

No.
In the Supreme Court of the United States

VIKING THERAPEUTICS, INC.,

Applicant,

v.

INTERNATIONAL TRADE COMMISSION;
ASCLETIS PHARMA INC.; ASCLETIS PHARMACEUTICALS CO. LTD.;
ASCLETIS BIOSCIENCE CO., LTD.; GANNEX PHARMA CO., LTD.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and
Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, Applicant Viking
Therapeutics, Inc., respectfully requests a 60-day extension of time, to and including
December 11, 2026, within which to file a petition for a writ of certiorari to review
the judgment of the United States Court of Appeals for the Federal Circuit in this
case. The order of the court of appeals (App., *infra*, 1a-3a) is not reported. The
opinion of the International Trade Commission (App., *infra*, 4a-92a) is not reported,
but a notice of the Commission's determination is published at 90 Fed. Reg. 23709
(June 4, 2025). The initial determination of the Commission's Chief Administrative
Law Judge (App., *infra*, 93a-339a) is not reported.

The court of appeals entered its order dismissing this case on July 14, 2026.
Unless extended, the time within which to file a petition for a writ of certiorari would

expire on October 12, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an unresolved question of federal appellate jurisdiction that has divided the courts of appeals: When a federal agency issues a single order that terminates all adjudicatory proceedings before it, does the entirety of that order become final at one time for purposes of appellate review, or do different portions of the order become final at different times, imposing different deadlines to appeal different aspects of the single order? Here, the Federal Circuit followed the latter approach, concluding that the decision of the International Trade Commission in this case became final on May 29, 2025 for some purposes even though all agree that it did not become final until July 28, 2025 for other purposes. As a result, it dismissed Viking’s appeal of the Commission’s decision as untimely while allowing a cross-appeal by other parties to the Commission proceedings—filed on the same day—to proceed. That approach conflicts with the plain text of the governing statute, which classifies the Commission’s order as a single “determination” subject to review in the Federal Circuit within 60 days of becoming final. 19 U.S.C. § 1337(c). It also conflicts with the decisions of other courts of appeals, which have recognized in analogous contexts that “an 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); see *Eagle Energy, Inc. v. Sec’y of Lab.*, 240 F.3d 319, 323 (4th Cir. 2001).

2. Section 337 of the Tariff Act of 1930 prohibits “[u]nfair methods of competition and unfair acts in the importation of articles . . . into the United States,”

19 U.S.C. § 1337(a)(1)(A), and empowers the International Trade Commission to “investigate any alleged violation of this section,” 19 U.S.C. § 1337(b)(1). In each investigation, the Commission “shall determine . . . whether or not there is a violation of this section” by making a “determination . . . on the record after notice and opportunity for a hearing.” 19 U.S.C. § 1337(c). If the Commission determines that a violation has occurred, it must “publish such determination in the Federal Register” and transmit its determination to the President, who then has 60 days to disapprove the determination “for policy reasons.” 19 U.S.C. § 1337(j)(1)(A), (2). If the President does so, the Commission’s determination “shall have no force or effect.” 19 U.S.C. § 1337(j)(2). Absent disapproval by the President, the “determination shall become final on the day after the close of such period” of Presidential review. 19 U.S.C. § 1337(j)(4). Any person adversely affected by “a final determination of the Commission” may then seek review in the Federal Circuit “within 60 days after the determination becomes final.” 19 U.S.C. § 1337(c).

