FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAVE OUR SKIES LA, *Petitioner*, v. FEDERAL AVIATION ADMINISTRATION; STEPHEN M. DICKSON, in his official capacity as Administrator, Federal Aviation Administration, *Respondents.*	No. 20-73314 OPINION

On Petition for Review of an Order of the
Federal Aviation Administration

Argued and Submitted May 20, 2022
Pasadena, California

Filed October 5, 2022

Before: Eric D. Miller and Daniel P. Collins, Circuit Judges, and Edward R. Korman,[*] District Judge.

Opinion by Judge Miller

[*] The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

SUMMARY[**]

Federal Aviation Administration

The panel denied in part, and dismissed in part, a petition for review brought by an association of nearby residents challenging several Federal Aviation Administration ("FAA") orders implementing and revising departure procedures at the Van Nuys and Burbank airports.

The two procedures at issue are the HARYS FOUR departure procedure at Van Nuys Airport, and the SLAPP TWO departure procedure at the Burbank Airport. Petitioner contends that the FAA failed to sufficiently analyze the procedures, in violation of the National Environmental Policy Act ("NEPA"), the Administrative Procedure Act, and section 4(f) of the Department of Transportation Act of 1996.

The key issue is the timeliness of petitioner's challenges. Petitions for review of FAA orders must be filed within 60 days after the order was issued, or where there are "reasonable grounds" to excuse a delay in filing. 49 U.S.C. § 46110(a).

The parties agree that the HARYS FOUR and SLAPP TWO orders, which were issued on September 10, 2020, were timely challenged. The petition for review, which was filed on November 9, 2020—exactly 60 days later—was timely as to those orders.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Petitioner argued that the FAA violated NEPA because it did not conduct an environmental assessment before it adopted HARYS FOUR and SLAPP TWO. NEPA's implementing regulations permit agencies to establish "categorical exclusions" covering actions that do not require environmental reports. 40 C.F.R.§ 1507.3(e)(2)(ii). The FAA has established 16 categorical exclusions, one of which covers the publication of existing air traffic control procedures that do not essentially change existing matters. The panel held that this described HARYS FOUR's and SLAPP TWO's contents because the only changes in those orders were purely editorial changes having no effect on the flight path of any aircraft. The orders did not implicate extraordinary circumstances, so the FAA did not err in relying on the categorical exclusion for its edits. Petitioner's argument that the FAA should have produced a supplemental environmental analysis under NEPA fails for the same reason. For similar reasons, Petitioner was incorrect in arguing that the FAA violated section 4(f) of the Department of Transportation Act of 1996 in adopting HARYS FOUR and SLAPP TWO. The panel concluded that the FAA did not act contrary to law in promulgating SLAPP TWO and HARYS FOUR; and the panel denied the petition for review insofar as it challenged those orders.

The orders that actually implemented the flight paths of departing aircraft are HARYS ONE and SLAPP ONE, which were promulgated years before petitioner filed its petition. First, petitioner argued that a timely challenge to one order allows a petitioner to challenge any related earlier orders. The panel held that the text of 49 U.S.C. § 46110 foreclosed this argument. Second, petitioner argued that the hundreds of days it let pass before its petition should be excused. The panel held that the statutory "reasonable grounds" exception did not apply. A petitioner's own

mistake cannot excuse its delay in filing. The panel further held that the FAA's alleged violative conduct did not toll the statute of limitations for filing the petition. Petitioner cannot circumvent the strict time limits imposed by section 46110 simply by invoking the Administrative Procedure Act. The panel concluded that the petition of review of HARYS ONE and SLAPP ONE was untimely, and it dismissed the petition for review insofar as it challenged those orders.

COUNSEL

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Robin Greenberg, President, Bel Air Hills Association, Los Angeles, California, for Amicus Curiae Bel Air Hills Association.

Stephen Arkle, President, Sunshine Hills Residents Association, Studio City, California, for Amicus Curiae Sunshine Hills Residents Association.

