

No.

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**In the Supreme Court of the United States**

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CROCS, INC., PETITIONER,

*v.*

INTERNATIONAL TRADE COMMISSION

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT*

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**PETITION FOR A WRIT OF CERTIORARI**

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JOHN P. ELWOOD  
*Counsel of Record*  
ELISABETH S. THEODORE  
DAVID A. CAINE  
DANIEL YABLON  
SPENCER FABER  
ARNOLD & PORTER  
KAYE SCHOLER LLP  
601 Massachusetts Ave. NW  
Washington, DC 20001  
(202) 942-5000  
john.elwood@arnoldporter.com

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### **QUESTION PRESENTED**

Under the final judgment rule, a judicial or agency decision is final, and thus ripe for appellate review, only once there is nothing left to decide. That longstanding rule ensures clear guidance for litigants, safeguards judicial resources, and avoids needless piecemeal appeals.

Nonetheless, the Federal Circuit below announced a different rule for determinations of the International Trade Commission under Section 337 of the Tariff Act of 1930. When the Commission issues a single determination excluding some products from entry but finding no violation for others, the court of appeals held that the decision is final only as to the Commission's no-violation findings. As the Federal Circuit acknowledged, the rule it announced below not only permits, but indeed compels, piecemeal appeals by a single party from the same administrative decision. In so doing, the Federal Circuit deepened an acknowledged split among the courts of appeals on the standard for finality of agency decisions.

The question presented is:

Whether an agency disposition is final as to some issues, thus triggering deadlines for judicial review, while other issues decided in the same disposition remain subject to further executive or administrative review.

### **PARTIES TO THE PROCEEDING**

Petitioner Crocs, Inc. (NASDAQ: CROX) was the appellant in the Court of Appeals for the Federal Circuit and the complainant before the International Trade Commission.

Respondent International Trade Commission was the appellee in the Court of Appeals for the Federal Circuit.

**RULE 29.6 STATEMENT**

Petitioner Crocs, Inc. (NASDAQ: CROX), a Delaware corporation, states that it has no parent corporation and no publicly held company owns more than ten percent of its stock.

### **RELATED PROCEEDINGS**

United States International Trade Commission:

*In re Certain Casual Footwear & Packaging Thereof*,  
No. 337-TA-1270 (Sept. 14, 2023)

United States Court of Appeals (Fed. Cir.):

*Crocs, Inc. v. International Trade Commission*,  
No. 2024-1300 (Jan. 8, 2026)

*Crocs, Inc. v. International Trade Commission*,  
No. 2024-1300 (Apr. 27, 2026) (denying rehearing  
and rehearing en banc)

Supreme Court of the United States (U.S.):

*Crocs, Inc. v. International Trade Commission*,  
No. 25A1364 (June 8, 2026)

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## **PETITION FOR A WRIT OF CERTIORARI**

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### **OPINIONS BELOW**

The opinion of the court of appeals (App. 1a-13a) is reported at 163 F.4th 1374. The order of the court of appeals denying rehearing (App. 136a-137a) is unreported. The decision of the International Trade Commission (App. 14a-25a) is unreported, but available at 2023 WL 6142345.

### **JURISDICTION**

The judgment of the court of appeals was entered on January 8, 2026. The court of appeals denied a timely petition for rehearing en banc on April 27, 2026. The Chief Justice extended the time to file a petition for a writ of certiorari to and including September 24, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### **STATUTORY PROVISIONS INVOLVED**

Pertinent statutory provisions are reproduced at App. 138a-157a.

### **STATEMENT OF THE CASE**

The courts of appeals are openly divided over whether a single agency determination, set forth in a single decision document, becomes final for appellate review piecemeal if a portion of the decision is subject to additional administrative review. Driven by bedrock principles of finality that have governed federal appellate review since the First Judiciary Act, the Fourth and D.C. Circuits say no: “[A]n agency action cannot be considered nonfinal for one purpose and final for another.” *Bellsouth Corp. v. FCC*, 17 F.3d 1487, 1489 (D.C. Cir. 1994). Mostly driven by considerations of expediency (allowing those portions of a case that have been conclusively resolved to proceed to appeal), the Ninth Circuit says yes—now joined by the Federal Circuit below. That conflict was

dispositive here. The International Trade Commission issued one determination resolving its investigation of trademark infringement claims brought by petitioner Crocs, Inc., and transmitted its single determination for Presidential review of the portion ordering certain products excluded. Crocs filed one notice of appeal after the review period ended. The Federal Circuit held that *two* notices of appeal were required for review of that single ITC determination—each subject to a different appeal deadline—and dismissed Crocs’ principal claims as untimely.

The Federal Circuit’s rule compels duplicative appellate proceedings for no reason. The court deemed the Commission’s no-violation findings immediately appealable, even though the exclusion orders contained in the same determination remained nonfinal pending expiration of the period for Executive Branch review. Only 60 days separate the two supposed deadlines. Yet the Federal Circuit’s rule requires a party to file two appeals from a single decision—appeals which will inevitably be consolidated soon after. It is a formalism that serves no purpose besides injecting needless complexity into what should be straightforward review of a single agency decision. And it creates a trap for the unwary: a party that appeals a Commission determination immediately risks a premature appeal as to the issues still under Presidential review; a party that waits until the entire disposition is final would be too late. “Even a modicum of concern for judicial economy militates strongly against concurrent review in this recurring situation.” *Bellsouth Corp.*, 17 F.3d at 1489.

