

No. _____

In The
Supreme Court of the United States

— ♦ —
IN RE CHANDRA BOZELKO,

Petitioner.

— ♦ —

**On Petition For A Writ Of Mandamus
To The Supreme Court Of Connecticut**

— ♦ —

PETITION FOR A WRIT OF MANDAMUS

— ♦ —

CHANDRA BOZELKO
183 Wild Rose Drive
Orange, CT 06477
(203) 795-9640
chandrabozelko@yahoo.com

QUESTIONS PRESENTED

BACKGROUND:

Connecticut General Statute § 53a-39 allows one party to a criminal action, the state, to confer subject matter jurisdiction over motions to modify sentences of incarceration that are three years or longer.

The statute requires any application to modify a sentence that is longer than three years of incarceration to be approved, or “concurred with,” by the state’s attorney in order to reach a judge. If the state’s attorney does not concur with the application to modify a sentence of more than three years incarceration, then the application is summarily denied.

Only the state’s attorney’s concurrence with the application confers subject matter jurisdiction over the application; the court cannot adjudicate the application over the state’s attorney’s disagreement. In dismissing Petitioner’s request for certification to review the constitutionality of C.G.S. § 53a-39, the Supreme Court of the State of Connecticut upheld the statute despite its obvious conflict with established, relevant precedent from the Supreme Court of the United States on the Due Process and Equal Protection clauses of the Fourteenth Amendment.

QUESTIONS:

1. Can one party in a case decide subject matter jurisdiction in lieu of the judge?

QUESTIONS PRESENTED – Continued

2. Is Connecticut General Statute § 53a-39 unconstitutional in that it prevents an unbiased decider from adjudicating an application for a sentence modification based on a suspect classification, namely the applicant's being sentenced to three or more years incarceration, and does the decision upholding the statute conflict with relevant decisions of this Court, including, but not limited to *Concrete Pipe & Products of Col., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U.S. 602, 617-18 (1993) and *Ex parte Hull*, 430 U.S. 546 (1941)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

The Petitioner is Chandra Bozelko, formerly Inmate No. 330445 at York Correctional Institution and currently residing at 183 Wild Rose Drive, Orange, Connecticut 06477. The Petitioner is represented before this court by herself.

The Respondent is the State of Connecticut, represented by Chief State's Attorney Kevin Kane of 300 Corporate Place, Rocky Hill, Connecticut 06067.

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**IN THE SUPREME COURT OF THE
UNITED STATES PETITION FOR
AN EXTRAORDINARY WRIT**

Petitioner respectfully prays that an extraordinary writ issue to review the constitutionality of Connecticut General Statute § 53a-39.

OPINIONS BELOW

The decision of the highest state court, the Supreme Court of the State of Connecticut, reviewing the constitutionality of Connecticut General Statute § 53a-39 appears at Appendix A to the petition and is unpublished.

JURISDICTION

Issuance by the Court of an extraordinary writ is explicitly authorized by 28 U.S.C. § 1651(a). To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition invokes the Due Process Clause and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, which read (Due Process Clause in italics and Equal Protection Clause in bold-face type):

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law;* **nor deny to any person within its jurisdiction the equal protection of the laws.**

as these clauses apply to Connecticut General Statute § 53a-39 which reads, in part, as follows:

Sec. 53a-39. Reduction of sentence or discharge of defendant by sentencing court or judge.

(a) At any time during the period of a definite sentence of three years or less, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced.

(b) At any time during the period of a definite sentence of more than three years, upon agreement of the defendant and the state's

attorney to seek review of the sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced.

◆

STATEMENT OF THE CASE

This case involves the constitutionality of a statute that allows one party to deny another party access to a neutral decision-maker based on the length of the party's sentence.

After a defendant in a criminal prosecution has been sentenced, C.G.S. § 53a-39 grants continuing jurisdiction to the sentencing court and authorizes that court to modify her sentence. Specifically, C.G.S. § 53a-39 reads as follows:

Sec. 53a-39. Reduction of sentence or discharge of defendant by sentencing court or judge.

