

**DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY**

UNITED STATES OF AMERICA	)	
	)	
v.	)	DEFENSE REQUEST
	)	FOR JUDICIAL
	)	NOTICE #1
SSGT KINYADA J. JOHNSON	)	
552d Operations Support Squadron (AETC)	)	
Tinker Air Force Base, OK	)	4 February 2026
	)	

COMES NOW the Accused, SSgt Johnson, by and through counsel, and respectfully moves this Honorable Court take judicial notice pursuant to Military Rule of Evidence (M.R.E.) 201 and 202 of the following domestic law: “that tetrahydrocannabinols contained in hemp, as defined by federal law, are expressly excluded from Schedule I controlled substances.”

The Defense further requests an Article 39(a) session should the Court not be inclined to grant the request on the papers.

SUMMARY

SSgt Johnson is charged with wrongful use of delta-9 tetrahydrocannabinol in violation of Article 112a, UCMJ. While the Government has requested judicial notice that tetrahydrocannabinol is a Schedule I controlled substance, federal law expressly provides an exception for tetrahydrocannabinols derived from hemp.

To ensure the members receive a complete and accurate statement of the applicable law, the Defense requests the Court also take judicial notice “that tetrahydrocannabinols in hemp, as defined by 7 U.S.C. § 1639, are excluded from Schedule I under 21 U.S.C. § 812 and its implementing regulations.” This information would provide necessary context for anticipated expert testimony regarding urinalysis testing limitations and lawful hemp exposure.

FACTS

1. SSgt Johnson faces one charge and one specification of wrongful use of delta-9 tetrahydrocannabinol under Article 112a, UCMJ. This charge was preferred on 10 September 2025, referred on 18 December 2025, and served on 19 December 2025. A motions hearing is scheduled for 10 February 2026.

2. Federal law governing controlled substances expressly excludes “tetrahydrocannabinols in hemp” from Schedule I. See 21 U.S.C. § 812(c), Schedule I(c)(17); 21 C.F.R. § 1308.11(d)(31)(ii). (*Attachment 1*) (*Attachment 2*).

3. Hemp” is defined by federal statute as *Cannabis sativa* L. and any part of that plant, including derivatives and extracts, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. 7 U.S.C. § 1639o. (*Attachment 3*).

4. The Defense anticipates expert testimony that lawful hemp products available on the market may contain delta-9 tetrahydrocannabinol. Additionally, repeated use or consumption of concentrated hemp derived products can result in accumulation of tetrahydrocannabinol metabolites in the body which could cause a positive urinalysis, and AFDTL urinalysis testing cannot distinguish whether detected tetrahydrocannabinol originated from marijuana, hemp, or laboratory-synthesized sources. (*Proffered testimony of Mr. [REDACTED], Forensic Toxicologist*)

BURDEN

5. As the proponent of judicial notice, the Defense bears the burden by a preponderance of the evidence. R.C.M. 905(c); *United States v. Palmer*, 55 M.J. 205, 208 (C.A.A.F. 2001).

LAW

6. M.R.E. 201 permits judicial notice of adjudicative facts not subject to reasonable dispute because they are capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned.

7. The military judge must take judicial notice if a party requests it and supplies the necessary information. M.R.E. 201(c)(2).

8. Under M.R.E. 202(a), the military judge may take judicial notice of domestic law. When domestic law is a fact of consequence, the procedural requirements of M.R.E. 201 apply.

9. Federal law expressly excludes tetrahydrocannabinols in hemp from Schedule I controlled substances. 21 U.S.C. § 812(c), Schedule I(c)(17); 21 C.F.R. § 1308.11(d)(31)(ii); 7 U.S.C. § 1639o. (*Attachments 1-3*).

ARGUMENT

10. The Government has requested judicial notice that tetrahydrocannabinol, including delta-9 tetrahydrocannabinol, is a Schedule I controlled substance. That statement of law is incomplete without the corresponding statutory exception enacted by Congress. (*Attachment 4*).

11. Federal law explicitly excludes tetrahydrocannabinols derived from hemp from Schedule I. This exclusion is not subject to reasonable dispute and is readily verifiable through official statutory and regulatory sources.

12. Taking judicial notice of the hemp exception will not resolve any factual issues reserved for the members. Rather, it ensures the members are instructed on the full scope of the governing law, particularly where expert testimony will address lawful sources of tetrahydrocannabinol

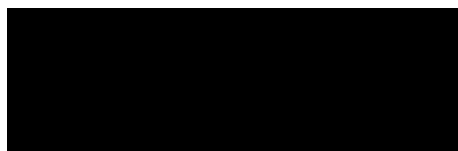
exposure and the scientific limitations of urinalysis testing.

13. Without judicial notice of the hemp exception, there is a substantial risk the members will incorrectly assume that any detected tetrahydrocannabinol necessarily establishes use of a Schedule I controlled substance, contrary to federal law.

RELIEF REQUESTED

14. The Defense respectfully requests this Court take judicial notice that tetrahydrocannabinols in hemp, as defined by 7 U.S.C. § 1639, are excluded from Schedule I controlled substances under 21 U.S.C. § 812 and 21 C.F.R. § 1308.11, and alternatively, grant an Article 39(a) hearing regarding the same.

Respectfully Submitted,



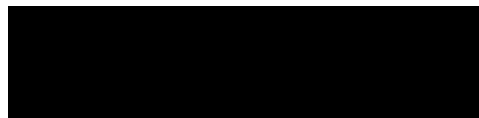
TRAVIS F. ELLIS, Capt, USAF
Defense Counsel

4 Attachments

1. 21 U.S.C. § 812, 9 pages
2. 21 CFR 1308.11 , 16 pages
3. 7 U.S.C. § 1639o, 3 pages
4. Government's Request for Judicial Notice #1, 4 pages

CERTIFICATE OF SERVICE

I hereby certify that I delivered a copy of the Defense Request for Judicial Notice #1 on the Military Judge and Trial Counsel, via electronic mail, on 4 February 2026.



TRAVIS F. ELLIS, Capt, USAF
Defense Counsel