



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW, Rm. 7513
Washington, DC 20530

Maxwell A. Baldi
maxwellbaldi@usdoj.gov

(202) 532-0211

July 6, 2026

VIA CM/ECF

Clifton Cislak, Clerk
United States Court of Appeals for the D.C. Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., NW
Washington, DC 20001

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

Dear Mr. Cislak:

Pursuant to Federal Rule of Appellate Procedure 28(j), we write to notify this Court of the Supreme Court's decision in *Mullin v. Doe*, No. 25-1083, 2026 WL 1825840 (U.S. June 25, 2026).

In *Doe*, the Supreme Court interpreted the scope of 8 U. S. C. §1254a(b)(5)(A) which “allows no judicial review of any determination with respect to the termination of a [temporary-protected-status (TPS)] designation.” 2026 WL 1825840, at *2 (cleaned up). Noting that “it is common to use the term ‘determination’” in the “broad sense” of meaning “the chain of events leading up to a decision,” *Doe* held that the provision barred review of both the decision to revoke TPS and the steps leading to that decision. *Id.* at *7-8. The Court looked to its decision in *McNary v. Haitian Refugee Center, Inc.*, which it explained “turned on the specific wording of the provision at issue” in that case rather than on adopting a narrow reading of the word “determination.” *Id.* at *9 (citing 498 U. S. 479, 492 (1991)). And the Court explained that because in agency review cases, “an agency’s subsidiary decisions merge into the final agency action, ... [i]f the final agency action is

unreviewable, then so too are subsidiary determinations.” *Id.* at *10 (citing *inter alia* *DCH Regional Medical Center v. Azar*, 925 F. 3d 503, 506 (D.C. Cir. 2019)). As the Court emphasized, “[t]his important principle ensures that challengers cannot avoid a judicial-review bar by creative pleading or clever lawyering.” *Id.*

Doe confirms that plaintiffs’ statutory claims are not subject to judicial review. It rejects allowing a litigant to avoid a judicial-review bar by challenging subsidiary determinations when review of a final decision is barred. *See* Gov’t Br. 26-28. And it confirms that *McNary* permitted a collateral attack based on the specific statute at issue there, *see* Gov’t Br. 29-30, rather than on the sort of “broad principle,” 2026 WL 1825840, at *8, plaintiffs suggest, *see* Reply 12-14. At the very least, this Court should heed *Doe*’s warning not to “read far too much into” *McNary* and similar decisions. 2026 WL 1825840, at *8.

Respectfully submitted,

/s/ Maxwell A. Baldi
Maxwell A. Baldi

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