PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1406

SAADIQ LONG, a/k/a Paul Anderson,

Petitioner,

v.

DAVID P. PEKOSKE, Administrator, Transportation Security Administration, in his official capacity,

Respondent.

On Petition for Review of an Order of the Transportation Security Administration.

Argued: January 26, 2022 Decided: June 29, 2022

Before NIEMEYER, AGEE, and DIAZ, Circuit Judges.

Vacated and remanded with instructions by published opinion. Judge Diaz wrote the opinion, in which Judge Niemeyer and Judge Agee joined.

ARGUED: Justin Mark Sadowsky, CAIR LEGAL DEFENSE FUND, Washington, D.C., for Petitioner. Joshua Paul Waldman, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent. **ON BRIEF:** Lena F. Masri, Gadeir I. Abbas, CAIR LEGAL DEFENSE FUND, Washington, D.C., for Petitioner. Brian M. Boynton, Acting Assistant Attorney General, Sharon Swingle, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Raj Parekh, Acting United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Respondent.

DIAZ, Circuit Judge:

Saadiq Long has asserted a bevy of constitutional and procedural claims related to his inclusion in the Terrorism Screening Database and its subclassification, the No Fly List. These are two governmental, interagency tools used to share information about suspected terrorists. The district court determined that Long's as-applied claims fell within 49 U.S.C. § 46110's grant of exclusive jurisdiction to the federal appellate courts over challenges to final Transportation Security Administration ("TSA") orders. So it transferred those claims to us under 28 U.S.C. § 1631.[1]

Before us, the parties agree on one thing: we lack jurisdiction to decide Long's claims on the merits. Long has moved to remand his claims to the district court, arguing it erred in finding we have exclusive jurisdiction under § 46110. Otherwise, he asks us to transfer the case again. Long (correctly) points out that, even if the district court believed it lacked jurisdiction over the claims, § 46110 mandated transfer to either the D.C. Circuit or the Tenth Circuit, where Long resides.

[1] Under that statute, a court that determines it lacks jurisdiction to hear a case must, if it is in the interest of justice, transfer the case to any other court where the action could have been brought.

The government,[2] on the other hand, has cross-moved to dismiss. It asserts that all the claims before us are moot because the government has removed Long from the No Fly List and avowed that it won't reinstate him based on currently available information.

We agree with the government that a portion of Long's claims—those challenging his status on the No Fly List—are moot. But we think it's unclear which of Long's claims the district court intended to transfer under § 1631. So we vacate the transfer order and remand to the district court with instructions to dismiss as moot Long's challenges to his status on the No Fly List; decide whether it has jurisdiction over the rest of Long's claims; and, if not, transfer them to the proper Circuit.

I.

A.

We begin by outlining the division of power among the agencies that maintain and administer the Terrorism Screening Database and the No Fly List.

1.

After the terrorist attacks on September 11, 2001, various government agencies consolidated their approaches to terrorism screening. These efforts produced the Terrorism

[2] Long sued several agency heads in their official capacities, including the Attorney General, FBI Director, Terrorism Screening Center Director, National Counterterrorism Center Director, Secretary of Homeland Security, and TSA Administrator. Because this action purportedly arises under our § 46110 jurisdiction over final TSA orders, only the Administrator of that agency is before us. We still refer to this defendant as "the government."

Screening Center, a multiagency entity administered by the FBI and supported by the Departments of Homeland Security ("DHS"), Justice, and State.

The Screening Center maintains the Terrorism Screening Database, often called the "terrorist watchlist." That watchlist "contains both biographic and biometric identifying information . . . of known and suspected terrorists." J.A. 131. The information on the list is confidential, "accessible only to persons who have a 'need to know[,]' such as federal law enforcement officials for their screening and vetting activities." *Id.* The watchlist also contains subclassifications, including the No Fly List. Those on the No Fly List can't board flights into, out of, or within U.S. airspace.

The Screening Center decides who to add to both the watchlist and the No Fly List. Getting on the watchlist entails a three-step nomination process, beginning with the nominating agency and continuing to the FBI or National Counterterrorism Center. The Screening Center then makes the final decision whether to add an individual to the watchlist.

