IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NEW DIRECTIONS ADDICTION RECOVERY SERVICES; *et al.*, *Petitioners*, v. DONALD J. TRUMP, in his official capacity as President of the United States; *et al.*, *Respondents.*	Case No. 26-1136

PETITIONERS' STATEMENT OF ISSUES TO BE RAISED

Pursuant to the Clerk's Order of May 29, 2026, Petitioners submit the following preliminary statement of issues to be raised in this petition for review:

On December 18, 2025, President Donald J. Trump issued Executive Order No. 14370, titled "Increasing Medical Marijuana and Cannabidiol Research," 90 Fed. Reg. 60,541 (Dec. 23, 2025) (the "Executive Order"), which directed the Attorney General to "take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the CSA in the most expeditious manner in accordance with Federal law, including 21 U.S.C. 811."

On April 22, 2026, in fulfillment of that directive, Acting Attorney General Todd Blanche issued the Final Order placing two categories of marijuana products into Schedule III of the CSA: (1) drug products containing marijuana that have been approved by the Food and Drug Administration ("FDA"), and (2) marijuana products subject to a qualifying state-issued license to manufacture, distribute, and/or dispense marijuana for medical purposes ("state medical marijuana license"). 91 Fed. Reg. at 22,714. The Final

Order simultaneously amended DEA regulations at 21 C.F.R. Part 1312 to require import and export permits for the rescheduled products, and established an expedited registration process under 21 C.F.R. Part 1301 for entities holding state medical marijuana licenses. *Id*.

Petitioners seek review and vacatur of the Final Order on the following grounds:

1. Whether the Final Order is *ultra vires* and in excess of the Attorney General's statutory authority under 21 U.S.C. § 811(d)(1), which the D.C. Circuit in *NORML v. DEA*, 559 F.2d 735 (D.C. Cir. 1977), construed as having a "limited purpose" that does not authorize placement of marijuana below Schedule II, where the Single Convention on Narcotic Drugs does not require Schedule III placement.
2. Whether the Final Order is unlawful because it creates a hybrid schedule not authorized by Congress or Section 811(d), by placing marijuana in Schedule III while simultaneously imposing Schedule I- and II-style regulatory requirements (quotas, import-export permits, enhanced registration) that are not characteristic of Schedule III, effectively creating a regulatory framework that Congress never enacted.
3. Whether the Final Order is arbitrary and capricious under 5 U.S.C. § 706(2)(A) because the agency failed to adequately consider marijuana's well-documented health risks—including the well-documented harms of cannabis use, such as the onset and exacerbation of serious mental health disorders (including psychosis, bipolar, PTSD, depression, and anxiety) impaired

adolescent neurological development, prenatal exposure risks, respiratory damage, drugged driving fatalities, cannabis use disorder, and cardiovascular harm—which DEA's own scientific review in the Administrative Hearing extensively documented but which the Final Order failed to meaningfully address or reconcile with prior agency findings.

4. Whether the Final Order is arbitrary and capricious because the agency failed to provide FDA-quality indication, dosing, risk-benefit, delivery, and monitoring systems and guidance and other information to physicians that is required to properly prescribe marijuana to patients.

5. Whether the Final Order is arbitrary and capricious because it relies on state medical marijuana licensing programs that do not satisfy the "adequate safeguards" required by the Single Convention on Narcotic Drugs—including the Convention's requirements for medical prescriptions (Article 30), manufacturing quotas (Article 21), and import-export permits (Article 31)—where state programs instead rely on "recommendations" or "certifications" that do not satisfy these treaty obligations.

