

**UNITED STATES DISTRICT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IHC INVESTMENTS, LLC,

Petitioner,

v.

US DRUG ENFORCEMENT
ADMINISTRATION; TERRANCE
C. COLE, in his official capacity as
Administrator of the U.S. Drug
Enforcement Administration;
TODD BLANCHE, in his official
capacity as Acting Attorney
General,

Respondents.

No. 26-3739

**BRIEF OF AMICUS CURIAE
AMERICAN TRADE ASSOCIATION FOR CANNABIS AND
HEMP IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

Introduction	1
Statement of Interest.....	2
Argument	3
HHC is an unlawful controlled substance that falls outside the scope of the Farm Bill.....	3
A. HHC is an Unnatural Substance with a Chemical Structure and Psychoactive Effects that Differ from non-Intoxicating Hemp	4
B. Because of its different chemical makeup and intoxicating effects, HHC is not a “derivative” of hemp and falls within Schedule I’s THC Class.	9
C. Congress Intended the Farm Bill to Legalize Hemp as an Agricultural Commodity — Not to Deregulate Synthetic Intoxicants.	15
Conclusion.....	17

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>AK Futures LLC v. Boyd Street Distro, LLC</i> , 35 F.4th 682 (9th Cir. 2022)	12, 13, 14, 15
<i>Anderson v. Diamondback Inv. Grp., LLC</i> , 117 F.4th 165 (4th Cir. 2024)	13, 14, 15
<i>Hemp Indus. Ass'n v. DEA</i> , 333 F.3d 1082 (9th Cir. 2003)	3, 12
<i>Hemp Indus. Ass'n v. DEA</i> , 357 F.3d 1012 (9th Cir. 2004)	3, 12
<i>People v. Derror</i> , 715 N.W.2d 822 (Mich. 2006)	10
<i>People v. Feezel</i> , 783 N.W.2d 67 (Mich. 2010)	10
<i>Reckitt & Colman, Ltd. v. Drug Enforcement Administration</i> , 788 F.2d 22 (D.C. Cir. 1986)	10, 11
<i>United States v. Galecki</i> , 89 F.4th 713 (9th Cir. 2023)	13
<i>United States v. Washam</i> , 312 F.3d 926 (8th Cir. 2002)	13
<u>Statutes</u>	
7 U.S.C. § 1639o	4, 5, 9, 16
21 U.S.C. § 802(32)(A)	12
21 U.S.C. § 811	9
21 U.S.C. § 812(b)	3

21 U.S.C. § 813.....	12
Continuing Appropriations, Agriculture, Legilstaive Branch, Military Construction and Veterans Affairs, And Extension Act, 2026, Pub. L. 119-37, 139 Stat. 495 (2025).....	16
Agricultural Improvement Act of 2018, Pub. L. 115-334, § 12619(a), 132 Stat. 4490 (2018)	4
Regulations	
21 C.F.R. § 1308.11(d)(31)	4, 9, 11, 14
Rules	
Fed. R. App. P. 29(a)(2).....	3
Fed. R. App. P. 29(a)(4)(E).....	2
Other Authorities	
American Trade Association for Cannabis and Hemp, <i>Hemp Intoxicants Report</i> (2026)	7
American Trade Association for Cannabis and Hemp, Toward Normalized Cannabinoid Regulation: The Regulation of Hemp- Synthesized Intoxicants (2023).....	5, 7
Bundesinstitut für Risikobewertung, <i>Psychoactive Effects to Be Expected Following Consumption of Products Containing Hexahydrocannabinol (HHC)</i> , BfR Opinion No. 019/2025 (June 4, 2025).....	8
Centers for Disease Control and Prevention, <i>What We Know About Marijuana</i> (Sept. 9, 2021).....	4, 5
European Monitoring Centre for Drugs and Drug Addiction, <i>Hexahydrocannabinol (HHC) and Related Substances</i> (2023).....	6, 7