(a) At any time during the period of a definite sentence of three years or less, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that

to which the defendant could have been originally sentenced.

(b) At any time during the period of a definite sentence of more than three years, upon agreement of the defendant and the state's attorney to seek review of the sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced.

Pursuant to C.G.S. § 53a-39, for a sentence of incarceration that is longer than three years, any application to modify one's sentence must be approved, or "concurred with," by the state's attorney. If the state's attorney does not concur with the application for sentence modification, the trial court must deny the application as a matter of law because only the state's attorney's concurrence with the application confers subject matter jurisdiction over the application. If the state's attorney does not concur with the application, the sentencing court cannot adjudicate it over the prosecutor's objection because the sentencing court has no jurisdiction to decide the motion.

Petitioner, sentenced to ten years incarceration, execution suspended after five, followed by four years of probation,¹ applied to have her sentence modified

¹ Appeals of convictions remain pending. Petitioner was convicted on the following docket numbers:

under C.G.S. § 53a-39 and using the State of Connecticut's Judicial Form Number CR-68 (Appendix B). On March 25, 2014, Senior Assistant State's Attorney Paul Gaetano checked the box on Judicial Form Number CR-68 indicating that he did not concur with the Petitioner's application. Therefore, Petitioner's application was "not accepted" by the court at all; the prosecutor's lack of concurrence with the application removed it from the court's subject matter jurisdiction and the court was not allowed to decide the application. Rather than an order from the judge, Petitioner received from the court a form that her "application [could not] be accepted." *See* "Return of Papers Sentence Modification" at Appendix C. Because the prosecutor blocked her

CR-05-0128811 – Larceny, 3rd Degree; Identity Theft, 3rd Degree; Illegal Use of Credit Card; Forgery, 3rd Degree

CR-05-0129107 – Larceny, 5th Degree; Illegal Use of Credit Card; Identity Theft, 3rd Degree

CR-05-0129108 – Larceny, 5th Degree; Illegal Use of Credit Card; Identity Theft, 3rd Degree

CR-05-0128445 – Larceny, 1st Degree; Identity Theft, 1st Degree; Illegal Use of Credit Card, Forgery, 3rd Degree

Petitioner was acquitted of Larceny in the Fourth Degree, Illegal Use of Credit Card, Identity Theft in the Third Degree (CR-05-0129102-S), Larceny in the Fourth Degree, two counts of Illegal Use of a Credit Card, Larceny in the Sixth Degree, and Identity Theft in the Third Degree (CR-05-0129104-S). Eleven charges were nolle: four counts of Illegal Use of a Credit Card and Larceny in the Sixth Degree (CR-05-0129103-S), Larceny in the Fourth Degree, Illegal Use of a Credit Card, Identity Theft in the Third Degree (CR-05-0129105-S) and larceny in the Fifth Degree, Illegal Use of a Credit Card and Identity Theft in the Third Degree (CR-05-0129106-S).

access to the court, Petitioner was denied the opportunity to raise the issue of federal constitutional law (constitutionality of C.G.S. § 53a-39 and its conflict with United States Supreme Court precedent) at the trial level.²

In theory, Petitioner should have been able to appeal this adverse decision but C.G.S. § 53a-39 prevents such direct review.

Even if an appeal was possible, Petitioner had two grounds to appeal the prosecutor's decision that were ultimately frivolous given the language of C.G.S. § 53a-39. First, that the trial court erred in deciding that it lacks subject matter jurisdiction or, second, that the trial court abused its discretion in denying the application.

First, if Petitioner had argued that the court erred in deciding that it did not retain subject matter jurisdiction over her application and that the court did, in fact, have continuing jurisdiction over the modification application per C.G.S. § 53a-39, then the statute would have directly contradicted her. C.G.S. § 53a-39 explicitly states that modification applications that lack a prosecutor's approval must be denied as a matter of law. The defendant who appeals the denial of his sentence modification application on these grounds loses before she starts.

² Petitioner notes this in satisfaction of Practice Rule 14.1(g)(i) of the Supreme Court of the United States.

