

May 19, 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 yesterday noting that the Supreme Court has denied six petitions seeking review of constitutional challenges to the Inflation Reduction Act’s Drug Price Negotiation Program. The Government’s reliance on the Supreme Court’s unreasoned denial order is misplaced for three reasons.

First, none of the petitions raised any of the statutory arguments that Teva presses here.

Second, the Government is incorrect that “[e]ach of the petitions presented the same due process arguments” as Teva. Three of the petitions presented entirely distinct constitutional claims having nothing to do with the Due Process Clause. *See Bristol Myers Squibb Co. v. Kennedy*, No. 25-751 (Takings Clause and First Amendment claims); *Novartis Pharms. Corp. v. Kennedy*, No. 25-902 (Anti-Injunction Act, Takings Clause, and First Amendment claims); *Janssen Pharms. Inc. v. Kennedy*, No. 25-749 (First Amendment and Takings Clause claims). A fourth petition touched on due-process principles but made an argument different than Teva’s. *See* Pet. 3, 19-22, *Novo Nordisk Inc. v. Kennedy*, No. 25-761 (arguing that procedural rights are constitutionally required when the government “forces parties to relinquish their constitutional rights as a condition of selling their products to private parties”).

Third, the denial of certiorari says nothing about the Supreme Court’s views on the merits. *E.g.*, *Brown v. Davenport*, 596 U.S. 118, 142 (2022) (“ ‘The denial of a writ of certiorari’ in this Court ‘imports no expression of opinion upon the merits of the case.’ ” (quoting *United States v. Carver*, 260 U.S. 482, 490 (1923))); *see also* Teva Opening Br. 54-59 (explaining why the circuit decisions the Government and District Court relied on are inapplicable here or otherwise miss the mark).

For all the reasons Teva has explained, the Drug Price Negotiation Program violates due process.

Respectfully submitted,

/s/ Sean Marotta
Sean Marotta

Counsel for Plaintiffs-Appellants

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