Nominees to the No Fly List must satisfy additional criteria beyond those required for the watchlist. TSA relies on the watchlist and the No Fly List to screen air passengers and vet individuals for transportation security credentials.

2.

If a person undergoes increased security measures at an airport, they may seek redress through the DHS Traveler Redress Inquiry Program ("DHS TRIP"). But most people who submit a grievance through DHS TRIP aren't on the watchlist. The Terrorism Screening Center Redress Office independently reviews all DHS TRIP complaints to

determine whether the complainant is on the watchlist and, if so, whether they should so remain.

Historically, the government wouldn't tell DHS TRIP complainants whether they were on the watchlist or the No Fly List. But in 2015, it changed the procedure in response to litigation. Now, when TSA prevents someone from boarding because they're on the No Fly List and the individual files a grievance, DHS TRIP will disclose their No-Fly status.

The individual can then request more information about their status and may also offer information in rebuttal. From there, the Screening Center will review the complainant's file and do one of two things: If the Screening Center decides someone doesn't belong on the No Fly List, it will remove them. But if it determines the complainant should stay on the list, it will submit that recommendation to the TSA Administrator, who has the final say.

In the latter set of cases, TSA will review all available information, including the Screening Center's recommendation. It will then (a) issue a final order that settles the individual's No-Fly status or (b) remand the matter to the Screening Center for more information.

B.

Saadiq Long (formerly Paul Anderson) is a United States citizen and an Oklahoma resident. While stationed in Turkey as a U.S. airman, Long converted to Islam and changed his name. He then applied for conscientious-objector status. The Air Force denied his request, and Long received an Other than Honorable Discharge soon after. He then moved his family to Egypt and later to Qatar.

Nearly a decade after moving to Qatar, Long tried to renew his passport to visit his critically ill mother in the United States. He had trouble renewing online, so Long went to the U.S. Embassy and Consulate in Qatar. Qatari officials detained him—allegedly at the behest of U.S. agents. Although Long ultimately received a new passport, he wasn't allowed to fly to the U.S. because he was on the No Fly List. Long filed a complaint through DHS TRIP but heard nothing for months.

According to Long, his difficulty renewing his passport was only the beginning of his travel-related woes. His complaint alleges more travel restrictions, unlawful searches and detentions, harassment by law enforcement, and job termination—all stemming from his placement on the watchlist and No Fly List.

Eventually, DHS TRIP confirmed in writing that Long was on the No Fly List. The government offered a brief rationale for his No-Fly status, explaining he "participated in training that may make [him] a threat to U.S. national security" and was arrested once in Turkey (which, Long alleges, only occurred because he was on the watchlist). Suppl. App. 8–9. In early 2019, the Acting Deputy Administrator of TSA sent Long a letter noting the agency's final decision that he would remain on the No Fly List.

C.

Long sued various government defendants, raising (as relevant here) facial and as-applied substantive-due-process challenges, facial and as-applied procedural-due-process challenges, Administrative Procedure Act ("APA") violations, and facial and as-applied equal-protection challenges. Long requested declaratory and injunctive relief, including removal from the No Fly List and the watchlist.

1.

The government moved to dismiss the amended complaint for lack of subject-matter jurisdiction and for failure to state a claim. The district court assessed its jurisdiction under 49 U.S.C. § 46110, which grants "exclusive jurisdiction to affirm, amend, modify, or set aside any part of" TSA orders to the federal courts of appeals—specifically, the D.C. Circuit or "the court of appeals . . . for the circuit in which the [petitioner] resides." *Id.* § 46110(a), (c).

The district court determined that § 46110 stripped it of jurisdiction to hear Long's challenges. As it explained, given the 2015 DHS TRIP revisions, "TSA's ultimate redress authority is an 'order' within the meaning of § 46110." *Long v. Barr*, 451 F. Supp. 3d 507, 528 (E.D. Va. 2020). The district court also considered whether any of Long's claims fell within the inescapable-intertwinement doctrine, which extends appellate courts' exclusive jurisdiction to claims that collaterally attack an order covered by § 46110. *See Mokdad v. Lynch*, 804 F.3d 807, 812 (6th Cir. 2015); *Ligon v. LaHood*, 614 F.3d 150, 155 (5th Cir. 2010). The court said, "[t]he upshot is that Long's as-applied challenges to his redress proceedings and his ongoing [w]atchlist status, as determined through DHS TRIP, belong in the Fourth Circuit." *Long*, 451 F. Supp. 3d at 529.

