

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABBVIE INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES, *et al.*,

Defendants.

Case No. 1:26-cv-00431 (CJN)

**Oral Argument Scheduled for
September 25, 2026**

PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE

Plaintiff AbbVie Inc. respectfully submits this response to defendants' notice (Dkt. No. 47) suggesting the Court may wish to postpone the upcoming September 25 hearing in light of the deadline to seek rehearing of the D.C. Circuit's decision in *Teva Pharmaceuticals USA, Inc. v. Kennedy*, __ F.4th __, 2026 WL 2409591 (Aug. 18, 2026).

Defendants do not affirmatively ask the Court to postpone the hearing, which raises the question why they even filed this notice in the first place. In any event, the Court should not do so. As AbbVie has previously noted (Dkt. Nos. 44, 46), *Teva* addressed a different statutory challenge from the one presented here. Nor has the government explained how the possibility of a rehearing petition in *Teva* (much less the more remote possibility that such a petition will be granted) would materially affect the resolution of this case. In addition, the Inflation Reduction Act requires CMS to publish the "maximum fair price" for BOTOX by November 30. *See* 42 U.S.C. § 1320f-4(a)(1). Given the imminent harm that would arise from the publication of the "maximum fair price," AbbVie believes that this case should be resolved by that date to avoid the need for seeking interim relief. *See* Dkt. No. 18. Accordingly, AbbVie opposes any postponement, especially given that the September 25 date does not create any scheduling conflicts for the parties.

Date: September 14, 2026

Respectfully submitted,

/s/ Kannon K. Shanmugam
Kannon K. Shanmugam (D.C. Bar No. 474304)
James Durling (D.C. Bar No. 1617226)*
Eleanor K. Ritter (D.C. Bar No. 90041795)*
DAVIS POLK & WARDWELL LLP
1050 17th Street, N.W.
Washington, DC 20036
(202) 962-7000
kshanmugam@davispolk.com

William T. Marks (D.C. Bar No. 1029756)
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300

S. Conrad Scott (D.C. Bar No. 1685829)*
Joshua A. Altman*
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

*Admitted *pro hac vice*

Counsel for Plaintiff AbbVie Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2026, I electronically filed this document with the Court by using the CM/ECF system, and that this document was distributed via the Court's CM/ECF system.

/s/ Kannon K. Shanmugam
Kannon K. Shanmugam