and any property, real or personal, constituting or derived from, any proceeds that SCHULTE obtained, directly or indirectly, as a result of the commission of the offenses charged in Counts Four, Six, and Seven of this Indictment.

18. As a result of committing the offense charged in Count Six of this Indictment, JOSHUA ADAM SCHULTE, the defendant, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, any property, real or personal, which constitutes or is derived from proceeds traceable to the commission of the offense charged in Count Six of the Indictment.

19. As the result of committing the offenses alleged in Counts Twelve, Thirteen, and Fourteen of this Indictment, JOSHUA

ADAM SCHULTE, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 2253(a), any visual depiction described in the offenses set forth in Counts Twelve through Fourteen, and any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Chapter 110 of Title 18, United States Code, and any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offenses, and any property, real or personal, used or intended to be used to commit or to promote the commission of such offenses or any property traceable to such property.

20. As a result of committing the criminal copyright infringement offense alleged in Count Fifteen of this Indictment, JOSHUA ADAM SCHULTE, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 2323(b), all articles made or trafficked as part of the commission of the offense; all property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of offense; and all property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, including, but not limited to, United States currency representing the amount of proceeds obtained directly or indirectly as a result of the

commission of the offense alleged in Count Fifteen.

(Title 18, United States Code, Sections 793(h), 981 & 982, 1030(i), 2253(a), 2323(b), Title 21 United States Code, Section 853(p); and Title 28, United States Code, Section 2461.)


Substitute Asset Provision

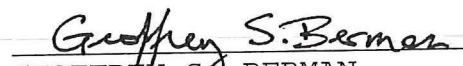
21. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 21, United States Code, Section 853(p).)


FOREPERSON


GEOFFREY S. BERMAN
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JOSHUA ADAM SCHULTE,

Defendant.

SUPERSEDING INDICTMENT

S2 17 Cr. 548 (PAC)

(18 U.S.C. §§ 401(3), 793, 1030,
2252A(a)(1), 2252A(a)(2)(B) and (b)(1),
2252(a)(5)(B) and (b)(2), and Section
2319(b)(1) and 2, and Title 17, United
States Code, Section 506(a)(1)(A).)

GEOFFREY S. BERMAN

United States Attorney



Foreperson