The conflict is acknowledged and entrenched—and with the addition of the Federal Circuit, there is no prospect that the courts will reconcile their divergent approaches without this Court’s intervention. Four circuits have taken sides, three have expressly

acknowledged the conflict, and two have denied rehearing en banc. Those four courts include two that have exclusive jurisdiction over many appeals from agency decisionmaking, as well as the largest regional circuit. Because the Federal Circuit has exclusive jurisdiction over ITC appeals, no further percolation is possible in that important context.

The Federal Circuit's rule is also wrong. Precedent dating to the First Judiciary Act uniformly holds that a tribunal's disposition is final, and thus subject to appellate review, only when it fully resolves the controversy before it. Indeed, the decision subjects ITC appeals to a different finality rule than the one governing the Federal Circuit's jurisdiction over appeals from multiple other courts. See 28 U.S.C. § 1295(a)(1), (2), (3), (5), (6). And it is wrong as a matter of common sense, because it compels pointless seriatim appeals of the same agency decision, giving a 60-day head start to a subset of appellate issues that will inevitably be consolidated with others after a second notice of appeal is filed. There is simply no sound reason for the Federal Circuit's conclusion that a party must file two separate notices of appeal within 60 days to preserve its ability to challenge a single agency decision.

Nor are there any obstacles to review. The finality issue was preserved below, briefed at length, and authoritatively decided in a published opinion. Rehearing en banc was denied. That the Federal Circuit has exclusive jurisdiction over appeals from the ITC's determinations makes review all the more urgent here; while there might be some possibility of percolation in other administrative contexts, the Federal Circuit's word below on the appeal deadlines for ITC determinations will otherwise almost certainly be the last.

Review is warranted in this case.

### A. Legal Background

1. Under Section 337 of the Tariff Act of 1930, the ITC “shall investigate” alleged import violations, including the importation of articles that “infringe a valid and enforceable United States trademark.” 19 U.S.C. § 1337(a), (b). “The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation” and may exclude articles it finds unlawful to import into the United States. *Id.* § 1337(c).

A complaint under Section 337 triggers an adversary process akin to a judicial proceeding. “All legal and equitable defenses may be presented in all cases.” *Ibid.* Both the complainant and respondents are entitled to participate in the proceedings, and the Commission may issue a determination only “on the record after notice and opportunity for a hearing” in conformity with the Administrative Procedure Act’s formal-adjudication provisions. *Ibid.* To ensure timely adjudication of alleged violations, Section 337 requires the Commission to “make its determination under this section at the earliest practicable time” after it publishes notice of its investigation. *Id.* § 1337(b)(1). Within 45 days of initiating an investigation, the Commission also must “establish a target date for its final determination.” *Ibid.*

If the Commission finds a Section 337 violation, “it shall direct that the articles concerned \*\*\* be excluded from entry into the United States,” unless enumerated public-interest factors weigh against exclusion. *Id.* § 1337(d)(1). Specifically, in ordering exclusion, the Commission may consider “the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.” *Ibid.*

An order excluding imports may take the form of a “general exclusion” order that prohibits importation of

the articles by any person, or an order “limited to persons determined by the Commission to be violating this section.” *Id.* § 1337(d)(2).

Section 337 also authorizes Presidential review of the Commission’s determinations ordering exclusion to ensure that they align with the public interest. When the Commission finds a Section 337 violation, it must “publish such determination in the Federal Register” and “transmit to the President a copy of such determination and the action taken,” “together with the record upon which such determination is based.” *Id.* § 1337(j)(1). If the President, within 60 days, “disapproves such determination and notifies the Commission of his disapproval,” the Commission’s determination “shall have no force or effect.” *Id.* § 1337(j)(2). Otherwise, the Commission’s determination is “effective upon publication” in the Federal Register. *Id.* § 1337(j)(2), (3). During the Presidential review period, excluded articles may be imported subject to a bond in an amount determined by the Commission. *Id.* § 1337(j)(3).

2. The Federal Circuit has jurisdiction to review “the final determinations of the United States International Trade Commission \*\*\* made under section 337.” 28 U.S.C. § 1295(a)(6). “Any person adversely affected by a final determination of the Commission \*\*\* may appeal such determination, within 60 days after the determination becomes final.” 19 U.S.C. § 1337(c).

Because a Commission determination finding import violations is subject to Presidential review, “such determination shall become final on the day after the close of [the review] period or the day on which the President notifies the Commission of his approval.” *Id.* § 1337(j)(4). In such cases, the 60-day deadline to appeal the Commission’s final determination begins to run only after the conclusion of Presidential review. *Ibid.*; see *id.* § 1337(c).

## **B. Factual and Procedural Background**

1. Petitioner Crocs, Inc., is the maker of the popular CROCS-brand casual footwear. Its universally recognized shoes are protected by federally registered trademarks, including the famous CROCS word mark—which attained “incontestable” status under federal trademark law in 2015—and multiple 3D marks protecting the shoes’ unique shape. See App. 33a-37a.

In mid-2021, Crocs filed an ITC complaint to protect its exclusive trademark rights from knock-offs imported from overseas. Its complaint identified infringing imports by 23 respondents, who marketed nearly identical shoes under names like “CROC.” 86 Fed. Reg. 36,303, 36,303 (July 9, 2021); see App. 29a-41a. The Commission instituted an investigation under Section 337, and Crocs later amended its complaint to add eleven additional respondents. 86 Fed. Reg. 66,337, 66,337 (Nov. 22, 2021); see App. 30a.

The Commission found four respondents in default and, over the course of several years of litigation, terminated several others pursuant to settlement agreements. App. 30a-31a. Three respondents contested the infringement allegations in the Commission investigation. App. 30a-31a.

Following an evidentiary hearing, an Administrative Law Judge ruled in favor of the respondents. The ALJ concluded that Crocs’ 3D marks lacked secondary meaning; that Crocs had not established infringement or dilution of any marks by the participating respondents; and that Crocs waived its infringement contentions against the defaulting respondents. App. 30a-31a.