Renée Johnson, Cong. Rsch. Serv., IF12278, Farm Bill Primer: Hemp Industry Support and Regulation (2023).....	15, 16
Golombek, Patricia et al., <i>Conversion of Cannabidiol (CBD) into Psychotropic Cannabinoids Including Tetrahydrocannabinol (THC): A Controversy in the Scientific Literature (2020)</i>	5, 6, 7
Helander, Anders et al., <i>Appearance of Hexahydrocannabinols as Recreational Drugs and Implications for Cannabis Drug Testing</i> , 84 Scandinavian J. Clinical & Lab. Investigation (2024).....	6, 8
McConnell, Mitch, <i>Growing Kentucky's Economy with Hemp</i> , Rich. Reg. (Apr. 20, 2018).....	16
Nasrallah, Daniel J. & Neil K. Garg, <i>Studies Pertaining to the Emerging Cannabinoid Hexahydrocannabinol (HHC)</i> , 18 ACS Chem. Biol. 2023 (2023).....	8
Rudd, Jack, <i>CBD vs THC — What are the Main Differences?</i> Analytical Cannabis (Jan. 27, 2023).....	5
Russo, Fabio et al., <i>Synthesis and Pharmacological Activity of the Epimers of Hexahydrocannabinol (HHC)</i> , 13 Sci. Rep. 11061 (2023).....	7
Scalia, Antonin & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012).....	9, 10
164 Cong. Rec. H10142-03, H10145 (daily ed. Dec. 12, 2018)	15
164 Cong. Rec. S7425-02, S7426 (daily ed. Dec. 11, 2018)	15
38 Fed. Reg. 8254 (Mar. 30, 1973).....	4

INTRODUCTION

Since 1970, marijuana and tetrahydrocannabinols (THC) have been Schedule I controlled substances under the Controlled Substances Act (CSA), covering both naturally occurring THC and synthetic equivalents, derivatives, and related substances. The 2018 Farm Bill exempted “hemp” — cannabis with a delta-9 (D9) THC concentration at or below 0.3% — legalizing it as an agricultural commodity, not a consumer intoxicant. However, that threshold created an opening that opportunistic manufacturers operating outside state-regulated cannabis markets quickly exploited by marketing laboratory-synthesized intoxicants as Farm Bill-exempt hemp products. In 2025, Congress confirmed what the Farm Bill's text always required: hemp's exemption does not extend to substances synthesized outside the plant.

Hexahydrocannabinol (HHC) is precisely such a substance. It is manufactured by applying chemicals to THC that come from outside the plant. That makes HHC a derivative of a controlled substance, not hemp, falling squarely within Schedule I — which expressly covers synthetic equivalents and derivatives of THC — and outside the Farm Bill's exemption, which reaches only THC in hemp. HHC can be just as intoxicating as D9, but it is not D9.

This Court should uphold the DEA's final rule because HHC is and always has been a Schedule I substance.

STATEMENT OF INTEREST

The American Trade Association for Cannabis and Hemp (“ATACH”) is a 501(c)(6) trade organization registered in Washington, D.C., that promotes the expansion, protection, and preservation of businesses engaged in the legal trade of industrial, medical, and recreational cannabis and hemp-based products. ATACH supports a thriving, lawfully regulated hemp industry — and it is for that reason, ATACH supports the DEA's rule. ATACH has a direct interest in this case: the DEA’s rule curbs the unregulated marketing and sale of potentially harmful synthetic tetrahydrocannabinols, protecting public health and the integrity of the cannabis industry as a whole and those—like the members of ATACH—who are subject to its regulations.¹ Additionally, ATACH appeared as amicus curiae in the related challenge to the same DEA rule pending in the Fourth Circuit, *Bluestar Operations, LLC v. DEA*, No. 26-1691, and directly submits this brief because the same question — whether HHC, a compound not itself found in commercially viable quantities in the cannabis plant, independently falls within Schedule I's regulatory definition

¹ The amicus curiae states that (i) no party’s counsel authored this brief in whole or in part; (ii) no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief; and (iii) no other person contributed money that was intended to fund preparing or submitting this brief other than the amici and their counsel. *See* Fed. R. App. P. 29(a)(4)(E).

of "tetrahydrocannabinols" as a synthetic derivative of THC — is squarely presented here. All parties have consented to the filing of this brief. See Fed. R. App. P. 29(a)(2).

