

July 7, 2026

By CM/ECF

Clifton Cislak, Clerk of Court
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *Teva Pharmaceuticals USA, Inc. v. Kennedy*, No. 25-5425 (argued May 5, 2026).

Dear Mr. Cislak:

We write in response to the Government’s letter regarding *Mullin v. Doe*, No. 25-1083 (U.S. June 25, 2026).

The statute in *Mullin* precludes “review of any determination” “with respect to” the decision to terminate Temporary Protected Status (TPS). 8 U.S.C. § 1254a(b)(5)(A). The Court acknowledged that “determination” could mean a singular decision or chain of events leading to a final decision, because “with respect to” “generally has a broadening effect.” Slip op. 12 (citation omitted). The *Mullin* plaintiffs either challenged several “discrete decision[s]”—that certain “country conditions” justified terminating their TPS designations—or they challenged the “steps” in “the process that led to” the final, unreviewable termination decision—how information specific to each country was communicated or decided. *Id.* at 13. And if a “final agency action is unreviewable, then so too are subsidiary determinations.” *Id.* at 18.

By contrast, Teva brought a “general collateral challenge[.]” to CMS’s statutory interpretation in separately promulgated guidance, which is its own final agency action. *Castaneira v. Noem*, 138 F.4th 540, 550 (D.C. Cir. 2025) (citation omitted). CMS’s guidance did not “merge into” CMS’s selection of IPAY 2027 drugs. *Mullin*, slip op. 17. Indeed, *Mullin* relied on *DCH Regional Medical*

Center v. Azar, 925 F.3d 503 (D.C. Cir. 2019), which Teva already explained is consistent with review of its claims. Reply Br. 11.

As for *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), *Mullin* merely rejected the argument that *McNary* held “‘determination’ applies only to substantive”—not procedural—“matters.” Slip op. 14. *Mullin* did not undermine the principle that “even if judicial review of a [specific] decision is barred,” parties can still “challenge the general rules leading to that decision.” *Florida Health Scis. Ctr., Inc. v. HHS*, 830 F.3d 515, 521 (D.C. Cir. 2016) (quotation marks omitted).

Finally, as between *McNary* and *Mullin*, *McNary* is the closer statutory analogue. The IRA provision at issue here lacks the broadening “with respect to” language *Mullin* relied on, but it shares the defining feature of the statute in *McNary*: Both refer to a “single act.” *Mullin*, slip op. 14; see Reply Br. 13.

Respectfully submitted,

/s/ Sean Marotta
Sean Marotta

Counsel for Plaintiffs-Appellants

cc: All counsel of record (by CM/ECF)