Minorities for Medical Marijuana (M4MM)

Executive Summary

June 29, 2026 DEA ALJ Hearing, Adult-Use Marijuana Rescheduling, and the 21 U.S.C. § 811(d)(1) / § 811(a) Conflict Problem

PREPARED FOR	M4MM leadership and stakeholders
PURPOSE	Clarify what the June 29 hearing can decide, what it cannot legalize, and where the § 811(d)(1) / § 811(a) dual-track theory is vulnerable.
IMPORTANT NOTE	This is a legal-policy and strategic planning summary, not legal advice.

Core Finding

Adult-use marijuana cannot be made federally lawful as adult-use marijuana through the ordinary administrative rescheduling process in 21 U.S.C. § 811(a). DEA can potentially reschedule the controlled substance "marijuana" from Schedule I to Schedule III if the statutory record supports Schedule III findings, but that is not the same thing as legalizing state adult-use cultivation, dispensary sales, consumer possession, interstate commerce, advertising, banking, insurance, or non-FDA-approved product claims under federal law.

Schedule III remains a controlled-substance schedule built around accepted medical use, federal registration, prescription/dispensing controls, manufacturing/distribution restrictions, recordkeeping, and enforcement. It is not a recreational-use category.

Second Finding: The Dual-Track Conflict

The Blanche strategy creates a doctrinal tension because DOJ used § 811(d)(1) to immediately place FDA-approved marijuana products and qualifying state-licensed medical marijuana activity into Schedule III, while also restarting a § 811(a) hearing to consider broader Schedule III treatment for marijuana. The structure is defensible only if the § 811(d)(1) order is treated as a narrow interim treaty-control bridge and the § 811(a) hearing builds an independent formal rulemaking record.

If DOJ treats the § 811(d)(1) order as proof that the broader § 811(a) hearing is already decided, or uses the § 811(a) process to backfill legal deficiencies in the § 811(d)(1) order, the combined structure becomes substantially more vulnerable to judicial attack.

What the June 29 Hearing Is — and Is Not

What it is	What it can decide	What it cannot decide alone
Formal CSA/APA rescheduling hearing under § 811(a).	Whether marijuana should be transferred to Schedule III based on the record.	It cannot create a complete adult-use federal legalization system.
Evidence and expert-opinion proceeding.	Abuse potential, medical use, safety, dependence, public health risk, and related statutory factors.	It cannot make state adult-use operators federally lawful without Congress or a separate statutory carveout.
A proceeding tied to the May 21, 2024 proposed rule.	A broader Schedule III final rule if the record supports it.	It cannot erase FD&C Act, tax, banking, immigration, interstate-commerce, and enforcement conflicts.

Why Schedule III Does Not Equal Adult-Use Legalization

- Schedules III, IV, and V require a currently accepted medical use in treatment in the United States. Adult-use marijuana, by definition, is nonmedical consumer use.
- A substance can have accepted medical use and qualify for Schedule III, but lawful activity under that schedule remains tied to the federal controlled-substance system.
- Rescheduling may reduce federal conflict and improve research or tax posture, but it does not create lawful recreational possession, sales, interstate commerce, or pharmacy-free distribution.
- Administrative descheduling is also unlikely on the current record because the HHS/Biden/Garland rationale supports continued control at a lower schedule, not removal from all schedules.

Dual-Track Defensibility Test

Defensible if DOJ says...	Vulnerable if DOJ...
§ 811(d)(1) is a narrow interim treaty-control bridge.	Treats the hearing as a formality.
§ 811(a) will build an independent record.	Uses § 811(a) to repair § 811(d)(1) defects.
The medical order is transitional and subject to modification.	Claims state medical systems are treaty-compliant without proof.
The broader hearing is not prejudged.	Claims Schedule III legalizes adult-use activity.
Implementation standards will be separately proposed.	Terminates prior proceedings without a reasoned explanation.

Recommended M4MM Filing Position

- Support broader Schedule III rescheduling of marijuana as a substance, grounded in HHS/FDA medical and scientific findings.
- Reject the claim that Schedule III equals adult-use legalization.
- Demand a separate implementation rule addressing DEA registration, FDA/FD&C Act status, state medical/adult-use separation, therapeutic-order rules, labeling, testing, disposal, import/export limits, recordkeeping, patient protections, tax guidance, banking, and insurance.
- Demand equity transition support so compliance upgrades do not become a consolidation tool against minority-owned, social equity, small, and legacy medical operators.
- Demand clarification of the relationship between the § 811(d)(1) final order and the § 811(a) broader rulemaking.

Strategic Message for Leadership and Stakeholders

M4MM should use a disciplined message: support rescheduling marijuana out of Schedule I; support medical recognition; oppose false claims that Schedule III administratively legalizes adult-use marijuana; and demand a separate, equity-protective federal-state implementation rule before operators, states, banks, insurers, and patients are pushed into a legally unstable system.

Immediate Next Steps

- Prepare a concise M4MM position statement for use before the June 29 hearing.
- Develop hearing comments that preserve M4MM's pro-rescheduling position while rejecting adult-use shortcut claims.
- Create a medical cannabis federal-readiness checklist for state licensees.
- Draft model state amendments for medical/adult-use inventory separation, therapeutic orders, patient information, batch records, adverse-event reporting, secure disposal, inspections, and federal data compatibility.
- Prepare a business advisory warning operators not to over-rely on Schedule III until DOJ/DEA/FDA/Treasury guidance is clear.

Source Notes Used in the Underlying Report

- 21 U.S.C. § 811: authority and criteria for classification of substances, including § 811(a), § 811(b), § 811(c), and § 811(d).
- 21 U.S.C. § 812: controlled-substance schedule criteria, including Schedule III's currently accepted medical use requirement.
- DOJ/DEA hearing notice and April 23, 2026 DOJ press release materials referenced in the report.
- DOJ/DEA May 21, 2024 NPRM, Schedules of Controlled Substances: Rescheduling of Marijuana.
- HHS/Biden/Garland rescheduling materials and M4MM policy materials summarizing accepted medical use and Schedule III recommendation.
- Supporting legal authorities and analyses cited in the report, including Alliance for Cannabis Therapeutics, Sisley, and related CSA/Single Convention materials.