UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

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

GOVERNMENT'S REPLY BRIEF REGARDING THE WEIGHT OF THE GAO REPORT

The United States Department of Justice (DOJ), Drug Enforcement Administration (Government or DEA), by and through the undersigned attorneys, hereby responds to the Court's invitation to reply to the Movants' arguments concerning the weight to be afforded to the September 23, 2026 Report published by the United States Government Accountability Office (GAO) recently admitted into evidence. As explained further below, the Movants' arguments regarding the weight of the Report are not supported by the record or law cited in Movants' response briefs.

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. 89 Fed. Reg. 44,597 (May 21, 2024). 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 Fed. Reg. 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 Initial Movants[1], 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) to ultimately recommend that marijuana be transferred to Schedule III. Smart Approaches to Marijuana (SAM), 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 Initial Movants submitted a Joint Motion requesting leave to file supplemental briefing, for admission of supplemental exhibit, and for stay of proceedings. The Initial Movants attached the September 23, 2026 Report by the GAO (GAO Report or Report) as said supplemental exhibit and requested leave to file additional briefing based on the GAO Report. On September 29, 2026, Judge Julius issued an order staying the proceedings and ordering the Government to respond to Initial Movants' request.

On October 9, 2026, the Government filed its opposition to Initial Movants' Joint Motion for Leave to File Supplemental Briefing. On October 12, 2026, the Initial Movants filed two new motions: the first requested leave to respond to the Government's Opposition and the second requested this Tribunal reopen the hearing for limited discovery and testimony. On October 13,

[1] DUID Victim Voices (DUID), Kenneth Finn, M.D., and the National Drug and Alcohol Association (NDASA).

2026, SAM and the States of Idaho, Indiana, and Nebraska (Opposed States) filed a joint response regarding supplemental briefing and the admission of the GAO Report. On October 22, 2026, the Court admitted the Report and granted the Initial Movants' request for supplemental briefing on it. Judge Julius's order noted "the GAO Report speaks for itself regarding its conclusions on the general rescheduling process and documentation about that process." Order Granting Motion to Admit GAO Rpt, p. 4. The Court sought briefing on the "weight, if any the tribunal should give to the GAO Report" and "if it should be afforded weight, to what extent the GAO Report has an effect on the current rescheduling matter." *Id.* The Parties may brief these questions and submit reply briefs thereafter. *Id.* On October 29, 2026, several parties, including the Government, DUID, SAM and the Opposed States, and the Tennessee Bureau of Investigation (TBI) (collectively, Movants) filed their respective briefs on the weight of the Report.

ARGUMENT

Movants present three arguments that the Government rebuts herein. First, Movants argue that the Report requires this Court to reject the current rescheduling process based on matters known to the parties before the hearing began. TBI Response, p. 4, 6; SAM Response p. 2-3; DUID Response p. 7.[2] The Report does not "prove or disprove" a material fact when it cites to a matter previously known by the parties, particularly when said citation includes no analysis or critical commentary. *See Saudi Basic Indus. Corp. v. ExxonMobil Corp.*, 401 F. Supp. 2d 383, 391 (D.N.J., 2005) ("[p]robative is defined as 'tending to prove or disprove,'" *citing Blacks Law Dictionary* 979 (7th ed. 2000)). DUID's September 28, 2026 motion to admit the Report as

[2] TBI's brief entitled "Supplemental Brief Regarding GAO Report" filed October 29, 2026; SAM's brief entitled "Supplemental Brief of SMART Approaches to Marijuana and the Opposed States Concerning the Weight of the GAO Report" filed October 29, 2026; and DUID's brief entitled "Joint Supplemental Brief of National Drug & Alcohol Screening Association, DUID Victim Voices, and Kenneth Finn, M.D." filed October 29, 2026.

evidence stated that the Report "repeats nothing in the record" (p. 5), yet Movants' recent response briefings include numerous arguments those same parties made in their post hearing briefs.

For example, TBI argues that DEA did not perform its own eight factor analysis (8FA) and, as a result, this Tribunal should reject the current marijuana rescheduling process in full. TBI Response, pp. 3-6. In support of its argument, TBI cites to the Report's description of the information flow between the agencies and TBI's post hearing brief, where TBI made these same arguments. TBI Response, pp. 4-6. While the Government denies that it failed to follow required processes,[3] this Court limited the current briefing to the Report's weight in the rescheduling review. Instead of addressing the probative value of the Report, the Movants are using this process to reargue matters that were debated at the hearing and which this Report provides no new information, contrary to DUID's previous assertion. As noted in the Government's October 29, 2026 brief, this Report is simply not probative on issues known to the parties prior to the Report's publication.

