NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

STONE *v.* IMMIGRATION AND NATURALIZATION SERVICE

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

No. 93–1199. Argued November 28, 1994—Decided April 19, 1995

In 1988, an Administrative Law Judge ordered petitioner Stone deported. The Board of Immigration Appeals (BIA) affirmed on July 26, 1991, and denied Stone's motion to reopen and/or reconsider the deportation in February 1993. Shortly thereafter, he petitioned the Court of Appeals for review of both the deportation and reconsideration orders. The court dismissed the petition for want of jurisdiction to the extent that it sought review of the underlying deportation determination, holding that the filing of the reconsideration motion did not toll the running of the 90-day filing period for review of final deportation orders specified in §106(a)(1) of the Immigration and Nationality Act (INA).

Held: A timely motion for reconsideration of a BIA decision does not toll the running of §106(a)(1)'s 90-day period. Pp. 3–21.

(a) The parties agree that a deportation order becomes final upon the BIA's dismissal of an appeal and that the 90-day appeal period started to run in this case on July 26, 1991. It is also clear that the Hobbs Act, which Congress has directed governs review of deportation orders, embraces a tolling rule: The timely filing of a motion to reconsider renders the underlying order nonfinal for purposes of judicial review, *ICC* v. *Locomotive Engineers,* 482 U. S. 270. That conventional tolling rule would apply to this case had Congress specified using the Hobbs Act to govern review of deportation orders without further qualification. Pp. 3–6.

(b) However, Congress instead specified 10 exceptions to the use of Hobbs Act procedures, one of which is decisive here.

Section 106(a)(6), added to the INA in 1990, provides that whenever a petitioner seeks review of an order under §106, ``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 for review and directs the courts to consolidate the matters. The direction that the motion to reopen or reconsider is to be consolidated with the review of the underlying order, not the other way around, indicates that the action to review the underlying order remains active and pending before the court. 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. Since it appears that only the no-tolling rule would 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. Pp. 6–9.

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(c) Petitioner's construction of §106(a)(6)—which presumes 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 after the petition for review—is unacceptable. It is implausible that Congress would direct different results in the two circumstances. Moreover, it is presumed that Congress intends its amendment of a statute to have real and substantial effect, yet under petitioner's construction the consolidation provision would have effect only in the rarest of circumstances. Pp. 9–11.

(d) Underlying considerations of administrative and judicial efficiency, as well as fairness to the alien, support the conclusion that Congress intended to depart from the conventional tolling rule in deportation cases. While an appeal of a deportation order results in an automatic stay, a motion for agency reconsideration does not. Congress might not have wished to impose on aliens the Hobson's choice of petitioning for reconsideration at the risk of immediate deportation or foregoing reconsideration and petitioning for review to obtain the automatic stay. In addition, the tolling rule's policy of delayed review would be at odds with Congress' fundamental purpose in enacting §106, which was to abbreviate the judicial review process in order to prevent aliens from forestalling deportation by dilatory tactics in the courts. Pp. 11–14.

(e) A consideration of the analogous practice of appellate court review of district court judgments confirms the correctness of this Court's construction of Congress' language. The filing of a motion for relief from judgment more than 10 days after judgment under Federal Rule of Civil Procedure 60(b) —the closest analogy to the petition for agency reconsideration here—does not affect the finality of a district court's judgment. If filed before the appeal is taken, it does not toll the running of the time to take an appeal; if filed after the notice of appeal, appellate court jurisdiction is not divested. Each case gives rise to two separate appellate proceedings that can be consolidated. However, if a post-trial motion that renders an underlying judgment nonfinal is filed before an appeal, it tolls the time for review, and if filed afterwards, it divests the appellate court of jurisdiction. Thus, it gives rise to only one appeal in which all matters are reviewed. In contrast, the hybrid tolling rule suggested by the dissent—that a reconsideration motion before the 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—has no analogue at all in the appellate court-district court context. Pp. 14–19.

13 F. 3d 934, affirmed.

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KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, THOMAS, and GINSBURG, JJ., joined. BREYER, J., filed a dissenting opinion, in which O'CONNOR and SOUTER, JJ., joined.