So the court severed Long's as-applied constitutional challenges, along with one of his APA claims, and transferred them here. It retained jurisdiction over Long's facial constitutional challenges but stayed them pending our review.

2.

The parties have cross-moved to contest our jurisdiction, but on different grounds. Long asks us to remand his claims to the district court, arguing they fall outside § 46110's exclusive-jurisdiction provision. Alternatively, even if § 46110 applies, he argues the court erred by sending his claims here. Rather, it should have transferred them to either the D.C. Circuit or the Tenth Circuit (where Long resides). *See* 49 U.S.C. § 46110(a).

For its part, the government argues Long's claims are moot because, after the district court's order, the Screening Center removed Long from the No Fly List.[3] In September 2020, DHS TRIP sent Long a letter informing him that he'd "been removed from the No Fly List and that [he would] not be placed back on the No Fly List based on the currently available information." Suppl. App. 13. The government provided us with a signed declaration from the Screening Center's Deputy Director for Operations to the same effect.

We deferred ruling on the motions and ordered full briefing.

II.

The pending motions implicate our subject-matter jurisdiction. One challenge is statutory; the other is constitutional. "'[T]here is no unyielding jurisdictional hierarchy' with respect to the order in which a court must address jurisdictional questions." *United States v. Hardy*, 545 F.3d 280, 284 (4th Cir. 2008) (quoting *Ruhrgas AG v. Marathon Oil*

[3] At first, it was unclear who ordered Long removed from the No Fly List. But at oral argument, the government clarified it was the Screening Center. Oral Argument at 14:42, Long v. Pekoske (2022) (No. 20-1406), https://www.ca4.uscourts.gov/OAarchive/mp3/20-1406-20220126.mp3.

Co., 526 U.S. 574, 578 (1999)). Here, we think it best to begin with the government's contention that Long's claims are moot.

A.

"A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (cleaned up). A case may become moot on appeal if there's "[a] change in factual circumstances[,] . . . such as when the plaintiff receives the relief sought in his or her claim." *Williams v. Ozmint*, 716 F.3d 801, 809 (4th Cir. 2013).

Assuming no exception applies, the government is correct that Long's claims challenging his No-Fly status are moot. Now that Long is no longer on the list, we can't "grant any effectual relief" on those claims. *Id*. As relevant here, Long's complaint requests an injunction ordering his "removal . . . from any watchlist or database that . . . prevents [him] from flying." J.A. 94. But Long has already received this relief. So "our resolution of [the] issue could not possibly have any practical effect on the outcome of the matter." *Norfolk S. Ry. Co. v. City of Alexandria*, 608 F.3d 150, 161 (4th Cir. 2010).

Nor does Long retain a "legally cognizable interest" in his request that we declare his placement on the No Fly List unlawful. *Williams*, 716 F.3d at 809. A request for declaratory relief presents a live controversy only if "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Preiser v. Newkirk*, 422 U.S. 395, 402 (1975) (cleaned up).

The Screening Center has removed Long from the No Fly List and has assured us that won't change based on the information it has now. Taking that assertion at face value, any future controversy over Long's No-Fly status is not only distant and hypothetical but would also depend on a new set of facts. A declaratory judgment on his *past* status would therefore have no practical effect.

B.

Long, however, insists that the voluntary-cessation exception preserves his otherwise moot claims. "[I]t is well settled that a defendant's voluntary cessation of a challenged practice" generally won't moot a plaintiff's claims. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (cleaned up). The test for mootness in such cases is "stringent" to ensure courts aren't "compelled to leave the defendant free to return to his old ways." *Id.* (cleaned up). "[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Id.* at 190. The voluntary relief also must "have completely and irrevocably eradicated the effects of the alleged violation." *Los Angeles Cnty. v. Davis*, 440 U.S. 625, 631 (1979).