2. Crocs appealed to the Commission, which issued its determination and supporting opinion September 14, 2023. App. 20a-21a, 31a. In its determination, the Commission set aside the ALJ’s decision that Crocs had waived its allegations against the defaulting respondents,

but otherwise affirmed or declined to review the ALJ's findings. App. 20a, 68a. It issued limited exclusion orders against the defaulting respondents, subject to a 100 percent bond during the 60-day Presidential review period, and terminated the investigation. App. 20a, 28a.

A week later, the Commission published its determination in the Federal Register. See 88 Fed. Reg. 64,926, 64,926 (Sept. 20, 2023). That published determination set forth the Commission's disposition of all allegations in the investigation, including its no-violation finding as to the participating respondents and its exclusion orders against the defaulting respondents. The Presidential review period expired November 14, 2023, without action from the President.

3. On December 22, 2023, Crocs noticed its appeal of the Commission's determination to the Federal Circuit. App. 158a-160a. Crocs sought review of both the Commission's finding of no violation as to the participating respondents and its entry of a limited, rather than general, exclusion order against the defaulting respondents. App. 2a. It identified the determination under review as the Commission's Notice of Final Determination, supporting opinion, and all findings and rulings that merged into the final determination. App. 159a.

4. The court of appeals affirmed in part and dismissed in part in a published opinion. App. 1a-13a. As to the remedy the Commission entered against the defaulting respondents, the court of appeals concluded that entry of a limited exclusion order was within the Commission's discretion. App. 2a. It thus affirmed the portion of the Commission's determination entering a limited exclusion order against those respondents. App. 11a-13a.

But the court dismissed the appeal of the portion of the Commission's determination that found no violation

by the participating respondents. App. 4a-10a. The court recognized that when the Commission issues a determination finding a Section 337 violation, that determination becomes final only following the 60-day Presidential review period. App. 6a. For that reason, the court explained, Crocs' appeal of "the entry of an exclusion order against the Defaulting Respondents" in the same determination was timely. App. 8a. Nonetheless, the court concluded that its "case law instructs that in investigations that have a mixed result \*\*\*, the notices of appeal for the different findings have distinct appeal windows." App. 8a.

The court rested that decision on two prior cases. In *Allied Corp. v. ITC*, 782 F.2d 982 (Fed. Cir. 1986), the Commission had issued two decisional documents on separate dates, and the Federal Circuit held that the petitioner had to appeal the first within 60 days of its issuance, rejecting the argument "that a § 337(c) proceeding is a single entity." *Id.* at 984. And in *Broadcom Corp. v. ITC*, 542 F.3d 894, 896-97 (Fed. Cir. 2008), the court declined to dismiss as premature an appeal of an order partially resolving a matter, because there was no further agency review of that partial disposition.

The court of appeals acknowledged that, unlike in *Allied* and *Broadcom*, "the Commission chose to issue both its decision of no violation against the Active Respondents and its decision to issue an exclusion order against the Defaulting Respondents in the same writing." App. 8a-9a. Indeed, the Commission issued and published in the Federal Register "only one Notice of Final Determination and Commission Opinion." App. 9a. But the court concluded that looking to the fact that the Commission issued only a single written decision "merely elevates form over substance." App. 9a. Because only the portion of the determination that contained the Commission's "violation finding" remained subject to

further review, the court held, the other findings in the Commission’s determination amounted to “a final decision of the Commission on the day it issued.” App. 8a. Thus, the court concluded, the 60-day period to file a notice of appeal as to those findings in the determination “began to run” immediately and expired on November 13, 2023. App. 8a.

The court of appeals denied rehearing en banc. App. 137a.

### **REASONS FOR GRANTING THE PETITION**

#### **I. THE DECISION BELOW WIDENS AN ENTRENCHED SPLIT OVER WHEN ISSUES DECIDED IN A SINGLE AGENCY DISPOSITION BECOME FINAL FOR APPELLATE REVIEW**

The decision below widens a recognized and intractable conflict among the courts of appeals over a basic question of finality: whether a single agency disposition can be final as to some issues while nonfinal as to others. On one side of the divide, the Fourth and D.C. Circuits hold that an agency disposition remains nonfinal while any part of it is subject to further administrative review, and thus an appeal is neither allowed nor required until the agency has finally resolved the dispute. On the other side of the split, the Ninth Circuit requires a party to seek immediate review of issues decided by an agency even while other issues in the same administrative decision remain subject to further agency process. Here, the Federal Circuit joined the Ninth, holding that a single agency disposition can be final as to some issues while nonfinal as to others, and a party that fails to take seriatim appeals of that single disposition forfeits its appellate rights.

This conflict is acknowledged and entrenched, and there is no prospect that the courts of appeals will reconcile their views. The Ninth Circuit has expressly

recognized and rejected the D.C. Circuit’s “view of finality.” *Cal. Dep’t of Water Res. v. FERC (Water Resources II)*, 361 F.3d 517, 520 (9th Cir. 2004). The leading treatise recognizes the same divide, describing the D.C. Circuit as adhering to a rule “contrary” to the Ninth Circuit’s. 16 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3942 n.64 (3d ed. 2026); see also 16AA Wright & Miller, *supra*, § 3961.3. The Federal Circuit has now joined that longstanding split.

