No. 24-1089

IN THE

Supreme Court of the United States

FEANYICHI E. UVUKANSI,
Petitioner,

vs.

ERIC GUERRERO, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner Feanyichi Uvukansi was convicted for shooting and killing two people outside a nightclub in Houston, Texas. He was sentenced to life in prison for the murders. The Texas Court of Criminal Appeals (TCCA), Federal District Court, and Fifth Circuit have all denied Uvukansi habeas relief for his false-testimony claim under *Napue v. Illinois*, 360 U.S. 264 (1959).

Respondent objects to Uvukansi's Questions Presented. Instead, Respondent suggests the following:

1. The Petition ignores a threshold issue: whether the *Wilson v. Sellers* look-through doctrine, 584 U.S. 122 (2018), applies to Texas's unique habeas procedures. Texas grants the TCCA exclusive jurisdiction over, and makes it the ultimate factfinder in, felony habeas cases like this one. Tex. Code Crim. Proc. art. 11.07. The TCCA adopts lower-court findings only when it does so explicitly. Here, the TCCA issued a summary denial of habeas relief without adopting the lower court's findings. This leaves open the question whether *Harrington v. Richter*, 562 U.S. 86 (2011) allows upholding the TCCA's denial of habeas relief on any reasonable ground supported by the record. One such ground is that the lower state court adjudicated a state-law claim under *Ex parte Weinstein*, 421 S.W.3d 656 (2014), which, unlike *Napue*, 360 U.S. 264, does not require a prosecutor to knowingly present false testimony. Because the state claim requires no knowledge of falsity, the lower state court did

not make such a finding—and in fact implicitly found the state prosecutor did *not* know the testimony was false. Such an implicit finding would be significant under *Richter* review, as *Napue* requires knowledge of falsity and thus lack of knowledge would extinguish Petitioner's *Napue* claim. Should the Court grant certiorari given this threshold issue, which Petitioner fails to address?

2. Regardless of whether *Wilson* applies, should the Court grant review when Petitioner has failed to rebut the lower state habeas court's factual findings—which are presumed correct under AEDPA—including the findings that (1) before trial, the prosecutor fully disclosed to the court and opposing counsel that the witness would likely receive a sentencing benefit in exchange for his testimony, and (2) subsequent corrective testimony informed the jury of that potential benefit, thus rendering any earlier false testimony immaterial?

3. Should the Court grant review of Petitioner's claim that the harmless-error standard of *Chapman v. California*, 386 U.S. 18 (1967) applies to his *Napue* claim absent any circuit split, and when no clearly established Supreme Court law applies *Chapman* to a § 2254 *Napue* claim disconnected from a *Brady* violation?

4. Should the Court grant review when no clearly established Supreme Court law holds or even

suggests that a witness's false testimony about a potential sentencing benefit in exchange for his testimony is material where a prosecutor fully discloses the potential sentencing benefit to the court and opposing counsel before trial, and subsequent corrective testimony informs the jury of the potential sentencing benefit?

RELATED CASES

State v. Uvukansi, No. 1353181-A (174th Dist. Ct. Harris County, Tex.) (convicted and sentenced to life without parole)

Uvukansi v. State, No. 01-14-00527-CR, 2016 WL 3162166 (Tex. App.—Houston [1st Dist.] June 2, 2016, pet. ref'd) (affirming conviction)

Uvukansi v. State, No. PD-0727-16 (Tex. Crim. App. Oct. 19, 2016) (refusing petition for discretionary review)

Ex parte Uvukansi, No. WR-88,493-021, 2020 WL 5649459 (Tex. Crim. App. Sept. 23, 2020) (denying state habeas application)

Uvukansi v. Texas, 142 S. Ct. 2811 (2022) (denying certiorari)

Uvukansi v. Lumpkin, No. 4:21-CV-1624, 2023 WL 5339215 (S.D. Tex. July 27, 2023), report and recommendation adopted, No. 4:21-CV-01624, 2023 WL 5340906 (S.D. Tex. Aug. 18, 2023)

Uvukansi v. Guerrero, 126 F.4th 382 (5th Cir. 2025)

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BRIEF IN OPPOSITION

The Respondent ("Director") respectfully submits this brief in opposition to the petition for a writ of certiorari ("Petition") filed by Feanyichi Uvukansi.

