UNITED STATES DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

In the matter of	)	**DEA Docket No. 1362**
	)	Hearing Docket No. 26-96
Schedules of Controlled Substances: Proposed Rescheduling of Marijuana	)	
	)	DEREK C. JULIUS
	)	CHIEF ADMINISTRATIVE LAW JUDGE

GOVERNMENT'S RESPONSE TO NATIONAL DRUG & ALCOHOL SCREENING, DUID VICTIM VOICES, AND KENNETH FINN, M.D.'S FOR LEAVE TO FILE SUPPLEMENTAL BRIEFING, FOR ADMISSION OF SUPPLEMENTAL EXHIBIT, AND FOR STAY OF PROCEEDINGS

The United States Department of Justice (DOJ), Drug Enforcement Administration (Government or DEA), by and through the undersigned attorneys, hereby responds to National Drug & Alcohol Screening (NDASA), DUID Victim Voices, and Kenneth Finn, M.D.'s (collectively, the Movants) Joint Motion for leave to file Supplemental Briefing, for Admission of Supplemental Exhibit, and for Stay of Proceedings. DEA respectfully opposes the Movants' request to file supplemental briefing and defers to this Honorable Court for the Admission of Supplemental Exhibit. Because this matter has been already stayed by this Honorable Court to allow the Government to file the instant motion, DEA takes no position on the Movants' request to Stay.

PROCEDURAL BACKGROUND

On May 21, 2024, DOJ, through the DEA, issued a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* proposing to transfer marijuana and any

drug containing a substance within the Controlled Substance Act's (CSA) definition of marijuana from Schedule I to Schedule III. On August 29, 2024, DEA scheduled a hearing pursuant to the NPRM and published such notice in the Federal Register on August 29, 2024. *See Schedules of Controlled Substances: Rescheduling of Marijuana*, 89 FR 70148 (Aug. 29, 2024).

On April 28, 2026, DOJ withdrew the notice of hearing and terminated all proceedings stemming from the August 29, 2024 Notice. *Schedules of Controlled Substances: Rescheduling of Marijuana; Withdrawal,* 91 Fed. Reg. 22,777, 22,778 (Apr. 28, 2026). That same day, then-Acting Attorney General Todd Blanche issued a notice rescheduling the hearing. *Id.* at 22,777. On June 29 – July 15, 2026, the Government and seven Opposed Parties, including the Movants, presented testimony supporting their respective positions in front of Chief Administrative Law Judge Derek C. Julius. The Government presented multiple exhibits along with testimony from Dr. Dominic Chiapperino detailing the process and analysis that led the Department of Health and Human Services (HHS) and the Food and Drug Administration (FDA) to ultimately recommend that marijuana be transferred to Schedule III. Smart Approaches to Marijuana, one of the opposing parties, called Dr. Luli Akinfiresoye, a DEA scientist, who testified about the process and analysis that DEA utilizes in scheduling controlled substances.

On August 27, 2026, all Parties submitted their Post-Hearing Briefs.

On September 28, 2026, the Movants submitted a Joint Motion requesting leave to file supplemental briefing, for admission of supplemental exhibit, and for stay of proceedings. The Movants attached a report by the Government Accountability Office

(GAO) dated 23, 2026 (GAO Report) as said supplemental exhibit and requested leave to file additional briefing based on the GAO Report. On September 29, 2026, Chief Administrative Judge Derek C. Julius issued an order staying the proceedings and ordering the Government to respond to Movants' request.

ARGUMENT

The Government objects to the Movants' request for additional briefing based on the GAO Report. The Movants request additional briefing to address whether, in light of the GAO Report, the Government has carried its burden in persuading this Tribunal that marijuana has a currently accepted medical use (CAMU) and thus should be transferred out of Schedule I. The Movants argue that the GAO report contains evidence that the opposing parties could not develop absent the GAO Report's publication and that the GAO report shows that the agencies reversed course on a finding Schedule III requires without any written standard for making it. *See* Movant's brief, at 11.

The Movants have mischaracterized the GAO Report and its impact on the instant proceedings. The GAO report does not present any new evidence salient to the issue before this Tribunal. Rather, the Report issued a recommendation that DEA and FDA "fill gaps" in their written policies surrounding the *process* of rescheduling. This recommendation is immaterial to the actual scientific processes and analysis these agencies used. More importantly, the GAO makes no critical finding as to the *actual* scientific processes and analyses used by FDA and DEA in scheduling controlled substances and makes no recommendations as to other scientific processes and analyses that FDA and DEA should use in determining what schedule to place a substance. Moreover, the GAO Report does not ever opine on FDA's ultimate conclusion that

marijuana should be transferred to Schedule III. While the Government defers to this Tribunal as to whether the GAO Report should be late admitted into evidence, the Government asserts that any briefing on the GAO Report – a document that has no bearing on the ultimate issue of whether marijuana should be transferred to Schedule III – is unnecessary.

The GAO Report sought answers to three questions. First, the GAO Report looked to the circumstances under which DEA is required to "request and consider HHS scientific and medical evaluations and scheduling recommendations." GAO Report, pp. 1-2. Second, the GAO Report reviewed the extent to which DEA sought HHS evaluations and recommendations over the last 6 years. *Id.*, at p. 2. Finally, the GAO Report assessed whether DEA and FDA have "policies and procedures related to evaluating and scheduling substances." *Id.* GAO found that DEA has sought and considered HHS scientific and medical evaluations on 95 substances, which is every time DEA has been required to do so. *Id.*, at p. 19. Further, at no time in the last six years (GAO's asserted timeframe) has DEA failed to request or consider HHS recommendations for these 95 substances. *Id.* Movants take no issue with DEA's consideration of HHS's scheduling recommendations and thus, GAO's review of the first two questions will not be addressed further herein.