This conflict implicates numerous agency review processes. It has recurred in cases arising under the Federal Power Act, the Communications Act, the Federal Mine Safety and Health Act, the securities laws, and, now, the Tariff Act. See, e.g., *Black v. SEC*, 125 F.4th 541 (4th Cir. 2025); *Saliba v. SEC*, 47 F.4th 961 (9th Cir. 2022); *Eagle Energy, Inc. v. Sec’y of Lab.*, 240 F.3d 319 (4th Cir. 2001); *Water Resources II*, 361 F.3d 517; *Bellsouth Corp. v. FCC*, 17 F.3d 1487 (D.C. Cir. 1994); *Steamboaters v. FERC*, 759 F.2d 1382, 1387-88 (9th Cir. 1985). The question is one of cross-cutting significance for appeals from agency adjudications. Only this Court’s review can resolve the split and restore uniformity and predictability for regulated parties under a host of administrative review regimes.

#### **A. The Fourth And D.C. Circuits Reject Piecemeal Finality Of A Single Agency Disposition**

The Fourth and D.C. Circuits expressly reject the view that one part of a single agency disposition can be final and reviewable while other parts of the same decision remain subject to further administrative review. So long as one part of an agency disposition remains before the Executive Branch, “the entire order is rendered nonfinal.” *Bellsouth*, 17 F.3d at 1489-90; see *Black*, 125 F.4th at 547 (“[W]hen Congress requires finality \*\*\* we must ensure that every matter in the controversy is decided in a single appeal.” (citation, quotation marks, and

alteration omitted)). “Put otherwise,” for an agency as for a court, “a final order ‘is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” *Black*, 125 F.4th at 546 (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

1. Start with the D.C. Circuit’s decision in *Bellsouth*. There, the FCC granted one applicant a licensing preference while denying another’s similar request. *Bellsouth*, 17 F.3d at 1488-89. The disappointed applicant petitioned for review of the portion of the FCC’s order granting a licensing preference to its competitor while seeking an agency rehearing as to the preference it sought for itself.

The D.C. Circuit rejected the applicant’s argument that the agency’s two holdings amounted to “separate adjudications,” *id.* at 1489, one a reviewable “final order[,]” 28 U.S.C. § 2342(1), and the other nonfinal. “[A]n agency action cannot be considered nonfinal for one purpose and final for another.” *Bellsouth*, 17 F.3d at 1489. As the court observed: “Even a modicum of concern for judicial economy militates strongly against concurrent review in this recurring situation.” *Ibid.* The court further explained that waiting until the agency fully resolved the dispute would present no risk, under this rule, that the “petition for review would be dismissed as untimely as to the [competitor licensure] issue.” *Id.* at 1490. So long as any part of the agency’s order remained subject to ongoing agency process, it was “nonfinal in its entirety.” *Ibid.*

Since *Bellsouth*, the D.C. Circuit has repeatedly applied that principle in determining that “[o]ngoing agency review renders an agency order non-final and judicial review premature.” *Marcum v. Salazar*, 694 F.3d 123, 128 (D.C. Cir. 2012); see, e.g., *Nostrum Pharms., LLC v. FDA*, 35 F.4th 820, 827 (D.C. Cir. 2022). And, recognizing that the Ninth Circuit had “rejected the

*Bellsouth* principle,” the D.C. Circuit has reiterated that “*Bellsouth* remains the law of this circuit.” *Mystic Dev., LLC v. FERC*, No. 06-1312, 2007 U.S. App. LEXIS 554, at \*2–3 (D.C. Cir. Jan. 9, 2007).

2. Like the D.C. Circuit, the Fourth Circuit holds that courts lack jurisdiction to review “a portion” of an agency order where “further proceedings” remain ongoing before the agency. *Black*, 125 F.4th at 546. In *Black*, an investment firm appealed a Securities and Exchange Commission order that affirmed fines imposed for two disciplinary violations but remanded on another. See *id.* at 545. The SEC urged the court to reach the merits of the disciplinary violation not subject to remand, contending that the court had “piecemeal jurisdiction to review this allegedly ‘final’ portion of the SEC Decision.” *Id.* at 546-47.

The Fourth Circuit disagreed. Analogizing to the standard for appellate jurisdiction over a final decision of a district court, the court held that an agency decision amounts to a final order only if it “‘ends the litigation on the merits and leaves nothing for the [agency] to do but execute the judgment.’” *Id.* at 546 (quoting *Catlin*, 324 U.S. at 233). “Put simply,” a party “must await the conclusion” of agency proceedings and seek review of the agency’s “‘final order’ resolving the entire case.” *Id.* at 547 (quoting 15 U.S.C. § 78y(a)(1)). In reaching that conclusion, the Fourth Circuit expressly declined to “adhere to a Ninth Circuit decision” finding jurisdiction over “part of an SEC decision” where other issues in the order remained pending before the agency. *Id.* at 546.

The Fourth Circuit has applied the same rule in other administrative contexts. In *Eagle Energy*, a mine operator sought review of the Federal Mine Safety and Health Review Commission’s finding that the operator’s regulatory violation was “significant and substantial.” 240 F.3d at 322. Although the Commission had refused to

review the ALJ's "significant and substantial" finding, and thus "ha[d] rendered its last word" on that issue, the Commission's then-pending review of other issues in the ALJ decision rendered the order nonfinal. See *id.* at 322-23. As the court explained, "when there is ongoing administrative review of some issues in [an agency] decision, the remaining issues are not rendered final for purpose of judicial review." *Id.* at 323. The "federal policy against piecemeal appeals" mandated that review "must wait until the Commission issues a final order disposing of the entire case." *Id.* at 325.