ARGUMENT

HHC IS AN UNLAWFUL CONTROLLED SUBSTANCE THAT FALLS OUTSIDE THE SCOPE OF THE FARM BILL.

To protect public safety, the Controlled Substances Act of 1970 (CSA) places drugs and other substances on schedules based on their potential for abuse, accepted medical use, and safety profile. 21 U.S.C. § 812(b). Schedule I — the most restrictive — is reserved for substances that have a high potential for abuse, no currently accepted medical use, and lack accepted safety for use even under medical supervision. *Id.* § 812(b)(1). Since 1970, both marijuana and THC have been listed independently on Schedule I. See *id.* § 812(c), Sched. I(c)(10) & (17). The Ninth Circuit has twice confirmed that the Schedule I THC listing covers "synthetic THC of any kind." *Hemp Indus. Ass'n v. DEA*, 333 F.3d 1082, 1089-90 (9th Cir. 2003) (Hemp I); *Hemp Indus. Ass'n v. DEA*, 357 F.3d 1012, 1018 (9th Cir. 2004) (Hemp II).

In 1973, the DEA promulgated regulations defining THC under Schedule I classification to include "synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*" and "synthetic substances, derivatives,

and their isomers with similar chemical structure and pharmacological activity." 21 C.F.R. § 1308.11(d)(31); *see* 38 Fed. Reg. 8254, 8256 (Mar. 30, 1973). That same definition remains today. *See* 21 C.F.R. § 1308.11(d)(31) (2025).

In 2018, Congress enacted the Farm Bill, legalizing the regulated production of hemp as an agricultural commodity — not as a consumer intoxicant. The Farm Bill amended the CSA by excluding “hemp” from the definition of marijuana, Pub. L. 115-334, § 12619(a), and “tetrahydrocannabinols in hemp from Schedule I classification,” *id.* § 12619(b). It defined “hemp” as the plant *Cannabis sativa* L. and its parts, derivatives, extracts, and cannabinoids, provided the delta-9 THC concentration does not exceed 0.3 percent on a dry weight basis. 7 U.S.C. § 1639o(1).

The only question before this Court is whether HHC — a synthetic hydrogenated derivative of THC, manufactured in a laboratory, and virtually pharmacologically indistinguishable from D9 — qualifies as a “tetrahydrocannabinol in hemp” exempt from Schedule I. It does not.

A. HHC is an Unnatural Substance with a Chemical Structure and Psychoactive Effects that Differ from non-Intoxicating Hemp

The plant *Cannabis sativa* L. contains more than one hundred chemical compounds, also known as cannabinoids — the two main cannabinoids being D9 and CBD. Ctrs. for Disease

Control & Prevention, What We Know About Marijuana, CDC (Sept. 9, 2021).² D9 elicits a 'high' in those who consume it; CBD does not — because whereas THC contains a cyclic ring, CBD contains a hydroxyl group, and that structural difference gives the two compounds entirely different pharmacological properties. Jack Rudd, CBD vs THC — What are the Main Differences?, Analytical Cannabis (Jan. 27, 2023).³ That distinction is why the Farm Bill defined "hemp" as cannabis by measuring D9 concentration specifically — freeing the plant, its derivatives, and cannabinoids like CBD for commercial production while preserving Schedule I status for intoxicating THC. *See* § 1639o(1).

Manufacturers operating outside regulated channels have exploited that framework by extracting CBD and other non-intoxicating cannabinoids from Farm Bill compliant hemp plants and converting those substances into new intoxicating substances, which are sometimes more potent than marijuana, through semi-synthetic processes involving heavy metals, volatile solvents, and other chemical agents. American Trade Ass'n for Cannabis & Hemp, *Toward Normalized Cannabinoid Regulation: The Regulation of Hemp-Synthesized Intoxicants* 6-7 (2023) (ATACH

² Available at: <https://www.cdc.gov/marijuana/what-we-know.html>.