Second, Movants argue that the prior 2016 rescheduling process was appropriately performed (TBI Response, p, 8; SAM Response, pp. 2-3; DUID Response, p. 4, 7, 10), yet the presence or absence of internal written protocols would have impacted marijuana's prior 2016 rescheduling review as well as the instant rescheduling. Movants cannot have it both ways. There is no indication that the agencies used a different set of internal written guidelines in 2016 than were used in 2023. Per the Report, DEA said that internal written policies were unnecessary because it followed the clearly outlined requirements in the CSA and related

[3] TBI asserts that DEA must perform its own 8FA in the rescheduling process and cites to the GAO Report for support. However, the GAO Report citations to 21 USC § 811(a) and (c) and 21 USC § 812(b) do not require DEA to perform its own 8FA.

regulations. Report, p. 13. FDA explained that it did not believe written policies were necessary either because "the number of scientific and medical staff involved in these activities is well-suited to ensuring continuity of institutional knowledge." *Id.* at 14. Thus, the Government's internal written guidelines for the rescheduling reviews appeared consistent between 2016 to 2023. Thus, Movants' preference for the 2016 marijuana rescheduling recommendation over the current recommendation is based on an outcome more favorable to their position, not the presence (or absence) of internal written guidelines.

Lastly, Movants' argument regarding the probative value of this Report fails to consider the voluminous scientific and medical information collected, presented, and examined at the hearing. Movants cite the *National Land* case in support of their position that lack of internal written policies and procedures should result in a rejection of this rescheduling process. TBI Response, p. 7; SAM Response, p. 3. But the *National Land* case does not support this finding. *Natl. Land for People, Inc. v. Bureau of Reclamation of Dept. of Int.*, 417 F.Supp. 449 (D.D.C. 1976).

In *National Land*, potential purchasers of private parcels and associated groups requested that the Bureau of Reclamation initiate a rulemaking process to address the appraisal methodologies the Bureau used when assessing privately owned parcels for potential sale.[4] *Id.* The Bureau denied the plaintiffs' request for a rulemaking process. *Id.* at 451. A government audit of the Bureau's appraisal procedures identified technical concerns with the Bureau's processes. *Id.* at 452. The audit also recommended that the Bureau create written policies concerning the "reasonableness of the sales price of those lands." *Id.* The Solicitor of the

[4] The Bureau is supervised by the Secretary of the Department of Interior and charged with appraising land for private sale when said land benefits from a federally subsidized water reclamation program. *Natl. Land for People*, 417 F. Supp. at 449-450.

Department of Interior then published opinions regarding land sales but the criteria included in those opinions was not promulgated pursuant to the rule making process of the Administrative Procedures Act. *Id.*

The *National Land* court entered a preliminary injunction directing the Bureau to initiate public rule making proceedings to address the criteria used to approve land sales. *Id.* at 453. Because the Parties are currently in a rulemaking proceeding regarding the rescheduling of marijuana, and the Report does not identify any substantive concerns with the process used by the Government in its current and historical rescheduling reviews, the *National Land* case does not support Movants' arguments. *See Natl. Land for* People, 417 F. Supp. 449.

CONCLUSION

For the foregoing reasons, the Government respectfully reiterates its request that the Court give the GAO Report no weight.

Dated: November 5, 2026

Respectfully submitted,

*James J. Schwartz*_____
James J. Schwartz
Stacy M. Race
Lisa K. Man
Jarrett T. Lonich
Attorneys | Diversion Section
Drug Enforcement Administration
Office of Chief Counsel
8701 Morrissette Drive
Springfield, VA 22152
James.J.Schwartz@dea.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2026, I electronically submitted the foregoing Government's Reply 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:

- National Drug & Alcohol Screening Association, via email to:
  - M. Jo McGuire at jomcguire@ndasa.com;
  - David Evans, Esq., at thinkon908@aol.com;
  - Patrick D. Kenneally, Esq. at Patrick.Kenneally@burkegroup.law;
  - Connor W. Mighell at connor.mighell@burkegroup.law
- Tennessee Bureau of Investigation, via email to:
  - Reed Smith at reed.smith@ag.tn.gov;
  - Jacob Durst, Esq., at jacob.durst@ag.tn.gov;
- Smart Approaches to Marijuana, via email to:
  - Patrick F. Philbin, Esq., at pphilbin@torridonlaw.com;
  - John M. McNichols, Esq., at jmcnichols@torridonlaw.com;
  - Chase T. Harrington, Esq., at charrington@torridonlaw.com;
- The States of Nebraska, Idaho, Indiana, and Louisiana, via email to:
  - Zachary Pohlman, Esq., at zachary.pohlman@nebraska.gov;
  - Michael Zarian, Esq., at Michael.Zarian@ag.idaho.gov;
  - Blake Lanning, Esq., at Blake.Lanning@atg.in.gov;
  - Zachary Faircloth, Esq., at FairclothZ@ag.louisiana.gov;
- DUID Victim Voices, via email to:

- Ed Wood at Edwood27@icloud.com;
- Patrick D. Kenneally, Esq. at Patrick.Kenneally@burkegroup.law;
- Connor W. Mighell at connor.mighell@burkegroup.law

- Kenneth Finn, M.D., via email to:
  - Patrick D. Kenneally, Esq. at Patrick.Kenneally@burkegroup.law;
  - Connor W. Mighell at connor.mighell@burkegroup.law
- Phillip A. Drum, PharmD, pro se, via email to phillipdrum@comcast.net.

Date: November 5, 2026 */s/ James J. Schwartz*

James Schwartz