October 30, 2026

The Honorable Terrance Cole
Administrator
U.S. Drug Enforcement Administration
700 Army Navy Drive
Arlington, VA 22202

The Honorable Kyle Diamantas
Acting Commissioner of the FDA
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Dear Administrator Cole and Acting Commissioner Diamantas:

On behalf of the Association of State Criminal Investigative Agencies, Federal Law Enforcement Officers Association, National District Attorneys Association, National HIDTA Directors Association, National Narcotics Officers' Associations' Coalition, and the National Sheriffs Association, we write to urge the Drug Enforcement Administration (DEA), in consultation with the Food and Drug Administration (FDA), to permanently place the entire kratom plant (*Mitragyna speciosa*) and its preparations regardless of 7-hydroxymitragynine or mitragynine pseudoindoxyl concentration, mitragynine, all of its pharmacologically active alkaloids, and all of its semi-synthetic and synthetic analogues in Schedule I of the Controlled Substances Act.

As supporters of the DEA's temporary placement of MGM-15 and MGM-16 in Schedule I[1] and the very recent Notice of Intent regarding 7-hydroxymitragynine (7-OH) and mitragynine pseudoindoxyl (MP)[2], we believe permanent scheduling for *all* kratom products is the next necessary step to ensure public safety. While we support these actions, a partial, threshold-based approach leaves dangerous products on store shelves and leaves those who must enforce the law, including prosecutors, law enforcement, and forensic laboratories, with a standard that is difficult to apply.

As stated in the supporting discussions of the most recent Notice of Intent, the DEA makes clear that there are no current acceptable medical uses nor accepted safety studies regarding Kratom and its related compounds and that no concentration of 7-hydroxymitragynine ("7-OH") or mitragynine pseudoindoxyl ("MP") are safe:

> *Available data and information for 7-hydroxymitragynine and mitragynine pseudoindoxyl indicate that these substances have a high potential for abuse, no*

[1] *Schedules of Controlled Substances: Temporary Placement of Mitragynine Pseudoindoxyl, MGM-15, and MGM-16 in Schedule I*, 91 Fed. Reg. 54948 (Aug. 26, 2026) (codified at 21 C.F.R. § 1308.11(h))
[2] *Schedules of Controlled Substances: Temporary Placement of 7-Hydroxymitragynine and Mitragynine Pseudoindoxyl Above a Specified Threshold in Schedule I*, 91 Fed. Reg. 65370 (proposed Oct. 14, 2026) (to be codified at 21 C.F.R. pt. 1308)

currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

Our concern, as voiced from stakeholders in the prosecutor, law enforcement, and forensic chemistry communities, is that establishing arbitrary concentration thresholds for two minor components of the kratom without controlling mitragynine will create a loophole and may bring to market kratom or mitragynine products at concentrations which create high levels of 7-OH and MP *in vivo* through the direct metabolism of mitragynine. Mitragynine itself has no currently accepted medical uses nor a well-understood toxicological profile[3].

We see the consequences of kratom products in our communities every day. These products are openly sold in gas stations and vape/smoke shops and are commonly marketed as "natural" and safe. Yet the FDA states, 7-OH produces respiratory depression with more than 3-fold greater potency than morphine, and the DEA found that mitragynine pseudoindoxyl, MGM-15, and MGM-16 are pharmacologically similar to, and more potent than, morphine.[4] Consumers often have no way of knowing which of these substances, or how much, is in a product simply labeled "kratom."

What we do know is that the number of overdoses on kratom is rising. The DEA TOX program has identified 7-OH in 85 cases since 2019, 55 of which were fatal.[5] The DEA also reports that between 2020 and 2025 there has been a significant increase in positive identification of 7-OH in fatal overdose cases.[6] Behind those numbers are families who have lost loved ones, and individuals who became dependent on a product they believed to be a harmless natural remedy.

While the recent Notice of Intent is helpful, the current threshold approach creates serious problems for enforcement. It also poses a threat to communities as "neither HHS nor DEA has made a finding that these substances are safe to use at below-threshold levels."[7] Under this Notice, kratom products are controlled only if they contain 7-OH or MP at a threshold of more than 1 mg per gram, or 1 mg per milliliter. In practice, this means:

- <u>Every seizure must be quantified:</u> A presence-based standard, as the DEA adopted for MGM-15 and MGM-16, lets a laboratory simply identify a controlled substance. Threshold standards require laboratories to develop sensitive and validated methods to measure 7-OH and/or MP concentrations in every sample, resulting in more lengthy and costly testing. Few forensic laboratories are likely to have the instrumentation or expertise to reliably analyze these products.

- <u>The threshold does not reflect how the drug works in the body:</u> Mitragynine is metabolized into 7-OH after it is ingested, so a product below the 7-OH threshold at the

[3] Babun AA, Evans BR, Volic IN, Wood S, Knighton K, Lopez F, Tufts P. Kratom Toxicity: Pharmacologic Mechanisms, Clinical Risks, and Management Considerations. Cureus. 2026 Jul 24;18(7): e113280. doi: 10.7759/cureus.113280. PMID: 42634663; PMCID: PMC13499954.
[4] US Food & Drug Admin., *7-OH: An Assessment of the Scientific Data & Toxicological Concerns Around an Emerging Opioid Threat 6*; 91 Fed. Reg. 54948.
[5] 91 Fed. Reg. 65370.
[6] *Id.* at 65370.
[7] *Id.* at 65370.

point of sale will deliver a controlled opioid to the user which will vary from the dosage, the type of product, any inconsistency within similar products, and the genetics and health of the consumer.

- The threshold is prone to abuse: A threshold permits the industry to create products with an almost unlimited amount of 7OH when mixed with fillers such as sugar or water. For example, a 12 oz energy drink could contain up to 355 mg of 7OH. Such a drink would not be a controlled substance under the proposed threshold. A typical candy bar weighs between 40-50 grams. This threshold permits 40-50 mg of 7OH to be added to such a product before it qualifies as a controlled substance.

- Federal and state law will diverge: Ten states prohibit 7-OH, others cap its concentration, and 19 have enacted kratom consumer protection acts that permit its sale.[8] This patchwork approach allows the same product to be lawful in one state and a Schedule I substance in another.

A single, clear federal standard that controls the plant and its pharmacologically active alkaloids would give consumers, retailers, law enforcement, and the courts a rule they can understand and apply. For these reasons, we respectfully urge:

1. The DEA, with FDA, to temporarily control on an emergency basis and place into Schedule 1 all kratom and its preparations without respect to any alkaloid threshold concentration, 7-hydroxymitragynine, mitragynine, mitragynine pseudoindoxyl, MGM-15, and MGM-16, along with their isomers, derivatives, and salts.
2. The FDA to promptly complete the scientific and medical evaluations needed to provide the DEA a permanent scheduling recommendation for the full kratom plant, its derivatives, and all semi-synthetic and synthetic analogues marketed as natural products.
3. The DEA and FDA to adopt a presence-based standard, rather than a concentration threshold, so that state and local laboratories can identify controlled kratom products efficiently and consistently.

America's prosecutors and law enforcement stand ready to work with the DEA and FDA to protect the public from these dangerous substances. Thank you for your attention to this emerging threat and your diligence in keeping our communities safe.

Sincerely,

Association of State Criminal Investigative Agencies
Federal Law Enforcement Officers Association
National District Attorneys Association
National HIDTA Directors Association
National Narcotics Officers' Associations' Coalition
National Sheriffs Association

[8] *Id.* at 65375.