OPINION

MILLER, Circuit Judge:

Few people want to live directly under an airport flight path, but planes still need to be able to go somewhere. Shifting a flight path only shifts the noise onto new areas and communities. Ensuring the safety and efficiency of air traffic is the responsibility of the Federal Aviation Administration, which prescribes approach and departure procedures for the nation's airports. Affected parties may challenge the FAA's decisions in court, but challenges are subject to a 60-day statute of limitations.

This case involves a challenge to several FAA orders implementing and revising departure procedures at the Van Nuys and Burbank airports in Southern California. Petitioner Save Our Skies Los Angeles, an association of nearby residents, sought review within the 60-day period of two FAA orders. But those orders did not implement the departure procedures to which Save Our Skies objects; they simply made minor editorial changes to two different orders that had been published years earlier. Save Our Skies cannot establish that there was anything unlawful about the editorial changes. Its real challenge is to the substance of the earlier orders. And as to those orders, its challenge comes long after the statute of limitations expired. We deny the petition for review in part and dismiss it in part.

I

Congress has vested the FAA with authority to adopt rules governing the navigation of aircraft within the United States. 49 U.S.C. §§ 40101(d), 40103(b)(2). In the exercise of that authority, the FAA has established flight-path procedures for aircraft. These procedures specify the steps

pilots must take in departing from or arriving at airports, such as where to turn, where to ascend or descend, and at what speeds to fly.

In 2012, Congress directed the FAA to modernize the nation's air transportation system, including the departure and arrival procedures at airports across the country. FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, § 213, 126 Stat. 11, 46–50. In particular, Congress instructed the FAA to replace conventional compass- and radar-based navigation procedures with satellite-based navigation procedures, which allow for greater flight automation and reduce the time and airspace needed by departing and arriving planes. As part of the modernization, the FAA began designing the Southern California Metroplex Project, which would implement new procedures at 21 airports across the region.

To comply with its procedural obligations under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, the FAA prepared an environmental assessment for the Southern California Metroplex. As part of that assessment, the FAA conducted air- and noise-pollution analyses of all of the proposed flight procedures. Because the FAA found that the proposed changes would result in no significant impact on the environment as compared to the alternative of taking no action, it determined that no further analysis was required under NEPA. Multiple petitioners challenged that determination. The District of Columbia Circuit denied the petitions for review, concluding that the FAA's "environmental analysis was substantively reasonable and procedurally sound." *Vaughn v. FAA*, 756 F. App'x 8, 12 (D.C. Cir. 2018) (per curiam).

As part of the Southern California Metroplex, the FAA implemented numerous procedures at the Van Nuys and

Burbank airports. To assist pilots and air traffic controllers in identifying a particular procedure, each procedure is given an arbitrary name. Additionally, the individual procedures are sequentially numbered to distinguish iterations of the procedure as it is revised and edited. The two procedures at issue in this case are the HARYS departure procedure at the Van Nuys Airport and the SLAPP departure procedure at the Burbank Airport. In early 2017, the FAA adopted the first versions of those procedures—HARYS ONE on April 27 and SLAPP ONE on March 2. Because the HARYS and SLAPP departure procedures differ, we discuss the history of each in turn.

Like other procedures, HARYS contains several "waypoints"—specified geographical positions along a flight route at which an aircraft is to begin changing direction, speed, or altitude. As part of the Southern California Metroplex, the FAA proposed a HARYS departure procedure that included a waypoint just over a mile south of the southern end of the Van Nuys runway. But implementing that waypoint required a waiver from the FAA's Flight Standards Procedure Review Board, which the Board did not grant. As a result, the procedure actually adopted by the FAA in HARYS ONE included a different waypoint, one located directly on the southern end of the Van Nuys runway. But that waypoint required aircraft to turn almost immediately upon takeoff, which resulted in violations of the Van Nuys Airport's noise-abatement requirements.