3. In 2022, Viking filed a complaint with the Commission alleging that a group of Chinese pharmaceutical companies (collectively, “Ascletis”) and their CEO, Dr. Jinzi Wu, had misappropriated Viking’s trade secrets to develop a drug that uses the same active pharmaceutical ingredient, and is intended to treat the same disease, as a drug that Viking had been developing for nearly a decade. *See App., infra*, 101a. Following an investigation, the Commission’s Chief Administrative Law Judge issued an initial determination finding that Wu and Ascletis had violated Section 337. *See App., infra*, 101a-102a, 337a-338a. Wu and Ascletis sought review by the

Commission, which issued a final determination on May 29, 2025. *See App., infra*, 4a-92a; *see also* 90 Fed. Reg. at 23711. The Commission found that Ascleitis had violated Section 337 and entered a seven-year limited exclusion order excluding Ascleitis's drug products from entry into the United States, but found no violation by Wu on the grounds that the unlawful actions Wu performed had been undertaken on behalf of Ascleitis rather than in his personal capacity. *App., infra*, 25a, 76a.

4. As required by Section 337(j)(2), the Commission transmitted its determination to the President on May 29, 2025, and subsequently published that determination in the Federal Register. *See* 90 Fed. Reg. 23709. The President did not disapprove the Commission's determination during the 60-day period that followed, and it accordingly became final on July 28, 2025. On September 26, 2026, Ascleitis and Viking both filed notices of appeal in the Federal Circuit. *See* Notice of Appeal, *Viking Therapeutics, Inc. v. ITC*, No. 25-2162 (Fed. Cir. docketed Sept. 30, 2025) (ECF No. 1-2); Notice of Appeal, *Ascleitis Pharma Inc. v. ITC*, No. 25-2164 (Fed. Cir. docketed Sept. 30, 2025) (ECF No. 1-2). The Federal Circuit consolidated the cases and established a briefing schedule for the cross-appeals. Order, *Ascleitis Pharma*, Nos. 25-2164, 25-2162 (Nov. 19, 2025) (ECF No. 10).

5. While Ascleitis's and Viking's cross-appeals were pending, the Federal Circuit issued its decision in *Crocs, Inc. v. ITC*, 163 F.4th 1374 (Fed. Cir. 2026). *Crocs*, like this case, arose from a Commission investigation in which the Commission entered a single order finding that certain respondents had violated Section 337 and that other respondents had not. *See id.* at 1376-77. And in *Crocs*, as in this case, the

complainant (Crocs) had filed its notice of appeal within 60 days following the end of the Presidential review period for that order. *See ibid.* The Federal Circuit, however, held that Crocs’s notice of appeal was untimely and therefore dismissed its appeal. *See id.* at 1380. Observing that Crocs sought to challenge portions of the Commission’s order that found no violation by certain respondents (and were therefore not independently subject to Presidential review), the court concluded that *those* aspects of the Commission’s order had become final for purposes of appeal immediately upon issuance by the Commission—even though other aspects of the order had not become final until the Presidential review period ended 60 days later. *See id.* at 1379-80. Crocs petitioned for rehearing en banc, but the Federal Circuit denied its petition. Order, *Crocs*, No. 24-1300 (Apr. 27, 2026) (ECF No. 83).*

6. Following the rehearing denial in *Crocs*, the Commission moved to dismiss Viking’s cross-appeal (but not Ascleitis’s) in this case. Because *Crocs* constituted binding circuit precedent, Viking “agree[d] that a panel of [the Federal Circuit] would properly dismiss Viking’s cross-appeal” and therefore did not oppose the Commission’s motion to dismiss. Motion to Dismiss Cross-Appeal at 1, *Ascleitis Pharma*, Nos. 25-2164, 25-2162 (May 12, 2026) (ECF No. 21). Viking nonetheless “reserve[d] all rights to challenge the dismissal of the cross-appeal in future proceedings.” *Ibid.* The Federal Circuit granted the Commission’s motion and dismissed Viking’s cross-appeal on July 14, 2026. *See App., infra*, 1a-3a.

* On September 24, 2026, Crocs filed a petition for a writ of certiorari in this Court. *See* Petition for Writ of Certiorari, *Crocs, Inc. v. ITC*, No. 26-421 (Sept. 24, 2026).