**B. The Ninth And Federal Circuits Embrace Piecemeal Finality Of A Single Agency Disposition**

1. "The Ninth Circuit takes another view of finality." *Water Resources II*, 361 F.3d at 520. That court has long allowed a party to obtain immediate review of an individual issue in an agency's single disposition even while other issues in that same disposition remain subject to further executive or administrative review. See, *e.g.*, *ibid.*; *Saliba*, 47 F.4th at 967; *MPS Merch. Servs., Inc. v. FERC*, 836 F.3d 1155, 1163 (9th Cir. 2016); *California ex rel. Harris v. FERC*, 809 F.3d 491, 498-500 (9th Cir. 2015); *Steamboaters*, 759 F.2d at 1387-88.

In *Water Resources II*, the Ninth Circuit staked out its disagreement with the D.C. Circuit's rule for finality. There, FERC issued an order denying rehearing on one issue while taking up two other issues anew. 361 F.3d at 520-21. The California Department of Water Resources sought judicial review of the issue on which rehearing was denied while seeking agency reconsideration of the newly decided issues. *Ibid.* The panel issued an opinion holding in passing that ongoing agency review of "other, unrelated issues" decided in the same order posed no barrier to review, and FERC petitioned for rehearing en banc. *Cal. Dep't of Water Res. v. FERC (Water Resources*

*I*), 341 F.3d 906, 909 (9th Cir. 2003); see *Water Resources II*, 361 F.3d at 520. Invoking the D.C. Circuit’s decision in *Bellsouth*, FERC urged that the court lacked jurisdiction to review any part of the order until a final decision was reached, because “the entire order [wa]s rendered nonfinal” by pending agency review. *Water Resources II*, 361 F.3d at 520 (quoting *Bellsouth*, 17 F.3d at 1489-90).

The court issued a precedential order denying rehearing and rehearing en banc. Declining to “follow [the] D.C. Circuit,” the Ninth Circuit held that it could properly review “discrete issues that FERC had resolved in the same order.” *Id.* at 520-21. As the court explained, longstanding Ninth Circuit precedent held that “the fact that one part of an agency order remains pending before the agency does not deprive this court of jurisdiction to review a discrete issue that has been definitively resolved by the agency.” *Id.* at 520. The court acknowledged the conflict with “the law in the D.C. Circuit.” *Id.* at 521. It concluded that “the potential to delay judicial review” of portions of agency decisions provided “sound reasons for our circuit to reject the [D.C. Circuit’s] view.” *Ibid.*

Since then, the Ninth Circuit has adhered to its position in a variety of administrative contexts. See, e.g., *Saliba*, 47 F.4th at 967; *MPS Merch. Servs.*, 836 F.3d at 1163; *Harris*, 809 F.3d at 498-500. In *Saliba*, for example, the SEC issued a single opinion addressing three restrictions barring a securities trader from participating in the securities industry, affirming two and remanding a third. *Saliba*, 47 F.4th at 966. In direct conflict with the Fourth Circuit’s decision in *Black*, the Ninth Circuit held that the SEC’s decision was an appealable “final order as to the two industry bars” while “not a final order” as to the third. *Id.* at 967; cf. *Black*, 125 F.4th at 546 (declining to follow the Ninth Circuit’s decision).

In so holding, the Ninth Circuit acknowledged the strong federal policy “disfavoring piecemeal appellate

review,” and that it was likely that a “later appeal from a new final order” in the same proceeding would follow. *Saliba*, 47 F.4th at 969 n.2. Nonetheless, the court deemed waiting “until the final sanction is resolved” to be an “intolerable” result. *Ibid.*

2. In its decision below, the Federal Circuit took the Ninth Circuit’s side of the split. Because only one of the issues addressed in the Commission’s determination triggered Presidential review, the court held the Commission’s other findings amounted to “a final decision of the Commission on the day it issued.” App. 8a. The court effectively held that every “final determination of the Commission” under 19 U.S.C. § 1337(c)—even if contained within a single determination document—is really a series of mini-determinations corresponding to particular issues, each with its own finality date.

Thus, “the 60-day period in Section 337(c) to file a notice of appeal began to run” in September 2023 on the issues not subject to further review, while other issues in the very same determination document remained nonfinal. App. 8a. Because Crocs filed only a single notice of appeal after all aspects of the “same writing” became final, the court dismissed the appeal in substantial part as untimely. App. 8a-10a.

The decision below directly conflicts with holdings of the Fourth and D.C. Circuits. Under the Federal Circuit’s decision, when some but not all findings in an agency order are “subject to presidential review or any other administrative proceedings,” “there will be different deadlines to file an appeal for such decisions.” App. 10a. That decision is flatly inconsistent with the D.C. Circuit’s rule that where agency proceedings remain ongoing as to any issue in an order, “the entire order is rendered nonfinal.” *Bellsouth*, 17 F.3d at 1489-90. And it contravenes the Fourth Circuit’s materially indistinguishable rule that a party “must await the

conclusion” of agency proceedings and seek review of the agency’s “final order resolving the entire case.” *Black*, 125 F.4th at 547 (quotation marks omitted). Under the Federal Circuit’s rule, parties may *not* await the conclusion of agency proceedings. As a result, regulated parties face different rules for finality in different circuits, with the risk that an appeal may be dismissed as premature or—worse—untimely if they take the wrong approach.

\* \* \*

Four circuits have now weighed in on this question, with three expressly acknowledging a circuit conflict, and two denying petitions for rehearing en banc that sought to reconcile their differences. The conflict is longstanding, entrenched, and unlikely to be resolved absent this Court’s intervention. And the courts that have staked out these irreconcilable positions include the two courts with exclusive jurisdiction over many agency appeals—the Federal and D.C. Circuits—as well as the Ninth Circuit, which handles the lion’s share of administrative agency appeals by volume. See Table B-5, U.S. Courts of Appeals Statistical Tables for the Federal Judiciary (June 30, 2026), Decisions in Cases Terminated on the Merits, by Nature of Proceeding, <https://www.uscourts.gov/data-news/data-tables/2026/06/30/statistical-tables-federal-judiciary/b-5>. This Court’s review is urgently needed to resolve the circuit split and restore a uniform federal standard for the finality of agency dispositions.

