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## **SUPREME COURT OF THE UNITED STATES**

No. 93-1199

**MARVIN STONE, PETITIONER v. IMMIGRATION AND  
NATURALIZATION SERVICE**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[April 19, 1995]

JUSTICE KENNEDY delivered the opinion of the Court.

We consider whether the filing of a timely motion for reconsideration of a decision by the Immigration and Naturalization Service's Board of Immigration Appeals tolls the running of the 90-day period for seeking judicial review of the decision.

Petitioner, Marvin Stone, is a citizen of Canada and a businessman and lawyer by profession. He entered the United States in 1977 as a nonimmigrant visitor for business and has since remained in the United States.

On January 3, 1983, Stone was convicted of conspiracy and mail fraud, in violation of 18 U. S. C. §§371 and 1341. He served 18 months of a 3-year prison term. In March 1987, after his release, the INS served him with an order to show cause why he should not be deported as a nonimmigrant who had remained in the United States beyond the period authorized by law. In January 1988, after a series of hearings, an Administrative Law Judge ordered Stone deported. The ALJ concluded that under the regulations in effect when Stone entered the United States, an alien on a nonimmigrant for business visa could remain in the country for an initial period not to

exceed six months with the privilege of seeking extensions, which could be granted in 6-month increments. 8 CFR 214.2(b) (1977). The ALJ ordered deportation under 8 U. S. C. §1251(a)(2) (now §1251(a)(1)(B) (1988 ed., Supp. V)) based on petitioner's testimony that he had remained in the United States since 1977 without seeking any extension. The ALJ denied Stone's application for suspension of deportation under 8 U. S. C. §1254(a) (1), concluding that Stone's conviction of mail fraud and 18-month incarceration barred him, as a matter of law, from establishing "good moral character" as required by §1254. See 8 U. S. C. §1101(f)(7).

Stone's administrative appeals were as follows: he appealed to the Board of Immigration Appeals, which affirmed the ALJ's determinations and dismissed the appeal on July 26, 1991; he filed a "Motion to Reopen and/or to Reconsider" with the BIA in August 1991; on February 3, 1993, some 17 months later, the BIA denied the reconsideration motion as frivolous.

Judicial review was sought next. The record does not give the precise date, but, sometime in February or March 1993, Stone petitioned the Court of Appeals for the Sixth Circuit for review of both the July 26, 1991, deportation order and the February 3, 1993, order denying reconsideration. The Court of Appeals dismissed the petition for want of jurisdiction to the extent the petition sought review of the July 26, 1991, order, the underlying deportation determination. The Court held that the filing of the reconsideration motion did not toll the running of the 90-day filing period for review of final deportation orders. 13 F. 3d 934, 938-939 (CA6 1994). We granted certiorari to resolve a conflict among the Circuits on the question, compare *Akrap v. INS*, 966 F. 2d 267, 271 (CA7 1992); and *Nocon v. INS*, 789 F. 2d 1028, 1033 (CA3 1986) (agreeing that the filing of a reconsideration motion does not toll the statutory time limit for seeking review of a deportation order), with *Fleary v. INS*, 950 F. 2d 711, 713 (CA11 1992); *Pierre v. INS*, 932 F. 2d 418, 421 (CA5 1991) (*per curiam*), *Attoh v. INS*, 606

F. 2d 1273, 1275, n. 15 (CADC 1979), and *Bregman v. INS*, 351 F. 2d 401, 402-403 (CA9 1965) (holding that a petition to review a deportation order is timely if filed within the statutory period following the disposition of a timely-filed reconsideration motion), 511 U. S. \_\_\_ (1994). We now affirm.

Section 106(a)(1) of the Immigration and Nationality Act (INA) specifies that “a petition for review [of a final deportation order] may be filed not later than 90 days after the date of the issuance of the final deportation order, or, in the case of an alien convicted of an aggravated felony, not later than 30 days after the issuance of such order.” 8 U. S. C. §1105a(a)(1) (1988 ed., and Supp. V). The clause pertaining to an “aggravated felony” is not a factor in the analysis, petitioner's offense not being within that defined term. See 8 U. S. C. §1101(a)(43) (1988 ed., Supp. V). He had the benefit of the full 90-day filing period. There is no dispute that a deportation order “become[s] final upon dismissal of an appeal by the Board of Immigration Appeals,” 8 CFR 243.1 (1977), and, the parties agree, the 90-day period started on July 26, 1991.

