ORAL ARGUMENT NOT YET SCHEDULED

No. 26-1324
(Consolidated with Nos. 26-1325 and 26-1329)

In the United States Court of Appeals
for the District of Columbia Circuit

Standard Wellness Utah, LLC, *et al.*,
Petitioners,

v.

Drug Enforcement Administration, *et al.*,
Respondents.

Brief of Amici Curiae States of Utah, North Dakota, and West Virginia in Support of Petitioners' Emergency Motion to Stay

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Certificate as to Parties, Rulings, and Related Cases

A. Parties and Amici

Except for the following, all parties and amici appearing in this Court are listed in Petitioners' Emergency Motion to Stay.

***Amici*:** The States of Utah, North Dakota, and West Virginia.

B. Ruling Under Review

The ruling under review is the document titled "DEA Medical Marijuana Timely Applicant Information," issued by the DEA on October 30, 2026. Though not published in the Federal Register, it is attached as Exhibit 2 to Petitioners' Emergency Motion to Stay.

C. Related Cases

This case has been consolidated with *G.P.M.II LLC v. DEA*, No. 26-1325 (D.C. Cir. 2026), and *PennAlt Organics, Inc. v. DEA*, No. 26-1329 (D.C. Cir. 2026). Counsel is not aware of any other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

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Glossary

Amici States	The States of Utah, North Dakota, and West Virginia
APA	Administrative Procedure Act
DEA	Drug Enforcement Administration
Final Rule	*Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana from Schedule I to Schedule III; Corresponding Change to Permit Requirements*, 91 Fed. Reg. 22714 (Apr. 28, 2026)
Information	DEA Medical Marijuana Timely Applicant Information (Oct. 30, 2026)

Introduction and Interests of Amici Curiae

Marijuana presents a paradox for regulators. On the one hand, it is "widely used to alleviate symptoms [and] treat disease," and has been for nearly two centuries. Mary Barna Bridgeman & Daniel T. Abazia, *Medicinal Cannabis: History, Pharmacology, and Implications for the Acute Care Setting*, 42 Pharmacy & Therapeutics 180, 183 (2017), https://pmc.ncbi.nlm.nih.gov/articles/PMC5312634/. On the other, it is "the most commonly cultivated, trafficked, and abused illicit drug worldwide." *Id.* at 180. The challenge for legislators lies in finding the balance between making marijuana available for medical purposes and prohibiting its harmful use.

Though Congress has "significantly regulated" marijuana at the federal level for nearly a century, it is a relative latecomer to the game. *Gonzales v. Raich*, 545 U.S. 1, 11 (2005). By the time Congress passed its first marijuana-related statute, States had been regulating the drug for decades. *E.g.*, *id.* at 5 & n.2. Nearly all those States understood marijuana's dual nature and thus made particular efforts to "permit[] medical use." *Raich v. Gonzales*, 500 F.3d 850, 865 (9th Cir. 2007). Indeed, all 22 States that regulated marijuana by the 1930s—when

Congress first stepped in—had established medical-use exceptions. *Ibid.* And even once marijuana possession became widely criminalized, nearly every State "created exceptions for 'persons for whom the drug had been prescribed or to whom it had been given by an authorized medical person.'" *Ibid.* (quoting *Leary v. United States,* 395 U.S. 6, 17 (1969)). In contrast, the federal government chose to outlaw marijuana completely for decades, deeming it a substance with "no accepted medical use." *Gonzales v. Oregon*, 546 U.S. 243, 269 (2006).

But times have changed. In recent years the federal government has become more willing to "allow States to act as laboratories and try novel social and economic experiments," including regulation of marijuana for medical use. *Standing Akimbo, LLC v. United States*, 141 S. Ct. 2236, 2238 (2021) (Thomas, J., respecting denial of certiorari) (internal quotations omitted). As part of that effort, the federal government rescheduled medical marijuana to be a Schedule III drug earlier this year. *See Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana from Schedule I to Schedule III; Corresponding Change to Permit Requirements*, 91 Fed. Reg. 22714 (Apr. 28, 2026) ("Final Rule").

In an apparent act of goodwill, the federal government even allowed state-licensed businesses to also register with the federal government and receive tax advantages. *Id.* at 22720. These steps appeared to signal stronger federal support for State medical-marijuana regimes.

That cooperative federalism would likely have materialized had the federal Drug Enforcement Administration (DEA) not suddenly altered course a few weeks ago. In an email sent to federal registrants, the DEA announced a new policy: beginning November 29, "Timely Applicants" for federal registration and successful federal registrants may no longer do business with any state medical-marijuana licensee that is not itself a Timely Applicant or federal registrant. Emergency Mot. Ex. 2, DEA Medical Marijuana Timely Applicant Information (Oct. 30, 2026) (the "Information"). A "Timely Applicant" was defined as a business who registered with the DEA before June 26, 2026—a deadline that had passed months earlier.

