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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS PAUL AUBINEAU,

No. C-12-1020 EMC (pr)

Petitioner,

v.

**ORDER OF DISMISSAL**

MRS. GONZALES, CMC Warden,

Respondent.  

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Douglas Paul Aubineau, a prisoner incarcerated at the California Men's Colony in San Luis Obispo, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge his 1997 conviction from the Santa Clara County Superior Court. The petition is not his first federal habeas petition concerning his 1997 conviction. His earlier habeas petition in *Aubineau v. Duncan*, No. C 00-20364 JF, was denied on March 5, 2003, and no appeal was taken.

A second or successive petition may not be filed in this Court unless the Petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. 28 U.S.C. § 2244(b)(3)(A).

Aubineau has not obtained an order from the Ninth Circuit permitting the filing of a second or successive petition. This Court will not entertain a new petition from Aubineau until he first obtains permission from the Ninth Circuit to file such a petition. This action is **DISMISSED** without prejudice to Aubineau filing a petition in this Court after he obtains the necessary order from the Ninth Circuit.

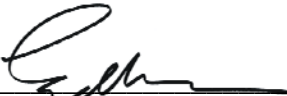
If Aubineau wants to attempt to obtain the necessary order from the Ninth Circuit, he should very clearly mark the first page of his document as an "APPLICATION FOR LEAVE TO FILE

1 SECOND OR SUCCESSIVE PETITION UNDER 28 U.S.C. § 2254" rather than labeling it as a  
2 habeas petition because the Ninth Circuit clerk's office is apt to simply forward to this Court any  
3 document labeled as a habeas petition. He also should mail the application to the Ninth Circuit (at  
4 95 Seventh Street, San Francisco, CA 94103), rather than to this Court. In his application to the  
5 Ninth Circuit, he should explain how he meets the requirements of 28 U.S.C. § 2244(b).

6 The Clerk shall close the file.

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8 IT IS SO ORDERED.

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10 Dated: May 30, 2012

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13 EDWARD M. CHEN  
14 United States District Judge  
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