The parties disagree, however, regarding the effect that petitioner's later filing of a timely motion to reconsider had on the finality of the order. Petitioner contends that a timely motion to reconsider renders the underlying order nonfinal, and that a petition seeking review of both the order and the reconsideration denial is timely if filed (as this petition was) within 90 days of the reconsideration denial. The INS argues that the finality and reviewability of an order are unaffected by the filing of a motion to reconsider or to reopen. In its view the Court of Appeals had jurisdiction to review the denial of the motion to reconsider but not to review the original order.

We considered the timeliness of a review petition where there is a motion to reconsider or reopen an agency's order in *ICC v. Locomotive Engineers*, 482 U. S. 270 (1987). The Interstate Commerce Commission's governing statute provided that, with

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certain exceptions, judicial review of ICC orders would be governed by the Hobbs Act, 28 U. S. C. §2341 *et seq.* See *Locomotive Engineers*, 482 U. S., at 277. We held that “the timely petition for administrative reconsideration stayed the running of the Hobbs Act's limitation period until the petition had been acted upon by the Commission.” *Id.*, at 284. Our conclusion, we acknowledged, was in some tension with the language of both the Hobbs Act, which permits an aggrieved party to petition for review “within 60 days after [the] entry” of a final order, 28 U. S. C. §2344, and of 49 U. S. C. §10327(i), “which provides that, ‘[n]otwithstanding’ the provision authorizing the Commission to reopen and reconsider its orders (§10327(g)), ‘an action of the Commission . . . is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.’” *Locomotive Engineers*, 482 U. S., at 284. We found the controlling language similar to the corresponding provision of the Administrative Procedure Act (APA), 5 U. S. C. §704, which provides that “agency action otherwise final is final for the purposes of this section [entitled ‘Actions Reviewable’] whether or not there has been presented or determined an application for . . . any form of reconsideratio[n]”— “language [that] has long been construed . . . merely to relieve parties from the *requirement* of petitioning for rehearing before seeking judicial review . . . but not to prevent petitions for reconsideration that are actually filed from rendering the orders under reconsideration nonfinal.” *Locomotive Engineers*, *supra*, at 284–285.

In support of that longstanding construction of the APA language, we cited dicta in two earlier cases, *American Farm Lines v. Black Ball Freight Service*, 397 U. S. 532, 541 (1970); *CAB v. Delta Air Lines, Inc.*, 367 U. S. 316, 326–327 (1961), and the holding in *Outland v. CAB*, 284 F. 2d 224, 227 (CADC 1960), a decision cited with approval in both *Black Ball* and

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*Delta. Outland* justified treating orders as nonfinal for purposes of review during the pendency of a motion for reconsideration in terms of judicial economy: “[W]hen the party elects to seek a rehearing there is always the possibility that the order complained of will be modified in a way which renders judicial review unnecessary.” *Outland, supra*, at 227.

As construed in *Locomotive Engineers* both the APA and the Hobbs Act embrace a tolling rule: The timely filing of a motion to reconsider renders the underlying order nonfinal for purposes of judicial review. In consequence, pendency of reconsideration renders the underlying decision not yet final, and it is implicit in the tolling rule that a party who has sought rehearing cannot seek judicial review until the rehearing has concluded. 4 K. Davis, *Administrative Law Treatise* §26:12 (2d ed. 1988). *United Transportation Union v. ICC*, 871 F.2d 1114, 1118 (CA DC 1989); *Bellsouth Corp. v. FCC*, 17 F.3d 1487, 1489-1490 (CA DC 1994). Indeed, those Circuits that apply the tolling rule have so held. See *Fleary*, 950 F.2d, at 711-712 (deportation order not reviewable during pendency of motion to reopen); *Hyun Joon Chung v. INS*, 720 F.2d 1471, 1474 (CA9 1984) (same).

Section 106 of the INA provides that “[t]he procedure prescribed by, and all the provisions of chapter 158 of title 28, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation . . . .” 8 U.S.C. §1105a(a) (1988 ed. and Supp. IV). The reference to chapter 158 of Title 28 is a reference to the Hobbs Act. In light of our construction of the Hobbs Act in *Locomotive Engineers*, had Congress used that Act to govern review of deportation orders without further qualification, it would follow that the so-called tolling rule applied.

