UNITED STATES DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

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

GOVERNMENT'S PREHEARING STATEMENT

Respectfully Submitted,

Dated: June 24, 2026

James J. Schwartz
Attorney | Diversion Section
Drug Enforcement Administration
Office of Chief Counsel
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Pursuant to the Tribunal's June 18, 2026 Preliminary Order, the United States Department of Justice, Drug Enforcement Administration (Government or DEA), by and through undersigned counsel, hereby submits the ordered Prehearing Statement in the above-captioned matter.

PROPOSED WITNESSES

1. Dominic Chiapperino, Ph.D.
   Director, Controlled Substance Staff
   Center for Drug Evaluation and Research
   Food and Drug Administration
   10903 New Hampshire Avenue
   Silver Spring, MD 20993

2. Corey Burchman, M.D.
   Pavilion Group
   35 Railroad Row, Suite 404
   White River Junction, VT 05001

SUMMARY OF TESTIMONY

1. Dominic Chiapperino, Ph.D.

The Government anticipates that Dr. Chiapperino will testify as a fact witness. Dr. Chiapperino will testify about his background and experience, including his experience performing scientific evaluations of drugs that require drug scheduling or rescheduling under the Controlled Substances Act. Dr. Chiapperino will testify that he is currently the Director of the Controlled Substance Staff with the Center for Drug Evaluation and Research, Food and Drug Administration (FDA). Dr. Chiapperino will identify and authenticate a copy of his C.V. The Government anticipates Dr. Chiapperino's C.V. will be marked as **Government's Exhibit No. 5**.

Dr. Chiapperino will testify that under 21 U.S.C. § 811(c) there are eight statutory factors relevant to a scheduling decision. He will testify that he supervised the 8-Factor Analysis (8FA)

performed by the FDA which supported FDA's recommendation to rescheduling marijuana from Schedule I to Schedule III which the Government anticipates will be marked as **Government's Exhibit No. 3,** or as an ALJ Exhibit**.**

Dr. Chiapperino will testify to the manner in which the Controlled Substances Staff, within the Center for Drug Evaluation and Research, performed the 8FA that resulted in FDA's rescheduling recommendation. Dr. Chiapperino will also testify to the FDA's assessment in the 8FA to assess marijuana's currently accepted medical use (CAMU) in treatment in the United States. Dr. Chiapperino will testify that FDA relied on the Part I assessment performed by the Office of the Assistant Secretary for Health (OASH), which found that licensed health care practitioners had widespread current experience with use of medical marijuana in jurisdictions where such medical use is recognized by entities that regulate the practice of medicine. Dr. Chiapperino will testify that he and the Controlled Substances Staff relied on OASH's Part I assessment to complete FDA's Part II review of marijuana's CAMU. Dr. Chiapperino will testify to FDA's assessment of the findings necessary to support placement in Schedule III, namely that marijuana has a potential for abuse less than the drugs or other substances in Schedules I and II, that marijuana has a CAMU for at least one therapeutic condition, and that abuse of marijuana may lead to moderate or low physical dependence or high psychological dependence.

Dr. Chiapperino is testifying in this matter pursuant to 21 C.F.R. § 20.1. FDA issued a *Touhy* letter, attached hereto as **Attachment 1**, that allows Dr. Chiapperino to testify to the scientific and medical determinations that form the basis of the 8FA pursuant to 21 C.F.R. §§ 811(a-c) and 812(b), scientific and medical determinations underlying the evaluation performed in FDA's assessment of CAMU under 21 U.S.C. § 812(b), and FDA's

recommendation to place marijuana in Schedule III under 21 U.S.C. § 812(b)(3). Dr. Chiapperino is not authorized to testify to matters outside of the afore-mentioned three topics.

2. Corey Burchman, M.D.

The Government anticipates that Dr. Burchman will testify as an expert and fact witness. Dr. Burchman will testify as to his background and experience, including, among other things, that he is currently a practicing physician and has been for over 30 years. He will testify that he holds a medical license in the State of New Hampshire and practiced as a board-certified anesthesiology and pain management physician until 2019. Dr. Burchman will identify and authenticate a copy of his C.V. which the Government anticipates will be marked as **Government's Exhibit No. 6**.