To address that problem, the FAA promulgated HARYS TWO in May 2018. The new order replaced the HARYS ONE waypoint with one at essentially the same location as the waypoint that was originally proposed by and analyzed in the Metroplex. Critically for this case, since the 2018

waypoint substitution in HARYS TWO, the FAA has not changed the path of the HARYS departure procedure or otherwise affected the movement of aircraft along it.

Following HARYS TWO, the FAA promulgated two orders implementing minor editorial changes to the procedure. Only the second of those orders, HARYS FOUR, is at issue here. HARYS FOUR made two changes to make the language of the procedure more consistent with the language in procedures used in other regions of the country. Specifically, it replaced the phrase "LANDING LAS COMPLEX" with "LANDING LAS TERMINAL AREA," and it added the phrase "VNY TOWER TO COMMUNICATIONS." Neither change affected the flight path of any aircraft departing from the Van Nuys Airport.

As part of its preparation for promulgating HARYS FOUR, the FAA issued a declaration that the proposed order did not require additional review under NEPA because it was a minor change that was categorically excluded from review, and it did not present any "extraordinary circumstances." On September 10, 2020, the FAA promulgated HARYS FOUR.

During the time that the agency was revising HARYS, local governments and members of the public formed the Southern San Fernando Valley Airplane Noise Task Force in response to concerns over a "southern shift" in which departing aircraft from Van Nuys and Burbank were flying farther south before turning north to their destinations as compared to the pre-Metroplex flight paths. This southern shift is at the heart of the petition in this case.

Between August 2019 and May 2020, the Task Force met seven times, and in June 2020, it submitted 16 recommendations to the FAA regarding, among other issues, the HARYS departure procedure. Although the FAA

was not a member of the Task Force, it sent technical advisors to at least one meeting to offer guidance on the feasibility of the Task Force's proposals. On September 1, 2020, the FAA responded to the Task Force's proposal and declined to implement the recommendations as infeasible.

The history of the SLAPP procedure is somewhat more straightforward. On March 2, 2017, the SLAPP departure procedure proposed by the FAA as part of the Southern California Metroplex and analyzed in its environmental assessment went into effect at the Burbank Airport. In October 2018, in an effort to remedy the southern shift from the Burbank Airport, the FAA published a draft environmental assessment identifying a number of potential solutions. In March 2019, after receiving numerous comments on its draft assessment and holding two public meetings, the FAA decided to prepare a further environmental assessment considering additional alternatives. That assessment is still underway.

While continuing to work on the SLAPP environmental assessment, the FAA determined that it was necessary to make a minor wording change to SLAPP ONE, similar to the one it made in HARYS FOUR, replacing "LANDING LAS COMPLEX" with "LANDING LAS TERMINAL AREA." That change did not affect the flight path of any aircraft departing from the Burbank Airport. In the same declaration covering HARYS FOUR—and for the same reasons—the FAA stated that SLAPP TWO did not require additional review under NEPA. On September 10, 2020, the FAA promulgated SLAPP TWO.

On November 9, 2020, Save Our Skies filed the present petition, seeking review of HARYS FOUR and SLAPP TWO. Save Our Skies argues that the FAA failed to sufficiently analyze the procedures, in violation of NEPA,

the Administrative Procedure Act, and section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303. The petition asks that this court "require the air traffic controllers to revert to the [pre-Metroplex] procedures" until the FAA remedies the alleged violations.

II

The key issue in this case is the timeliness of Save Our Skies' challenges. Congress has limited our jurisdiction over petitions for review of FAA orders to those petitions that are "filed not later than 60 days after the order is issued" or for which "reasonable grounds" excuse the delay in filing. 49 U.S.C. § 46110(a); *Americopters, LLC v. FAA*, 441 F.3d 726, 732–34 (9th Cir. 2006). As we will see, most of the orders at issue are well outside the 60-day period. We begin, however, with the orders that everyone agrees Save Our Skies timely challenged.

