

**In The  
Supreme Court of the United States**

---

CHARLES GARO AVETIAN,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

---

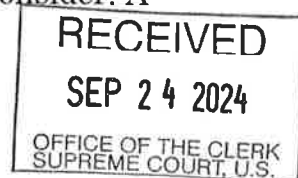
**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A  
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

To the Honorable Samuel Alito, Associate Justice of the United States Supreme Court and Circuit Justice for the Third Circuit:

Petitioner corrects this application as directed by the clerk and requests an extension of time to file his Petition for a Writ of Certiorari. Petitioner requests a 31 day extension from October 28, 2024 to November 28, 2024. The order of dismissal, dated July 2, 2024, and the denial of rehearing and rehearing en banc, dated July 29, 2024, are attached.

Jurisdiction of this Court to review the order and judgments being invoked pursuant to 28 U. S. C. § 1254(1).

The appeal involves a serious question concerning motions for reconsideration and the failure of the electronic filing system. It has been said by the Tenth Circuit that “The federal rules do not recognize a motion to reconsider. A



litigant seeking reconsideration must file a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e), or a motion seeking relief from judgment under Fed. R. Civ. P. 60(b).” *Ysais v. Richardson*, 603 F.3d 1175, 1178 n.2 (10th Cir. 2010). Not all Circuits are in agreement and provide for different standards on motions for reconsideration. See 12 Moore’s Federal Practice - Civil § 59.30 (2024).

More important, there is no question that the notice of appeal was timely filed, but, due to a breakdown in the electronic filing system was not docketed until a later date, which is corroborated by the district court clerk. The Third Circuit’s holding that such a filing is untimely is contrary to the Second Circuit’s decision in *Phoenix Global Ventures, LLC v. Phoenix Hotel Assocs., Ltd.*, 422 F.3d 72, 76 (2d Cir. 2005) (per curiam); see also *Farzana K. v. Ind. Dep’t of Educ.*, 473 F.3d 703, 707 (7th Cir. 2007); *Evans v. Bantek West, Inc.*, 2009 U.S. Dist. LEXIS 19218, \*6, 2009 WL 700426 (E.D.Cal.) (“courts have held that a district court may consider the merits of a motion to remand when the motion would have been timely but for technical noncompliance with a local rule or the requirements of an Electronic Case Filing (“ECF”) system and the defendant would not suffer prejudice therefrom.”) (citing *Bilbruck v. BNSF Ry. Co.*, 243 F. App’x 293, 295 (9th Cir. 2007)); *St. John v. CBE Group, Inc.*, 2011 U.S. Dist. LEXIS 13608, \*10, 2011 WL 613741 (D. Mass.) (“failure to file the motion in ECF within the thirty-day window was attributable to delays in the mail system, and he made a good faith attempt to comply with the procedural requirements.”); *Seville v. Stowitzky*, 2009 U.S. Dist. LEXIS 21805, 2009 WL 722274, at \*3 (E.D. Pa.) (the court deemed a pro se litigant’s remand motion

"made" on the date it was signed and dated rather than the date it was filed in ECF.); *Wilson v. Lowe's Home Center, Inc.*, 401 F. Supp. 2d 186, 189 (D. Conn. 2005) (concluding that a motion to remand was timely when it arrived in the clerk's office before expiration of the statutory period, but was not filed until after the period had elapsed).

Petitioner seeks an extension of time to file an application for a Writ of Certiorari because he is pro se, the issues are complex and of first impression, and is required to print the application.

Respectfully submitted,

/s/ Charles G. Avetian, D.O.  
Petitioner Pro Se  
2 Mill Court  
Newtown Square, PA.19073  
610-348-4230 txt;  
drchipgaro@gmail.com

#### Certificate of Service

I certify that a true copy of this application has been mailed to Office of the Solicitor General, 950 Pennsylvania Ave. NW, Washington DC 20530-0001 on September 18, 2024.

/s/Charles G. Avetian, D.O.

DLD-120

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. 24-1264

UNITED STATES OF AMERICA

v.

CHARLES GARO AVETIAN,  
Appellant

(E.D. Pa. Crim. No. 2-18-cr-00410-001)

Present: JORDAN, PORTER, and PHIPPS, Circuit Judges

Submitted are:

- (1) By the Clerk, the within appeal for possible dismissal for jurisdiction defect; and
- (2) Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

**ORDER**

This appeal is dismissed for lack of appellate jurisdiction. In a civil case in which a United States agency is a party, a notice of appeal must be filed within 60 days of the entry of the order or judgment being appealed. See Fed. R. App. P. 4(a)(1)(B). The timely filing of a notice of appeal is "mandatory and jurisdictional." Bowles v. Russell, 551 U.S. 205, 209 (2007) (citation and quotation marks omitted). Avetian filed his notice of appeal more than 60 days after the District Court entered the orders denying his motion pursuant to 28 U.S.C. § 2255 and his motion for reconsideration.



A True Copy:

*Patricia S. Dodszeit*

Patricia S. Dodszeit, Clerk  
Certified Order Issued in Lieu of Mandate

By the Court,

s/David J. Porter  
Circuit Judge

Dated: July 2, 2024

Tmm/cc: Charles Garo Avetian

Franks R. Costello, Jr., Esq.

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

No. 24-1264

UNITED STATES OF AMERICA

v.

CHARLES GARO AVETIAN,  
Appellant

---

(D.C. Civil No. 2:18-cr-00410-001)

---

ORDER

---

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES and CHUNG, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the the Court en banc, is denied.

BY THE COURT,

s/ David J. Porter  
Circuit Judge

Date: July 29, 2024

Tmm/cc: Charles Garo Avetian  
Frank R. Costello, Jr., Esq.