

**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
REQUEST FOR
JUDICIAL NOTICE #1

9 February 2026

MOTION

The Government opposes Defense’s request to take judicial notice “that tetrahydrocannabinols contained in hemp, as defined by federal law, are expressly excluded from Schedule I controlled substances.” The Prosecution requests an Article 39(a) session.

SUMMARY

The statutory exemption language for hemp is not relevant to this case. The Accused tested positive for Delta-9 Tetrahydrocannabinol (“THC9”) on over 20 drug tests between on or about 26 July 2024 and on or about 28 January 2026. The number of positive drug tests over a period of a year and a half, the specific concentrations levels for THC9 for each test, and the Accused’s confession to using THC9 undercut Defense’s motion, and it strains credulity to suggest that repeated use of outlandish quantities of “hemp” products (containing a THC9 concentration of not more than 0.3%) over a period of several months unwittingly caused the THC9 levels.

FACTS

1. The Government generally agrees with the recitation of facts in Defense’s Motion, paragraphs 1-3, where supported by evidence.

2. Between on or about 26 July 2024 and on or about 28 January 2026, the Accused tested positive for THC9 on 23 separate urinalysis tests (and 1 forensic toxicology examination of his blood).

a. On **16 August 2024**, the Accused was randomly selected for drug testing at the 72d Air Base Wing Drug Demand Reduction Program Office on Tinker AFB, OK. (**Att. 1(a)**). The Accused was ordered to report to the 552d Operations Support Squadron Commander’s Support Section to report for a random urinalysis. (*Id.*). When contacted by the trusted agent, Mr. [REDACTED] (552 OSS/CSS), after SSgt Johnson did not show up as directed, the Accused made up lies about not being able to make it because his truck was at the shop. (*Id.*). SSgt Johnson refused to answer his phone, or show up, in an attempt to avoid mandatory drug screening. (*Id.*). Later that evening, after multiple unsuccessful attempts to reach the Accused, the Accused contacted MSgt [REDACTED], 552 OSS/CCF. (*Id.*). MSgt [REDACTED] directed the Accused to surrender himself at the gate,

and the Accused did. (*Id.*). Security Forces apprehended the Accused. (*Id.*). The Accused was charged with violating Article 86 (Absence without leave) and Article 92 (Failure to obey). (*Id.*). Security Forces obtained search authorization based on probable cause to search and seize the Accused's blood. (*Id.*). The Accused's blood was collected, packaged, and shipped to the Armed Forces Medical Examiner System, Division of Forensic Toxicology at Dover AFB, DE for testing. The Accused's blood tested positive for THC9 at 5.6 ng/mL (cutoff of 5 ng/mL). (*Id.*).

b. On **24 October 2024**, the Accused provided a urine sample at the 72d Air Base Wing DDRP Office on Tinker AFB, OK as part of a random urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **25 ng/mL** (*Id.*). The Department of Defense cutoff for THC9 is 15 ng/mL.

c. On **5 November 2024**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **244 ng/mL**. (*Id.*).

d. On **14 November 2024**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **315 ng/mL**. (*Id.*).

e. On **25 November 2024**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **149 ng/mL**. (*Id.*).

f. On **5 December 2024**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **110 ng/mL**. (*Id.*).

g. On **13 December 2024**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **50 ng/mL**. (*Id.*).

h. On **30 December 2024**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **74 ng/mL**. (*Id.*).

i. On **13 January 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **238 ng/mL**. (*Id.*).

j. On **21 January 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **392 ng/mL**. (*Id.*).

k. On **31 January 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **388 ng/mL**. (*Id.*).

l. On **10 February 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **88 ng/mL**. (*Id.*).

m. On **20 February 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **83 ng/mL**. (*Id.*).

n. On **27 February 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **146 ng/mL**. (*Id.*).

o. On **6 March 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **494 ng/mL**. (*Id.*).

p. On **13 March 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **659 ng/mL**. (*Id.*).

q. On **21 March 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **627 ng/mL**. (*Id.*).

r. On **31 March 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **957 ng/mL**. (*Id.*).

