

**DEPARTMENT OF THE AIR FORCE
TRIAL JUDICIARY**

UNITED STATES v. SSGT KINYADA J. JOHNSON 552d Operations Support Squadron (AFMC) Tinker Air Force Base, OK	GOVERNMENT RESPONSE TO DEFENSE MOTION FOR APPROPRIATE RELIEF: CONTINUANCE 2 February 2026
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MOTION

The United States (government), by and through counsel, hereby responds to the Defense Motion for Appropriate Relief: Continuance. The Government does **not** oppose the Defense motion for a continuance of the trial. However, the Government requests that Your Honor hold an Article 39(a) session on a date during the previously scheduled week of trial to resolve outstanding motions. The Government does **not** request an Article 39(a) session on this motion.

SUMMARY

The Government does not oppose the continuance of trial on the merits. However, the Government requests that an Article 39(a) session be held on a date during the previously scheduled week of trial (10-13 February 2026) to resolve outstanding motions. On that limited basis, the government does oppose any delay of the motions hearing, set to begin 10 February 2026 because it is wholly unwarranted and Defense has sufficient time to prepare.

FACTS

1. The Government disagrees with Defense's recitation of the facts in that they lack specificity and completeness.
2. 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.*).
3. On 5 January 2026, an R.C.M. 802 scheduling conference was held telephonically. (**Att. 2**). Judge Schrama was present for the Court, Captain Rizzarda was present for the Defense, and Captain Sherrill was present for the Government. (*Id.*). The Court issued a scheduling order after this conference. (*Id.*).

4. The Government submitted a request for an expert witness on 9 January 2026. (**Att. 3**).
5. Although the scheduling order deadline was 9 January 2026, Defense sent a brief email to trial counsel on 14 January 2026 requesting a forensic toxicologist (no formal written request with any detail, justification or reasoning was submitted) and attached Dr. [REDACTED]'s fee schedule and Curriculum Vitae. (**Att. 4**). Trial Counsel for the Government immediately forwarded this request to the case paralegal for processing. (**Att. 5**).
6. According to the Court's scheduling order, Friday, 16 January 2026, was the deadline to act on Defense requests for experts. (**Att. 2**). Monday, 19 January 2026 was a federal holiday (Martin Luther King Jr. Day). (*Proffer of Trial Counsel*). That week, Trial Counsel was organizing, drafting, and preparing its motion to pre-admit evidence, which ultimately included over 40 attachments, many of which contained redactions, and its motion for judicial notice. (*Proffer of Trial Counsel*). On Friday, 23 January 2026, Trial Counsel was dismissed early in the day due to inclement weather, and Tinker AFB base was shut down due to snow and unsafe driving conditions. (**Atts. 6-7; Proffer of Trial Counsel**). The base remained closed on Monday, 26 January and on Tuesday, 27 January. (**Att. 8 and Att. 9**).
7. On Saturday, 24 January 2026, Defense submitted its initial discovery request to the Government, which was past the deadline of 10 January 2026. (**Att. 10**). Trial Counsel timely submitted its response on 29 January 2026. (**Att. 11**). Also, on 24 January 2026, Defense Counsel submitted its Notices of certain character evidence pursuant to MRE 404(a)(2) and 608(a), which was past the scheduling order deadline of 16 January 2026. (**Atts. 2, 12**).
8. On 26 January 2026, Trial Counsel timely provided Your Honor and Defense Counsel with its witness list IAW the Court's scheduling order. (**Att. 13**).
9. Trial Counsel obtained the SJA's signature on the expert witness package on Wednesday, 28 January 2026, six duty days after Defense submitted its request, which was then sent to Defense's requested witness for signature. (**Att. 14 and Att. 15**).

BURDEN

10. Defense has the burden of proof and persuasion for this motion. R.C.M. 905(c)(2). The standard of proof as to any factual issue necessary to resolve this motion is a preponderance of the evidence. R.C.M. 905(c)(1).

LAW

11. The discussion to R.C.M. 906(b)(1), citing Article 40, UCMJ, states that "[t]he military judge should, upon a showing or reasonable cause, grant a continuance to any party for as long and as often as is just."
12. "The standard of review of a military judge's decision to deny a continuance is abuse of discretion. There is an abuse of discretion where reasons or rulings of the military judge are clearly untenable and . . . deprive a party of a substantial right such as to amount to a denial of

justice; it does not imply an improper motive, willful purpose, or intentional wrong.” *United States v. Weisbeck*, 50 M.J. 461, 464 (C.A.A.F. 1999)(quoting *United States v. Miller*, 47 M.J. 352, 358 (C.A.A.F. 1997)).

