

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. 24-44**

**SUPPLEMENTAL BRIEFING ORDER REGARDING A JOINT MOTION FILED BY  
HEMP FOR VICTORY AND VILLAGE FARMS INTERNATIONAL**

On November 18, 2024, Hemp for Victory (HFV) and Village Farms International, Inc. (VFI) (collectively, the Movants) jointly filed a motion with this tribunal bearing the caption “Joint Motion Requesting Supplementation of the Record and Disqualification and Removal of DEA from the Role of Proponent of the Rule in these Proceedings” (the Motion or Mot.). The Motion was filed in connection with ongoing prehearing proceedings in this action. The Motion alleges, *inter alia*, that there have been improper *ex parte* communications between Smart Approaches to Marijuana (SAM), a Designated Participant, and officials at the Drug Enforcement Administration. Mot. 1, 7-11, 22-23. In light of these allegations and any potential impact on participation eligibility,<sup>1</sup> SAM is likewise authorized to respond to the Motion.

As such, it is herein **ORDERED**, that in addition to the Government, should Smart Approaches to Marijuana (and by this order only that Designated Participant) elect to respond to the Motion it may do so **no later than 2:00 P.M. Eastern Time on November 25, 2024.**

Dated: November 21, 2024

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JOHN J. MULROONEY, II  
Chief Administrative Law Judge

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<sup>1</sup> 5 U.S.C. § 557(d)(1)(D).

## CERTIFICATE OF SERVICE

This is to certify that the undersigned, on November 21, 2024 caused a copy of the foregoing to be delivered to the following recipients: (1) James J. Schwartz, Esq., Counsel for the Government, via email at james.j.schwartz@dea.gov; Jarrett T. Lonich, Esq., Counsel for the Government, via email at jarrett.t.lonich@dea.gov; and S. Taylor Johnston, Esq., Counsel for the Government, via email at stephen.t.johnston@dea.gov; (2) the DEA Government Mailbox, via email at dea.registration.litigation@dea.gov; (3) Shane Pennington, Esq., Counsel for Village Farms International, via email at spennington@porterwright.com; and Tristan Cavanaugh, Esq., Counsel for Village Farms International, via email at tcavanaugh@porterwright.com; (4) Nikolas S. Komyati, Esq., Counsel for National Cannabis Industry Association, via email at nkomyati@foxrothschild.com; William Bogot, Esq., Counsel for National Cannabis Industry Association, via email at wbogot@foxrothschild.com; and Khurshid Khoja, Esq., Counsel for National Cannabis Industry Association, via email at khurshid@greenbridgelaw.com; (5) John Jones and Dante Picazo for Cannabis Bioscience International Holdings, via email at ir@cbih.net; (6) Andrew J. Kline, Esq., Counsel for Hemp for Victory, AKline@perkinscoie.com; and Abdul Kallon, Esq., Counsel for Hemp for Victory, via email at AKallon@perkinscoie.com; (7) Erin Gorman Kirk for the State of Connecticut, via email at erin.kirk@ct.gov; (8) Shanetha Lewis for Veterans Initiative 22, via email at info@veteransinitiative22.com; (9) Kelly Fair, Esq., Counsel for The Commonwealth Project, via email at Kelly.Fair@dentons.com; (10) Rafe Petersen, Esq., Counsel for Ari Kirshenbaum, via email at Rafe.Petersen@hkllaw.com; (11) David G. Evans, Esq., Counsel for Cannabis Industry Victims Educating Litigators, Community Anti-Drug Coalitions of America, Phillip Drum, Kenneth Finn, International Academy on the Science and Impacts of Cannabis, and National Drug and Alcohol Screening Association, via email at thinkon908@aol.com; (12) Patrick Philbin, Esq., Counsel for Smart Approaches to Marijuana, via email at pphilbin@torridonlaw.com; and Chase Harrington, Esq., Counsel for Smart Approaches to Marijuana, via email at charrington@torridonlaw.com; (13) Stephanie E. Masker, Esq., Counsel for National Transportation Safety Board, via email at stephanie.masker@ntsb.gov; (14) Eric Hamilton, Esq., Counsel for the State of Nebraska, via email at eric.hamilton@nebraska.gov; and Zachary Viglianco, Esq., for the State of Nebraska, via email at zachary.viglianco@nebraska.gov; (15) Gene Voegtlin for International Association of Chiefs of Police, via email at voegtlin@theiacp.org; (16) Gregory J. Cherundolo for Drug Enforcement Association of Federal Narcotics Agents, via email at executive.director@afna.org; and (17) Reed N. Smith, Esq., Counsel for the Tennessee Bureau of Investigation, via email at Reed.Smith@ag.tn.gov; and Jacob Durst, Esq., Counsel for Tennessee Bureau of Investigation, via email at Jacob.Durst@ag.tn.gov.

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Quinn Fox  
Staff Assistant to the Chief Judge  
Office of Administrative Law Judges

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**Schedules of Controlled Substances:  
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**DEA Docket No. 1362  
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**ORDER DENYING NON-PARTICIPANT'S MOTION TO STAY**

The United States Department of Justice (DOJ) through the Drug Enforcement Administration (DEA or Agency) initiated rulemaking proceedings to reschedule marijuana from Schedule I of the Controlled Substances Act to Schedule III. *Schedules of Controlled Substances: Rescheduling of Marijuana*, 89 Fed. Reg. 44597, 44597 (2024). In another order published in the Federal Register, the DEA Administrator (the Administrator) subsequently determined that hearing procedures are appropriate and fixed a December 2, 2024 hearing commencement date. *Schedules of Controlled Substances: Rescheduling of Marijuana*, 89 Fed. Reg. 70148, 70148-49 (2024). I was appointed to preside over the hearing proceedings, and subsequent correspondence from the Administrator listed twenty-five (25) designated participants (Designated Participants or DPs) to participate in the hearing proceedings involving the proposed schedule change.