7. The Federal Circuit’s decision in *Crocs* deepened an already existing split among the courts of appeals as to whether a single agency action can be final in some respects but not in others. The Fourth and D.C. Circuits have held that an “an 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). On that view, “when there is ongoing administrative review of some issues” in a decision, “the remaining issues are not rendered final for purpose of judicial review.” *Eagle Energy, Inc. v. Sec’y of Lab.*, 240 F.3d 319, 323 (4th Cir. 2001). The Ninth Circuit, however, “takes another view of finality.” *Cal. Dep’t of Water Res. v. FERC*, 361 F.3d 517, 520 (9th Cir. 2004) (declining to follow *Bellsouth*). Under Ninth Circuit precedent, an appellate court has “jurisdiction to review an issue definitively resolved by an agency” regardless of whether proceedings continue with respect to “a separate issue that happens to be addressed in the same agency order.” *Id.* at 521. In *Crocs*, the Federal Circuit agreed with the Ninth Circuit’s position, holding that jurisdiction exists to review a Commission finding of no violation immediately even though, by virtue of the Presidential review period, other findings issued in the very same Commission decision are not yet final or reviewable. *See* 163 F.4th at 1379-80. Only this Court can resolve that fundamental conflict between the Fourth and D.C. Circuits, on the one hand, and the Ninth and Federal Circuits, on the other.

8. The Federal Circuit’s approach, moreover, is incorrect. Under Section 337, “[i]f the Commission determines that there is a violation” and “the President does not disapprove such determination, . . . such determination shall become final

on the day after the close of” the Presidential review period, including “for purposes of . . . subsection (c).” 19 U.S.C. § 1337(j)(1), (4). Subsection (c) provides that an appeal must be filed “within 60 days after the determination becomes final.” 19 U.S.C. § 1337(c). Here (and in *Crocs*), the Commission issued a single notice of final determination and a single opinion explaining its findings, and the President did not disapprove. *See* 90 Fed. Reg. at 23709; App., *infra*, 4a-92a. Accordingly, the Commission’s determination became final the day after the Presidential review period ended, and the time to appeal began to run on that day. *See* 19 U.S.C. § 1337(c). In concluding otherwise, the Federal Circuit treated the Commission’s single act resolving the investigation as an amalgamation of separate determinations, contrary to the statute’s direction that a determination must be made “with respect to each *investigation*,” not with respect to each separate alleged violation falling within an investigation. *Ibid.* (emphasis added).

9. The Federal Circuit’s approach is also inconsistent with this Court’s longstanding recognition that piecemeal appeals are disfavored. “Since its establishment, it has been a marked characteristic of the federal judicial system not to permit an appeal until a litigation has been concluded in the court of first instance.” *Radio Station WOW v. Johnson*, 326 U.S. 120, 123 (1945). That requirement functions to “preclude[] piecemeal, prejudgment appeals that would undermine efficient judicial administration.” *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 38 (2020) (alteration and internal quotation marks omitted). Under the Federal Circuit’s approach, however, piecemeal appeals from a single Commission

decision are not just permitted, but required.

10. A 60-day extension is warranted. The finality question at issue in this case implicates not only review under Section 337, but also the interpretation of numerous other special statutory review provisions directed to other types of agency action. Undersigned counsel, however, has been occupied with other obligations with proximate deadlines, including preparing Viking's response brief as intervenor in *Ascleitis Pharma*, No. 25-2164, which was filed on September 25, 2026; preparing appellees' response brief in *Klein v. Walgreens Boots Alliance, Inc.*, No. 26-2254 (7th Cir.), which was filed on September 21, 2026; and preparing a brief in a confidential JAMS arbitral appeal, which was filed on September 29, 2026. A 60-day extension is therefore necessary to provide sufficient time to research and analyze the other statutory regimes discussed above and prepare the petition for filing.

11. For the foregoing reasons, Viking respectfully requests that the time to file its petition for a writ of certiorari be extended by 60 days, to and including December 11, 2026.

Dated: October 1, 2026

Respectfully submitted,

/s/ Benjamin W. Snyder

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