INTRODUCTION

The Court should deny the Petition. No circuit split or controlling precedent exists. And unaddressed threshold issues and unchallenged factual findings make this case unsuitable for review.

The Court must first resolve whether the *Wilson v. Sellers* look-through presumption applies to Texas's unique habeas procedure, in which the TCCA enjoys exclusive jurisdiction over felony habeas cases, where it acts as the ultimate factfinder. The TCCA adopts state habeas court findings only when it does so explicitly, and its summary denial of habeas relief here did not adopt any such findings. This leaves open the question whether *Harrington v. Richter* allows upholding the TCCA's denial of habeas relief on any reasonable ground supported by the record. Here, the state habeas court did not find the prosecutor knew the witness testimony was false—and its implicit finding that the prosecutor did *not* know the testimony was false—negated a claim under *Napue*, which requires prosecutorial knowledge of falsity. Petitioner does not address this issue.

Whether or not *Wilson* applies, the state habeas court's unchallenged findings bar relief under AEDPA. 28 U.S.C. §§ 2254 (d)(1), (e)(1). The prosecutor fully disclosed to the court and opposing counsel before trial that her witness might receive a sentencing benefit in exchange for his testimony. And even if the witness

knowingly or unknowingly lied about the details of that potential sentencing benefit while testifying, subsequent corrective testimony informed the jury of the potential sentencing benefit, rendering the initial false testimony immaterial. These findings, unrebutted by Petitioner, defeat a *Napue* claim, which requires a *Brady*-like violation and materiality.

On the merits, no clearly established law before *Glossip* applied *Chapman*'s harmless-error standard to a § 2254 *Napue* claim, particularly outside the *Brady* context. *Glossip* postdates the TCCA's 2021 denial of habeas relief by several years and thus does not apply here. Nor does any precedent even suggest the materiality of false testimony about a cooperation agreement where the prosecutor discloses that agreement to the court and opposing counsel before trial, and corrective testimony ultimately informs the jury of that agreement. The TCCA's denial of habeas relief was reasonable, and certiorari is unwarranted.

OPINIONS BELOW

The Fifth Circuit's opinion affirming the denial of Uvukansi's habeas petition can be found under *Uvukansi v. Guerrero*, 126 F.4th 382 (5th Cir. 2025). The federal district court's opinion denying relief can be found under *Uvukansi v. Lumpkin*, No. 4:21-CV-01624, 2023 WL 5340906 (S.D. Tex. Aug. 18, 2023).

JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1254(1) to review the Fifth Circuit's decision affirming the

district court's judgment denying Uvukansi federal habeas relief.

CONSTITUTIONAL PROVISION INVOLVED

The Questions Presented concern the Fourteenth Amendment right to due process as described in *Napue*, 360 U.S. 264.

STATEMENT OF THE CASE

I. Facts from Uvukansi's Murder Trial

Three people were killed during a shooting outside a nightclub in Houston, Texas. *Uvukansi v. State*, No. 01-14-00527-CR, 2016 WL 3162166 at *1 (Tex. App.—Houston [1st Dist.] June 2, 2016, pet. ref'd). The police theorized the shootings related to a gang rivalry, ROA.2153–80, and pinned Uvukansi as a possible suspect, which Dedrick Foster later confirmed based on a photo lineup, ROA.2182, 2184–85. Before trial, Foster was murdered while Uvukansi was in custody. ROA.2225.

During his police interview, Uvukansi claimed he heard the shots while standing outside the nightclub and was then pulled back inside by Michael Rhone. ROA.2204–10. But Rhone denied this claim and later testified that he was at a friend's house on the night of the shooting. ROA.2219, 2101–03.