Dr. Burchman will testify as a medical expert in the practice of pain management, with significant clinical experience in the use of medical marijuana. Dr. Burchman will testify that he provided direct patient care for pain patients as an anesthesiologist and pain management physician following his residency and fellowship training in 1986 until 2019. He will testify that he was practicing at the Dartmouth-Hitchcock Medical Center in Hanover, NH when the medical center began prioritizing medical marijuana as a treatment modality for pain patients and he worked to transition many patients from treatment with opioids to treatment with marijuana. Dr. Burchman will further testify that in his medical opinion, medical marijuana provides a medical benefit to pain patients.

Dr. Burchman will testify that he routinely reviews the medical literature on the use of medical marijuana for treatment of pain and uses that information to direct his patient treatment plans. He will also testify that he consults with other physicians on the treatment plans of their patients and provides medical advice to cannabis, professional medical, and various government or quasi - government offices and organizations.

Dr. Burchman will also testify about patient safety measures utilized in the industry regarding the cultivation, processing, and dispensing of medicinal marijuana, including caps on the monthly amount of medicinal marijuana allowed per patient along with product QR codes, certificates of analysis, and testing by certified labs. Dr. Burchman's testimony will be based on the New Hampshire medical marijuana model given his experience treating pain patients in New Hampshire, role on the New Hampshire Therapeutic Medical Cannabis Oversight Board, and work with medical marijuana dispensaries in New Hampshire.

PROPOSED EXHIBITS

Proposed Government Exhibit No. 1: Notice of Proposed Rulemaking, published May 21, 2024 (26 pages).

Proposed Government Exhibit No. 2: Comments Received in Response to Notice of Proposed Rulemaking:

a. Unique Comments (4,834 pages).
b. Cluster Comments (113 pages).
c. Attachment to Comments (8,695 pages).
d. Attachment to Comment by CIVEL (487 pages).

Proposed Government Exhibit No. 3: HHS, Basis for Recommendation to Place Marijuana in Schedule III of the Controlled Substance Act, dated August 29, 2023 (252 pages).

Proposed Government Exhibit No. 4: U.S. Department of Justice Office of Legal Counsel's Memorandum Opinion for the Attorney General: *Questions Related to the Potential Rescheduling of Marijuana*, 48 Op. O.L.C. __ (Apr. 11, 2024) (36 Pages).

Proposed Government Exhibit No. 5: Dr. Dominic Chiapperino, Ph.D., *curriculum vitae* (5 pages).

Proposed Government Exhibit No. 6: Dr. Corey Burchman, MD*, curriculum vitae* (7 pages).

OTHER MATTERS

The Government reserves the opportunity to amend its instant pleading at a time and date specified by this Tribunal.

Respectfully Submitted,

Dated: June 24, 2026

/s/ *James J. Schwartz*
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[1] In the Government's Notices of Appearance, Ms. Race's email address was not correct. This is the correct address.

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2026, I electronically submitted the foregoing Government's Notice of Appearance 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: June 24, 2026

/s/ James J. Schwartz
James Schwartz

Attachment 1:

FDA *Touhy* Letter for Dr. Chiapperino

U.S. FOOD & DRUG ADMINISTRATION

June 15, 2026

James J. Schwartz
Deputy Chief
U.S. Department of Justice
Drug Enforcement Administration
Office of Chief Counsel
Diversion Section

Re: 20.1 Request for Testimony of FDA employee Dr. Dominic Chiapperino

Dear Mr. Schwartz:

This letter is in response to your 21 C.F.R. § 20.1 request, dated June 2, 2026, to the United States Food and Drug Administration (FDA) seeking the testimony from an FDA employee, during the administrative hearing on proposed rulemaking for Schedules of Controlled Substances: Rescheduling of Marijuana, DEA-1362, Attorney General Order No. 6753-2026 (April 28, 2026).