As to the third question, GAO recommended that DEA and HHS create written policies to "fill gaps" in their current written procedures because those gaps "may pose a risk to the consistency of DEA's and FDA's future operations in the event of staff turnover or any other disruption that could lead to a loss of institutional knowledge." *Id.*, at p. 12. Importantly, GAO made no critical findings regarding the Government's

methodology for scheduling reviews, including its procedure for weighing any of the statutory eight factors or performing a CAMU determination. The GAO Report's only "process" recommendation pertains to the *written memorialization* of the analysis process used by the Government, not the analysis itself.

For example, GAO recommended that the FDA update its Memoranda of Understanding (MOU) with National Institute of Drug Abuse (NIDA), who partner with the FDA in FDA's rescheduling evaluations. The current MOU is 40 years old and identifies FDA offices no longer relevant to its work with NIDA. The Report made no critical findings about the information exchanged between NIDA and FDA at all. Per GAO, "FDA consults with NIDA to seek concurrence on scientific findings in the drafted drug evaluation. If FDA and NIDA do not fully concur on scientific findings, NIDA may provide separate input to the Assistant Secretary for Health." *Id.*, at p. 7. GAO made no critical findings regarding the manner in which FDA and NIDA have coordinated in any scheduling assessment. Instead, the GAO Report recommends that FDA and NIDA update the old MOU and memorialize their collaboration processes in writing. *Id.*, at p. 15. Movants request additional briefing to address a report that is clear on its face. When a document's meaning is clear, the court need not allow additional argument to interpret the document. As noted in *Central States*, if a document is "unambiguous, we 'will not look beyond its four corners in interpreting its meaning.'" *Central States, Southeast & Southwest Areas Pension Fund v. Waste Management of Michigan, Inc*., 674 F.3d 630, 634 (7th Cir. 2012) citing *Trs. of S. Ill. Carpenters Welfare Fund v. RFMS, Inc.,* 401 F.3d 847, 849 (7th Cir. 2005)(internal citations omitted). Applied to the case herein, because the Report unambiguously

addresses its findings, there is no reason for further debate. See *Central States*, 674 F.3d at 634.

The GAO Report recommendation to memorialize the Government's procedures do not constitute new evidence as it relates to whether marijuana should be transferred to schedule III. The GAO report itself is new; however, the information contained within is not. The Movants argue that the GAO Report goes to the weight of the Government's evidence and supplies information that the parties could not have developed but for the GAO Report but conspicuously do not point what that new information is. The Movants also conveniently ignore the fact that they extensively cross-examined the Government witnesses and presented their own witnesses at the hearing in an attempt to cast aspersions on the Government's review process and ultimate recommendation. The Movants never asked Drs. Chiapperino or Akinfiresoye whether FDA or DEA, respectively, memorialized its rescheduling review process. Arguably, the Movants did not ask about the process's memorialization because such inquiry was not germane to the actual processes and analyses performed, nor is the memorialization of the process relevant to FDA's ultimate recommendation that marijuana be transferred to Schedule III.

Agency review does not become arbitrary and capricious if the process by which the Government performs its review is not memorialized by that specific government agency. Under the Administrative Procedure Act (APA), courts must "hold unlawful and set aside agency action[s]" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The law at issue before the Tribunal is the Controlled Substances Act (CSA) and implementing regulations,

which list the factors the Government must consider when performing a rescheduling assessment. *See* 21 U.S.C. § 811(c). The CSA also identifies the three considerations the Government must further assess when determining where in the Schedules a controlled substance should be placed. *See* 21 U.S.C. § 812(b). In fact, the GAO Report acknowledges that HHS and DEA's review of the appropriate schedule to place a substance is ultimately based on the factors established by the CSA. GAO Report pp. 6-8. Notably, the Movants do not cite anything in the GAO Report that points toward DEA and FDA's rescheduling process not being in accordance with the law. Rather, the Movants' argument depends solely on the gaps in the memorialization of rescheduling process, not any flaws in the rescheduling process itself. Such distinction does not constitute new evidence to warrant additional briefing and further delay of this process.

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CONCLUSION

This Court should deny the Movants' request. The GAO Report speaks for itself and contains no information salient to the issue before this Tribunal. Supplemental briefing on the GAO Report is unnecessary and does not require this Court to further delay its decision for briefing on the Report's findings. As such, the Government respectfully requests that the Court deny the Movants' request for additional briefing based on the GAO Report.

Respectfully Submitted,

Dated: October 9, 2026

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Certificate of Service

I hereby certify that on October 9, 2026, I electronically submitted the foregoing Government's Response To National Drug & Alcohol Screening, DUID Victim Voices, and Kenneth Finn, M.D.'s for Leave to File Supplemental Briefing, for Admission of Supplemental Exhibit, and for Stay of Proceedings to the DEA Office of Administrative Law Judges via the DEA Judicial Mailbox, at ECF-NPRM@dea.gov, and so caused a copy to be delivered to the following recipients:

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Date: October 9, 2026

/s/ Lisa K. Man
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