The INS, however, proffers a different reading of *Locomotive Engineers*. Relying on our statement that

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§704 of the APA has been construed “not to *prevent* petitions for reconsideration that are actually filed from rendering the orders under reconsideration nonfinal,” 482 U. S., at 285 (emphasis supplied), the INS understands *Locomotive Engineers* to set forth merely a default rule from which agencies may choose to depart. It argues that it did so here.

If the case turned on this theory, the question would arise whether an agency subject to either the APA or the Hobbs Act has the authority to specify whether the finality of its orders for purposes of judicial review is affected by the filing of a motion to reconsider. The question is not presented here. Both the Hobbs Act and the APA are congressional enactments, and Congress may alter or modify their application in the case of particular agencies. We conclude that in amending the INA Congress chose to depart from the ordinary judicial treatment of agency orders under reconsideration.

Congress directed that the Hobbs Act procedures would govern review of deportation orders, except for 10 specified qualifications. See 8 U. S. C. §1105a(a). Two of those exceptions are pertinent. The first, contained in §106(a)(1) of the INA, provides an alien with 90 days to petition for review of a final deportation order (30 days for aliens convicted of an aggravated felony), instead of the Hobbs Act's 60-day period. See 8 U. S. C. §1105(a)(1). The second and decisive exception is contained in §106(a)(6), a provision added when Congress amended the INA in 1990. The section provides:

“[W]henever a petitioner seeks review of an order under this section, any review sought with respect to a motion to reopen or reconsider such an order shall be consolidated with the review of the order.”

By its terms, §106(a)(6) contemplates two petitions

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for review and directs the courts to consolidate the matters. The words of the statute do not permit us to say that the filing of a petition for reconsideration or reopening dislodges the earlier proceeding reviewing the underlying order. The statute, in fact, directs that the motion to reopen or reconsider is to be consolidated with the review of the order, not the other way around. This indicates to us that the action to review the underlying order remains active and pending before the court. We conclude that the statute is best understood as reflecting an intent on the part of Congress that deportation orders are to be reviewed in a timely fashion after issuance, irrespective of the later filing of a motion to reopen or reconsider.

Were a motion for reconsideration to render the underlying order nonfinal, there would be, in the normal course, only one petition for review filed and hence nothing for the judiciary to consolidate. As in *Locomotive Engineers* itself, review would be sought after denial of reconsideration, and both the underlying order and the denial of reconsideration would be reviewed in a single proceeding, in so far, at least, as denial of reconsideration would be reviewable at all. See *Locomotive Engineers*, 482 U. S., at 280. Indeed, the Ninth Circuit, which before the 1990 amendment had held that pendency of a reconsideration motion did render a deportation order nonfinal, understood that the tolling rule contemplates just one petition for review: “Congress visualized a single administrative proceeding in which all questions relating to an alien's deportation would be raised and resolved, followed by a single petition in a court of appeals for judicial review . . . .” *Yamada v. INS*, 384 F.2d 214, 218 (CA9 1967). The tolling rule is hard to square with the existence of two separate judicial review proceedings.

Under the no-tolling rule, by contrast, two separate petitions for review will exist in the normal course.



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An order would be final when issued, irrespective of the later filing of a reconsideration motion, and the aggrieved party would seek judicial review of the order within the specified period. Upon denial of reconsideration, the petitioner would file a separate petition to review that second final order. Because it appears that only the no-tolling rule could give rise to two separate petitions for review simultaneously before the courts, which it is plain §106(a)(6) contemplates, it would seem that only that rule gives meaning to the section.

Although the consolidation provision does not mention tolling, see *post*, at \_\_\_ (BREYER, J., dissenting), tolling would be the logical consequence if the statutory scheme provided for the nonfinality of orders upon the filing of a reconsideration motion. *Locomotive Engineers'* conclusion as to tolling followed as a necessary consequence from its conclusion about finality. Finality is the antecedent question, and as to that matter the consolidation provision speaks volumes. All would agree that the provision envisions two petitions for review. See *post*, at \_\_\_ (BREYER, J., dissenting). Because only “final deportation order[s]” may be reviewed, 8 U. S. C. §1105a(a)(1), it follows by necessity that the provision requires for its operation the existence of two separate final orders, the petitions for review of which could be consolidated. The two orders cannot remain final and hence the subject of separate petitions for review if the filing of the reconsideration motion rendered the original order nonfinal. It follows that the filing of the reconsideration motion does not toll the time to petition for review. By speaking to finality, the consolidation provision does say quite a bit about tolling.