³ Available at: <https://www.analyticalcannabis.com/articles/cbd-vs-thc-what-are-the-main-differences-297486>.

2023 Whitepaper);⁴ see also Patricia Golombek et al., *Conversion of Cannabidiol (CBD) into Psychotropic Cannabinoids Including Tetrahydrocannabinol (THC): A Controversy in the Scientific Literature*, 8 Toxics, art. 41, June 2020, at 5.

HHC does not occur in hemp in any commercially meaningful quantity and is not biosynthesized by the plant. European Monitoring Ctr. for Drugs & Drug Addiction, *Hexahydrocannabinol (HHC) and Related Substances 22* (2023)(EMCDDA Report); see also Anders Helander et al., *Appearance of Hexahydrocannabinols as Recreational Drugs and Implications for Cannabis Drug Testing*, 84 Scandinavian J. Clinical & Lab. Investigation 125, 126 (2024) (HHC "may not occur naturally or in only trace amounts in the cannabis plant"). It first emerged on the drug market in the United States in late 2021, and is a derivative of a Schedule I controlled substance. EMCDDA Report at 34.

Commercial HHC production proceeds through one of two manufacturing methods: isomerization or functionalization. Isomerization — the more common commercial route — involves extracting CBD from raw hemp plant material, dissolving it in a

⁴Available at: <https://atach.org/wp-content/uploads/2023/06/ATACH-Paper-Toward-Normalized-Cannabinoid-Regulationd.pdf>

solvent, and exposing it to an acidic catalyst and heat, which changes the bonds in CBD, creating new intoxicating molecules — primarily D8 and D9 — before hydrogenation of that intermediate yields HHC. EMCDDA Report at 35-36 ("CBD is a 'pre-precursor' with Δ 8-THC being the immediate precursor to HHC"); Fabio Russo et al., *Synthesis and Pharmacological Activity of the Epimers of Hexahydrocannabinol (HHC)*, 13 Sci. Rep. 11061, at 3 (2023) (acid-catalyzed cyclization of CBD produces " Δ 9-THC or Δ 8-THC as reaction intermediates" before hydrogenation yields HHC); *see also* Golombek at 5. Functionalization begins with THC rather than CBD and applies different chemical processes to alter the cannabinoid's surface chemistry adding new functions or properties. ATACH 2023 Whitepaper at 15; American Trade Ass'n for Cannabis & Hemp, Hemp Intoxicants Report 6 (2026) (ATACH 2026 Report).⁵

The pharmacological evidence confirms that HHC's structural similarity to D9 determines its effects — but that parallel should not obscure a critical distinction. HHC is not the plant's own D9 THC; it is a synthetic conversion product manufactured in a laboratory. That pharmacological parity does

⁵ Available at https://www.atach.org/insights?utm_source=MM&utm_medium=banner&utm_campaign=apr-2026-hemp-report

not justify treating it as hemp; it confirms that HHC is in Schedule I. In laboratory tests directly comparing how strongly HHC and D9 each bind to and activate the CB1 receptor — the brain receptor that produces cannabis intoxication — the more active HHC form performed essentially identical to D9, leading researchers to conclude that its activity "nearly matches that of [D]9-THC." Daniel J. Nasrallah & Neil K. Garg, *Studies Pertaining to the Emerging Cannabinoid Hexahydrocannabinol (HHC)*, 18 ACS Chem. Biol. 2023, 2027 (2023). After HHC emerged in Sweden, false positive screening tests for THC rose—because HHC cross-reacts with the same antibodies as D9. Helander at 127. Germany's Federal Institute for Risk Assessment reached the same conclusion: the commercially dominant form of HHC "has psychoactive potential" with "effects . . . similar to those of Δ 9-THC"—a finding the agency supported with reference to clinical case reports of HHC-associated psychosis. Bundesinstitut für Risikobewertung (BfR), *Psychoactive Effects to Be Expected Following Consumption of Products Containing Hexahydrocannabinol (HHC)*, BfR Opinion No. 019/2025, at 3-4 (June 4, 2025).