The DEA's new policy was problematic from the start. After having gone through no rulemaking procedures or processes, the DEA retroactively imposed a severe consequence for failing to register that could not be cured. It attached a new and severe consequence—

exclusion from the State medical-marijuana market—to a filing window that had closed four months earlier, when nothing in the agency's earlier Final Rule had hinted at that consequence. The result: State-licensed marijuana businesses now face the loss of supply chains because they failed to obey a rule they didn't know existed, and States now face serious disruption to their medical-marijuana regulatory systems.

The States of Utah, North Dakota, and West Virginia (Amici States) submit this brief in support of Petitioners' emergency motion for a stay. Each of the Amici States has a medical-only marijuana regulation scheme. Each has developed comprehensive procedures for ensuring its citizens have access to marijuana for medical uses while preventing illegal and harmful nonmedical use of the drug. And each will suffer the effects of sudden, unlawful federal intrusion into its marijuana regulatory schemes in the absence of a stay.

Amici States welcome the partnership of the federal government in providing safe and effective medical treatment for their citizens. But the DEA's new policy does just the opposite. The Court should grant the

emergency motion and stay the Information pending further judicial review.

Argument

I. The DEA Information interferes with State medical marijuana regulation, thus harming States and their residents.

Medical and drug regulation are most effective when the federal government works with, rather than against, the States. Indeed, "[t]he structure and operation of the [Controlled Substances Act] presume and rely upon a functioning medical profession regulated under the States' police powers." *Gonzales*, 546 U.S. at 270. The Information turns that principle on its head. Rather than supporting preexisting State regulatory structures, the Information disrupts them by forcibly inserting new strictures on trade. Medical marijuana companies licensed by States in limited numbers now face product shortages and supply issues, making it harder for residents to obtain marijuana for legitimate medical purposes through lawful means. The DEA's unheralded new requirements thus harm both Amici States and their citizens.

Although the DEA insists that the Information is "not meant to bind the public in any way" and merely "provide[s] clarity to the public regarding existing requirements," the document's contents belie that assertion. Information at 5. In reality, the Information makes two major changes to existing federal policy.

First, the Information retroactively classifies State-licensed medical-marijuana providers who "submitted complete applications" for federal registration and paid the requisite fee "between April 28, 2026 to June 26, 2026" as "Timely Applicants." *Id.* at 2. In contrast to the Information, the Final Rule promulgated in April contained no indication that applications after June 26 would be untimely. *See* 91 Fed. Reg. at 22720 (referring only to "early applicants" and not discussing timeliness). This retroactive classification is especially problematic because DEA itself delayed the application process. DEA's first registrations, issued October 30, went only to dispensaries in seven states (not including Utah). And DEA's dedicated manufacturer and distributor application did not open until October 5—more than three months after the June deadline. Emergency Mot. Ex. 4 ¶ 16. Yet the

Information now states that no application after June 26 can be considered timely.

Second, the Information declares that "Timely Applicants and DEA registrants may not lawfully engage in any schedule III medical marijuana activities with entities" that are not Timely Applicants "until those entities become DEA registrants." Information ¶ 7. Federal registrants and Timely Applicants who break this rule risk denial or revocation of their federal registration. *Id.* ¶ 8. This rule cleaves State medical-marijuana programs in two, placing State-registered marijuana companies on opposite sides of a newly created federal divide. One group includes the companies that voluntarily applied with the federal government before June 26. The other comprises those who did not. Those two groups cannot do business with each other beginning on November 29. *Id.* ¶ 11. The result: each previously integrated State market is now divided into two groups, each hermetically sealed by federal fiat—and neither of which knew that their pre-June 26 actions would determine their fate.