The only remaining witness to identify Uvukansi as the shooter was Oscar Jeresano, a valet at the club that night. ROA.2000–05. Jeresano stated he heard the shots and saw Uvukansi shooting a gun. *Id*. He ducked behind a car, where he saw people running and bodies falling. ROA.2013–15. He did not immediately tell this

to police because he had a federal criminal case pending and feared getting in trouble. ROA.2017–18. Instead, he first told his federal defense attorney. Resp't App. 8a. Jeresano testified he decided to cooperate in the shooting investigation to help the victims' families, since he had a similar experience when his uncle was killed. Resp't App. 7a.

Nearly four months before trial, the state prosecutor, Gretchen Flader, provided a *Brady* disclosure to defense counsel, Vivien King, during a proceeding before the trial court. Resp't App. 1a–6a. In that disclosure, Flader informed King and the trial court of Jeresano's federal drug charge and that Flader intended "to write the federal judge" about Jeresano's cooperation. *Id*. at 2a–5a. Flader also told King that Brent Wasserstein, Jeresano's federal defense attorney, "ha[d] been asking for continuances on that sentencing until after" Uvukansi's trial. *Id*. at 4a. King was also provided Flader's e-mail exchanges with Wasserstein. *Id*. at 5a.

At trial before the jury, Flader asked Jeresano whether he received any promises for testifying or if he was told his sentence would be reduced. Resp't App. 7a–8a. He replied "no" to both questions. *Id*. Flader then asked what Jeresano's "understanding of what the possibilities" were for his drug sentence, and he replied "[t]en years to life." *Id*. Flader also clarified through Jeresano that he spoke to the police at his attorney's office. *Id*.

King then cross-examined Jeresano about the specifics of his drug case. Resp't App. 9a–15a. Jeresano admitted he was federally charged in 2011 for possession of ten kilograms of cocaine. Resp't App. 9a–

10. He seemed confused as to whether he was charged or finally convicted. Resp't App. 10a–11a. He could not remember any other facts from his case and did not know he would be sentenced at his next court date. Resp't App. 12a–13a. He further denied knowledge of a plea agreement wherein the federal court would consider a § 5K1.1 reduction of his federal sentencing if he cooperated with the State's prosecution. Resp't App. 13a–14a. King asked Jeresano if he understood he could "get a lot less time" if he cooperated with the State. Resp't App. 14a–15a. Jeresano stated no one told him he "was going to get less time for helping this case." *Id.* He reiterated he was there to help the victims' families and not himself. Resp't App. 15a. King then asked if Jeresano would permit Wasserstein to testify about Jeresano being told he could receive a shorter sentence should he cooperate. Resp't App. 15a. The prosecutor objected to this question as "improper" impeachment, which the trial court initially sustained. *Id.*

Later, outside the presence of the jury, King again argued that she should be able to impeach Jeresano concerning his possible sentence reduction. Resp't App. 15a–30a. King contended, based on her conversations with Wasserstein and the federal prosecutor, that Jeresano knew the potential benefits of testifying—including the possibility of a sentence reduction. *Id.* at 16a–17a. Flader interjected that she had no knowledge about the agreement by the federal prosecutor to move for a reduced sentence. Resp't App. 17a–18a. Flader clarified she *only* told Wasserstein she would send the not-yet-written letter to the federal court acknowledging Jeresano's cooperation. Resp't App. 18a–20a. She further argued this was not a promise

made to Jeresano, especially if Wasserstein knew about it but Jeresano did not. Resp't App. 21a–22a. The trial court agreed, recalling that Jeresano claimed no one *promised* him anything, so it was unclear what he actually knew. Resp't App.22a–26a, 29a. King argued Jeresano may remember facts if further confronted as she had been talking to Wasserstein. Resp't App. 26a–29a. The trial court ultimately ruled against King based on Jeresano's testimony of no knowledge. Resp't App. 28a–29a. However, while the trial court barred King from directly impeaching Jeresano using Wasserstein's out-of-court statements, it agreed King could call Wasserstein as a witness to explore Jeresano's understanding of how his cooperation may lower his federal sentence. Resp't App. 29a ("Why don't you just put his lawyer on and ask him the questions. I'm trying to tell you what to do without telling you what to do.").

