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**

ORDER GRANTING MOTION TO ADMIT GAO REPORT AND MOTION TO FILE SUPPLEMENTAL BRIEFS; ORDER DENYING MOTION TO REOPEN HEARING

The hearing on the merits in the above-captioned matter took place from June 29, 2026, through July 15, 2026. On September 28, 2026, DUID Victim Voices, Kenneth Finn, M.D., and the National Drug and Alcohol Association (NDASA), three Interested Parties (collectively hereinafter the Moving Parties), filed a "Joint Motion for Leave to File Supplemental Briefing, for Admission of Supplemental Exhibit, and for Stay of Proceedings" (Motion to Admit GAO Report). The Motion requests that this tribunal allow the admission of the U.S. Government Accountability Office's (GAO) report titled "Drug Scheduling: While DEA Decisions Have Aligned with Recent HHS Recommendations, Both Need Comprehensive Policies" (the GAO Report), published on September 23, 2026, into the record as either Finn Exhibit 126 or as an ALJ Exhibit via official notice. The Motion further requests to allow for an additional briefing period on the contents of the GAO Report and how it impacts these proceedings, if at all.

On September 29, 2026, I granted a stay of this matter to allow briefing on the issue of whether the GAO Report should be admitted into the record as evidence. The Government submitted its response in opposition to the Motion to Admit GAO Report (Government's First Opposition) on October 9, 2026. In its Opposition, the Government opposes the filing of supplemental briefs on the GAO Report but "defers to this Honorable Court" on its admission into the record. Gov't First Opp. at 1, 3. On October 13, 2026, Smart Approaches to Marijuana (SAM) and the States of Idaho, Indiana, and Nebraska (the Opposed States) filed a joint response in support of admitting the GAO Report into evidence and allowing a supplemental briefing period

on the GAO Report. No other Interested Party filed a response to the Motion to Admit GAO Report.

Subsequently, on October 12, 2026, the Moving Parties filed two new motions. First, a motion for leave to file a reply to the Government's First Opposition (Motion for Leave to Reply). Second, the Moving Parties ask this tribunal to "reopen the hearing for limited discovery and testimony" if the GAO Report is admitted into the record. *See* Motion to Reopen Hearing for Limited Purposes and for Limited Discovery (Motion to Reopen Hearing) at 1. I granted the Motion for Leave to Reply (the reply hereinafter referred to as First Reply), and I ordered the Government to respond to the Motion to Reopen Hearing. The Government timely filed a response (Government's Second Opposition) opposing the reopening of the hearing for additional testimony and evidence and I allowed the Moving Parties to file a response (Second Reply).

As the Government does not directly oppose admission of the GAO Report, I will **ADMIT** the GAO Report into the record as Finn Exhibit 126. The question now is whether to allow briefing, to reopen the hearing for additional testimony and evidence, or neither.

The Moving Parties argue that by not opposing admission of the GAO Report, the Government implicitly "accepts that the [GAO] Report belongs in this proceeding and that it identifies a risk to consistent agency operations." Moving Parties' First Reply to Gov't First Opp. at 1. The Government's position on the contents of the GAO Report are that "[t]he GAO [R]eport does not present any new evidence salient to the issue before this Tribunal" and "the [GAO] Report issued a recommendation that DEA and FDA 'fill gaps' in their written policies surrounding the *process* of rescheduling." Gov't First Opp. at 2 (emphasis in original). Indeed, the Moving Parties and the Government appear closer aligned in their understanding of the GAO Report than their postures may indicate. The division stems from the bearing the GAO Report has on the present rescheduling matter; therefore, it is more an issue of weight and impact on this specific case.

The Moving Parties have asked to reopen the hearing for additional testimony and evidence to address five questions:

> (1) Who selected, recommended, directed, drafted, or approved the July 2023 two-part CAMU test for marijuana; when that occurred; and what records or other information explain why HHS used that test after FDA's evaluation had begun.

(2) Who prepared or materially revised the Part 1 and Part 2 CAMU language in the HHS recommendation; and what role DEA, FDA, HHS, NIH, OLC, and outside participants played in such preparation or material revision.

(3) Why the 2023 HHS evaluation did not address mental-health effects, psychosis, schizophrenia, the gateway effect, high-potency products, cardiovascular disease, pregnancy and prenatal exposure, diversion, pediatric use, geriatric use, or other public-health evidence in the same manner as earlier marijuana evaluations and the hearing record.

(4) What written or unwritten criteria FDA used for "potential for abuse," "relative potential for abuse," and the Schedule III comparison required by 21 U.S.C. § 812(b)(3)(A).

(5) What policies, procedures, memoranda, training materials, role assignments, agency communications, written responses, and technical comments GAO reviewed or requested regarding eight-factor analyses, schedule placement, consideration of HHS recommendations, and final scheduling decisions.