At first blush, the government's sudden and unexplained decision to remove Long from the No Fly List cautions against a finding of mootness. Indeed, we've declined to moot claims when the defendant "retains the authority and capacity to repeat an alleged harm." *Wall v. Wade*, 741 F.3d 492, 497 (4th Cir. 2014). That said, the government has promised not to put Long back on the No Fly List without new information that justifies

doing so. *Contra Porter v. Clarke*, 852 F.3d 358, 366 (4th Cir. 2017) (declining to moot claims where the government "refuse[d] to promise not to resume the prior practice" and "ha[d] suggested circumstances may require re-imposing the challenged policies" (cleaned up)).

As we explain, the government has met its burden by convincing us we can "reasonably [] expect[]" the conduct Long challenges won't recur. *See Friends of the Earth, Inc.*, 528 U.S. at 189. We also agree with the government that removing Long from the No Fly List "completely and irrevocably eradicated the effects of the alleged [constitutional] violation[s]." *Davis*, 440 U.S. at 631.

1.

First, we consider the likelihood that the harms Long alleges will recur if we moot his claims. On this issue, we're guided (in part) by the Ninth Circuit's decisions in *Fikre v. FBI*, 904 F.3d 1033 (9th Cir. 2018) ("*Fikre I*") and *Fikre v. FBI*, 35 F.4th 762 (9th Cir. 2022) ("*Fikre II*"). But while we agree with the general framework the Ninth Circuit has set out, we think its strict application of that standard under these circumstances demands too much of the government.

In *Fikre I*, the Ninth Circuit similarly considered whether a plaintiff's challenges to his inclusion on the No Fly List were moot because the government had voluntarily removed him from the list during the litigation. The court emphasized that to overcome the voluntary-cessation doctrine, the government "must [] demonstrate that the change in its behavior is entrenched or permanent." *Id.* at 1037 (cleaned up). For example, a statutory change can generally moot a claim, but "an executive action that is not governed

by any clear or codified procedures cannot." *Id.* at 1038 (cleaned up). The court said it also considers the government's stated reasons for changing its behavior—specifically, whether the government disavowed its former conduct or otherwise vindicated the plaintiff's position.

The *Fikre I* court found the government failed to meet its burden to show the challenged conduct wouldn't recur for two reasons. First, it said that "the [government's] decision to restore Fikre's flying privileges is an individualized determination untethered to any explanation or change in policy, much less an abiding change in policy." *Id.* at 1039–40. Second,

> the government ha[d] not assured Fikre that he [would] not be banned from flying for the same reasons that prompted the government to add him to the list in the first place, nor ha[d] it verified the implementation of procedural safeguards conditioning its ability to revise Fikre's status on the receipt of new information. . . . [W]ith no explanation of the reasons for dropping Fikre from the No Fly List, [the court could] not infer the government's acquiescence to the righteousness of Fikre's contentions.

Id. at 1040.

We agree that merely removing someone from the No Fly List—with no explanation or assurances—isn't enough to moot a claim. But on remand to the District of Oregon, the government tried to comply with the Ninth Circuit's guidance. It filed a new declaration, which explained that Fikre "was removed from the No Fly List upon determination that he no longer satisfied the criteria for placement on the [list]" and that he would "not be placed on the No Fly List in the future based on the currently available information." *Fikre II*, 35 F.4th at 767.

Yet the Ninth Circuit again held that Fikre's No Fly List claims weren't moot. *See id.* at 770. It did so over the government's contention that its promise that it wouldn't put Fikre back on the No Fly List based on the then-available information meant he would "not be banned from flying for the same reasons that prompted the government to add him to the list in the first place." *Id.* at 772. This, we think, goes too far.

Here, the government offered Long nearly identical assurances to those it gave Fikre on remand. But unlike the Ninth Circuit, we're satisfied that they prove the government will only return Long to the No Fly List on a new factual record. *See Kovac v. Wray*, 449 F. Supp. 3d 649, 655 n.17 (N.D. Tex. 2020) (distinguishing *Fikre I* and finding the plaintiff's challenge to his No-Fly status moot because DHS "informed Kovac that he no longer satisfie[d] the criteria for placement, he was removed, and he [would] not be placed back on the list" without new information). The "currently available information" the government has promised it won't rely on (exclusively, at least) to return Long to the list includes whatever information prompted it to add him in the first place. *See* Suppl. App. 13.

