

**DEPARTMENT OF THE AIR FORCE
TRIAL JUDICIARY**

UNITED STATES v. SSGT KINYADA J. JOHNSON 552d Operations Support Squadron (AETC) Tinker Air Force Base, OK	GOVERNMENT REQUEST FOR JUDICIAL NOTICE #1 25 January 2026
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MOTION

The United States (government), by and through counsel, requests this Honorable Court take judicial notice pursuant to Military Rule of Evidence (M.R.E.) 201 and 202 of the following: that tetrahydrocannabinols (THC), including Delta-9 tetrahydrocannabinol (THC-9), is a Schedule I controlled substance. The government further requests an Article 39(a) session should the Court not be inclined to grant the request on the papers.

SUMMARY

SSgt Kinyada J. Johnson (“Accused”) is charged with violating Article 112a of the Uniform Code of Military Justice for wrongfully using Delta-9 tetrahydrocannabinol (THC-9), a Schedule I controlled substance. To establish a violation of Article 112a, UCMJ, the Government seeks judicial notice that THC, including THC-9, is a Schedule I controlled substance under Title 21 United States Code § 812 (21 U.S.C. § 812).

FACTS

1. On 10 September 2025, Lt Col [REDACTED], 552d Operations Support Squadron Commander, Tinker AFB, OK, preferred one charge and one specification against SSgt Kinyada J. Johnson, the Accused, for wrongfully using Delta-9 Tetrahydrocannabinol (THC-9), on divers occasions, between on or about 22 January 2025 and on or about 9 June 2025, in violation of Article 112a, Uniform Code of Military Justice (UCMJ). (**Att. 1**). On 18 December 2025, Colonel [REDACTED], 72d Air Base Wing Commander, referred that charge and specification to trial by special court-martial. (*Id.*).

a. On 6 February 2025, the Accused admitted in a written response to an offer of nonjudicial punishment that he knowingly and wrongfully used THC-9 on divers occasions between on or about 26 July 2024 and on or about 21 January 2025. (**Att. 2**).

b. On 5 January 2026, the Accused provided a urine sample as part of a random urinalysis to the 72d Air Base Wing Drug Demand Reduction Program Office, located on Tinker AFB, Oklahoma. (**Att. 3**). The Accused’s urine specimen was collected, packaged, and shipped to the

Air Force Drug Testing Lab (AFDTL) for testing. (**Att. 3**). The Accused's urine specimen tested positive for THC-9 at 1,167 ng/mL (DoD cutoff for THC-9 is 15 ng/mL). (**Atts. 3 & 4**).

2. THC, including THC-9, is a Schedule I controlled substance under 21 U.S.C. § 812. (**Atts. 5-7**).

BURDEN

3. As proponent of the evidence, the Government bears the burden. *United States v. Palmer*, 55 M.J. 205, 208 (CAAF 2001); *see also* R.C.M. 905(c)(2). The standard to resolve any issue is preponderance of the evidence. R.C.M. 905(c)(1).

LAW

4. Mil. R. Evid. 201 allows judicial notice of adjudicative facts. The military judge may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known universally, locally, or in the area pertinent to the event; or (2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. Mil. R. Evid. 201(b).

5. The military judge must take judicial notice if a party requests it and the military judge is supplied with the necessary information. Mil. R. Evid. 201(c)(2).

6. The military judge may take judicial notice at any stage of the proceeding. Mil. R. Evid. 201(d). On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. Mil. R. Evid. 201(e). If the military judge takes judicial notice before notifying a party, the party, on request, is still entitled to be heard. *Id.*

7. Under Mil. R. Evid. 202(a), “[t]he military judge may take judicial notice of domestic law. If a domestic law is a fact that is of consequence to the determination of the action, the procedural requirements of Mil. R. Evid. 201—except Rule 201(f)—apply.

8. THC, including THC-9, is a Schedule I controlled substance under 21 U.S.C. § 812 (the Controlled Substances Act). (**Att. 5**). Title 21 Code of Federal Regulations Part 1308.11(31) (21 CFR 1308.11(31)), which implements 21 U.S.C. § 812, assigns THC a unique identifier: Controlled Substance Code Number (CSCN) 7370. (**Att. 6**) The Department of Justice (DOJ) List of Controlled Substances confirms THC-9 falls under CSCN 7370 and is a Schedule I controlled substance. (**Att. 7**).

