

D.C. Circuit challenge and DEA hearing put federal cannabis rescheduling to the test

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When we wrote in May about the Department of Justice's (DOJ) final order (the Order) (<https://bit.ly/4xWjw4B>) immediately moving FDA-approved cannabis products and state-licensed medical cannabis from Schedule I to Schedule III of the Controlled Substances Act (CSA), we predicted the move was likely to draw legal challenges. That prediction turned out to be correct.

Three petitions challenging the order have since been filed and consolidated before the DC. Circuit Court of Appeals, setting up what is likely to become the first appellate test of the DOJ's interpretation of its scheduling authority under the CSA. At the same time, the Drug Enforcement Administration (DEA) has launched an expedited administrative hearing to determine whether cannabis more broadly should also be transferred to Schedule III. The hearing began on June 29 and is scheduled to conclude by July 15.

Both proceedings trace back to the Trump Administration's December 18, 2025, executive order (<https://bit.ly/3SGPWA7>) directing the Attorney General to take all lawful steps to reschedule cannabis as quickly as possible. Acting Attorney General Todd Blanche responded by issuing the April 22 Order and initiating the DEA hearing within months.

But for all that speed, the path to rescheduling remains far from clear, and the Trump Administration's efforts face real obstacles on both tracks.

A novel path to rescheduling

Rather than proceed through the CSA's ordinary rescheduling process, which generally requires notice-and-comment rulemaking and an administrative hearing, the DOJ relied on Section 811(d)(1), a treaty-implementation provision of the CSA authorizing the Attorney General to bypass the ordinary procedures and issue scheduling orders necessary to satisfy U.S. obligations under international drug-control treaties, including the 1961 Single Convention on Narcotic Drugs.

The DOJ concluded that immediate rescheduling of FDA-approved cannabis products and state-legal medical cannabis was required to fulfill those treaty obligations and therefore could proceed without the ordinary administrative process. While the move had the advantage of speed, it has also become a lightning rod for legal challenge.

Legal challenges in the D.C. Circuit

Opponents of the Order mobilized quickly. The first petition was filed on May 4 by Smart Approaches to Marijuana (SAM), an anti-legalization group, and the National Drug and Alcohol Screening Association (NDASA), a drug-testing trade group. See *SAM Inc., et al. v. U.S. Department of Justice, et al.*, No. 26-1106 (filed May 4, 2026).

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Indiana, Nebraska and Louisiana followed with a second petition on May 22, although Louisiana has since withdrawn. See *Nebraska et al. v. U.S. Department of Justice, et al.*, No. 26-1130 (filed May 22, 2026).

A third petition, filed on May 28, came from a coalition including a substance-abuse treatment provider, physicians, a cannabis-victims advocacy organization, and pharmaceutical developer MMJ International Holdings. See *New Directions Addiction Recovery Services, et al. v. Donald Trump, et al.*, No. 26-1136 (filed May 28, 2026).

The DC. Circuit consolidated all three petitions into a single proceeding on May 29.

Collectively, the petitioners ask the DC. Circuit to vacate the order, arguing that the DOJ violated the Administrative Procedure Act, improperly bypassed the CSA's procedural requirements, and acted arbitrarily and capriciously by issuing the order without notice-and-comment rulemaking or an administrative hearing.

The petitions principally contend that Section 811(d)(1) does not authorize the sweeping action taken by the DOJ. Relying heavily on the D.C. Circuit's 1977 decision in *NORML v. DEA*, 559 F.2d 735 (D.C. Cir. 1977), they argue the treaty provision serves a limited purpose and cannot be used to place cannabis below Schedule II absent a treaty mandate.

While the D.C. Circuit litigation proceeds, the DEA is moving ahead with its expedited hearing on whether to move cannabis generally (including recreational cannabis) to Schedule III.

The petitioners also argue, among other things, that the Order creates an unauthorized “hybrid” regulatory regime by placing certain cannabis products in Schedule III while retaining restrictions ordinarily applicable to Schedule I or II substances, including quotas and import-export controls. They argue Congress did not authorize DOJ to mix those regulatory regimes.

On June 9, two of the petitioners — NDASA and MMJ — jointly moved to stay the Order pending judicial review, arguing that allowing the Order to remain in effect would cause irreparable harm before the legality of the DOJ's action can be resolved. The government's response was filed July 2.

The DEA hearing

While the D.C. Circuit litigation proceeds, the DEA is moving ahead with its expedited hearing on whether to move cannabis generally (including recreational cannabis) to Schedule III. The hearing commenced on June 29.

The hearing follows an earlier rescheduling proceeding initiated during the Biden administration that stalled amid procedural disputes and allegations of improper *ex parte* communications between DEA officials and anti-legalization groups.

The current proceeding has generated controversy of its own. On June 18, the DEA announced (<https://bit.ly/3RbPLMG>) it had selected seven parties to participate in the hearing, all of whom oppose rescheduling, including SAM, NDASA, a consolidated

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group of states, the Tennessee Bureau of Investigation, the group DUID Victim Voices, and two physicians. No pro-rescheduling group made the list.

The DEA reasoned that supporters of rescheduling had not demonstrated they were “adversely affected or aggrieved” by the proposed rule and thus did not meet the definition of “interested person,” as required under DEA regulations.

Industry groups and legalization advocates immediately criticized the decision, arguing that excluding proponents of rescheduling risks creating an incomplete administrative record. Requests for reconsideration, including one submitted by NORML (<https://bit.ly/4v8qf1w>), were rejected by the administrative law judge on June 24 (<https://bit.ly/4vKv17e>).

The hearing may prove less one-sided than the participant list suggests. Because the DEA itself is technically the nominal proponent of the proposed rule, it bears the burden of supporting rescheduling at the hearing. In its opening statement on June 29, the agency confirmed its support for the proposal and indicated it intends to present testimony from an FDA scientist and a pain physician addressing cannabis's accepted medical use and its qualification for Schedule III.

What comes next

The first significant development will likely be the D.C. Circuit's decision on the motion to stay. A stay could temporarily halt implementation of the Order, including the new DEA registration pathway for qualifying medical cannabis operators and the tax relief available to Schedule III businesses under Internal Revenue Code Section 280E.

The DEA hearing presents a different question: whether the administrative record ultimately developed — particularly after excluding pro-rescheduling participants — will withstand judicial review if the agency ultimately recommends moving cannabis to Schedule III.

For now, the future of the Administration's rescheduling efforts depends on two institutions moving at once: a federal appellate court weighing whether the DOJ had authority to act as it did, and an agency tribunal building a record on whether the federal government should go even further.

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