That division creates significant negative consequences in States that closely regulate medical marijuana. Utah provides a paradigmatic

example. Relatively few Utah companies are permitted to engage in medical marijuana production, and those that do are subject to careful scrutiny. In fact, Utah currently allows only "eight companies to be Medical Cannabis Cultivators." *Medical Cannabis Cultivation*, Utah Dep't of Agric. & Food, https://ag.utah.gov/specialized-products/medical-cannabis/medical-cannabis-cultivators/. And each of those eight companies complies with strict requirements to ensure that their products are used only for lawful purposes. Utah cultivators must "ensure that any cannabis growing at the cannabis cultivation facility is not visible from the ground level." Utah Code § 4-41a-501(1). They must "use a unique identifier that is connected to the facility's inventory control system" to track "each cannabis plant," "each unique harvest," "each batch of cannabis" transferred, and even any discarded cannabis plants. *Id.* § 4-41a-501(2). And they must keep detailed records as required by Utah regulators. *Id.* § 4-41a-501(6)(a). Utah also imposes rules on "cannabis production establishment[s]" that process the cannabis after it is grown. *Id.* § 4-41a-401 *et seq.*

On the distribution side, Utah law is similarly comprehensive. The State may only "issue up to 17 medical cannabis pharmacy

licenses." *Id.* § 4-41a-1005(1). Successful licensees must show that they satisfy factors such as patient accessibility, community safety, and economic viability. *Id.* § 4-41a-1005(2)(a). Two of the 17 licenses available may only be awarded to pharmacies that will serve a "medically underserved area." *Id.* § 4-41a-1006(3)(b)(i). And once licensed, a "medical cannabis pharmacy" may distribute only specific products in statutorily capped amounts to patients that can prove their ability to lawfully purchase marijuana. *Id.* § 4-41a-1102.

Utah's medical marijuana program is thus "limited in size and scope, providing strict regulatory controls on patient access, product availability, and licensing." Cannabis Law Deskbook § 2:5 (2026–2027 ed.). The State carefully controls how marijuana is grown, processed, tracked, and sold, and is highly selective in which companies it allows to enter the marijuana business. Legislative enactments continue to supply the "details for implementing a medical marijuana market in Utah," just as they have since Utah first created the market. *JLPR LLC v. Procurement Pol'y Bd.*, 2021 UT App 52, ¶ 2, 492 P.3d 784. Under those enactments, Utah administers medical marijuana to its residents through a limited number of qualified, monitored entities.

The Information runs roughshod over Utah's deliberate regulatory scheme. With so few companies given State licenses to begin with, the Information's division of those companies into two groups that cannot deal with each other will throw the Utah cannabis market into chaos. Petitioners assert that five Utah producers (including cultivators) and 14 Utah pharmacies qualify as Timely Applicants, while seven producers and two pharmacies are not. Emergency Mot. Ex. 5 ¶ 13. Over half of the relatively few companies permitted to supply marijuana products in Utah are thus now limited to only two potential buyers—one of which is located in one of Utah's most remote counties.[1] *Ibid.* And because four vertically integrated companies timely applied to register their *pharmacies* but not their *production* facilities—recall that the DEA's manufacturer and distributor applications did not open until October 5—those four companies now cannot stock their own products. *Id.* ¶ 14.

[1] The Information's requirements may also lead to other adverse consequences under Utah law. For instance, shifting volume to affiliated pharmacies could expose producers to Utah's anticompetitive-practices provision, Utah Code §§ 4-41a-102(4), 76-16-510. And the Information's laboratory carve-out may not fully cover Utah's mandatory state-lab batch testing. Information ¶ 10; *see* Utah Code § 4-41a-701.

The resulting harms require little imagination. The Information's new trade prohibitions will disrupt supply chains and throw Utah's carefully regulated medical marijuana industry into disarray. *E.g.*, *id.* ¶¶ 13–27. That interference alone causes significant harm to Amici States, which administer medical-only marijuana programs. This Circuit has long recognized as "common ground that States have an interest, as sovereigns, in exercising 'the power to create and enforce a legal code.'" *Alaska v. U.S. Dep't of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989) (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982)). Amici States have exercised that interest in part by establishing medical-only cannabis programs. By unlawfully limiting economic regulation originally within the States' purview, the DEA has directly harmed Amici States. *See, e.g.*, *Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 964 F.3d 1177, 1185 (D.C. Cir. 2020) (state agencies raised "a plausible claim that they have the authority to block local [energy products] from entering the federal market and FERC's Orders expressly take away that authority").

But Amici States and their resident businesses are not the only—and not the most important—victims. Critically, the greatest harm

inflicted by the Information falls on Amici States' citizens. Over 115,000 Utah patients are currently authorized to purchase medical marijuana. *Center for Medical Cannabis June 2026 Report*, Utah Dep't of Health & Hum. Servs. (July 1, 2026) at 3, https://medicalcannabis.utah.gov/wp-content/uploads/2026-06-Monthly-Report.pdf. And the number of Utah patients with a legitimate need for access to medical marijuana is growing. *Id.* at 5. Each of these patients has been vetted by a medical provider and has duly registered for permission through Utah's system. *See* Utah Code § 26B-4-213. Yet despite the Utah Legislature's best efforts to "ensure a geographic dispersal among licensees that is sufficient to reasonably maximize access to the largest number of medical cannabis cardholders," *id.* § 4-41a-1005(2)(a)(ii), Utah patients now face a wave of artificial scarcity. As supply becomes uncertain, prices rise and availability falls, leaving many patients without viable means to obtain legal medical treatment.