Requests for testimony from the Department of Health and Human Services (DHHS) employees that pertain to any function of FDA are governed by Title 21, Code of Federal Regulations, Section 20.1 (21 C.F.R. § 20.1). This regulation prohibits FDA employees from testifying with respect to any information acquired in the discharge of his or her official duties except with the express authorization of the FDA Commissioner or an employee designated by him to act on his behalf. As the Acting Director of Division of Information Disclosure, Office of Management and Enterprise Services, Office of Operations, I have been delegated the authority by the Commissioner to review requests made under 21 C.F.R. § 20.1.

Section 20.1 provides that a request for testimony may be granted upon a determination that the testimony requested is both in the public health interest and furthers the objectives of the Federal Food, Drug, and Cosmetic Act (FDCA) and the agency. Because of limited resources and the vast number of requests the agency receives for personnel to orally testify in litigation to which FDA is not a party, FDA may, in its discretion, deny a request for a testimony even when these prerequisites have been met. FDA must deny requests that are duplicative, unlikely to elicit relevant oral testimony, unduly burdensome, or otherwise inappropriate. Accordingly, the agency must carefully assess requests for an oral testimony made pursuant to section 20.1.

After considering the merits of your request, FDA has determined that your request for testimony, in part, is in public interest and promotes the objectives of the agency, and hereby authorizes Dominic Chiapperino, Ph.D. to provide testimony during the above referenced administrative hearing, limited to the matters detailed specifically below.

Dr. Chiapperino is authorized to give testimony regarding:

1. Scientific and medical determinations underlying the Eight Factor Analysis (8FA) performed by FDA pursuant to paragraphs (a) through (c) of section 201 and paragraph

(b) of section 202 of the Controlled Substances Act (21 U.S.C. §§ 811(a-c) and 812(b)), as transmitted to DEA with HHS's August 29, 2023, Recommendation;

2. Scientific and medical determinations underlying the analysis performed, and conclusions drawn, by FDA in its August 28, 2023 Report "Considerations for Whether Marijuana Has a Currently Accepted Medical Use in the United States for Purposes of Section 202(b) of the Controlled Substances Act" (a/k/a FDA's Part 2 CAMU Evaluation), namely that for purposes of the drug scheduling criteria in 21 U.S.C. § 812(b), marijuana has a CAMU for: (i) anorexia related to a medical condition; (ii) nausea and vomiting (*e.g.*, chemotherapy-induced); and (iii) pain; and

3. FDA's recommendation that marijuana be placed in Schedule III under 21 U.S.C. § 812(b)(3).

Dr. Chiapperino's authorization to testify is limited to the three topics listed above. Please note that the ultimate placement of marijuana in any particular CSA Schedule is beyond the scope of FDA's scheduling recommendation under 21 U.S.C. § 811(b); accordingly, Dr. Chiapperino is neither authorized nor qualified to testify about that ultimate issue. In addition, please note that FDA has not conducted further analysis following FDA's 8FA and Part 2 CAMU Evaluation as transmitted to DEA by HHS on August 28, 2023.

This authorization does not apply to information that FDA is prohibited from disclosing by law, *e.g.*, third party trade secrets and confidential commercial information that would be prohibited from disclosure in this proceeding. *See* 18 U.S.C. § 1905; 21 U.S.C. § 331(j); 21 C.F.R. § 20.61. Further, FDA retains the right to assert any applicable privilege that an attorney representing the agency determines to be appropriate.

Please note that the FDA's Office of the Chief Counsel (OCC) has assigned Shannon Singleton, who can be reached at Shannon.Singleton@fda.hhs.gov or 240-778-9481 to assist with coordinating Dr. Chiapperino's testimony, if necessary.

Sincerely,

MARK A. BARNES -S

Digitally signed by MARK A. BARNES -S
Date: 2026.06.15 16:00:27 -04'00'

Mark Barnes
Acting Director
Division of Information Disclosure
Office of Management and Emergency Services
Office of Operations
U. S. Food and Drug Administration