## II. THE DECISION BELOW IS WRONG

The Federal Circuit’s decision is deeply wrong, creating a trap for the unwary that mandates precisely the piecemeal appeals this Court’s finality jurisprudence precludes. Neither longstanding principles of finality nor anything in the statutory regime governing ITC appeals lends any support to requiring that the same party appeal twice from the same decision at different times.

A. The decision below conflicts with longstanding principles of finality and the rule against piecemeal review.

1. “Finality as a condition of review is an historic characteristic of federal appellate procedure” that was “written into the first Judiciary Act.” *Cobbledick v. United States*, 309 U.S. 323, 324 (1940). Under that historical tradition, appellate courts lack “power to review rulings \*\*\* until after the *entire controversy* has been concluded.” *Id.* at 326 (emphasis added). This Court has long recognized a “general rule that a party is entitled to a single appeal, to be deferred until final judgment,” because “piecemeal” review “undermines ‘efficient judicial administration.’” *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981)). In short: “The case is not to be sent up in fragments.” *Catlin*, 324 U.S. at 234 (quotation marks omitted).

Consistent with that rule, “a decision generally is ‘final’ under § 1291,” the principal statute governing federal appellate review, “only when it ‘resolves the entire case’—when it ‘ends the litigation’ (on the merits or otherwise) and ‘leaves nothing for the court to do but execute the judgment.’” *GEO Grp., Inc. v. Menocal*, 607 U.S. 438, 443 (2026) (quoting *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37-38 (2020)); cf. 28 U.S.C. § 1295(a)(6) (authorizing appellate jurisdiction over only “final” determinations of the ITC); 19 U.S.C. § 1337(c) (permitting presentation of “[a]ll legal and equitable defenses,” with a right of direct “appeal”). Under that standard, “a party must ordinarily raise all claims of error in a single appeal following final judgment.” *Flanagan v. United States*, 465 U.S. 259, 263 (1984). A necessary corollary is that when further review remains available for any portion of a decision, it is not “final” for purposes of appeal. Thus, a timely Rule 50(b) or Rule 59 motion

suspends appellate deadlines for the entire judgment, even if the motion addresses only part of it. See Fed. R. App. P. 4(a)(4)(A); *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 173-74 (1989).

2. A similar principle governs judicial review of agency decisions. “American administrative law is grounded in a conception of the relationship between reviewing courts and agencies modeled on the relationship between appeals courts and trial courts in civil litigation.” Thomas W. Merrill, *Article III, Agency Adjudication, and the Origins of the Appellate Review Model of Administrative Law*, 111 Colum. L. Rev. 939, 939 (2011). Where Congress has directed a court to review an agency’s final decision, “[l]ike considerations govern review of administrative orders.” *SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943). This Court has accordingly rejected a standard of finality for agency dispositions that “leads to piecemeal review[,] which at the least is inefficient and upon completion of the agency process might prove to have been unnecessary.” *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 242 (1980).

Accordingly, as the Fourth and D.C. Circuits have explained, the general standard for finality under the Administrative Procedure Act precludes piecemeal review. If a party requests agency “reconsideration of an order or *any part thereof*, the entire order is rendered nonfinal as to that party,” because “an agency action cannot be considered nonfinal for one purpose and final for another.” *Bellsouth*, 17 F.3d at 1489-90 (emphasis added); see 5 U.S.C. § 704 (availability of review turns on whether the “agency action” at issue is final). An agency order does not “mark the consummation of the agency’s decisionmaking process” when aspects of that order remain the subject of “further proceedings” within the Executive Branch. *Black*, 125 F.4th at 547 (quotation

marks omitted) (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997)).

3. The court of appeals’ holding that different aspects of a single written decision become final at different times, triggering “different deadlines to file an appeal,” App. 10a, flatly contravenes these principles. The “determination” here was a single decisional document—embodied in a single Federal Register notice—that addressed all aspects of an ITC proceeding pending Presidential review. See 88 Fed. Reg. at 64,926. As the court of appeals recognized, the Commission’s conclusion that the defaulting respondents should be barred from importing infringing articles was nonfinal under Section 337 because the President retained authority, for 60 days, to disapprove that decision. App. 9a-10a, 28a. Yet the court of appeals deemed the agency’s singular determination to be final for some purposes but not others.

As the court of appeals acknowledged, the rule it announced requires parties before the Commission in cases with a “mixed result” to file two separate notices of appeal, spaced 60 days apart, or forfeit judicial review. App. 7a-8a. That absurd result turns the strong judicial policy against “piecemeal, prejudgment appeals” on its head and “undermines efficient judicial administration.” *Mohawk*, 558 U.S. at 106 (quotation marks omitted). And it defies this Court’s directive to refrain from intrusion into agency decisionmaking before the “completion of the agency process,” *Standard Oil*, 449 U.S. at 242, particularly where the President’s resolution of the public interest factors might bear on the Commission’s decision to exclude some infringing articles while permitting importation of others.

**B.** Section 337 and the Federal Circuit’s jurisdictional statute only underscore that Congress did not impose a rule requiring multiple (and differently

timed) appeals from the same agency determination. The statutory regime, in both its plain language and its structure, contemplates only a single appeal from a single final determination at the conclusion of an ITC investigation.