In placing artificial market divides between State-licensed cannabis companies, the DEA has upset years of work by Amici States to create safe and effective medical marijuana programs. Worse, it has

pulled the rug out from under patients seeking medical relief. The Information's new policy is as unwise as it is unlawful.

II. The DEA Information violates the Administrative Procedure Act because it is arbitrary, capricious, and contrary to law.

The harms inflicted by the Information sting all the more given the DEA's obvious failure to adhere to the requirements of the Administrative Procedure Act (APA). By design, the APA functions "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391 (2024) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 644 (1950)). Its "central purpose" is to "provid[e] a broad spectrum of judicial review of agency action." *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). Such review is especially important where a federal agency acts in a manner "contrary to law and arbitrary and capricious." *Sinclair Wyoming Refin. Co. LLC v. EPA*, 114 F.4th 693, 700 (D.C. Cir. 2024) (per curiam). DEA's Information violates the APA in both those ways.

First, the Information is contrary to law. The Controlled Substances Act empowers the Attorney General to "promulgate rules

and regulations . . . relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances." 21 U.S.C. § 821. It does not empower the DEA to impose sweeping commercial restrictions through internal guidance informally emailed to voluntary registrants. Because courts do not "read[ ] a phrase into the statute when Congress has left it out," Congress's limited grant of rulemaking authority to the Attorney General in this sphere bars the DEA's attempted end-run through an "Information." *Jawad v. Gates*, 832 F.3d 364, 370 (D.C. Cir. 2016) (quoting *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993)).

Though the Information does not purport to be a rule, it would violate the APA even if the DEA were now to belatedly characterize it as one. "Before an agency adopts a new substantive rule, the APA requires the agency to jump through certain procedural hoops that allow the public to weigh in on its proposal." *Nat'l Ass'n of Broads. v. FCC*, 147 F.4th 978, 992 (D.C. Cir. 2025). Those procedural hoops—public notice, opportunity for comment, incorporation of comments into a final rule, and promulgation—exist to ensure that the public can understand and contribute to the administrative process. The

Information implemented harsh new market limitations based on unchangeable past actions without any procedure (or even advance warning) at all. That attempt to "'pull a surprise switcheroo' on interested parties" is exactly what the APA is designed to prevent. *Ibid.* (quoting *Env't Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005)).

For similar reasons, the DEA Information is also "arbitrary" and "capricious." 5 U.S.C. § 706(2)(A). The APA "requires that agency action be reasonable and reasonably explained." *Huntsman Petrochemical LLC v. EPA*, 114 F.4th 727, 735 (D.C. Cir. 2024) (quotation omitted). In other words, an agency cannot "entirely fail[] to consider an important aspect of the problem," "offer[] an explanation for its decision that runs counter to the evidence before the agency," or fail to "examine the relevant data and articulate a satisfactory explanation for its action." *Ibid.* (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

The DEA violated these established principles in issuing the Information. It failed to consider the consequences to market participants, State regulators, and patients created by its new

restrictions (and by its arbitrarily chosen November 29 deadline). It ignored existing reliance interests developed by States and their licensees through existing regulatory structures. It imposed new trade restrictions based on an already-passed deadline that businesses did not know existed when it occurred. And it declined to address businesses' reliance on the Final Rule, explain why a longer or more tailored transition was insufficient, or—other than a bare reference to 21 C.F.R. 1301.13—offer any reasoned basis for its decision at all. Information ¶¶ 1, 3, 7. The Information is a model of arbitrary and capricious agency action.

The DEA's Information is a gambit designed to circumvent the APA and impose substantive regulation without notice or accountability. This Court has consistently, and correctly, rejected such efforts to evade APA review as unlawful. *E.g.*, *City of Billings v. TSA*, 153 F.4th 46, 53 (D.C. Cir. 2025) ("[A]n agency cannot simply rulemake its way out of the APA's requirements for rulemaking."). It should again do so here.

Conclusion

The DEA Information is harmful to Amici States and unlawful under the APA. This Court should grant Petitioners' emergency motion and stay enforcement of the Information pending its disposition of the petition for review.

Respectfully submitted,

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Certificate of Compliance

Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, this brief contains 2,982 words, excluding the parts of the document exempted by Rule 32(f), and complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6), as required by Rule 27(d)(1)(E), because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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