The second possible ground for appeal of Petitioner's sentence modification application was that the court abused its discretion in denying the application. Yet, the court has no discretion to abuse under C.G.S. § 53a-39; all discretion is invested in one party, the prosecutor, and it is his decision that is final, for all intents and purposes, which is why the statute is unconstitutional. To wit, the bottom of Judicial Form CR-68, found at Appendix B, contains no signature or order from a judge denying the motion under the "Judgment" section of the form. Because of this lack of formal adjudication that is allowed by the statute, the defendant seeking to modify a sentence enjoys no procedural safeguards or opportunity to appeal or seek any post-decision review.

For the reasons stated above, Petitioner raised the federal question presented in the instant petition to the Supreme Court of the State of Connecticut and sought review of C.G.S. § 53a-39 by the same court under Connecticut Practice Book § 84(2).³ See copy of Petition for Certification at Appendix D. Said Petition for Certification was assigned Docket No. PSC 13-01415 and was dismissed on May 29, 2014. Petitioner was barred from applying for sentence modification again. Her motion was not even accepted by the court on March 5, 2018. (Appendix F).

³ Section 84-2(4) authorizes the Supreme Court of the State of Connecticut to review issues "[w]here a question of great public importance is involved."

REASONS FOR GRANTING THE WRIT

Tenets of due process require that neither party to an action adjudicate the matter. The statute in question allows the prosecutor to do exactly that to defendants sentenced to three years or more of incarceration. When the state's attorney disagrees with the defendant's sentence modification application and moves it beyond the court's subject matter jurisdiction, the state's attorney effectively decides the application and denies the defendant due process of law.

I. C.G.S. § 53a-39 CONFLICTS WITH UNITED STATES SUPREME COURT PRECEDENT ON UNBIASED DECIDERS

The minimum due process procedures required to prevent the right to seek sentence modification from being abrogated include that the application be decided by a neutral decision maker. "[O]ne is entitled as a matter of due process of law to an adjudicator who is not in a situation which would offer possible temptation to the average man as judge . . . which might lead him not to hold the balance nice, clear and true," *Concrete Pipe & Products of Col., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U.S. 602, 617-18 (1993). Even "purportedly fair" adjudicators "are disqualified by their interest in the controversy . . ." *Tumey v. Ohio*, 273 U.S. 510, 522 (1927).

C.G.S. § 53a-39 allows interested parties to act as judges in cases where defendants have been sentenced to three years or more. Allowing a party to adjudicate

a matter violates the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. This extraordinary writ should be granted.

A. DUE PROCESS REQUIRES AN UNBIASED DECIDER FOR SENTENCE MODIFICATION APPLICATIONS UNDER C.G.S. § 53a-39

Even “enemy combatants” under President George W. Bush’s 2011 “Authorization to Use Military Force Law” are entitled to neutral decision-makers. See *Hamdi v. Rumsfeld*, 542 U.S. 507, 538 (2004). Thus C.G.S. § 53a-39 accords defendants in Connecticut less protection than potential terrorists receive.

B. C.G.S. § 53a-39 VIOLATES DUE PROCESS CLAUSE OF FOURTEENTH AMENDMENT

“The touchstone of due process is protection of the individual against arbitrary action of government,” *Dent v. West Virginia*, 129 U.S. 114, 123 (1889).

In general, “identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement would entail," *Matthews v. Eldridge*, 424 U.S. 319, 334-35 (1976). See also *Goldberg v. Kelly*, 397 U.S. 254, 263-271 (1970).

**1. FIRST DUE PROCESS FACTOR:
PRIVATE INTEREST AFFECTED BY
C.G.S. § 53a-39**

Through C.G.S. § 53a-39's language "... the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence . . . ," the State of Connecticut confers upon the sentenced defendant in a criminal prosecution a liberty interest in the sentence modification process. "[A] person's interest is equally protected, even when the liberty itself is a statutory creation of the state," *Dent v. West Virginia* at 123.

As such, minimum procedures must be in place "to insure that the state-created right is not arbitrarily abrogated," *Wolff v. McDonnell*, 418 U.S. 556, 557 (1974). In its current form, C.G.S. § 53a-39 does not afford a defendant adequate procedures to preserve his rights because the statute permits the prosecutor to deny the defendant access to a neutral decision-maker and the statute prevents appellate/habeas review.