Recognizing this problem, petitioner at oral argument sought to give meaning to §106(a)(6) by offering a different version of what often might occur. Petitioner envisioned an alien who petitioned for

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review of a final deportation order, and, while the petition was still pending, went back to the agency to seek its reconsideration or, if new evidence had arisen, reopening. If, upon denial of reconsideration or reopening, the alien sought review, and the review of the original order were still pending, §106(a)(6) would apply and the two petitions would be consolidated. The dissent relies on the same assumed state of events. See *post*, at \_\_\_.

That construct, however, is premised on a view of finality quite inconsistent with the tolling rule petitioner himself proposes. If, as petitioner advocates, the filing of a timely petition for reconsideration before seeking judicial review renders the underlying order nonfinal, so that a reviewing court would lack jurisdiction to review the order until after disposition of the reconsideration motion, one wonders how a court retains jurisdiction merely because the petitioner delays the reconsideration motions until after filing the petition for judicial review of the underlying order. The policy supporting the nonfinality rule—that “when the party elects to seek a rehearing there is always a possibility that the order complained of will be modified in a way which renders judicial review unnecessary,” *Outland*, 284 F.2d, at 227—applies with equal force where the party seeks agency rehearing after filing a petition for judicial review. Indeed, the Court of Appeals for the District of Columbia Circuit, whose decision in *Outland* we cited in support of our construction in *Locomotive Engineers*, has so held in the years following our decision. See *Wade v. FCC*, 986 F.2d 1433, 1434 (CA DC 1993) (*per curiam*) (“The danger of wasted judicial effort . . . arises whether a party seeks agency reconsideration before, simultaneous with, or after filing an appeal or petition for judicial review”) (citations omitted). The *Wade* holding rested on, and is consistent with, our decision in a somewhat analogous context that the filing of a Rule

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59 motion to alter or amend a district court's judgment strips the appellate court of jurisdiction, whether the Rule 59 motion is filed before or after the notice of appeal. See *Griggs v. Provident Consumer Discount Co.*, 459 U. S. 56, 61 (1982) (*per curiam*). Our decision, based on a construction of Fed. Rule App. Proc. 4(a)(4), noted the “theoretical inconsistency” of permitting the district court to retain jurisdiction to decide the Rule 59 motion while treating the notice of appeal as “adequate for purposes of beginning the appeals process.” *Griggs, supra*, at 59.

We need not confirm the correctness of the *Wade* decision, but neither should we go out of our way to say it is incorrect, as the petitioner and the dissent would have us do. The inconsistency in petitioner's construction of §106(a)(6) is the same inconsistency that we noted in *Griggs*. The petitioner assumes that a reconsideration motion renders the underlying order nonfinal if the motion is filed before a petition for review but that finality is unaffected if the reconsideration motion is filed one day after the petition for review. It is implausible that Congress would direct different results in the two circumstances. At any rate, under petitioner's construction the consolidation provision would have effect only in the rarest of circumstances.

When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect. See *Reiter v. Sonotone Corp.*, 442 U. S. 330, 339 (1979) (Court must construe statute to give effect, if possible, to every provision); *Moskal v. United States*, 498 U. S. 103, 109–111 (1990) (same). Had Congress intended review of INS orders to proceed in a manner no different than review of other agencies, as petitioner appears to argue, there would have been no reason for Congress to have included the consolidation provision. The reasonable construction is that the amendment was enacted as

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an exception, not just to state an already existing rule. Section 106(a)(6) is an explicit exception to the general applicability of the Hobbs Act procedures, so it must be construed as creating a procedure different from normal practice under the Act. We conclude, as did the Court of Appeals, see 13 F. 3d, at 938, and the Seventh Circuit, see *Akrap*, 966 F. 2d, at 271, that the consolidation provision Congress inserted when it amended the Act in 1990 is best understood as reflecting its expectation that in the particular context of INS deportation orders the normal tolling rule will not apply.

Underlying considerations of administrative and judicial efficiency, as well as fairness to the alien, support our conclusion that Congress intended to depart from the conventional tolling rule in deportation cases.