B. Because of its different chemical makeup and intoxicating effects, HHC is not a “derivative” of hemp and falls within Schedule I’s THC Class.

The Farm Bill defines hemp as "any part of" the cannabis plant, "including . . . all derivatives, extracts, cannabinoids, isomers,. . . with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent." § 1639o(1). HHC does not fall within that definition — it falls within Schedule I's THC class — which differs from the scientific definition, and covers THC "naturally contained in a plant of the genus *Cannabis* . . . 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." 21 C.F.R. § 1308.11(d)(31)(i) (promulgated pursuant to 21 U.S.C. § 811). The class definition does contain a hemp carve-out, expressly excluding "any material, compound, mixture, or preparation that falls within the definition of hemp set forth in § 1639o." *Id.* § 1308.11(d)(31)(ii).

Although the Farm Bill does not define "derivatives," the surrounding statutory language — "cannabinoids, isomers, acids" — signals that the term bears a technical, scientific meaning.

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012) (statutory terms should be

understood in their "ordinary, everyday meanings — unless the context indicates that they bear a technical sense"). Courts construing identical language in controlled substances statutes have agreed: "the term 'derivative' is a scientific term, definable only by reference to scientific dictionaries." *People v. Derror*, 715 N.W.2d 822, 828 (Mich. 2006), overruled on other grounds by *People v. Feezel*, 783 N.W.2d 67 (Mich. 2010).

In *Reckitt & Colman, Ltd. v. Drug Enforcement Administration*, 788 F.2d 22 (D.C. Cir. 1986), the D.C. Circuit upheld the DEA Administrator's classification of a pharmaceutical compound as a narcotic derivative of the opiate thebaine, even though production required six or seven chemical conversion steps. The Administrator applied a three-factor test: whether the substance (1) was prepared from the parent substance, (2) chemically resembles that substance, and (3) shares some of its adverse effects. *Id.* at 24-25. The Administrator rejected the proposed rule limiting "derivative" status to substances producible in only one or two chemical operations, explaining that "[t]o attribute great significance to the actual number of chemical steps is misleading" and that "what is important" instead "is the overall chemical similarity of the product to its parent." *Id.* at 25. The D.C. Circuit found that construction reasonable and consistent with that employed by chemists. *Id.* at 25. The court likewise

found it reasonable for the Administrator to confirm chemical similarity by reference to a compound's real-world pharmacological effects, given the CSA's purpose of controlling the distribution of harmful drugs. *Id.*

Applying that test to HHC confirms it is a derivative of intoxicating THC, not of hemp. HHC is prepared using THC as an intermediate or starting material, chemically resembles D9 THC, differing only by the addition of two hydrogen atoms through hydrogenation, and shares THC's intoxicating effects, binding and activating the CB1 receptor at a potency nearly matching D9 THC. *Supra* Section A. HHC fails that same test as against hemp: although the process can begin with a hemp-extracted, non-intoxicating cannabinoid, *supra* Section A, HHC does not share hemp's defining pharmacological property — non-intoxication — and so does not exhibit "some of [the] adverse effects" that would make it a derivative of hemp under *Reckitt*. *Reckitt*, 788 F.2d at 25. Schedule I's own text confirms the result — it extends to "synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity" to THC. 21

C.F.R. § 1308.11(d)(31)(i). HHC meets that standard; hemp does not.⁶

This Court's own precedent confirms that conclusion. In *Hemp Indus. Ass'n v. DEA (Hemp I)* and *Hemp Indus. Ass'n v. DEA (Hemp II)*, this Court held that the Schedule I THC listing reaches "synthetic THC of any kind," while the CSA's marijuana listing excludes only non-psychoactive, naturally occurring trace THC found in specific parts of the hemp plant — stalks, fiber, and sterilized seed. 333 F.3d at 1089-91; 357 F.3d at 1016-19.