On November 18, 2024, this tribunal received a filing (Motion to Stay or MTS) submitted by David Heldreth (the Petitioner), who is not among the Administrator's DPs. In his MTS, the (non-participant) Petitioner seeks a stay of these proceedings on his own behalf and on behalf of his (also non-participant) company, Panacea Plant Sciences. The propounded basis for the requested stay is founded primarily on this absence from the DP roster, but is alternatively based upon his aspirational view that the impending change in presidential administrations might yield a more successful decisional structure.

Inasmuch as the Petitioner was not included in the Administrator's Designated Participant list, and has not been admitted to the proceedings in some other manner, no action can or will be taken on his Motion to Stay.<sup>1</sup>

Dated: November 20, 2024

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JOHN J. MULROONEY, II  
Chief Administrative Law Judge

### CERTIFICATE OF SERVICE

This is to certify that the undersigned, on November 20, 2024 caused a copy of the foregoing to be delivered to the following recipients: (1) James J. Schwartz, Esq., Counsel for the Government, via email at james.j.schwartz@dea.gov; Jarrett T. Lonich, Esq., Counsel for the Government, via email at jarrett.t.lonich@dea.gov; and S. Taylor Johnston, Esq., Counsel for the Government, via email at stephen.t.johnston@dea.gov; (2) the DEA Government Mailbox, via email at dea.registration.litigation@dea.gov; (3) Shane Pennington, Esq., Counsel for Village Farms International, via email at spennington@porterwright.com; and Tristan Cavanaugh, Esq., Counsel for Village Farms International, via email at tcavanaugh@porterwright.com; (4) Nikolas S. Komyati, Esq., Counsel for National Cannabis Industry Association, via email at nkomyati@foxrothschild.com; William Bogot, Esq., Counsel for National Cannabis Industry Association, via email at wbogot@foxrothschild.com; and Khurshid Khoja, Esq., Counsel for National Cannabis Industry Association, via email at khurshid@greenbridgelaw.com; (5) John Jones and Dante Picazo for Cannabis Bioscience International Holdings, via email at ir@cbih.net; (6) Andrew J. Kline, Esq., Counsel for Hemp for Victory,

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<sup>1</sup> Even if the Motion to Stay was considered on the merits, it would be unlikely to succeed here. In its evaluation of requests to stay DEA Administrative Proceedings, the Agency has adopted the factors set forth in *Nken v. Holder* (the *Nken* Factors), *to wit*:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the [stay] applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

556 U.S. 418, 434 (2009); *Jennifer L. St. Croix, M.D.*, 86 Fed. Reg. 30494, 30495 (2021). The Motion to Stay fails to discuss (or even reference) any of the *Nken* Factors. The MTS does not include arguments that would support likely success on the merits, irreparable injury, or impact of a stay if granted. Although not specifically styled as such, the thrust of the Petitioner's argument could arguably be construed to urge that, at least in his view, the public interest would best be served in some way by including him in the hearing proceedings. While true that the Petitioner was not included by the Administrator in her list of DPs, the MTS indicates that he did avail himself of the opportunity to submit his views to the Agency by submitting written comments. MTS at 3. Thus, the Agency did get the benefit of his perspective, but not in the fulsome manner he had requested. Naturally, this tribunal will scrupulously adhere to any directives issued by the U.S. District Court for the Western District of Washington, where the Petitioner claims to have sought to commence an action related to these proceedings.

AKline@perkinscoie.com; and Abdul Kallon, Esq., Counsel for Hemp for Victory, via email at and AKallon@perkinscoie.com; (7) Erin Gorman Kirk for the State of Connecticut, via email at erin.kirk@ct.gov; (8) Shanetha Lewis for Veterans Initiative 22, via email at info@veteransinitiative22.com; (9) Kelly Fair, Esq., Counsel for The Commonwealth Project, via email at Kelly.Fair@dentons.com; (10) Rafe Petersen, Esq., Counsel for Ari Kirshenbaum, via email at Rafe.Petersen@hkllaw.com; (11) David G. Evans, Esq., Counsel for Cannabis Industry Victims Educating Litigators, Community Anti-Drug Coalitions of America, Phillip Drum, Kenneth Finn, International Academy on the Science and Impacts of Cannabis, and National Drug and Alcohol Screening Association, via email at thinkon908@aol.com; (12) Patrick Philbin, Esq., Counsel for Smart Approaches to Marijuana, via email at pphilbin@torridonlaw.com; and Chase Harrington, Esq., Counsel for Smart Approaches to Marijuana, via email at charrington@torridonlaw.com; (13) Stephanie E. Masker, Esq., Counsel for National Transportation Safety Board, via email at stephanie.masker@ntsb.gov; (14) Eric Hamilton, Esq., Counsel for the State of Nebraska, via email at eric.hamilton@nebraska.gov; and Zachary Viglianco, Esq., for the State of Nebraska, via email at zachary.viglianco@nebraska.gov; (15) Gene Voegtlin for International Association of Chiefs of Police, via email at voegtlin@theiacp.org; (16) Gregory J. Cherundolo for Drug Enforcement Association of Federal Narcotics Agents, via email at executive.director@afna.org; (17) Reed N. Smith, Esq., Counsel for the Tennessee Bureau of Investigation, via email at Reed.Smith@ag.tn.gov; and Jacob Durst, Esq., Counsel for Tennessee Bureau of Investigation, via email at Jacob.Durst@ag.tn.gov; and (18) David Heldreth, via email at dheldrethjr@gmail.com.

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Tayonna Eubanks  
Secretary (CTR)  
Office of Administrative Law Judges