To be clear: even if the government were to base some future decision to place Long back on the No Fly List *in part* on information it has now, *any* new grounds for that decision would necessarily impact his claims. That being so, a mootness finding here is appropriate.

What's more, we've accepted comparable assurances in other contexts as sufficient to moot a claim. *See Grutzmacher v. Howard Cnty.*, 851 F.3d 332, 349 (4th Cir. 2017) (finding a First Amendment challenge to a fire department's social media policy moot where the department repealed the policy, "adopt[ed] a new Social Media Policy and

revised Code of Conduct," and the fire chief "submitted a sworn affidavit that" "he . . . d[id] not intend to re-issue the original [policies]" (cleaned up)).

Long urges that this case is still like *Fikre* in at least one respect: the Screening Center removed Long from the No Fly List "without explanation or any announced change in policy" not long after "DHS affirmed . . . that [Long] posed a threat to civil aviation or national security and [] refused to remove him from the No Fly List." *Fikre I,* 904 F.3d at 1040 (cleaned up). Put another way, the government hasn't explained why Long satisfied the No Fly List's criteria after his DHS TRIP review but ceased doing so shortly before the government's briefing deadline in this case.

We don't find this omission dispositive. Even without a specific explanation on why it removed Long from the No Fly List, we (unlike the Ninth Circuit) infer that the government has "acquiesce[d] to the righteousness of [Long]'s contentions," at least to some degree. *Id.* While the government doesn't concede constitutional error,[4] we assume it removed Long from the list because, as he contends, he doesn't belong on it. To say otherwise would be to suggest the government risked national security simply to moot a lawsuit. This we decline to do.

No one should read our opinion as adopting a lower voluntary-cessation burden for government defendants as a general matter. Some of our sister circuits apply the doctrine differently in cases with government defendants, rather than private ones. *See, e.g.*,

[4] Whether Long's facial constitutional challenges are also moot is not before us. That will be for the district court to decide on remand.

Sossamon v. Texas, 560 F.3d 316, 325 (5th Cir. 2009) (explaining that "courts are justified in treating a voluntary governmental cessation of possibly wrongful conduct with some solicitude, mooting cases that might have been allowed to proceed had the defendant not been a public entity"). But when pressed to join these circuits on this point, we've passed. *Wall*, 741 F.3d at 497–98.

Even so, we think it appropriate—in this unique national-security context where the relevant decision-making is highly sensitive and confidential—to allow the government more leeway on its evidentiary burden than we otherwise might. *Cf. Holder v. Humanitarian L. Project*, 561 U.S. 1, 33–35 (2010) ("Th[e] evaluation of the facts by the Executive [in the national-security context] . . . is entitled to deference. . . . [C]onclusions must often be based on informed judgment rather than concrete evidence, and that reality affects what we may reasonably insist on from the Government.").

In sum, we're satisfied the government has met its burden to show the conduct Long challenges is unlikely to recur.

2.

We also agree with the government that removing Long from the No Fly List has "completely and irrevocably eradicated the effects of the alleged [constitutional] violation[s]." *Davis*, 440 U.S. at 631. Long argues that "[a]bsent an acknowledgement by the government that its investigation revealed [he] did not belong on the list . . . [he] remains . . . stigmatized as a known or suspected terrorist and as an individual who represents a threat of engaging in or conducting a violent act of terrorism and who is

operationally capable of doing so." Petitioner's Br. at 42 (quoting *Fikre*, 904 F.3d at 1040 (cleaned up)). Even if that's true, it's not enough to spare his claims from mootness.