This Court's later decision in *AK Futures* did not revisit or alter that precedent, nor did it need to. 35 F.4th 682 (9th Cir. 2022). *AK Futures* was not a broad ruling on Schedule I exemptions — it was a narrow, record-bound holding resting on the "uncontradicted" record before the Court. *Id.* at 691. The plaintiff's uncontradicted declaration stated its products were hemp derived and under the D9 threshold. *Id.* The defendant cited FDA materials describing D8 as naturally produced by cannabis.

⁶ HHC also independently qualifies as a controlled substance analogue under 21 U.S.C. §§ 802(32)(A) and 813. It has a chemical structure substantially similar to D9 — differing by two hydrogen atoms — produces pharmacologically similar intoxicating effects and is sold for human consumption. See *United States v. Washam*, 312 F.3d 926, 930 (8th Cir. 2002) ("substantially similar" does not require identical chemical structure); *United States v. Galecki*, 89 F.4th 713, 730 (9th Cir. 2023) (same).

Id. On that specific record, the Court concluded the product at issue was "properly understood as a derivative, extract, or cannabinoid originating from the cannabis plant." *Id.* The Court, however, cautioned that its conclusion "necessarily depend[ed] on the veracity of the company's claim." *Id.*

In *Anderson v. Diamondback Inv. Grp., LLC*, 117 F.4th 165 (4th Cir. 2024), the Fourth Circuit misapplied *AK Futures* in three respects. First, it treated *AK Futures* as a general holding on when a cannabinoid qualifies as hemp, *Anderson*, 117 F.4th at 186-187, when it was in fact a narrow application of the Farm Bill to a specific, undisputed record. *AK Futures*, 35 F.4th at 690–91. Second, *Anderson* incorrectly described *AK Futures* as having rejected the argument that a compound chemically synthesized from a plant-derived cannabinoid, rather than found in the plant itself is “synthetic.” *Anderson*, 117 F.4th at 186-187. But *AK Futures* never decided that issue – rather, it held that the Farm Bill drew no distinction based on manufacturing method, and observed that the DEA’s regulatory language suggests source, not manufacturing method, is determinative of whether a product is synthetic. *AK Futures*, 35 F.4th at 692–93. Third, having incorrectly treated *AK Futures* as resolving whether a substance not sourced from the cannabis plant can qualify as hemp, *Anderson* weighed its interpretation of *AK Futures* against

the DEA's position that all synthetically derived tetrahydrocannabinols remain Schedule I substances regardless of delta-9 THC concentration, *id.* at 187, and on that ground rejected the argument that a specific DEA interim rule and letter required a finding that a substance produced by performing chemical operations on THC, and not found in the plant, was illegal. *Id.* at 187–88.

Neither the *Anderson* court nor the *AK Futures* Court grappled with Schedule I's regulatory definition of "tetrahydrocannabinols," which expressly reaches "synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity" to those in the plant. 21 C.F.R. § 1308.11(d)(31)(i). *AK Futures* had no occasion to address this issue: it did not involve a product purporting to be a non-plant-sourced compound or derivative of THC under Schedule I. For its part, *Anderson* proceeded on the mistaken premise that *AK Futures* had resolved the status of such compounds and therefore did not analyze the Schedule I THC definition either. Judge Richardson's concurrence confirms as much: "whether synthetic derivatives . . . count as excepted hemp is a difficult question. The DEA and Ninth Circuit interpretations did not fully consider the issue. Neither did the parties." *Anderson*, 117 F.4th at 193 (Richardson, J., concurring). Neither *Anderson* nor *AK Futures*,

then, addresses the issue before this Court: whether a synthetic substance independently falls within Schedule I's THC class as a derivative of THC under the CSA regulation.

The practical stakes of that doctrinal gap are not theoretical. Manufacturers are currently doing what has always been prohibited: chemically converting hemp CBD into synthetic intoxicants and selling them to consumers across the country — all misleadingly under the 'hemp' label — exposing unsuspecting consumers to an unregulated Schedule I intoxicant. They have done so in reliance on decisions like *Anderson* and *AK Futures* that never reached that issue.

