

**DEPARTMENT OF THE AIR FORCE
TRIAL JUDICIARY**

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
SSGT KINYADA J. JOHNSON	)	DEFENSE MOTION FOR
552d Operations Support Squadron (ACC)	)	APPROPRIATE RELIEF:
Sheppard Air Force Base, TX	)	CONTINUANCE
	)	
	)	29 January 2026

NOW COMES the Accused, SSgt Kinyada Johnson, by and through counsel, and respectfully moves for a continuance. This motion is made pursuant to Article 40, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 840, Rule for Courts-Martial (R.C.M.) 906(b)(1) (2019), the Due Process Clause of the Fifth Amendment to the United States Constitution, the Sixth Amendment to the United States Constitution, military due process, and applicable case law. The Defense does not request an Article 39(a), UCMJ, session.

SUMMARY

Government did not provide the MOU for Defense's requested expert until 29 January 2026, which is 15 days after Defense submitted the request and 11 days before the docketed trial date. Additionally, Government notified Defense of 29 new witnesses on 26 January 2026, less than two weeks before the docketed trial date, to include their own expert witness. Government built an unfair tactical advantage by building in time to consult and interview all 29 of their witnesses for weeks or months prior to the scheduling order deadline, to include their own expert, while keeping Defense in the dark on the nearly 30 witnesses until the last permissible moment and without an expert until a week and a half before trial. If the trial proceeds as currently scheduled, the Defense will not have adequate time to prepare and likely be ineffective in assisting SSgt Johnson to defend against the charge. Therefore, Defense requests a continuance until the next date mutually agreed upon by the parties.

FACTS

1. SSgt Kindyada Johnson is accused of wrongful use of THC-9 on diverse occasions in violation of Article 112a, UCMJ. (Attachment 1)
2. On 5 January 2026, a R.C.M. 802 scheduling conference was held telephonically, which involved trial counsel, defense counsel, and the military judge. Following the scheduling conference, the Court issued its scheduling order. (Attachment 2)
3. On 14 January 2026, the Defense submitted its request for a forensic toxicologist. Government confirmed receipt and stated it would route the request on 14 January 2026. (Attachment 3)

4. Government stated in two Joint Status Updates to the military judge, on 15 January and 22 January 2026, that Defense's requested expert was being processed. (Attachments 4 and 5)
5. Pursuant to the Court's scheduling order, action on the Defense's expert request was due as soon as possible, but no later than 16 January 2026. (Attachment 2)
6. On 26 January 2026, Government notified Defense for the first time of 29 witnesses, to include their own forensic toxicologist. (Attachment 6)
7. The Government did not take action on the Defense's digital forensics expert request until 28 January 2026 and did not properly notify Defense and the expert until 29 January 2026. (Attachment 7)

BURDEN OF PROOF AND PERSUASION

8. Under R.C.M. 905(c), the Defense bears the burden of persuasion. The burden of proof for any factual issue whose resolution is necessary to decide this motion is a preponderance of the evidence.

LAW

9. Under Article 40, UCMJ, "The military judge . . . may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just."
10. "A continuance may be granted only by the military judge." R.C.M. 906(b)(1).
11. "The non-binding Discussion of [R.C.M.] 906(b)(1) explains: 'Reasons for a continuance may include: insufficient opportunity to prepare for trial; unavailability of an essential witness; [and] the interest of Government in the order of trial of related cases'" *United States v. Weisbeck*, 50 M.J. 461, 464 (C.A.A.F. 1998).
12. In *United States v. Miller*, 47 M.J. 352, 358 (C.A.A.F. 1997), the C.A.A.F. provides guidance on granting continuances. Although *Miller* dealt with the accused's right to obtain civilian counsel, many of the blackletter law principles from the case apply to granting continuances generally.
13. For example, although this motion is raised at the trial level, Defense notes that the Honorable Court's decision, if denied, will be tested on appeal for an abuse of discretion, through the lens of the factors set out in *Miller*, 47 M.J. at 358 (citations and quotation marks omitted): surprise, nature of any evidence involved, timeliness of the request, substitute testimony or evidence, availability of witness or evidence requested, length of continuance, prejudice to opponent, moving party received prior continuance, good faith of the moving party, use of reasonable diligence by moving party, possible impact on verdict, and prior notice.

ARGUMENT

14. In accordance with *Miller* and *Weisbeck*, this Honorable Court should grant the requested continuance based upon Defense's need for sufficient opportunity to properly prepare for trial.

15. The Defense has continually acted in good faith and used reasonable diligence to try to keep the currently scheduled trial. As aforementioned, *supra* at paras. 1 – 7, the Defense has not had sufficient opportunity to properly prepare for trial. The Defense exercised reasonable diligence to secure expert assistance and to have the discovery provided to its expert for review well ahead of trial. Understanding that the scheduling order deadline was 9 January 2026 for expert witness requests from Defense to Government, Government essentially ratified Defense's request by confirming receipt and processing it from 14 January to 28 January 2026. Additionally, if Defense had submitted the request by 9 January 2026, government's action would nonetheless have been due 16 January 2026, eight days later. Taking this same timeline into account, eight days after 14 January 2026 would be 22 January 2026. However, Defense's expert request was not acted upon until 28 January 2026, and Defense and the expert were not notified until 29 January 2026.

