

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 CHRIS BARKLEY,

No. C 10-5389 CW (PR)

4 Petitioner,

ORDER CONSTRUING REQUEST FOR
EXTENSION OF TIME AS TIMELY
NOTICE OF APPEAL; DIRECTING
CLERK TO TRANSMIT FILE TO THE
NINTH CIRCUIT

5 v.

6 JAMES NUEHRING, Warden,

7 Respondent.

(Docket no. 20)

8 _____/
9 On September 30, 2012, the Court issued an order denying on
10 the merits the instant pro se petition for a writ of habeas corpus,
11 denied a certificate of appealability and entered judgment in favor
12 of Respondent. Docket nos. 17 & 18.

13 On October 30, 2012, Petitioner, who is incarcerated in
14 Tutwiler, Mississippi, signed, and prison officials deposited in
15 the mail, a request for an extension of time to file a notice of
16 appeal. Docket no. 20.

17 Applying the mailbox rule and liberally construing
18 Petitioner's request, the Court construes the request as a timely-
19 filed notice of appeal. See Fed. R. App. Proc. 4(c) ("If an
20 inmate confined in an institution files a notice of appeal
21 . . . the notice of appeal is timely filed if it is deposited
22 in the institution's internal mail system on or before the
23 last day for filing."); Andrade v. Attorney General, 270 F.3d
24 743, 752 (9th Cir. 2001), reversed on other grounds by Lockyer
25 v. Andrade, 538 U. S. 63 (2003) (holding court may consider a
26 timely motion for extension of time the functional equivalent
27 of a notice of appeal).

28 The Clerk of the Court shall transmit a copy of this Order,

1 together with the case file, to the Ninth Circuit.

2 This Order terminates Docket no. 20.

3 IT IS SO ORDERED.

4 Dated: 11/8/2012



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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