s. On **8 April 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **840 ng/mL**. (*Id.*).

t. On **16 April 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **1450 ng/mL (>LOL)**. (*Id.*).

u. On **24 April 2025**, the Accused was ordered to provide a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **436 ng/mL**. (*Id.*).

v. On **5 May 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC8 at 16 ng/mL and THC9 at **2105 ng/mL (>LOL)**. (*Id.*).

w. On **9 June 2025**, the Accused provided a urine sample as part of a *Bickel* follow-up urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **19 ng/mL**. (*Id.*).

x. On **5 January 2026**, the Accused provided a urine sample as part of a random urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **1167 ng/mL** and THC-8 at **19 ng/mL**. (*Id.*).

y. On **28 January 2026**, the Accused provided a urine sample as part of a *Bickel* re-inspection urinalysis. (**Att. 1(b)**). The Accused's urine specimen tested positive for THC9 at **119 ng/mL**. (*Id.*).

3. On 3 February 2025, the Accused was offered Non-Judicial Punishment (NJP) for failing to go to the 552d OSS/CSS on 16 August 2024 as directed and for knowingly and wrongfully using THC9 on divers occasions between on or about 26 July 2024 and on or about 21 January 2025, in violation of Article 112a, Uniform Code of Military Justice (UCMJ). (**Att. 1(a)**). In his written response to the NJP, dated 6 February 2025, the Accused stated in pertinent part as follows:

2. I accept full responsibility for the allegations against me. I am truly sorry for my lack of judgement and want to provide some insight on how I found myself in this situation. I do not intend on making excuses for my actions, [REDACTED]

[REDACTED]

[REDACTED]

(*Id.*). He appealed the NJP and provided an additional written response admitting to the allegations and explaining the circumstances present in his personal and professional life. (*Id.*).

4. 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 THC9 on divers occasions between on or about 22 January 2025 and on or about 9 June 2025 in violation of Article 112a, UCMJ. (**Att. 1(c)**). On 18 December 2025, Colonel [REDACTED], 72d Air Base Wing Commander, referred that charge and specification to trial by special court-martial. (*Id.*).

5. On 21 January 2026, Defense emailed the Military Judge requesting, in pertinent part, an extension to the motions deadline until EOD Monday, 26 January 2026. (**Att. 1(d)**). The Government did not oppose, and the Military Judge granted defense's request. (*Id.*).

6. On 25 January 2026, the Government filed its motion for judicial notice. (**Att. 1(e)**). On 26 January 2026, Defense Counsel emailed the Military Judge that it did “not oppose the Court taking Judicial notice that THC is listed as a schedule I controlled substance under federal law. However, if the Court is inclined to take judicial notice, we respectfully request that the judicial notice include the statutory exemption for hemp.” (**Att. 1(f)**).

7. On 27 January 2026, the Military Judge directed the Defense to file a written motion if it was separately requesting judicial notice. (*Id.*). That same date, Defense acknowledged the Military Judge’s email and stated it would “notify the Court and Government of our next action ASAP.” (*Id.*).

8. On 28 January 2026, the Accused was arraigned by Judge Nathan Royer at an Article 39a motions hearing at Tinker AFB, OK. (**Att. 1(g)**).

9. On 4 February 2026, Defense filed a Request for Judicial Notice. (*See* Defense’s Motion).

BURDEN

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

LAW

11. 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).

12. 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).

13. 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.*

14. 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.

15. 21 U.S.C. § 812 (the Controlled Substances Act) provides in pertinent part as follows:

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts

of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

...

(17) Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under section 1639o of title 7).

(Att. 1(e)). Title 21 Code of Federal Regulations Part 1308.11(31) (21 C.F.R. 1308.11(31)), which implements 21 U.S.C. § 812, assigns THC a unique identifier: Controlled Substance Code Number (CSCN) 7370. (*Id.*) 21 C.F.R. 1308.11(31) states in pertinent part as follows:

(31) Tetrahydrocannabinols	7370
(i) Meaning tetrahydrocannabinols, except as in paragraph (d)(31)(ii) of this section, naturally contained in a plant of the genus <i>Cannabis</i> (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:	
1 cis or trans tetrahydrocannabinol, and their optical isomers	
6 cis or trans tetrahydrocannabinol, and their optical isomers	
3, 4 cis or trans tetrahydrocannabinol, and its optical isomers	
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)	
(ii) Tetrahydrocannabinols does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639o.	