1. Multiple provisions of Section 337 establish that a single document, denominated a “determination,” concludes a Commission investigation into alleged violations. Start with subsection (b). It directs the Commission to investigate any violations of Section 337 alleged in a complaint and then “conclude” its “investigation and make *its determination* \*\*\* at the earliest practicable time.” 19 U.S.C. § 1337(b)(1) (emphasis added). Subsection (b) likewise provides that “the Commission shall, within 45 days after an investigation is initiated, establish a target date for *its final determination*.” *Ibid.* (emphasis added).

Subsection (c) similarly directs the Commission to “determine, with respect to each investigation \*\*\*, whether or not there is a violation of this section,” authorizing aggrieved parties to appeal within 60 days after “*the determination* becomes final.” *Id.* § 1337(c) (emphasis added). Of course, before investigating, the Commission cannot know whether it will find that some or all alleged violations occurred, such that its determination will be subject to Presidential review. But the statute nonetheless requires a single target date for a “final determination”—that is, a document or order finally resolving all remaining aspects of “such investigation.” *Id.* § 1337(b)(1).

The Presidential review provision in subsection (j) confirms that a single “determination” document terminating an investigation becomes final all at once. Under that provision, if the Commission makes a determination that finds a violation, it shall “publish such determination in the Federal Register” and “transmit” a

“copy” to the President. “[S]uch determination”—that is, the entire “determination” published in the Federal Register and sent to the President—“shall become final” only after Presidential review. *Id.* § 1337(j)(1), (4). The only “determination” the statute references is the document published in the Federal Register, and the Commission publishes the entire determination in the Federal Register, not merely those findings that are subject to the President’s review. Indeed, the Commission here issued only a single “determination” for which it took a single vote, encompassing both its no-violation findings and its entry of a limited exclusion order, which it published as a single Federal Register entry. App. 19a-21a; see 88 Fed. Reg. 64,926.

2. The statute granting the Federal Circuit “exclusive jurisdiction” to hear numerous categories of appeals similarly forecloses piecemeal finality and multiple appeal deadlines for a single agency decision. 28 U.S.C. § 1295. Section 1295 uses the very same term—“final”—for each category of appealable decision, whether it be a “final determination[] of the United States International Trade Commission,” 28 U.S.C. § 1295(a)(6), “a final decision of the United States Court of Federal Claims,” § 1295(a)(3), “a final decision of the United States Court of International Trade,” § 1295(a)(5), or “a final decision of a district court of the United States” involving various subjects within the Federal Circuit’s exclusive jurisdiction, § 1295(a)(1), (2). Thus, the statute establishes parallel regimes for both categories of the Federal Circuit’s exclusive jurisdiction. The Federal Circuit applies the normal finality rule to appeals from lower court decisions under Section 1295. *E.g.*, *Nystrom v. Trex Co., Inc.*, 339 F.3d 1347, 1350 (Fed. Cir. 2003). The court of appeals’ conclusion that finality means something different for appeals from a formal adjudication by the

Commission than it does for appeals from a district court is irreconcilable with that statutory scheme.

As this Court has repeatedly held, “identical words and phrases within the same statute should normally be given the same meaning.” *Monsalvo Velázquez v. Bondi*, 604 U.S. 712, 726 (2025) (quoting *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007)). “And, if anything, that maxim may be ‘doubly appropriate’ where, as here, Congress employed the same term in multiple places ‘at the same time’ in the ‘same section of the [same] public law.’” *Ibid.* (quoting *Powerex*, 551 U.S. at 231-32); see Federal Courts Improvement Act of 1982 § 127, Pub. L. No. 97-164, 96 Stat. 25, 37-39 (conferring exclusive appellate jurisdiction in the Federal Circuit over “final” decisions of various courts and agencies, including the ITC). Congress’s use of the term “final” throughout Section 1295 to define the orders subject to the Federal Circuit’s review evinces its unmistakable intent that the same standard for finality would govern each. Cf. *Black*, 125 F.4th at 546 (holding that a “final order” under the Securities Exchange Act is one that, like the final decision of a district court, “ends the litigation on the merits” and leaves nothing else to decide).

That conclusion is further buttressed by the “settled principle of interpretation that, absent other indication, ‘Congress intends to incorporate the well-settled meaning of the common-law terms it uses.’” *Sekhar v. United States*, 570 U.S. 729, 732 (2013) (quoting *Neder v. United States*, 527 U.S. 1, 23 (1999)). “[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.” *Id.* at 733 (quoting Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)). Since the First Judiciary Act, “finality” has required that appellate review wait “until after the entire controversy has been concluded.” *Cobbledick*, 309 U.S. at

324-26. Congress’s decision to confer jurisdiction on the Federal Circuit to review only the Commission’s “final determinations,” 28 U.S.C. § 1295(a)(6), without further definition or elaboration, “incorporate[s] the well-settled meaning” of that term, *Neder*, 527 U.S. at 23. The Federal Circuit’s contrary holding that a single agency decision can be final for purposes of review of some issues but not others departs from both the settled law of finality and the statutory text.

C. The court of appeals’ decision below also poses practical problems that reveal its approach to finality as untenable. As this Court has repeatedly observed, “[t]he cases dealing with judicial review of administrative actions have interpreted the ‘finality’ element in a pragmatic way.” *Standard Oil*, 449 U.S. at 239 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). In keeping with that principle, the Court has rejected requirements to file a “protective” appeal as “a sheer formality” to preserve review of an agency decision. *Crown Coat Front Co. v. United States*, 386 U.S. 503, 515 (1967). Such requirements pose “a procedural trap for the unwary and an additional complication for those who manage the dockets of the courts.” *Ibid*.