The HARYS FOUR and SLAPP TWO orders were issued on September 10, 2020, so as the FAA acknowledges, the petition for review, which was filed on November 9, 2020—exactly 60 days later—was timely as to those orders. Unfortunately for Save Our Skies, its challenge to those orders fails on the merits.

Save Our Skies argues that the FAA violated NEPA because it did not conduct an environmental assessment before it adopted HARYS FOUR and SLAPP TWO. NEPA "imposes procedural requirements designed to force agencies to take a 'hard look' at environmental consequences" of proposed actions. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9th Cir. 2003) (quoting *Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir. 2002)); *see Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Under NEPA, a

federal agency must prepare an environmental impact statement before undertaking "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). To determine whether a proposed action will significantly affect the quality of the human environment, an agency usually prepares an environmental assessment, which is a "concise public document" that "[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement." 40 C.F.R. §§ 1508.1(h), 1501.5(c)(1). But in certain circumstances, an agency may fulfill its obligations under NEPA without preparing an environmental assessment.

NEPA's implementing regulations permit agencies to establish "categorical exclusions" covering actions that "normally do not require either an environmental impact statement or an environmental assessment and do not have a significant effect on the human environment." 40 C.F.R. § 1507.3(e)(2)(ii). To establish a categorical exclusion, an agency must "identify when documentation of a categorical exclusion determination is required" as well as "provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect" and, therefore, require further review. 40 C.F.R. § 1507.3(e)(2)(ii). The FAA's NEPA regulations state that categorical-exclusion documentation should "be concise" and need only "cite the [exclusion] used, describe how the proposed action fits within the category of actions" covered by the exclusion, "and explain that there are no extraordinary circumstances." FAA Order 1050.1F 5-3.d. Extraordinary circumstances exist only when, among other requirements, the proposed action "[m]ay have a significant impact" on the environment. FAA Order 1050.1F 5-2.a.

The FAA has established 16 categorical exclusions, one of which covers the "[p]ublication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks." FAA Order 1050.1F 5-6.5.k. That describes HARYS FOUR's and SLAPP TWO's contents exactly: The only actions taken in those orders are changing "LANDING LAS COMPLEX" to "LANDING LAS TERMINAL AREA" in HARYS FOUR and SLAPP TWO and adding "VNY TOWER TO COMMUNICATIONS" in HARYS FOUR. Those purely editorial changes have no effect on the flight path of any aircraft.

Save Our Skies does not meaningfully dispute that the orders fall within the scope of the categorical exclusion. Instead, it argues that the FAA could not invoke the exclusion because of what it calls the "obvious extraordinary circumstances" implicated by HARYS FOUR and SLAPP TWO. But Save Our Skies does not explain how the minor wording changes "[m]ay have a significant impact." FAA Order 1050.1F 5-2.a. It asserts that the HARYS FOUR and SLAPP TWO edits "could exacerbate noise impacts," but the orders could not possibly have any effect on noise because, as we have explained, they do nothing to change the flight path of any aircraft. The orders did not implicate extraordinary circumstances, so the FAA did not err in relying on the categorical exclusion for its edits.

Save Our Skies' argument that the FAA should have produced a supplemental environmental analysis under NEPA fails for the same reason. Supplemental environmental analysis is required only "when the environmental impact is significant or uncertain and the [environmental assessment] is no longer valid." *City of Las*

Vegas v. FAA, 570 F.3d 1109, 1117 (9th Cir. 2009). Even if the original environmental assessment were no longer valid here, the minor wording changes do not have an environmental impact, let alone a "significant or uncertain" one. *Id.* The FAA therefore had no obligation to produce a supplemental assessment.

For similar reasons, Save Our Skies is incorrect to argue that the FAA violated section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303, in adopting HARYS FOUR and SLAPP TWO. That statute concerns the Secretary of Transportation's approval power over projects "requiring the use of publicly owned land." *Id.* § 303(c). Because HARYS FOUR and SLAPP TWO made only editorial changes, they could not have resulted in the "use" of any publicly owned land.