Deportation orders are self-executing orders, not dependent upon judicial enforcement. This accounts for the automatic stay mechanism, the statutory provision providing that service of the petition for review of the deportation order stays the deportation absent contrary direction from the court or the alien's aggravated felony status. See 8 U. S. C. §1105a(a)(3). The automatic stay would be all but a necessity for preserving the jurisdiction of the court, for the agency might not otherwise refrain from enforcement. Indeed, the INA provides that “nothing in this section [Judicial review of orders of deportation and exclusion] shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section.” 8 U. S. C. §1105a(a)(8) (1988 ed., Supp. V). And it has been the longstanding view of the INS, a view we presume Congress understood when it amended the Act in 1990, that a motion for

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reconsideration does not serve to stay the deportation order. 8 CFR 3.8 (1977). Cf. *Delta Air Lines*, 367 U. S., at 325-327 (certificate of public convenience and necessity effective when issued though not final for purposes of judicial review because of pendency of reconsideration motion).

Were the tolling rule to apply here, aliens subject to deportation orders might well face a Hobson's choice: petition for agency reconsideration at the risk of immediate deportation, or forego reconsideration and petition for review to obtain the automatic stay. The choice is a hard one in deportation cases, in that the consequences of deportation are so final, unlike orders in some other administrative contexts. Once an alien has been deported, the courts lack jurisdiction to review the deportation order's validity. See 8 U. S. C. §1105a(c). This choice is one Congress might not have wished to impose on the alien.

An alien who had filed for agency reconsideration might seek to avoid immediate deportation by seeking a judicial stay. At oral argument, the petitioner suggested a habeas corpus action as one solution to the dilemma. Even on the assumption that a habeas corpus action would be available, see 8 U. S. C. §1105a(a) (Exclusiveness of procedure), the solution is unsatisfactory. In evaluating those stay applications the courts would be required to assess the probability of the alien's prevailing on review, turning the stay proceedings into collateral previews of the eventual petitions for review—indeed a preview now implicating the district court, not just the court of appeals. By inviting duplicative review in multiple courts, the normal tolling rule would frustrate, rather than promote, its stated goal of judicial economy.

From an even more fundamental standpoint, the policies of the tolling rule are at odds with Congress' policy in adopting the judicial review provisions of the INA. The tolling rule reflects a preference to postpone judicial review to ensure completion of the

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administrative process. Reconsideration might eliminate the need for judicial intervention, and the resultant saving in judicial resources ought not to be diminished by premature adjudication. By contrast, Congress' "fundamental purpose" in enacting §106 of the INA was "to abbreviate the process of judicial review . . . in order to frustrate certain practices . . . whereby persons subject to deportation were forestalling departure by dilatory tactics in the courts." *Foti v. INS*, 375 U. S. 217, 224 (1963). Congress' concern reflected the reality that "in a deportation proceeding . . . as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States." *INS v. Doherty*, 502 U. S. 314, 321-325 (1992). Congress' intent in adopting and then amending the INA was to expedite both the initiation and the completion of the judicial review process. The tolling rule's policy of delayed review would be at odds with the congressional purpose.

The dissent does not dispute that a principal purpose of the 1990 amendments to the INA was to expedite petitions for review and to redress the related problem of successive and frivolous administrative appeals and motions. In the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 5048, Congress took five steps to reduce or eliminate these abuses. First, it directed the Attorney General to promulgate regulations limiting the number of reconsideration and reopening motions that an alien could file. §545(b). Second, it instructed the Attorney General to promulgate regulations specifying the maximum time period for the filing of those motions, hinting that a 20-day period would be appropriate. See *ibid.* Third, Congress cut in half the time for seeking judicial review of the final deportation order, from 180 to 90 days. See *ibid.* Fourth, Congress directed the Attorney General to define "frivolous behavior for which attorneys may be

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sanctioned” in connection with administrative appeals and motions. See *ibid.*, §545(a). In the dissent's view, a fifth measure, the consolidation provision, was added for no apparent reason and bears no relation to the other amendments Congress enacted at the same time. It is more plausible that when Congress took the first four steps to solve a problem, the fifth—the consolidation provision—was also part of the solution, and not a step in the other direction. By envisioning that a final deportation order will remain final and reviewable for 90 days from the date of its issuance irrespective of the later filing of a reconsideration motion, Congress' amendment eliminates much if not all of the incentive to file a meritless reconsideration motion, and, like the other amendments adopted at the same time, expedites the time within which the judicial review process of the deportation order begins.