**2. SECOND DUE PROCESS FACTOR:
EXTREME RISK OF ERRONEOUS
DEPRIVATION OF SUCH INTEREST**

"[O]fficers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the

controversy to be decided is . . . the general rule,” *Tumey v. Ohio*, 273 U.S. 510, 522 (1927).

A criminal prosecution is an adversarial process involving the state, represented by the state’s attorney/prosecutor/district attorney, and a defendant, represented by defense counsel or by herself. The roles and duties of state’s attorney, defense attorney and judge are usually well-delineated. Accordingly, through the very nature of criminal proceedings, a prosecutor represents a party whose interests often oppose the interests of the defendant, which is why a judge decides the clashing positions between the state and the defendant. The nature of prosecutors’ duties disqualifies them from acting in a judicial capacity, yet C.G.S. § 53a-39 specifically permits them to do so.

C.G.S. § 53a-39 conflates the prosecutor’s duty as a representative of an interested party with the duties of the judge. When “an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, [this situation] necessarily involves a lack of due process of law . . .” *Tumey v. Ohio*, 273 U.S. 510, 534 (1927). This also creates a grave risk that a defendant’s liberty interest under C.G.S. § 53a-39 will be adversely impacted thus depriving him of his right to have his sentence modification application heard by the trial court.

**a. INSUFFICIENT SAFEGUARDS
EXIST TO PREVENT ABUSE -
THE COURT BECOMES COERCED
UNDER C.G.S. § 53a-39.**

“Certain safeguards are essential to criminal justice. The court must be uncoerced,…” *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275 (1942) (citing *Moore v. Dempsey*, 201 U.S. 86 (1923)).

C.G.S. § 53a-39 does not include sufficient safeguards to prevent abuse by prosecutors. Their decisions do, in fact, coerce the court’s actions in sentence modification applications. Indeed, the Judicial District of Waterbury’s form letter for sentence modification denials (Appendix B) reads “[a]s such, [the judge] is *obligated by statute* to concur with the State’s Attorney . . .” The statute coerces the court and is, therefore, unconstitutional.

For applications from defendants sentenced to more than three years of incarceration, only concurrence with the application confers subject matter jurisdiction on the application; no judge may decide a sentence modification application from someone sentenced to more than three years of incarceration if the prosecutor does not agree. The state’s attorney, the party and the decision-maker, is the end of the road for sentence modification applications.

“This Court has never held that the States are required to establish avenues of . . . review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can

only impede open and equal access to the courts." *Williams v. Oklahoma City*, 395 U.S. 458, 459 (1969). See also *Griffin v. Illinois*, 351 U.S. 12 (1956); *Douglas v. California*, 372 U.S. 353 (1963); *Lane v. Brown*, 372 U.S. 477 (1963); *Draper v. Washington*, 372 U.S. 487 (1963); *Rinaldi v. Yeager*, 384 U.S. 305, 310-311 (1966). By enacting C.G.S. § 53a-39 and codifying the right to have one's sentence modified, the legislature of the State of Connecticut obligated the state to assure that no "unreasoned distinctions" prevented all defendants from receiving review. However, the statute does not meet this obligation.

3. THIRD DUE PROCESS FACTOR: GOVERNMENTAL INTEREST DOES NOT OUTWEIGH INDIVIDUAL RIGHTS

The governmental interest in rehabilitation and public safety does not outweigh an individual's right to due process by having her sentence modification application heard by an unbiased decision maker. Such an assertion by the State of Connecticut presupposes that all applications will be granted if they are decided by the neutral decider of the sentencing court and not by the prosecutor. It is entirely possible that every application will be denied by the trial court if the court is allowed to decide them. "[T]he settled rule [is] that the Fourteenth Amendment guarantees equal laws, not equal results." *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 273 (1979).

In fact, Connecticut's own statutory scheme for sentencing defendants in criminal cases gives discretion to the judge alone, ostensibly because superior court judges are the most trustworthy and best-trained evaluators of the law, rehabilitation and public safety. The state has not vested total discretion for sentencing in judges because they do not know what they are doing.