Finally, Save Our Skies argues that, "[b]eyond NEPA, the FAA has an independent duty to 'prescribe . . . regulations to control and abate aircraft noise'" under 49 U.S.C. § 44715(a)(1)(A). It argues that the FAA violated that duty by promulgating HARYS FOUR and SLAPP TWO without acting to reduce the noise effects of the Southern California Metroplex. But the statute requires the Administrator of the FAA to prescribe regulations "as he deems necessary." *Id.* It vests the Administrator with the discretion, not the obligation, to act. *Cf. United States v. 14.02 Acres of Land More or Less in Fresno Cnty.*, 547 F.3d 943, 951–52 (9th Cir. 2008) (holding that the phrase "as he deems necessary" in a different statute meant that "Congress has unequivocally committed that determination to the discretion of the Secretary"). It does not strip the FAA of the authority to make non-substantive changes like those at issue here.

We conclude that the FAA did not act contrary to law in promulgating SLAPP TWO and HARYS FOUR, so we deny the petition for review insofar as it challenges those orders.

III

The orders that actually implemented the flight paths of departing aircraft, and thus the orders that form the true basis for Save Our Skies' challenge, are HARYS ONE and TWO and SLAPP ONE, which were promulgated years before Save Our Skies filed its petition. In an effort to reach those orders despite the petition's obvious tardiness, Save Our Skies relies on two theories. First, it argues that a timely challenge to one order allows a petitioner to challenge any related earlier orders. Second, it attempts to attack the orders directly by arguing that the hundreds of days it let pass before filing its petition should be excused. Neither theory has merit.

A

Save Our Skies insists that its challenge to the earlier HARYS and SLAPP orders "does not amount to a collateral attack" on those orders, but that is precisely what it seeks to bring in this proceeding. Save Our Skies attempts to blend all of the HARYS and SLAPP orders together, arguing that because it timely challenged HARYS FOUR and SLAPP TWO, this court has jurisdiction over all previous orders bearing the HARYS or SLAPP name, no matter their age. The text of 49 U.S.C. § 46110 forecloses that argument.

Section 46110 strictly limits our jurisdiction in both time and scope. *See Americopters*, 441 F.3d at 733–34. As to time, subsection (a) makes clear that we have jurisdiction to hear only those challenges "filed not later than 60 days after *the order* is issued" or for which reasonable grounds exist to

excuse the delay. 49 U.S.C. § 46110(a) (emphasis added). As to scope, subsection (c) gives us "jurisdiction to affirm, amend, modify, or set aside any part of *the order*." *Id.* § 46110(c) (emphasis added). Both requirements, thus, turn on the specific order challenged. Our jurisdiction extends only to the orders directly and timely challenged by a petitioner.

Because Save Our Skies timely challenged HARYS FOUR and SLAPP TWO, we have jurisdiction to affirm or modify "any part of" those orders—but only those orders. 49 U.S.C. § 46110(c). We cannot review FAA actions taken in earlier orders simply because Save Our Skies has challenged later orders bearing similar names. *See Tur v. FAA*, 104 F.3d 290, 292 (9th Cir. 1997) ("Tur's suit presents a collateral challenge to the merits of his previous adjudication. Section 46110 does not permit such suits."); *NRDC, Inc. v. NRC*, 666 F.2d 595, 601–02 (D.C. Cir. 1981).

B

Save Our Skies devotes most of its effort to a direct attack on the earlier HARYS and SLAPP orders. It contends that its petition is timely as to those orders because the statutory "reasonable grounds" exception excuses its multi-year delay, or, alternatively, because the FAA's alleged NEPA and other violations tolled the statute of limitations. We disagree.

1

Section 46110 permits us to entertain a petition filed "later than 60 days after the order is issued . . . only if there are reasonable grounds for not filing by the 60th day." 49 U.S.C. § 46110(a). Courts "have rarely found 'reasonable grounds' under section 46110(a)," and we find none here.