The next day, King called Wasserstein as a witness to inform the jury of Jeresano's arrest and charge for possessing ten kilograms of cocaine. Resp't App. 30a–34a. He was released on bond January 3, 2012, with a condition to remain at home with GPS monitoring. Resp't App. 34a–35a. Wasserstein testified Jeresano wanted to talk to the police about the murders because it was the right thing to do, and he did not ask whether this would help him with his federal case. Resp't App. 39a–40a. Jeresano pleaded guilty in July 2012, Resp't App.35a−38a, but Wasserstein repeatedly reset the sentencing so Jeresano could testify against Uvukansi, Resp't App. 37a−38a. He intended to notify the federal prosecutor after Jeresano testified so the prosecutor would file a § 5K1.1 motion requesting the judge to reduce the sentence. *Id*. Jeresano's GPS-monitor

requirements were also removed. *Id.* at 36a. Wasserstein explained to Jeresano that testifying against Uvukansi would probably help his sentencing, but did not explain to him what a § 5K1.1 motion was. Resp't App. 40a–41a. No one asked Wasserstein about Flader's potential letter. Resp't App. 88a. This point bears repeating: although King had long known Flader intended to write a letter if Jeresano cooperated, King strategically opted not to question Wasserstein on this point.[1]

During closing arguments, King argued that Jeresano's testimony was not credible for several reasons. She argued his motivation was to get a deal for his federal drug-possession charge, Resp't App. 44a; he gave inconsistent statements to the police, Resp't App. 45a; and he likely was not wearing his prescription glasses on the night of the shootings, Resp't App. 44a. Flader's arguments focused on Jeresano's state of mind when he first spoke to the police. She reminded the jury Jeresano testified that he contacted the police to help others and not to get a deal. Resp't App. 48a. Flader argued that even Wasserstein confirmed this. *Id.* She next argued that only after Jeresano testified was "there even a possibility that he's going to get a deal," that it could not be truly known before then, and that there was "no promise" at the time he came forward to the police. Resp't App. 49a. Thus, she argued, Jeresano credibly testified he "came forward because he" did not

[1] As described below, King explained that she did not view the letter as dispositive. Resp't App.95a–97a. Rather, she was more concerned about Jeresano's intent in coming forward and the federal prosecutor's agreement to recommend a downward departure for Jeresano's sentence. *Id.*

want the victims to have his experience of not knowing "who killed [their] loved one." *Id.*

Uvukansi was convicted of capital murder and sentenced to life-imprisonment on June 20, 2014, by the 174th District Court of Harris County under cause number 1353181. *Uvukansi*, 2016 WL 3162166; Pet. App. 168a–73a.

On September 2, 2014, a hearing was held for Uvukansi's motion for new trial. ROA.2668. There, defense counsel King and prosecutor Flader both testified. ROA.2670–71, 2706. However, Uvukansi did not raise any claim regarding Jeresano's supposed false testimony. ROA.1370–78, 1382. Also, after Uvukansi's trial, Flader drafted and sent her letter describing Jeresano's cooperation to the federal judge, ROA.6067–68, and Jeresano received a probated sentence, ROA.6069–73.

II. Procedural History of Uvukansi's Criminal Appeal and State Habeas Proceedings

A. Direct appeal proceedings

The Fourteenth Court of Appeals of Texas affirmed Uvukansi's conviction on appeal, and the TCCA refused a petition for discretionary review on October 19, 2016. *Uvukansi*, 2016 WL 3162166.

B. State postconviction proceedings

Uvukansi next filed a state habeas application in November 2017. ROA.5989. In the first claim on his application form, Uvukansi claimed "the State used and failed to correct false testimony," but he did not specifically allege the State *knowingly* did so.