16. Meanwhile, Government routed and approved their won expert toxicologist, which they notified Defense of on 26 January 2026, among 28 other witnesses. Essentially, Government has had an unknown amount of time leading up to 26 January 2026 to interview, prepare, and consult with their expert. Defense is now left with 11 days for their expert to become familiar with and analyze all 10+ litigation packages from the Air Force Drug Testing Lab, the additional discovery, and for Defense to consult with him and prepare a case – all while balancing the 28 other witnesses that require Defense's attention.

17. The additional 28 witnesses were technically noticed to Defense in accordance with the military judge's scheduling order of 26 January 2026. However, Government had the discretion to give Defense a professional courtesy "heads up" ahead of the deadline, given the tight timeline between the due date of witness lists and trial (two weeks). While it was completely optional for Government to notify Defense of nearly three dozen witnesses ahead of the scheduling order deadline, Government's failure to do so as essentially amounted to a tactical advantage, wherein Government has had the opportunity to prepare and interview these 29 witnesses for as long as it wants prior to the deadline. Defense, however, is only now able to coordinate 29 interviews in a 2 week timespan on top of preparing an expert with 11 days' lead time.

18. The Defense would not presume bad faith upon the Government, but the fact remains, that the Government has been able to review and analyze the evidence with expert assistance and prepare interviews for the 28 other witnesses, while the Defense has not despite its good faith and use of reasonable diligence.

19. The Defense has continually strived for this court-martial to proceed to trial as currently scheduled. The Defense has not requested a lengthy delay in this case, notwithstanding the three day delay (agreed to by Government) to accommodate co-counsel availability. However, no amount of acts in good faith—such as requesting expert assistance three and a half weeks before trial—can alleviate the current situation which the Defense finds itself. If the Government had

acted on Defense's expert request on time, this situation *may* have been alleviated entirely. Of course, that would not have given the Government the unfair, tactical advantage that it now enjoys.

20. If this case were to proceed to trial as scheduled, the Defense runs the risk of being ineffective. A pillar of preparation of any defense in a drug case is review of the technical drug tests with an expert witness. Based on the inability of the Defense's expert to review the evidence prior to the MOI, the Defense cannot fully understand the evidence against SSgt Johnson, let alone fully prepare a defense. If this case proceeds to trial as scheduled, the Government will likely seek to admit evidence that the Defense has not had the opportunity to fully review or discuss with its expert due to the time constraints and amount of evidence, thereby potentially catching the Defense by surprise and rendering the assistance of SSgt Johnson's defense counsel ineffective. The Defense needs adequate time for its expert to review the to be adequately prepared for trial. When paired with the 29 Government witnesses Defense is scrambling to find time to talk to on top of other routine try prep, that is not possible. Therefore, Defense is unable to prepare properly for trial if it begins on 9 February 2026.

21. The risk of prejudice to the Government is minimal, if not nonexistent. In fact, a continuance would surely allow the Government to prepare its case further. Of the utmost importance is that Defense owes SSgt Johnson an ethical and moral obligation to provide him with zealous representation, and that cannot be done with the current scheduled trial.

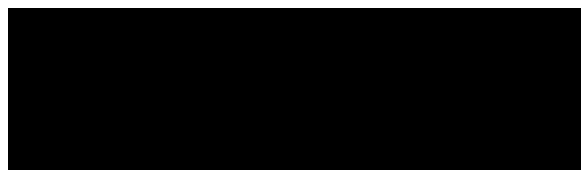
22. Finally, a continuance appears to have, at the most, a negligible effect on the verdict in this case. *Nearly all* of the Government's witness (at least current witnesses) are employees of the Government or active duty military. Nearly all of the Government's evidence will be technical drug testing data. Therefore, evidence condition or witness availability will not hamper the potential verdict in this case.

RELIEF REQUESTED

23. Wherefore, the Defense respectfully requests that the Military Judge GRANT the Defense's request for a continuance until the next date mutually agreed upon by the parties.

The Defense does not request an Article 39(a) hearing to be heard on this motion at this time.

Respectfully submitted on this 29th day of January 2026.



MARY CLAIRE RIZZARDI, Capt, USAF
Defense Counsel

Attachments (7):

1. Charge Sheet, dated 8 December 2025, 2 pages
2. Military Judge's Scheduling Order, dated 5 January 2026, 5 pages
3. Defense's Request for Expert in Toxicology, dated 14 January 2026, 3 pages
4. Joint Status Update, dated 15 January 2026, 2 pages
5. Joint Status Update, dated 22 January 2026, 2 pages
6. Government Witness List, dated 26 January 2026, 5 pages
7. Email from Dr. [REDACTED] Confirming Receipt of MOA/MOU, dated 29 January 2026, 1 page

CERTIFICATE OF SERVICE

I certify that on 29 January 2026, I delivered a copy of this Defense Motion for Appropriate Relief - Continuance via e-mail to the Military Judge and Trial Counsel.

[REDACTED]

MARY CLAIRE RIZZARDI, Capt, USAF
Defense Counsel