To show a cognizable constitutional injury, a plaintiff must allege more than "stigma" or harm to "reputation alone." *Elhady v. Kable*, 993 F.3d 208, 226 (4th Cir. 2021) (quoting *Paul v. Davis*, 424 U.S. 693, 701 (1976)). Rather, a plaintiff must prove "[(1)] a statement 'stigmatizing his good name' and damaging his standing in the community; (2) some type of dissemination or publication of the statement; and (3) some other government action that 'alter[s] or extinguishe[s] one of his legal rights.'" *Id.* (quoting *Davis*, 424 U.S. at 706, 711). We call this a "stigma-plus" claim. *See id.*

Long hasn't alleged facts sufficient to show a stigma-plus injury based on his past inclusion on the No Fly List, so damage to his reputation can't evade mootness. More precisely, Long hasn't alleged the government publicly disclosed his No-Fly status.

The government's interagency dissemination of Long's No-Fly status isn't publication. In *Elhady*, which involved watchlist-related challenges, we explained, "The government does not publicly disclose [watchlist] status. The federal government's intragovernmental dissemination of [watchlist] information to other federal agencies and components, to be used for federal law enforcement purposes, is not 'public disclosure' for purposes of a stigma-plus claim." 993 F.3d at 225. Nor does "disclosure to state or tribal law enforcement agencies . . . constitute public disclosure." *Id.* at 226.

As with the watchlist, the government doesn't publicly disclose someone's No-Fly status. And the fact that federal agencies shared that information isn't public dissemination. Long does allege that the government disclosed his status to other

countries' governments. But just as sharing information with state or tribal law enforcement agencies isn't "public disclosure," we think the same logic applies to foreign governments cooperating with the United States to combat terrorism.

Long also claims that the trucking company he worked for abruptly fired him after the FBI contacted it. True, "we [have] recognized that making stigmatizing information available to prospective employers could, in some circumstances, constitute publication." *Id.* But Long doesn't allege that the FBI told his employer he was on the No Fly List—only "that they should not let him drive." J.A. 72. The same is true of his allegation that one of his bank accounts was closed. In fact, he alleges "the closure was due to [his watchlist] status," not his No-Fly status. *Id.*

Long also alleges that the government "disseminat[ed] [] the watchlist to the gun market," so he couldn't purchase a firearm after clearing a background check. J.A. 65–66, 73. But Long doesn't claim he's still barred from purchasing a firearm now that he's no longer on the No Fly List. And even if he is, he doesn't argue it's because he was once on the No Fly List, rather than the fact that he remains on the watchlist. Our decision here doesn't impact Long's watchlist-related challenges.

In sum, because Long can't show an ongoing, legally cognizable harm stemming from his former No-Fly status, his claims challenging that status are moot.[5]

III.

The effect of our mootness ruling is less clear. The government claims that the district court transferred only Long's substantive and procedural challenges to his No-Fly status. But Long points to the district court's order, which transferred his "as-applied claims in Counts I, II, III, and V" to us. *Long*, 451 F. Supp. 3d at 542. So, Long submits, the order facially encompasses his watchlist challenges, which the government (rightly) doesn't contend are moot.

Either way, we decline to take a scalpel to Long's complaint. We hold only that Long's challenges to his No-Fly status are moot. We trust the district court on remand to apply that ruling and decipher which of Long's constitutional challenges remain justiciable.

We also decline to decide whether § 46110 deprives the district court of jurisdiction over Long's remaining as-applied challenges. There's simply no circumstance where we would have statutory jurisdiction over *any* of Long's claims now. And deciding a

[5] As the government points out, other circuits have held that "when injury to reputation is alleged as a secondary effect of an otherwise moot action, . . . some tangible, concrete effect [must] remain, susceptible to judicial correction." *Pulphus v. Ayers*, 909 F.3d 1148, 1154 (D.C. Cir. 2018) (cleaned up); *see* Respondent's Br. at 17–18 (collecting cases). This view strikes us as a logical byproduct of our conclusion that standalone stigmatic harm isn't legally cognizable.

complicated question on a sister circuit's jurisdiction could create quite the conundrum if they were to disagree.

On remand, the district court should reconsider its subject-matter jurisdiction over the remaining claims. If the court still finds it lacks jurisdiction, it should transfer the claims to either the D.C. or Tenth Circuit, the only circuits that may hear Long's claims on the merits.

VACATED AND REMANDED WITH INSTRUCTIONS