ROA.5994–95. He further alleged King was ineffective for not eliciting testimony regarding Flader's intent to write a letter, among other alleged deficiencies. ROA.5996–97. In his brief supporting his form application, ROA.6162, Uvukansi still alleged "the State's use of and failure to correct the false testimony of Oscar Jeresano," without demonstrating the knowing element. ROA.6168, 6775. His brief referenced *Napue* and *Giglio v. United States*, 405 U.S. 150 (1972), ROA.6175–76, but he failed to—and specifically contended he need not—allege facts showing the prosecution knew of any false testimony. ROA.6176 (citing *Ex parte Chabot*, 300 S.W.3d 768, 771 (Tex. Crim. App. 2009)), 6177–80. In a footnote, he concluded Flader acted deceitfully, but did not support that argument with any facts. ROA.6170. He concluded materiality must still be disproven by the State beyond a reasonable doubt per *Bagley*, despite his failure to show the knowing element. ROA.6176.[2]

On August 6, 2018, an evidentiary hearing was held in the state habeas trial court, at which Flader, Wasserstein, and King all testified. Resp't App. 50a–97a. Flader again averred she was unaware of the § 5K1.1 motion and was uncertain Jeresano knew about her intent to write a letter, as she informed only Wasserstein. Resp't App. 56a, 58a, 60a, 64a, 66a–67a. Wasserstein confirmed this during his habeas testimony. Resp't App. 82a, 84a–85a, 91a–92a. King

[2] As he does in this petition, Uvukansi claimed Flader argued in her closing that there was no promise. However, he ignores the context of Falder's statement (her reminding the jury of Jeresano's mindset *when he first approached the police*). Resp't App. 48a–49a.

testified she strategically chose to impeach Jeresano using the federal prosecutor's motion, rather than Flader's potential letter. Resp't App. 95a–97a.

The State later filed its proposed findings of fact and conclusions of law with the trial court, ROA.5833, and Uvukansi filed his proposed findings the next day, ROA.5863. Uvukansi presented no facts or conclusions supporting Flader's *knowing* presentation of false testimony, ROA.5876–83, but did conclude *he* had shown materiality, ROA.5884. The State proposed a factual finding of no false testimony based on the context of Flader's questions to Jeresano. ROA.5858. The State proposed both Flader and Jeresano were referencing a promise as a guaranteed lower sentence and not her agreement to write a letter. *Id.*

The trial court partially adopted the State's proposed findings of fact and conclusions of law, recommending the TCCA deny habeas relief. Pet. App. 76a−134a. The trial court found Flader presented false testimony through Jeresano. Pet. App. 116a–19a, 123a (relying on *Ex parte Weinstein*, 421 S.W.3d 656, which cites *Ex parte Chabot*, 300 S.W.3d 768, for the *unknowing* presentation of false, material evidence). The trial court also made credibility determinations, based on the record evidence, regarding Flader's actions and beliefs. It found Flader fully disclosed to the defense her intent to write the letter in exchange for Jeresano's testimony, that Wasserstein requested this letter as a good character reference, and that the letter was not a condition precedent for the § 5K1.1 motion. Pet. App. 117a. It further found that, because her legal practice focused mostly on Texas law, Flader was unfamiliar with the nuances of the federal sentencing guidelines

and reasonably believed her letter would not be important enough to impact Jeresano's potential sentence. *Id*.

Both parties filed objections. The State reiterated its argument that Jeresano's response was not legally false due to the vagueness of what a "promise" could mean. It further argued that Uvukansi should have raised the claim on direct appeal since he knew of the alleged falsity at trial. ROA.4654–58. Uvukansi objected, claiming the trial court found Flader "knowingly elicited false testimony," ROA.5917, 5926, and that the burden of materiality should be on the State. ROA.5918. Uvukansi, recognizing the distinction from *Ex parte Weinstein*, 421 S.W.3d 656, now explicitly linked his claim to *Napue*. ROA.5927–28. He repeated his reliance on events occurring *after* his conviction—namely, the final contents of Flader's letter and the sentence Jeresano eventually received. ROA.5923–24.