C. Congress Intended the Farm Bill to Legalize Hemp as an Agricultural Commodity — Not to Deregulate Synthetic Intoxicants.

The legislative history confirms what the text requires: legislators who spoke to the hemp provisions described the same purpose — legalizing hemp as an agricultural commodity and industrial crop, not a vehicle for consumer intoxication. *See, e.g.*, 164 Cong. Rec. H10142-03, H10145 (2018) (Rep. Comer) ("particularly glad to see industrial hemp de-scheduled"); 164 Cong. Rec. S7425-02, S7426 (2018) (Sen. Leahy) (Farm Bill would "legaliz[e] the growth and sale of hemp as an agricultural commodity"). The Congressional Research Service confirms: "The 2018 farm bill addressed hemp cultivation only and did not

directly address . . . consumer products containing hemp or hemp ingredients." Renée Johnson, Cong. Rsch. Serv., IF12278, Farm Bill Primer 2 (2023). Senator McConnell, the bill's primary sponsor, emphasized that hemp contains only negligible levels of THC and that the legislation legalizes only cannabis at or below a 0.3% THC concentration. Mitch McConnell, *Growing Kentucky's Economy with Hemp*, Rich. Reg. (Apr. 20, 2018). Reading the Farm Bill exemption to cover HHC — a substance that binds the brain's cannabis receptor with essentially the same potency as Schedule I THC and has been linked to adverse effects, *supra* Section A — renders that threshold meaningless. The 0.3% threshold exists to separate intoxicating cannabis from non-intoxicating hemp — not to create a loophole for laboratory-manufactured intoxicants whose intoxicating molecule carries a different chemical prefix.

Congress confirmed this understanding in Pub. L. 119-37, enacted November 12, 2025, which expressly excludes from the definition of hemp any cannabinoid product containing cannabinoids "synthesized or manufactured outside the plant." Pub. L. 119-37, div. B, title VII, § 781(2) (amending § 1639o). P.L. 119-37 closed no genuine statutory gap. Manufacturers had exploited the absence of express synthetic intoxicant language to claim Farm Bill protection for laboratory-synthesized products

that the statute's structure and purpose never contemplated. In making its original intent explicit on the face of the statute, Congress reaffirmed — rather than created — the prohibition. HHC — manufactured through laboratory synthesis from THC and incapable of occurring in the cannabis plant in commercially meaningful quantities — falls squarely within that exclusion.

CONCLUSION

For the foregoing reasons, amicus curiae ATACH respectfully urges this Court to uphold DEA Docket No. DEA-1632 and affirm that hexahydrocannabinol falls within Schedule I's tetrahydrocannabinols class regardless of its delta-9 THC concentration.

Respectfully submitted,

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September 3, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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**UNITED STATES COURT OF APPEALS
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² To the extent it can be obtained through due diligence.

If yes, identify all such owners for each entity (*attach additional pages as necessary*):

2. In a criminal case, absent good cause shown, the government must identify here any organizational victim of the alleged criminal activity:
3. In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must identify here each debtor not named in the court of appeals caption:
4. Are you aware of any judge serving on this Court who participated at any stage of the case, either in district court, administrative proceedings, or in related state court proceedings?
Yes No

If yes, list the name of the judge and the case name, case number, and name of court of the related proceedings:

I certify that (*select only one*):

this is the first disclosure statement filed in the above-referenced case by the above-identified party/parties, prospective intervenor(s), or amicus/amici, and this disclosure statement complies with FRAP 26.1 and Circuit Rule 26.1-1.

the party/parties, prospective intervenor(s), or amicus/amici submitting this supplemental disclosure statement has previously filed a compliant disclosure statement in this case, and this updated disclosure statement discloses changed or additional information.

I have reviewed this form, FRAP 26.1, and Circuit Rule 26.1-1 and, to the best of my knowledge, have no information to disclose at this time.

Signature _____ **Date** _____
(use "s/[typed name]" to sign electronically-filed documents)