

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

JOSE A. FRANCO-POU

v.

PRISONER  
3:12cv1334 (SRU)

USA

**ORDER OF TRANSFER**

Petitioner's first federal habeas petition was denied on the merits. See Franco-Pou v. USA, 3:11cv1859 (SRU) (D. Conn. Jan. 30, 2012). Petitioner now seeks leave to file a second or successive petition for writ of habeas corpus.

A petitioner cannot file a second or successive petition in district court unless he first obtains permission to do so from the court of appeals. See 28 U.S.C. § 2244(b)(3)(A). Because petitioner's first federal habeas petition was denied on the merits, this petition is a second or successive petition within the meaning of section 2244. Petitioner neither alleges in his petition nor attaches evidence that he has obtained permission from the Second Circuit to file this petition. Under this circumstance, the Second Circuit has held that the district court "should transfer the petition . . . to this Court in the interest of justice pursuant to [28 U.S.C.] § 1631." Liraino v. United States, 95 F.3d 119, 122 (2d Cir. 1996).

Accordingly, this case is **TRANSFERRED** to the United States

Court of Appeals for the Second Circuit to enable that court to determine whether petitioner should be permitted to file a second or successive petition.

**SO ORDERED.**

Dated at Bridgeport, Connecticut this 24<sup>th</sup> day of September 2012.

/s/ Stefan R. Underhill  
Stefan R. Underhill  
United States District Judge