Allowing defendants to apply directly to the sentencing court for a sentence modification regardless of the prosecutor's position on the matter will not overburden the courts, otherwise the Committee on the Judiciary of the Connecticut General Assembly would not have proposed "An Act Concerning Sentence Modification," Raised Bill No. 6539, to delete the language "of three years or less" from subsection (a) of C.G.S. § 53a-39 and delete subsection (b) entirely. It may, in fact, be the legislature's intention to assure that a neutral decision maker decides sentence modification applications. See "An Act Concerning Sentence Modification" at Appendix E which shows text of the bill, votes from the Committee on the Judiciary and estimated savings (approximately \$3 million per 100 sentence modification applications) from deleting the unconstitutional portion of the statute. Until the law changes, however, the unconstitutional portions of C.G.S. § 53a-39 – the very portions that "An Act Concerning Sentence Modification" seeks to strike – remain and violate the due process rights of defendants who seek to modify their sentences.

II. C.G.S. § 53a-39 CONFLICTS WITH UNITED STATES SUPREME COURT PRECEDENT ON EQUAL PROTECTION CLAUSE

The Fourteenth Amendment's Equal Protection Clause requires that similarly situated persons be treated equally and not classified in suspect ways. The cases from the Supreme Court of the United States upholding this rule of federal law are legion.

A. C.G.S. § 53A-39'S THREE-YEAR CUTOFF IS ARBITRARY

When compared to other statutes, the three-year line employed by C.G.S. § 53a39 (defendants sentenced to more than three years must receive approval by state's attorney – hereinafter “three-year cutoff”) is arbitrary and affords differing levels of protection to similarly-situated defendants. Theoretically, two people convicted of the same crime can receive different sentences, one less than three years and the other greater than three years. There is no reason why they both should not receive the same constitutional protection from C.G.S. § 53a-39.

With C.G.S. § 53a-39 as a valid statute, defendants sentenced to less than three years incarceration enjoy the full protection of the Constitution if they apply to modify their sentences, while someone sentenced to three years and one day does not. This legislative classification is arbitrary and therefore unreasonable because the three-year cutoff does not rationally relate to severity of crime or any other rehabilitative or public

safety goal. To wit, under C.G.S. § 53a-36, defendants convicted of misdemeanors face a maximum sentence of one year of incarceration whereas, under § 53a-35a, felony defendants are usually sentenced to a minimum of one-year incarceration. But C.G.S. § 53a-39 does not employ the one-year sentence cutoff found in C.G.S. §§ 53a-36 or 53a-35;⁴ C.G.S. § 53a-39 employs a three-year cutoff.

If C.G.S. § 53a-39 employed a two-year cutoff, that is, the statute required prosecutor's concurrence with sentences greater than two years, such a requirement might be rationally related to C.G.S. § 53a-125a which divides aspiring parolees into two pools: 1) defendants with sentences of two years or less whose parole is within the sole discretion of the wardens of their correctional facilities and 2) defendants sentenced to more than two years whose parole must be voted upon by the Board of Pardons and Paroles. But C.G.S. § 53a-39 does not employ C.G.S. § 53a-125a's two-year cutoff. C.G.S. § 53a-39's legislative history is silent as to how the three-year cutoff was drawn when drafting a law on sentence modification.

⁴ Even if the felony-misdemeanor distinction were the basis of C.G.S. § 53a-39, this distinction too would violate federal law and conflict with United States Supreme Court precedent. See *Mayer v. City of Chicago*, 404 U.S. 189, 195-96 (1971) ("[t]he distinction between felony and nonfelony offenses can no more satisfy the requirements of the Fourteenth Amendment than could the like distinction in the Wisconsin law, held invalid in *Groppi v. Wisconsin*, 400 U.S. 505 (1971), which permitted a change of venue in felony but not in misdemeanor trials.")

