



1 denied for lack of subject matter jurisdiction.

2 Begay's claim that he is entitled to a writ of *audita querela* to obtain re-  
3 sentencing in light of Booker has been conclusively foreclosed by the Ninth Circuit,  
4 which has repeatedly held that a federal prisoner may not challenge a sentence by  
5 way of a petition for a writ of *audita querela* when that challenge is cognizable  
6 through a § 2255 habeas petition. United States v. Valdez-Pacheco, 237 F.3d 1077,  
7 1080 (9<sup>th</sup> Cir.2001) (also holding that the fact that a second or successive § 2255  
8 motion may be barred pursuant to 28 U.S.C. § 2255(h) does not permit  
9 circumvention of the statute by styling a second or successive petition as a petition  
10 for a writ of *audita querela.*); *see also*, Carrington v. United States, 503 F.3d 888,  
11 890 (9<sup>th</sup> Cir.2007) (holding that the statutory limits on second or successive habeas  
12 petitions and cases such as Booker which do not apply on collateral review do not  
13 create a gap in the post-conviction landscape that can be filled with common law  
14 writs.) Begay's petition is in reality a second or successive motion pursuant to §  
15 2255 which the Court has no jurisdiction to adjudicate since Begay has not obtained  
16 from the Ninth Circuit the certification required by § 2255. Therefore,

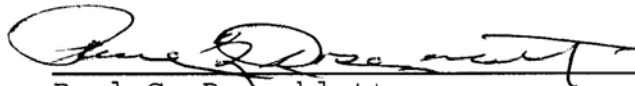
17 IT IS ORDERED that the Court's Notice of Assignment (Doc. 2 in CV-  
18 15-08209-PCT-PGR (JZB)) is vacated.

19 IT IS FURTHER ORDERED that movant Begay's Petition for a Writ of Audita  
20 Querela (Doc. 91 in CR-00-01222-PCT-PGR) is denied and the civil action opened  
21 in connection with the petition (CV-15-08209-PCT-PGR (JZB)) is dismissed for lack  
22 of subject matter jurisdiction. The Clerk of the Court shall enter judgment  
23 accordingly.

24 IT IS FURTHER ORDERED that a certificate of appealability, to the extent that  
25 one is required, shall not be issued and that the movant is not entitled to appeal *in*  
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1 *forma pauperis* because reasonable jurists would not find it debatable whether the  
2 petition states a valid claim for the denial of a constitutional right and would not find  
3 the Court's procedural ruling debatable.

4 DATED this 8<sup>th</sup> day of October, 2015.

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7 Paul G. Rosenblatt  
8 United States District Judge  
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