13. Several factors must be considered in deciding whether to grant a continuance. In *Miller*, the U.S. Court of Appeals for the Armed Forces articulated factors a court will examine to determine whether a judge abused his or her discretion in denying a motion for continuance. Those factors include 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 the opponent, whether the moving party received prior continuances, good faith of the moving party, use of reasonable diligence by the moving party, possible impact on verdict, and prior notice. See *Miller*, 47 M.J. at 358.

14. The decision to grant or deny a continuance is within a judge’s broad discretion and, absent clear abuse, will not be overturned. *United States v. Thomas*, 22 M.J. 57 (C.M.A. 1986)

ARGUMENT

15. The Government does **not** oppose Defense’s motion for a continuance of the trial date. The Government requests that Your Honor hold an Article 39(a) session on a date during the previously scheduled week of trial to resolve outstanding motions. On that limited basis, the government does oppose any delay of the motions hearing, set to begin 10 February 2026 because it is wholly unwarranted and Defense has sufficient time to prepare.

16. The Government has continually reviewed, pursued, and analyzed evidence in an effort to perfect its case against the Accused. The Government has promptly turned over any and all discovery to Defense, including the names of the individuals involved with the Accused’s positive urinalysis results.

17. Despite being requested late and in an informal manner, the Government approved Defense’s request for an expert. The Court’s scheduling order gave Government five duty days to act on Defense’s request, and the Government acted on Defense’s request within six duty days despite the lateness of the request. Government submitted its own request for an expert witness on 9 January 2026, the same day Defense was required per the Court’s scheduling order to submit a request for an expert. Similarly, the Government provided its witness list to Defense in accordance with the Court’s scheduling order.

18. It is not the Government’s intent to gain an “unfair, tactical advantage” as Defense suggests. As such, the Government is willing to enable Defense the time it requests to prepare the best case it can for its client. However, Defense is currently in possession of all the exhibits the Government included in its Motion to Pre-Admit and has the available assistance of their expert. As such, both parties are in a position to fully and competently litigate motions next week on 10 February 2026, the original date of trial.

RELIEF REQUESTED

The Government does **not** oppose the Defense motion to the extent it requests continuing trial on the merits. The Government requests that Your Honor hold an Article 39(a) session on a date during the previously scheduled week of trial to resolve outstanding motions. On that limited basis, the Government respectfully requests this Honorable Court deny the Defense Motion for Continuance to the extent that it requests a continuance of the motions hearing. The Government does **not** request oral argument on this matter in an Article 39a session.

Respectfully submitted,



ALISON R. SHERRILL, Capt, USAF
Assistant Trial Counsel

15 Attachments:

1. Charge Sheet (redacted), dated 10 September 2025 (2 pages)
2. Order: Scheduling for Trial, dated 5 January 2026 (5 pages)
3. Email Requesting Expert Witness for Government, dated 9 January 2026 (1 page)
4. Email Requesting Expert Witness for Defense, dated 14 January 2026 (2 pages)
5. Email Forwarding Defense Expert Witness Request, dated 14 January 2026 (3 pages)
6. AtHoc Email Announcing Early Dismissal, dated 23 January 2026 (2 pages)
7. AtHoc Email Announcing Base Closure, dated 23 January 2026 (2 pages)
8. AtHoc Email Announcing Base Closure, dated 25 January 2026 (1 page)
9. AtHoc Email Announcing Base Closure, dated 26 January 2026 (2 pages)
10. Email with Defense Initial Discovery Request, dated 24 January 2026 (4 pages)
11. Email with Government Response to Discovery Request, dated 29 January 2026 (5 pages)
12. Email with Defense Notice of Character Evidence, dated 24 January 2026 (1 page)
13. Email with Government's witness list, dated 26 January 2026 (1 page)
14. MOA for Defense Witness, undated (2 pages)
15. Email to Defense with MOA for Signature, dated 28 January 2026 (1 page)

CERTIFICATE OF SERVICE

I certify that I served a copy of this Response to Defense Motion for Appropriate Relief via electronic mail and e-file to the Military Judge and Defense Counsel on 2 February 2026.



ALISON R. SHERRILL, Capt, USAF
Assistant Trial Counsel