6. Whether the Final Order is arbitrary and capricious under 5 U.S.C. § 706(2)(A) because it lacks any rational evidentiary basis for its implicit determination that marijuana as dispensed under state medical marijuana programs constitutes an effective medical treatment, where

    a. no marijuana product dispensed under a state license has received FDA approval, and the agency's rescheduling to Schedule III—a

schedule historically reserved for drugs that have undergone FDA review—represents an unexplained departure from the agency's own longstanding practice and the CSA's statutory framework requiring consideration of "scientific evidence of [the drug's] pharmacological effect," 21 U.S.C. § 811(c)(3), and "the state of current scientific knowledge regarding the drug," id. § 811(c)(4);

b. the state medical marijuana programs on which the Final Order relies are so widely divergent in their qualifying conditions, permitted product types, potency limitations, dosing requirements, and oversight mechanisms that no rational scheduling determination can be applied uniformly across the category the agency has defined—rendering the agency's factual premise that these programs constitute a coherent regulatory category for CSA scheduling purposes arbitrary on its face; and

c. there is no body of adequate and well-controlled scientific studies demonstrating that cannabis as sold in state-licensed dispensaries—as distinguished from isolated, pharmaceutical-grade cannabinoid formulations—can effectively treat any specific medical condition with the degree of scientific rigor historically required for CSA scheduling determinations. *See Alliance for Cannabis Therapeutics v. DEA*, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

7. Whether the Final Order was issued without observance of procedure required by law, in violation of the APA's notice-and-comment requirements, 5 U.S.C. § 553, and the CSA's requirement that scheduling rules be "made on the record after opportunity for a hearing," 21 U.S.C. § 811(a), where the Final Order was issued as an immediately effective order without prior notice-and-comment rulemaking or a formal hearing on the record.
8. Whether the Final Order deprived Petitioners of procedural due process under 21 U.S.C. § 811(a) by circumventing their statutory right to a hearing on the record—including by withdrawing the prior Notice of Hearing and terminating the proceedings before the ALJ in which Petitioners Dr. Finn and CIVEL had established standing, filed prehearing statements, and prepared for a hearing originally scheduled for December 2, 2024—and issuing a final order effective April 22, 2026 without any recourse to a hearing or public comment.
9. Whether the Final Order violates the major questions doctrine under *West Virginia v. EPA*, 597 U.S. 697 (2022), because the Attorney General used the ancillary treaty-implementation provision of § 811(d)(1) to accomplish a decision of vast economic and political significance—including the restructuring of DEA regulations and the immediate elimination of the 26 U.S.C. § 280E tax bar for state-licensed marijuana businesses—without clear congressional authorization for such economically and politically transformative action.

10. Whether the Final Order violates the equal protection component of the Fifth Amendment's Due Process Clause by creating a novel, condition-based scheduling framework that treats chemically identical marijuana products differently based solely on whether they are covered by a state medical marijuana license or FDA approval, without rational basis in the CSA's statutory structure.
11. Whether the Final Order contravenes the United States' obligations under the Single Convention on Narcotic Drugs, where DOJ's own Office of Legal Counsel conceded that Schedule III alone does not fully satisfy the Convention's requirements and the State Department acknowledged that only "most—but not all" of the Convention's obligations would be met.
12. Whether the Final Order is unlawful under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), because the Acting Attorney General's contested interpretation of § 811(d)(1) cannot survive *de novo* judicial review of the statute's best meaning.
13. Whether the Final Order is unlawful because it was issued under the authority of an administrative structure that the Department of Justice itself has conceded violates the separation of powers and Article II of the Constitution, where DOJ formally acknowledged in *MMJ BioPharma Cultivation Inc. v. Bondi*, Civil Action No. 1:24-cv-127-WES-PAS (D.R.I.), that "the multiple layers of removal restrictions for administrative law judges ('ALJs') in 5 U.S.C. § 7521 do not comport with the separation of powers and Article II," and the same

constitutionally defective administrative structure is expected to conduct the expedited rescheduling hearing commencing June 29, 2026. *See Axon Enterprises, Inc. v. FTC*, 598 U.S. 175 (2023).

Date: June 18, 2026

Respectfully submitted,

/s/Patrick Kenneally

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2026, I caused the foregoing document to be electronically filed with the Clerk and served on the parties using CM/ECF.

/s/Patrick Kenneally
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