A consideration of the analogous practice of appellate court review of district court judgments confirms the correctness of our construction of Congress' language. The closest analogy to the INS' discretionary petition for agency reconsideration is the Rule 60(b) motion for relief from judgment. The effect of Rule 60(b) motions (at least when made more than 10 days after judgment, an exception discussed below), on the finality and appealability of district court judgments is comparable to the effect of reconsideration motions on INS orders. With the exception noted, the filing of a Rule 60(b) motion does not toll the running of the time for taking an appeal, see Fed. Rule Civ. Proc. 60(b); 11 C. Wright & A. Miller, *Federal Practice and Procedure* §2871 (1973) (Wright & Miller), and the pendency of the motion before the district court does not affect the continuity of a prior-taken appeal. See *ibid.* And last but not least, the pendency of an appeal does not affect the

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district court's power to grant Rule 60 relief. See *Standard Oil Co. of Cal. v. United States*, 429 U. S. 17, 18-19 (1976) (*per curiam*); Wright & Miller, §2873 (1994 Supp.). A litigant faced with an unfavorable district court judgment must appeal that judgment within the time allotted by Fed. Rule App. Proc. 4, whether or not the litigant first files a Rule 60(b) motion (where the Rule 60 motion is filed more than 10 days following judgment). Either before or after filing his appeal, the litigant may also file a Rule 60(b) motion for relief with the district court. The denial of the motion is appealable as a separate final order, and if the original appeal is still pending it would seem that the court of appeals can consolidate the proceedings. In each of these respects, the practice of litigants under Rule 60(b) is, under our construction, identical to that of aliens who file motions for reconsideration before the BIA. In each case two separate post-decision appeals are filed.

For reasons not relevant here, in 1991 the Rules of Appellate Procedure were amended to provide that Rule 60(b) motions filed within 10 days of a district court's judgment do toll the time for taking an appeal. See Fed. Rule App. Proc. 4(a)(4)(F). That amendment added Rule 60(b) motions filed within 10 days of judgment to a list of other post-trial motions that toll the running of the time for appeal, a list that includes Rule 59 motions to alter or amend a judgment. See Fed. Rule App. Proc. 4(a)(4)(C). A consideration of this provision of the appellate rules is quite revealing. The list of post-trial motions that toll the time for appeal is followed, and hence qualified, by the language interpreted in *Griggs*, language that provides in express terms that these motions also serve to divest the appellate court of jurisdiction where the motions are filed after appeal is taken.

The language of Rule 4 undermines the dissent's reliance on a presumption that appellate court jurisdiction once asserted is not divested by further



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proceedings at the trial or agency level. See *post*, at \_\_\_\_\_. Indeed, the practice is most often to the contrary where appellate court review of district court judgments subject to post-trial motions is concerned. See Fed. Rule App. Proc. 4(a)(4) (specifying that the majority of post-judgment motions filed with the district court divest the appellate court of jurisdiction that had once existed). A district court judgment subject to one of these enumerated motions, typified by Rule 59, is reviewable only after, and in conjunction with, review of the denial of the post-trial motion, and just one appeal pends before the appellate court at any one time.

In short, the Rules of Appellate Procedure evince a consistent and coherent view of the finality and appealability of district court judgments subject to post-trial motions. The majority of post-trial motions, such as Rule 59, render the underlying judgment nonfinal both when filed before an appeal is taken (thus tolling the time for taking an appeal), and when filed after the notice of appeal (thus divesting the appellate court of jurisdiction). Other motions, such as Rule 60(b) motions filed more than 10 days after judgment, do not affect the finality of a district court's judgment, either when filed before the appeal (no tolling), or afterwards (appellate court jurisdiction not divested). Motions that do toll the time for taking appeal give rise to only one appeal in which all matters are reviewed; motions that do not toll the time for taking an appeal give rise to two separate appellate proceedings that can be consolidated.