9. There is established precedent for military and federal courts taking judicial notice of drugs' Schedules under the Controlled Substances Act. *See, e.g., United States v. Commander*, 39 M.J. 972, 977, (A.F.C.M.R. 1994) (noting that the trial judge took judicial notice that anabolic steroids are a Schedule III controlled substance); *United States v. Dickerson*, 48 C.M.R. 150, 153 (A.C.M.R.1973) (noting that the trial judge took judicial notice that LSD was a Schedule I controlled substance); *United States v. Wisniewski*, 741 F.2d 138, 142 (7th Cir. 1984) (deciding the district court properly took judicial notice that the drug was a Schedule I controlled substance);

United States v. Coffman, 638 F.2d 192, 194-95 (10th Cir. 1981) (finding the district court may instruct the jury that a drug is a controlled substance listed on a particular schedule). Federal courts have likewise taken judicial notice of facts readily verifiable by an official government source. *See, e.g., Santa Monica Foods Not Bombs v. City of Santa Monica*, 450F.3d 1022, 1025 (9th Cir. 2006) (“Facts contained in public records are considered appropriate subjects of judicial notice.”). Courts may generally also exercise their authority to take judicial notice of public documents. *Ahuka v. Detica Inc.*, 742 F. Supp 2d 96, 103 (D.D.C. 2010) (considering an E.E.O.C. complaint as a public document “of which a court may take judicial notice.”).

ARGUMENT

10. The Government requests this Court take judicial notice that THC, including THC-9, is a Schedule I Controlled substance under 21 U.S.C. § 812, a domestic law in effect during the entire charging window and at all pertinent times. As previously mentioned, the DOJ List of Controlled Substances confirms that THC-9 falls under the THC category and is a Schedule I controlled substance.

11. The Court should take judicial notice that THC, including THC-9, is a Schedule I controlled substance under 21 U.S.C. § 812. The Government must prove, among other things, that THC-9 is a controlled substance that the Accused wrongfully used, in violation of Article 112a, UCMJ. Since 21 U.S.C. § 812 establishes THC as a Schedule I controlled substance, the military judge may take judicial notice of this domestic law.

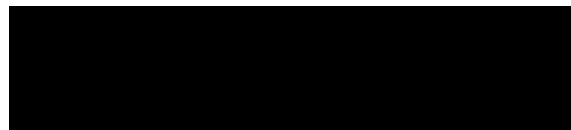
12. There is no reasonable dispute about the language provided in 21 U.S.C. § 812 establishing THC as a Schedule I controlled substance. There is also no reasonable dispute that THC-9 is “THC” for the purposes of 21 U.S.C. § 812.

13. The federal law is accurately and readily determined from sources whose accuracy cannot be reasonably questioned, specifically, the electronic records system created and maintained by the United States House of Representatives, Office of Law Revision Counsel (OLRC), located at <https://uscode.house.gov/browse.xhtml> and the National Archives for Code of Federal Regulation, located at <https://www.ecfr.gov/current/title-21/chapter-II/part-1308>.

RELIEF REQUESTED

14. The government respectfully requests the taking of judicial notice of law that THC, including THC-9, is a Schedule I controlled substance, and alternatively, for an Article 39(a) hearing regarding same.

Respectfully submitted,



JASON J. ZUMMO, Maj, USAF
Trial Counsel

7 Attachments:

1. DD Form 458, Charge Sheet, 10 Sep 25, 2 pgs.
2. AF Form 3070B, Record of NJP Proceedings, and SSgt Johnson's written response, various dates, 6 pgs.
3. DDRP Records, 5 Jan 26, 8 pgs.
4. Excerpts of DoDI 1010.16, 3 pgs.
5. Excerpts of 21 U.S.C. § 812, various dates, 12 pgs.
6. Excerpts of 21 CFR 1308.11(31), various dates, 19 pgs.
7. Excerpts from DOJ List of Controlled Substances, various dates, 4 pgs.

CERTIFICATE OF SERVICE

I certify that I served a copy of this Government Request for Judicial Notice #1 via electronic mail and e-file to the Military Judge and Defense Counsel on 25 January 2026.



Trial Counsel