Electronic Priv. Info. Ctr. v. FAA, 821 F.3d 39, 43 (D.C. Cir. 2016).

In our published opinions discussing the "reasonable grounds" exception, we have made clear that a petitioner's own mistake cannot excuse its delay in filing. In *Sierra Club v. Skinner*, we held that even though "the FAA ha[d] created a confusing situation in circulating a Handbook which states that the [challenged action] is not an order," no reasonable grounds for delay existed because "adequate research should have revealed that" the action was in fact a reviewable final order. 885 F.2d 591, 593–94 (9th Cir. 1989). Similarly, in *Americopters*, we held that the "quixotic pursuit of the wrong remedies"—in that case, mistakenly "filing in the wrong court"—"was not a reasonable ground for delay." 441 F.3d at 734. Other circuits have similarly held that a delay of the petitioner's own making is not based on reasonable grounds. *See, e.g.*, *Howard Cnty. v. FAA*, 970 F.3d 441, 450–51 (4th Cir. 2020); *Nat'l Fed. of the Blind v. United States Dep't of Transp.*, 827 F.3d 51, 58 (D.C. Cir. 2016); *Tulsa Airports Improvement Tr. v. FAA*, 839 F.3d 945, 950 (10th Cir. 2016).

Save Our Skies argues that the FAA "acted in a manner that would confound the public" when it promulgated the earlier HARYS and SLAPP orders. Specifically, it says that the FAA confused the public by not explaining the contents of the departure procedures or how and when it changed them. But the FAA published documents and maps detailing the departure procedures for each order challenged here. That Save Our Skies failed to undertake "adequate research" by not examining the orders within 60 days of their promulgation does not establish reasonable grounds for delay. *Skinner*, 885 F.2d at 593.

Save Our Skies relies heavily on cases in which the District of Columbia Circuit excused a petitioner's delay under Section 46110(a). We have not had occasion to decide whether to read "reasonable grounds" as expansively as the District of Columbia Circuit, and we need not do so here. Even accepting that court's case law on its own terms, none of the cited cases is analogous to the case before us. The critical fact in each of the cases was that the "*agency's* words and actions reasonably call[ed] into question the finality of its action." *Maryland v. FAA*, 952 F.3d 288, 292 (D.C. Cir. 2020); *see Paralyzed Veterans of Am. v. Civil Aeronautics Bd.*, 752 F.2d 694, 705 n.82 (D.C. Cir. 1985) (finding reasonable grounds because the Board "explicitly left its rulemaking docket open in order to receive additional comments from the public" in order to consider further "modification" of the rule); *Safe Extensions, Inc. v. FAA*, 509 F.3d 593, 603–04 (D.C. Cir. 2007) (finding reasonable grounds because the FAA told the petitioner and others to "ignore" its order after it caused a "significant uproar in the industry"); *City of Phoenix, Ariz. v. Huerta*, 869 F.3d 963, 970 (D.C. Cir. 2017) (finding reasonable grounds because, in this "rare case," the FAA's "serial promises" and engagement with affected parties "would certainly have led reasonable observers to think the FAA might fix the noise problem without being forced to do so by a court").

As the court explained in *Maryland v. FAA*, that the FAA "assur[ed] the public that it would work cooperatively to implement further changes to address noise concerns," "actively participated" in a working group on noise, and engaged with a petitioner on the issue of noise prevention, is not by itself sufficient to establish reasonable grounds for delay. 952 F.3d at 290–92. The court rejected Maryland's argument that because the agency "signaled that it was willing to work with the [Working] Group on possible

