

DOJ'S EX PARTE CLASSIFIED PLANS FOR JOSHUA SCHULTE — AND MAYBE, JULIAN ASSANGE

Update: The High Court has overturned Baraitser's ruling, finding that the US should have had an opportunity to give the assurances it has since given that Assange will not be subjected to solitary confinement. I expect Assange will appeal immediately.

Per a tweet from Stella Morris, the decision in the appeal of a Vanessa Baraitser's decision denying the US extradition request for Julian Assange on humanitarian grounds will be announced Friday at 10:15 GMT. Because of something that happened in the High Court extradition hearing, I want to point to some things that happened in the Joshua Schulte docket in recent months.

On August 5, DOJ filed notice of an *ex parte* classified status letter in the Schulte case.

The Government respectfully submits this letter to provide notice of an *ex parte*, classified status letter submitted yesterday.

By filing an *ex parte* classified status letter, the government would have informed the judge (then Paul Crotty but the case has since been reassigned to Judge Jesse Furman) something about the case, without sharing it with Schulte or the public. The letter would have been filed five years to the day after the start date, August 4, 2016, for searches DOJ has described that Schulte did on WikiLeaks, Edward Snowden, and (as described elsewhere) Shadow Brokers.

In addition to the numerous searches for

"wikileaks" which commenced on August 4, 2016, SCHULTE also conducted multiple related Searches, including: prior to the March 7, 2017 release of the Classified Information, "assange" (Julian Assange is the founder and "editor-in-chief" of WikiLeaks.org), "snowden its time," "wikileaks code," and "wikileaks 2017"-and after the March 7, 2017 release of the Classified Information, "wikileaks public opinion," and "officials were aware before the WikiLeaks release of a loss of sensitive information."

On September 23, the government wrote a letter to Judge Crotty, voicing its support for adjourning Schulte's trial date – which at that point was scheduled for October 25, two days before Assange's extradition hearing – and revisiting the schedule after November 1, several days after the extradition hearing.

The Government respectfully submits this letter in response to the defendant's request to adjourn the trial date, currently scheduled for October 25, 2021. (D.E. 495). As discussed at the pretrial conference held on September 15, 2021, the Government consents to the defendant's request for an adjournment. We respectfully suggest that the Court enter an order adjourning the trial sine die, and the Government will provide an update with respect to our views on an appropriate trial date by November 1, 2021.

On September 26, Yahoo published a story that made claims about assassination discussions that, the story itself revealed, were overblown. The story debunked WikiLeaks' claims that the charges against Assange were political retaliation pertaining to the Russian investigation from Trump. It corroborated the obvious temporal link between the initial charge

against Assange and a Russian exfiltration attempt. And it provided details of CIA's clandestine plans to limit the damage of the still (then, and now) unreleased Vault 8 source code of CIA's hacking tools. There's reason to believe WikiLeaks has known aspects of those damage mitigation plans for at least two years, via means they do not want to disclose.

Since its publication, WikiLeaks has used the story to try to suggest that the DOJ extradition should not go forward, but the British judges who heard the appeal seemed unimpressed by tales of CIA outrage about WikiLeaks' hoarding CIA's hacking tools.

As part of the extradition hearing on October 28, according to the WikiLeaks' Twitter account, the lawyer representing the US in Assange's extradition hearing, James Lewis, asserted that if this effort to extradite Assange fails, they can just start again with another extradition request.



US: "Even if we lose, we can start again with Mr. Assange and issue another extradition request" - James Lewis QC today at the UK High Court on behalf of the US Government

4:22 PM · Oct 28, 2021 · TweetDeck

Note: I looked for a more credible source for this quotation than WikiLeaks, which has been sowing more propaganda than usual in recent months, but did not find it quoted by other credible journalists. For the purposes of this post, though, I will accept this as accurate. A representative for US DOJ said that if this extradition attempt fails, Lewis seemed to suggest, DOJ can ask the UK to extradite on a different indictment.

Shortly after the extradition hearing, on November 5, in response to an order from Judge Furman, DOJ proposed March 21, 2022 as the earliest feasible trial date, largely because of expected CIPA proceedings, but in part because

of whatever DOJ discussed in that August 4 *ex parte* classified status letter.

Although the Government is available for trial at any time in the first or second quarters of 2022, the Government does not believe it would be practical to schedule the trial prior to March 2022.

[snip]

The proposed trial date also takes into consideration matters discussed in the Government's *ex parte* letter submitted on August 4, 2021. Accordingly, in order to afford sufficient time both for the likely upcoming CIPA litigation and for the parties to prepare for trial with the benefit of any supplemental CIPA rulings, the Government believes that the earliest practical trial date for this matter would be March 21, 2022.

March 21 would be two weeks after the five year anniversary of the first publication of Vault 7, the less harmful development notes stolen from the CIA, but with them, the names or pseudos of several colleagues that Schulte allegedly scapegoated. That would be the likely date for any statutes of limitation on another CFAA conspiracy to toll.

That is, this timing would provide DOJ an opportunity to learn the fate of Assange's first, declassified charges through 2015, in case DOJ wanted to ask for extradition on a second case charging actions since 2015.

Admittedly, one explanation for that August 4 filing could be that DOJ obtained new evidence (though if it is evidence Schulte will ultimately get, it should not be *ex parte*). But given Lewis' comment and the timing of DOJ's various updates about trial schedule, one explanation is that DOJ would ask to extradite Assange for the Vault 7 publications (and related actions that have nothing to do with journalism) if the current extradition effort

fails.

Ultimately, Schulte's decisions have created a further delay than the one the government proposed. Because Schulte's expert, Steve Bellovin, has limited availability due to his teaching schedule, the trial is scheduled to start on June 13, 2022, more than six years after Schulte allegedly stole the files in question.

Depends on what happens tomorrow, though, we may learn sooner what that *ex parte* filing was.