The approach to finality the Federal Circuit adopted below exemplifies that sort of needless procedural hurdle. Under the court of appeals’ decision, a party seeking review of a mixed Commission determination (or any other agency decision where only some issues decided remain subject to further agency review) must file two separate notices of appeal to satisfy “different deadlines.” App.10a. File just one notice of appeal while issues remain under agency review, the court has held, and the appeal will be dismissed as “premature” as to those issues. *Crucible Materials Corp. v. ITC*, 127 F.3d 1057, 1060 (Fed. Cir. 1997). Wait until the determination is final as to

all claims and parties, and the appeal is too late. See App. 10a.

In the ITC context, the court of appeals' decision is all the more absurd. Under the Federal Circuit's rule, a mere 60 days separates those issues that must be appealed immediately and those that must wait. The decision below thus mandates duplicative seriatim appeals from the same Commission determination that, in practice, the court will inevitably consolidate in any event. That needless "additional complication" defies any common-sense understanding of Congress's design in conferring jurisdiction on the Federal Circuit to hear appeals from the Commission's final determinations. *Crown Coat*, 386 U.S. at 515.

### **III. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THIS IMPORTANT QUESTION**

This case presents an ideal vehicle for resolving the circuit split over the finality of agency decisions while some but not all issues remain subject to agency review. The question presented was preserved, argued, and decided below. And while the question presented has broad ramifications for appeals across numerous federal agencies, the Federal Circuit's exclusive jurisdiction over ITC appeals makes this Court's review all the more appropriate here.

1. No vehicle problems hinder the Court's resolution of the question presented in this case. Crocs pressed its finality argument at every stage of the appeal: in opposition to the Commission's motion to dismiss; in its merits briefing; and in a petition for panel rehearing or rehearing en banc. The court of appeals considered and decided the question presented at length in a published opinion. See App. 4a-10a. Resolution of that question was critical to the outcome, resulting in dismissal of the appeal as to the principal merits issues Crocs raised in its brief. See App. 2a. Notwithstanding Crocs' identification of

contrary precedent from other courts of appeals, the Federal Circuit denied rehearing en banc, reflecting that this is likely its last published word on the matter. And the question is highly significant, both within the Federal Circuit and elsewhere. Already, the court of appeals has dismissed in an unpublished order another appeal, which the court held for this case, that arose while this appeal was pending presenting the same jurisdictional question. See Order, *Viking Therapeutics, Inc. v. ITC*, No. 25-2162 (Fed. Cir. July 14, 2026).

2. That the Federal Circuit has exclusive jurisdiction over appeals from the Commission’s final determinations is only further reason to grant review here. Whether an appeal must be taken from an agency disposition while some but not all issues remain subject to Executive Branch review has cross-cutting significance for appeals across federal agencies. Indeed, the Fourth, Ninth, and D.C. Circuits, which have recognized the circuit conflict, have applied their differing standards for agency finality to a variety of agencies and statutory contexts. See, *e.g.*, *Black*, 125 F.4th 541 (SEC); *Saliba*, 47 F.4th 961 (SEC); *Nostrum Pharms.*, 35 F.4th 820 (FDA); *Eagle Energy*, 240 F.3d 319 (Federal Mine Safety and Health Review Commission); *Water Resources II*, 361 F.3d 517 (FERC); *Bellsouth Corp.*, 17 F.3d 1487 (FCC). But the Federal Circuit has exclusive jurisdiction over appeals from ITC determinations. Absent this Court’s intervention, it is thus highly likely that at least in this context, the court of appeals’ erroneous decision imposing “different deadlines” and mandatory piecemeal appeals of ITC determinations, App. 9a-10a, will stand. No further percolation on that issue is possible.

For that reason, this Court often grants certiorari even in the absence of a circuit conflict in cases where the Federal Circuit has exclusive jurisdiction, as it has done in each of the last five terms. See, *e.g.*, *Trump v. V.O.S.*

*Selections, Inc.*, No. 25-250; *Soto v. United States*, No. 24-320; *Feliciano v. Dep't of Transp.*, No. 23-861; *Rudisill v. McDonough*, No. 22-888; *Amgen Inc. v. Sanofi*, No. 21-757. The case for review is more compelling still where the Federal Circuit's rule squarely conflicts with the practices of other courts of appeals in indistinguishable contexts.

The question presented is also particularly pressing in the ITC context. As was true below, ITC investigations typically involve claims against “numerous respondents,” App. 16a-18a, which Congress has directed the ITC to resolve in a single “investigation” by a single “final determination,” 19 U.S.C. § 1337(b)(1). Under the Federal Circuit's rule, every ITC investigation that produces a “mixed result” triggers “different deadlines to file an appeal” from the same Commission determination. App. 7a-10a. That “[c]omplex test[] \*\*\* encourage[s] gamesmanship, \*\*\* diminish[es] the likelihood that results and settlements will reflect a claim's legal and factual merits,” and wastes “[j]udicial resources.” *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). For good reason, this Court has repeatedly admonished that such rules “should be ‘clear and easy to apply.’” *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 212 (2023) (Gorsuch, J., concurring in judgment) (quoting *Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 25 (2017)). The rule adopted by the Ninth and Federal Circuits is the opposite. This Court's review is urgently needed to restore clarity and uniformity to the standard governing appellate review of agency dispositions.

**CONCLUSION**

The petition for a writ of certiorari should be granted.  
Respectfully submitted.

JOHN P. ELWOOD  
*Counsel of Record*  
ELISABETH S. THEODORE  
DAVID A. CAINE  
DANIEL YABLON  
SPENCER FABER  
ARNOLD & PORTER  
KAYE SCHOLER LLP  
*601 Massachusetts Ave. NW*  
*Washington, DC 20001*  
*(202) 942-5000*  
john.elwood@arnoldporter.com

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