revisions," any petition for review "might have shut down dialogue between" Maryland and the FAA, so a delay in filing was reasonable. *Id.* at 291. It held that a "'pattern' of 'serial promises' that [the FAA] was considering the petitioner's noise concerns" is not enough. *Id.* (quoting *City of Phoenix*, 869 F.3d at 970). Distinguishing its decision in *City of Phoenix*, which had excused a delay of about six months, the court explained that the key fact in that case was "the FAA's near constant engagement with petitioner City of Phoenix throughout the period between the new flight paths' implementation and the City's late petition." *Id.* Where the engagement is not so continuous and substantial, and the FAA's statements to the public do not "suggest[] that it intend[s] to amend the challenged procedures further," reasonable grounds for delay do not exist. *Id.* at 292; *see Howard Cnty.*, 970 F.3d at 451 ("As in *Maryland*, the missing ingredient in this case is 'continuous . . . engagement' between the County and the FAA." (alteration in original) (quoting *Maryland*, 952 F.3d at 292)).

Save Our Skies contends that, as in *City of Phoenix*, the FAA's engagement with affected parties "would certainly have led reasonable observers to think the FAA might fix the noise problem without being forced to do so by a court." *City of Phoenix*, 869 F.3d at 970. But Save Our Skies' petition was far later than the petition in *City of Phoenix*—indeed, it was far later than that excused by any court applying the "reasonable grounds" exception. More importantly, there was no pattern of engagement by the FAA as to either the HARYS or SLAPP orders that was remotely comparable to the "near constant engagement" in *City of Phoenix*. *See Maryland*, 952 F.3d at 291.

As to HARYS ONE and TWO, Save Our Skies waited 1232 and 840 days, respectively, to file its petition. It asserts

that this multi-year delay is excusable because during that time "engagement with the FAA was a promising course of action." As evidence of engagement, Save Our Skies points to the Southern San Fernando Valley Airplane Noise Task Force. But the FAA's engagement with the Task Force can hardly be described as "constant," *Maryland*, 952 F.3d at 291, let alone so constant as to "have led reasonable observers to think the FAA might fix the noise problem" on its own, *City of Phoenix*, 869 F.3d at 970.

The most that can be said of the FAA's engagement with the Task Force—an entity that the FAA did not form and of which neither the FAA nor Save Our Skies were members—is that the FAA sent a technical advisor to at least one meeting to consult on the feasibility of certain recommendations. Otherwise, the FAA's engagement began and ended with the agency's receipt—and rejection—of the Task Force's recommendations regarding, among many issues, the HARYS departure procedure. As the District of Columbia Circuit has explained, even "the FAA actively participat[ing]" in a group like the Task Force would be insufficient to furnish reasonable grounds for delay. *Maryland*, 952 F.3d at 291. Its involvement here was far from the level of engagement necessary to create reasonable grounds.

In any event, even if Save Our Skies had succeeded in demonstrating that the Task Force's existence furnished reasonable grounds, that still would not make the petition timely because it would excuse only the period between the Task Force's formation in July 2019 and the FAA's rejection of its recommendations on September 1, 2020. The Task Force was not formed until more than a year after the filing deadlines for both HARYS ONE and TWO had expired, and the FAA rejected its recommendations 69 days before Save

Our Skies filed its petition. Neither of those periods of delay—that is, the period before the Task Force was formed and the period after the FAA rejected its recommendations—can be explained as a product of the FAA's engagement with the Task Force. And each, by itself, exceeds the 60-day limitations period.

As to SLAPP ONE, Save Our Skies similarly fails to excuse its delay of 1288 days. It argues that it did not petition for review earlier because, until the promulgation of SLAPP TWO, "the FAA appeared to engage in an administrative and environmental review process to modify SLAPP ONE to address community concerns about environmental impacts." As evidence, Save Our Skies states that the FAA published a draft environmental review in 2018, took comments and held community workshops in 2019, and decided to prepare a further assessment analyzing proposed changes to SLAPP ONE.