B. C.G.S. § 53a-39's ARBITRARINESS MAKES STATUTE UNCONSTITUTIONAL

The three-year sentence cutoff does not rationally relate to any public policy goal that would permit the distinction between defendants sentenced to three years or more of incarceration and those sentenced to less to impede access to the courts. *Cf. Regents of the University of California v. Bakke*, 438 U.S. 265, 310 (1978) (holding that some public policy goals justify the use of suspect classifications).

Because it is unclear where the three-year cutoff even came from, it is "... an 'unreasoned distinction' which the Fourteenth Amendment forbids the State to make." *Williams v. Oklahoma City*, at 459. See also *Griffin v. Illinois*, 351 U.S. 12 (1956); *Draper v. Washington*, 372 U.S. 487 (1963); *Eskridge v. Washington State Board*, 357 U.S. 214 (1958). C.G.S. § 53a-39 is unconstitutional and the only court that can correct the statute, now that the state court of last resort has declined to review it, is the Supreme Court of the United States. A writ should issue.

III. STRICT SCRUTINY NECESSARY FOR ANALYZING C.G.S. § 53a-39

Strict judicial scrutiny is the proper standard of review for C.G.S. § 53a-39 because the statute burdens the fundamental constitutional right of access to the courts for defendants in Connecticut sentenced to more than three years of incarceration. "It is now established beyond doubt that prisoners have a

constitutional right to access to the courts.” *Bounds v. Smith*, 430 U.S. 817, 821 (1977). And “. . . the state and its officers may not abridge or impair [a] petitioner’s right . . . ” *Ex parte Hull*, 430 U.S. 546, 549 (1941) (striking down Michigan statute that required petitions for writs of habeas corpus to be approved by a legal investigator for the state parole board before they could be filed). *See also Cochran v. Kansas*, 316 U.S. 255 (1942). Defendants sentenced to more than three years incarceration in Connecticut sustain “. . . an absolute deprivation of a meaningful opportunity to enjoy that benefit (access to the courts)” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973) which is why C.G.S. § 53a-39 needs to be reviewed and, since the Supreme Court of the State of Connecticut declined to do so, the only Court left to protect the constitutional rights of defendants in Connecticut is the Supreme Court of the United States by granting review of this petition.

IV. GRANTING EXTRAORDINARY WRIT IS JUSTIFIED

This Court would be justified in issuing an extraordinary writ to review the constitutionality of this statute.

A. IN AID OF COURT’S APPELLATE JURISDICTION

A court may issue a writ in aid of its appellate jurisdiction if said court has jurisdiction to review, by

appeal or writ of error, the final orders or decisions of the lower court.

B. EXCEPTIONAL CIRCUMSTANCES

In the past, the Supreme Court of the United States has held that exceptional circumstances such as “a judicial ‘usurpation of power’ justify the invocation of this extraordinary remedy.” See *Kerr v. U.S. Dist. Court for Northern Dist. of California*, 426 U.S. 394, 402 (1976) (citations omitted). State’s attorneys are usurping judges’ authority under C.G.S. § 53a-39.

This is not a case where Petitioner seeks review of errors or mistakes in matters of discretion. Petitioner is barred from requesting another sentence modification after her first request was denied by opposing counsel, not a judge.

C. ADEQUATE RELIEF UNAVAILABLE IN OTHER FORMS OR COURTS

There is no other way to review the constitutionality of a state statute if the highest state court refuses to review it.

CONCLUSION

The State of Connecticut’s highest court’s decision not to review the constitutionality of C.G.S. § 53a-39 (in *State v. Bozelko*, PSC 13-01415) upholds a state statute that is repugnant to the Due Process and Equal

Protection clauses of the Fourteenth Amendment to the United States Constitution. Further, the decision conflicts with precedent established by the Supreme Court of the United States on unbiased deciders and suspect classification. The statute in question essentially bars 15,894 prisoners, probationers and parolees (almost 80% of Connecticut's prison population of as of July 1, 2015) from accessing the court for a sentence modification application. The highest Court of the country should grant an extraordinary writ to examine a statute that continues to violate criminal defendants' Due Process and Equal Protection rights.

Respectfully submitted,

The Petitioner
CHANDRA BOZELKO
183 Wild Rose Drive
Orange, CT 06477