(*Id.*). The Department of Justice List of Controlled Substances confirms THC9 falls under CSCN 7370 and is a Schedule I controlled substance. (*Id.*). Under 7 U.S.C. 1639o(1), “The term ‘hemp’ means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

16. 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*, 450 F.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

17. The statutory exemption language for hemp is not relevant to this case. The Accused tested positive on thirteen (13) drug tests for Delta-9 Tetrahydrocannabinol (“THC9”) between on or about 22 January 2025 and on or about 9 June 2025. This is the primary evidentiary basis of the charge and specification for wrongful use of THC9 on divers occasions under Article 112a, UCMJ.

18. Immediately prior to the charging window, the Accused tested positive on ten (10) drug tests for THC9 between on or about 26 July 2024 and on or about 21 January 2025. He was offered NJP on 3 February 2025, accepted it, and provided written statements on 6 February 2025 and 24 February 2025 confessing to failing to report to the 552d Operation Support Squadron Commander’s Support Staff for a random urinalysis in an attempt to avoid mandatory drug screening in violation of Article 86, UCMJ, and knowingly and wrongfully using THC9 on divers occasions between on or about 26 July 2024 and on or about 21 January 2025 in violation of Article 112a.

19. On 5 and 28 January 2026—which was after preferral and referral of the charge, and two days before arraignment on 30 January 2026—the Accused provided urine samples that tested positive for THC9. The startling number of positive drug tests over a period of a year and a half, the concentration levels for THC9, and the Accused’s confession to knowing and wrongful use of THC9 on divers occasions directly undermine defense’s request. This case is not about “hemp,” THC8, or Cannabidiol (CBD). Defense’s request to take judicial notice “that tetrahydrocannabinols contained in hemp, as defined by federal law, are expressly excluded from Schedule I controlled substances” serves only to mislead and confuse the panel members. While fantasy is a necessary ingredient in living, arguing that the repeated use of outlandish quantities of “hemp” products (containing a THC9 concentration of not more than 0.3%) over a period of several months unwittingly caused the THC9 levels is like looking at life through the wrong end of a telescope. Common sense does not support that. Science does not support that. The Accused’s own words do not support that.

RELIEF REQUESTED

20. The Government moves this Court to deny Defense’s request for judicial notice in its entirety. The Prosecution requests an Article 39(a) session.



ALISON R. SHERRILL, Capt, USAF
Assistant Trial Counsel

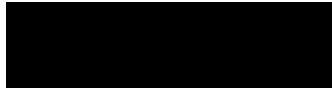
Attachment:

1. One Compact Disc (CD) labeled, “Attachments to Govt Response to Defense Request for Judicial Notice” containing nine (7) PDF files titled as follows:
 - a. “Att. 1a” – Records related to NJP, various dates (34 pages)

- b. "Att. 1b" – DDRP Records for 24 Oct 24 to 28 Jan 26, various dates (203 pages)
- c. "Att. 1c" – Charge Sheet, dated 10 September 2025 (3 pages)
- d. "Att. 1d" – Email Correspondence re Extension of Motion Deadline, various dates (3 pages)
- e. "Att. 1e" – Govt Request for Judicial Notice #1, dated 25 January 2026 (66 pages)
- f. "Att. 1f" – Email Correspondence re Judicial Notice, various dates (7 pages)
- g. "Att. 1g" – Email Correspondence re Arraignment, various dates (7 pages)

CERTIFICATE OF SERVICE

I hereby certify that I delivered a copy of this Government Response to Defense Request for Judicial Notice No. 1 on Defense Counsel via e-mail and e-filing on 9 February 2026.



ALISON R. SHERRILL, Capt, USAF
Assistant Trial Counsel