Save Our Skies misunderstands SLAPP TWO as a sub silentio rejection of the amendments proposed in the environmental review. In fact, as the FAA explained in its September 2020 letter to the Task Force, the SLAPP environmental assessment process is ongoing. SLAPP TWO did not reject the proposed amendments; it merely implemented the minor wording changes to SLAPP ONE that we have already discussed. Save Our Skies' own confusion is not a reasonable ground for delay, and certainly not a delay of this length. *See Skinner*, 885 F.2d at 593–94; *Americopters*, 441 F.3d at 734. And in any event, Save Our Skies does not explain how the draft SLAPP environmental review, published in October 2018, could possibly excuse the 17 months of delay that had already taken place after the 60-day period for challenging SLAPP ONE expired in May 2017.

2

Finally, Save Our Skies contends that because the FAA "repeatedly failed to comply with the requirements of NEPA," there is "a continuous pattern of violative conduct by the FAA, which should serve to toll the statute of limitations for the filing of this petition." It is true that in certain contexts, we have stated that a statute of limitations may be tolled to allow a plaintiff to challenge a series of related acts, some of which occurred within the limitations period and some of which occurred earlier. *See Cherosky v. Henderson*, 330 F.3d 1243, 1246 (9th Cir. 2003). But that rule is more limited than Save Our Skies suggests: When "a plaintiff alleges 'claims based on discrete acts,' the claims 'are only timely where such acts occurred within the limitations period.'" *Ellis v. Salt River Project Agric. Improvement & Power Dist.*, 24 F.4th 1262, 1273 (9th Cir. 2022) (quoting *Cherosky*, 330 F.3d at 1246).

Save Our Skies urges us to apply to the 60-day time limit in section 46110 the same continuing-violations doctrine that it contends applies in the context of the six-year statute of limitations applicable to APA claims. *See* 28 U.S.C. § 2401(a). We have never held that the continuing-violations doctrine applies to APA claims under section 2401(a), and several courts of appeals have held that it does not. *See Izaak Walton League of America, Inc. v. Kimbell*, 558 F.3d 751, 761 (8th Cir. 2009); *Preminger v. Secretary of Veterans Affairs*, 517 F.3d 1299, 1307 (Fed. Cir. 2008); *Center for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1334–35 (11th Cir. 2006) (per curiam); *Stupak-Thrall v. Glickman*, 346 F.3d 579, 583–85 (6th Cir. 2003). To be sure, the District of Columbia Circuit has suggested, albeit in dicta, that the continuing-violations doctrine might apply to an APA claim for agency action unlawfully withheld. *See*

Wilderness Soc'y v. Norton, 434 F.3d 584, 589 (D.C. Cir. 2006). But we need not decide whether that suggestion is correct. Even setting aside the problem that Save Our Skies complains of discrete, historical agency actions and does not identify any action that the FAA continues to unlawfully withhold, its argument fails for a more fundamental reason.

The governing statute here is section 46110, not section 2401(a). Although section 2401(a) requires filing within six years of when "the right of action first accrues," section 46110(a) requires filing within 60 days of when "the order is issued." Whether or not a continuing violation can extend the accrual of a right of action, it cannot alter the date on which "the order is issued." *See United States v. Locke*, 471 U.S. 84, 93 (1985) (explaining that "with respect to filing deadlines a literal reading of Congress' words is generally the only proper reading").

Save Our Skies' argument amounts to a request that we ignore section 46110 in favor of the statute of limitations that would otherwise apply to APA claims. But Save Our Skies cannot "circumvent the strict time limits" imposed by section 46110 simply by invoking the APA. *See Turtle Island Restoration Network v. United States Dep't of Commerce*, 438 F.3d 937, 944 (9th Cir. 2006). Allowing it to do so would contradict the rule of statutory construction that "[a] specific provision controls over one of more general application." *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991). The continuing-violation doctrine therefore does not provide a basis for extending the statute of limitations.

Save Our Skies' petition for review of HARYS ONE and TWO and SLAPP ONE is untimely, so we dismiss the petition for review insofar as it challenges those orders.

PETITION DENIED in part and DISMISSED in part.