Our colleagues in dissent agree that the consolidation provision envisions the existence of two separate petitions for review. See *post*, at \_\_\_\_\_. To give the provision meaning while at the same time concluding that the tolling rule applies, the dissent is compelled to conclude that a reconsideration motion before the

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BIA renders the original order nonfinal if made before a petition for judicial review is filed but does not affect the finality of the order if filed afterwards. See *post*, at \_\_\_\_\_. The hybrid tolling rule the dissent suggests has no analogue at all in the appellate court-district court context. On the contrary, as we have just observed, the uniform principle where appellate review of district court judgments is concerned is that motions that toll produce but one appeal, motions that do not toll produce two. It is only by creating this new hybrid that the dissent can give meaning to the consolidation provision, and avoid the Hobson's choice for the alien. While litigants who practice before the district courts and the BIA will have familiarity with both types of post-trial motions discussed above, and will have no difficulty practicing under the rule we announce today, practitioners would have no familiarity with the hybrid tolling rule the dissent is compelled to devise in order to give the consolidation provision meaning.

It is worthwhile pausing to consider just how many steps the dissent must take to reconcile the consolidation provision with the tolling rule it prefers. The dissent's construction would require that the Court conclude, without any briefing, that our decision in *Griggs* does not apply to agency review. The dissent would as well disrupt administrative law in general by overturning the practice of the circuit court with the most experience reviewing agency decisions when faced with agency reconsideration motions made after petition for review (the District of Columbia Circuit), thereby resolving a circuit split without any briefing or argument. See *post*, at \_\_\_\_\_. Our construction avoids each of these extraordinary steps. It creates a practice parallel to that of appellate courts reviewing district court judgments subject to pending Rule 60(b) motions filed more than 10 days after judgment and requires us to take no

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firm position on whether *Griggs* applies to agency review where tolling does occur.

But the full import of our decision in *Griggs*, and the concomitant problem addressed in *Wade*, are in some sense secondary to our fundamental point of dispute with the dissent. In our view the consolidation provision reflects Congress' intent to depart from the normal tolling rule in this context, whereas on the dissent's view it does not. Congress itself was explicit in stating that the consolidation provision is an exception to the applicability of the Hobbs Act procedures, see *supra*, at \_\_\_, and it took the deliberate step of amending the Act in 1990 to add the provision. The challenge for the dissent is not, then, just to give the consolidation provision some work to do that is consistent with the tolling rule, but to give it some work as an exception to the applicability of the Hobbs Act procedures, a meaning that explains why Congress might have taken trouble to add it. The dissent's construction of the consolidation provision gives it effect, if any, only in what must be those rare instances where aliens first petition for judicial review and then seek agency reconsideration. And, more important, its construction cannot account for Congress' decision to amend the Act in 1990 to provide that the Hobbs Act procedures, which in the normal course include the tolling rule, shall apply "except" for the consolidation provision.

Whatever assessment Congress might have made in enacting the judicial review provisions of the INA in the first instance, we conclude from the consolidation provision added in 1990 that it envisioned two separate petitions filed to review two separate final orders. To be sure, it would have been preferable for Congress to have spoken with greater clarity. Judicial review provisions, however, are jurisdictional in nature and must be construed with strict fidelity to

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their terms. As we have explained:

“Section 106(a) is intended exclusively to prescribe and regulate a portion of the jurisdiction of the federal courts. As a jurisdictional statute, it must be construed both with precision and with fidelity to the terms by which Congress has expressed its wishes.” *Cheng Fan Kwok v. INS*, 392 U. S. 206, 212 (1968).

This is all the more true of statutory provisions specifying the timing of review, for those time limits are, as we have often stated, “mandatory and jurisdictional,” *Missouri v. Jenkins*, 495 U. S. 33, 45 (1990), and are not subject to equitable tolling. See Fed. Rule App. Proc. 26(b).

\* \* \*

The consolidation provision in §106(a)(6) reflects Congress' understanding that a deportation order is final, and reviewable, when issued. Its finality is not affected by the subsequent filing of a motion to reconsider. The order being final when issued, an alien has 90 days from that date to seek review. The alien, if he chooses, may also seek agency reconsideration of the order and seek review of the disposition upon reconsideration within 90 days of its issuance. Where the original petition is still before the court, the court shall consolidate the two petitions. See 8 U. S. C. §106(a)(6).

Because Stone's petition was filed more than 90 days after the issuance of the BIA's July 26, 1991, decision, the Court of Appeals lacked jurisdiction to review that order.

The judgment of the Court of Appeals is affirmed.

*It is so ordered.*