

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Argued September 30, 2025

Decided October 10, 2025

*Before*MICHAEL Y. SCUDDER, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 24-3055

MARTIN XOCHITECATL-CIELO,
*Petitioner,*Petition for Review of an Order of the
Board of Immigration Appeals.*v.*

No. A205-278-208

PAMELA J. BONDI, Attorney General
of the United States,
*Respondent.***ORDER**

Martin Xochitecatl-Cielo, a Mexican citizen, petitions for review of the denial of his application for cancellation of removal for certain non-permanent residents. *See* 8 U.S.C. § 1229b(b)(1). His petition, however, is untimely as to the Board of Immigration Appeals' initial order denying relief, and his brief does not meaningfully address the denial of his subsequent motion to reconsider. Because Xochitecatl-Cielo has waived the only argument properly before us, we deny his petition.

Xochitecatl-Cielo entered the United States without inspection in 1999. In 2012, the Department of Homeland Security commenced removal proceedings against him

for being a noncitizen present in the United States without having been admitted or paroled. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Xochitecatl-Cielo conceded his removability but applied for cancellation of removal, claiming that his removal would cause exceptional and extremely unusual hardship to his United States citizen daughter. *See* 8 U.S.C. § 1229b(b)(1)(D).

The immigration judge denied Xochitecatl-Cielo's request for cancellation of removal and ordered him removed to Mexico. Xochitecatl-Cielo appealed. On July 16, 2024, the Board of Immigration Appeals affirmed the IJ's decision. The Board agreed with the IJ that Xochitecatl-Cielo did not establish that his daughter would suffer hardship beyond what ordinarily occurs when a parent is removed from the country. Xochitecatl-Cielo did not petition for review.

Instead, Xochitecatl-Cielo filed a motion with the Board to reconsider its decision, which the Board denied on October 23, 2024. The Board explained that his motion did not identify any errors in the IJ's decision or meaningfully contest the Board's conclusion that the IJ's decision was correct.

Xochitecatl-Cielo then petitioned for review on November 12, 2024—within 30 days of the Board's order denying reconsideration but almost four months after the Board's initial order dismissing his appeal. In his brief, Xochitecatl-Cielo argues only the merits of his application: that his daughter will suffer exceptional and extremely unusual hardship if he is removed. He does not address the denial of his motion.

Xochitecatl-Cielo did not timely petition for review of the Board's July 2024 order affirming the IJ's denial of his application; instead, he filed a motion to reconsider. But a motion to reconsider does not extend the deadline to seek judicial review, nor does a petition for review from its denial encompass review of the underlying order. *Stone v. INS*, 514 U.S. 386, 394, 405 (1995); *Shaohua He v. Holder*, 781 F.3d 880, 882 (7th Cir. 2015) (citing 8 U.S.C. § 1252(b)(1)). The Supreme Court's recent decision in *Riley v. Bondi*, 145 S. Ct. 2190 (2025), did not change the filing deadline. *Riley* establishes only that the deadline is a claim-processing rule, rather than a jurisdictional requirement. *Id.* at 2201–02. Because the government raised the untimeliness of Xochitecatl-Cielo's November petition, § 1252(b)(1) precludes our review of the Board's July 2024 order. *See Hamer v. Neighborhood Housing Servs. of Chi.*, 583 U.S. 17, 20 (2017) (courts must apply claim-processing rules when properly invoked).

Xochitecatl-Cielo argues that we should review the Board's July 2024 order because “any review sought of a motion to reopen or reconsider the order shall be

consolidated with the review of the order.” § 1252(b)(6). But this provision directs consolidation only as to orders that are properly before us. Xochitecatl-Cielo did not timely appeal the Board’s July 2024 order, and therefore it cannot be consolidated with our review of the Board’s denial of his motion to reconsider. *See Stone*, 514 U.S. at 394; *Shaohua He*, 781 F.3d at 882.

That leaves only the October 2024 denial of the motion to reconsider, but Xochitecatl-Cielo has waived any challenge to that order. In his brief, Xochitecatl-Cielo asserts only that the IJ was wrong in denying his application for cancellation of removal in the first place. He does not develop an argument that the Board’s denial of his motion for reconsideration “was made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis,” *Aparicio-Brito v. Lynch*, 824 F.3d 674, 688 (7th Cir. 2016) (quoting *Awad v. Ashcroft*, 328 F.3d 336, 341 (7th Cir. 2003)). Where a petition is timely only as to the denial of reconsideration, but only the underlying merits are briefed, we cannot review either decision. *See Asere v. Gonzales*, 439 F.3d 378, 381 (7th Cir. 2006).

We conclude with a reminder to counsel for the petitioner. This is the second case in which she has filed a petition for review from the Board’s denial of a motion for reconsideration yet seeks review of the underlying order without having timely petitioned. *See Ramirez-Acosta v. Bondi*, No. 24-1961, 2025 WL 764612 (7th Cir. Mar. 11, 2025). Our case law is clear and unambiguous that failing to file a petition for review of the underlying order forecloses any challenge to that order. *Shaohua He*, 781 F.3d at 882; *Asere*, 439 F.3d at 380 (“[T]he case law could not be clearer on this issue; a motion to reconsider does not toll the initial 30-day filing deadline for seeking judicial review of the underlying removal order.”). To preserve judicial review of the Board’s underlying decision affirming the IJ’s denial of Xochitecatl-Cielo’s application for cancellation of removal, counsel should have filed a petition for review of the Board’s July 2024 order within the 30-day deadline. *Stone*, 514 U.S. at 394 (explaining removal orders “are to be reviewed in a timely fashion after issuance, irrespective of the later filing of a motion to reopen or reconsider”). This petition could then have been consolidated with the petition for review from the Board’s denial of the motion to reconsider. *See* § 1252(b)(6). Alternatively, counsel could have forgone the motion to reconsider altogether. *See Shaohua He*, 781 F.3d at 882 (“Rather than revisit matters that were already covered (or should have been covered) in a prior appeal to the Board, the better course for a petitioner is to file a petition for review in this court.”).

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We remind counsel of the filing deadline set forth in § 1252(b)(1) in the hope that she does not take this misguided approach a third time. *Cf. id.* at 882–83 (directing the clerk of court to send copy of opinion to counsel’s licensing authority for appropriate action in response to third untimely petition for review).

For the reasons discussed, we DENY Xochitecatl-Cielo’s petition for review.