Motion to Reopen Hearing at 4. I will address these questions in turn.

Questions 1 and 2 are immaterial for the narrow purpose of this hearing. It is undisputed that HHS employed the Two-Part Test in its 2023 Evaluation of marijuana. The genesis of that test is not an essential question before this tribunal; rather, the deference the tribunal should afford the Two-Part Test is an essential question.[1] In fact, I indicated as much on the record when I directed the Government to brief the issue of whether the OLC Opinion, which determined that significant deference should be afforded to the Two-Part Test, was binding on the tribunal. *See* Tr. at 442-43. I also invited all other parties to weigh in on the issue. From my review of the post-hearing briefs, only the Government and NDASA briefed that issue. Accordingly, the Moving Parties are not entitled to a reopened hearing on Questions 1 and 2 when they were already allowed ample opportunity to explore those issues in their relevant forms.

Questions 3 and 4 also could have been explored by the Moving Parties during their cross examinations of Dr. Dominic Chiapperino, the Director of the Controlled Substance Staff within the Center for Drug Evaluation and Research, a part of the FDA, who oversaw FDA's Part-Two Evaluation. *See* Tr. at 37-48. The Moving Parties were each allotted one hour to cross-examine

[1] The Moving Parties' Second Reply stresses the importance of determining the genesis of the Two-Part Test. *See* Second Reply at 3-5 Again, this is not material for the narrow issue before the tribunal.

Dr. Chiapperino concerning his team's work on the Part-Two Evaluation. To the extent that I determined that any information sought on cross-exam was outside the scope of what FDA allowed Dr. Chiapperino to testify under his *Touhy* authorization letter, the parties remain free to challenge *Touhy* to a court of competent jurisdiction, but my *Touhy* rulings regarding Dr. Chiapperino's testimony remain unchanged. *See* Tr. at 269. Moreover, to the extent that the information the Moving Parties now seek pertains to Part One of the Two-Part Test, no witness was called who could testify on that matter, so the Part One Report itself is the best evidence. The Moving Parties are therefore not entitled to a reopened hearing on Questions 3 and 4.

The fifth and final question is the strongest on which the Moving Parties rely on for grounds to reopen the hearing. The Moving Parties seek to explore the underlying materials considered by GAO to explore the basis of the full GAO Report. Nonetheless, this issue is also not before the tribunal, and allowing testimony on it would only serve to confuse the matter. The GAO is not a party to this litigation, and the GAO Report speaks for itself regarding its conclusions on the general rescheduling process and documentation about that process. Now that the GAO report is a part of the record, no further testimony is required concerning it.

As the Moving Parties note, the Government does bear the burden in this case. Second Reply at 1 (citing 5 U.S.C. § 556(d)). If the Moving Parties now believe the record is "bare where it counts," *see* Second Reply at 5, that argument goes towards the ultimate question of whether the Government met its burden—it does not justify reopening the hearing, which already includes over 2,500 pages of witness testimony and multiple thousands of pages of documentary evidence. The Motion to Reopen Hearing is therefore **DENIED**.

Briefing is another matter. While the contents of the GAO Report speak for themselves, the weight the tribunal should give to the GAO Report and what impact if any it has on this specific case are other matters—ones on which the parties disagree. Accordingly, I will permit limited briefing. The briefs should be narrowly tailored to the issues of (1) the weight, if any, the tribunal should give to the GAO Report; and (2) if it should be afforded weight, to what extent the GAO Report has an effect on the current rescheduling matter (*i.e.*, are the "gaps" in written rescheduling policies identified by the GAO Report substantial enough to jeopardize the larger process and specifically impact the instant rescheduling proposal before the tribunal). I will also permit reply briefs. Briefs and reply briefs are optional submissions and should be no more than ten pages each double spaced. Briefs on the GAO Report should be submitted no later than **October 29, 2026**;

any replies should be submitted no later than **November 5, 2026**. As before, Interested Parties may not reply to one another's briefs. Requests for further briefing on these issues beyond the replies allowed above are disfavored.

The Motion to Admit the GAO Report is **GRANTED**. This matter remains **STAYED** until the time for briefing is closed; the stay will expire by its own terms at the conclusion of this briefing schedule.

It is so **ORDERED**.

Dated: October 22, 2026

DEREK JULIUS Digitally signed by DEREK JULIUS Date: 2026.10.22 10:00:58 -04'00'

DEREK C. JULIUS
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned, on October 22, 2026, caused a copy of the foregoing ORDER GRANTING MOTION TO ADMIT GAO REPORT AND MOTION TO FILE SUPPLEMENTAL BRIEFS; ORDER DENYING MOTION TO REOPEN HEARING to be delivered to the following parties:

(1) The Government, via email to
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Kemba Arthur
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