The TCCA denied Uvukansi's application without written order without explicitly adopting the trial court's findings of fact and conclusions of law. ROA.3497.[3]

III. Procedural History of Uvukansi's Federal Habeas and Appellate Proceedings

Uvukansi filed his federal habeas petition in May 2021, ROA.5, this time labeling his ground for relief as a due process violation for the "State's *knowing* use of

[3] Uvukansi previously petitioned this Court for a writ of certiorari, claiming the TCCA incorrectly or unreasonably applied *Bagley* and *Chapman* to his *Napue* claim, but this Court denied that petition on June 13, 2022. *Uvukansi v. Texas*, 142 S. Ct. 2811 (2022).

and failure to correct false testimony." ROA.21 (emphasis added). Uvukansi acknowledged that under Texas law, habeas petitioners may be entitled to relief if they prove materiality for the unknowing use of false testimony per *Ex parte Weinstein*. ROA.52.

The Director answered Uvukansi's claims, ROA.136, arguing he failed to demonstrate under AEDPA that the TCCA unreasonably applied, or ruled contrary to, clearly established law by this Court. ROA.143–45; *see* 28 U.S.C. § 2254(d). The Director further noted the TCCA did not explicitly adopt the trial court's findings; thus, under AEDPA, its denial should be entitled to deference if reasonably supported by the record. ROA.153.

The magistrate judge for the district court recommended that Uvukansi's claims be denied, ROA.187, believing the trial court found the State knowingly presented false testimony from Jeresano, but that Uvukansi failed to demonstrate materiality. ROA.196 (referencing the findings, Pet. App. 117a–128a). The magistrate judge further concluded, without explanation, that the TCCA denied relief "[b]ased on these findings." ROA.202. Finally, in response to Uvukansi's argument that the State must disprove materiality, the magistrate disagreed, saying this Court has held that materiality was an "element required to prove that a constitutional violation occurred under *Giglio*."[4] ROA.204. The magistrate reasoned that, while

[4] Although the magistrate referenced *Giglio* in his memorandum, Uvukansi never alleged, and the record refutes, that the State "failed to disclose an alleged promise made to its key witness" that he would receive some form of leniency if "he testified for the Government." *Giglio*, 405 U.S. at 151.

both *Bagley* and *Chapman* used "similar standards," as the materiality element in Uvukansi's case, "that similarity does not support conflating the two separate inquiries into one." ROA.205.

Ultimately, Uvukansi failed to meet his burden because the TCCA's "decision was not 'an unreasonable application of . . . clearly established federal law,'" as determined by this Court. ROA.206 (quoting 28 U.S.C. § 2254(d)(1)). Uvukansi filed his objections on August 10, 2023, but the district court denied them and accepted the recommendations of the magistrate judge. ROA.241–43. The district court's final judgment was entered in August 2023. ROA.244.

Uvukansi appealed, and after briefing and oral argument, the Fifth Circuit affirmed the district court's denial. *Uvukansi*, 126 F.4th 382. Disagreeing with the Director's arguments, the circuit court ruled the trial court's findings should be reviewed for reasonableness under AEDPA, per *Wilson*, because there was nothing unreasonable about the findings. *Id.* at 389. The lower court concluded that this Court's precedent on the burden-shift for *Napue*'s materiality under § 2254 was not clearly established at the time the TCCA denied relief. *Id.* at 390. Rather, "Supreme Court precedent must be on point: 'if a habeas court must extend a rationale before it can apply to the facts at hand,' then by definition the rationale was not 'clearly established at the time of the state-court decision.'" *Id.* at 388 (quoting *White v. Woodall*, 572 U.S. 415, 426 (2014)).

Uvukansi now seeks a writ of certiorari.

SUMMARY OF THE ARGUMENT

If the Court grants Uvukansi's Petition, it must first decide a threshold issue he never addressed: whether the *Wilson v. Sellers* look-through doctrine applies to the TCCA's summary denial of habeas relief. Texas's habeas procedures vest exclusive jurisdiction in the TCCA as the ultimate factfinder in felony habeas cases like this one. Tex. Code Crim. Proc. art. 11.07. The TCCA may disregard lower court factual findings without explanation and typically adopts them only if it does so explicitly. *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008). Texas habeas procedure thus differs from the Georgia habeas procedure at issue in *Wilson*. If *Wilson* is inapplicable here, then *Harrington v. Richter*, 562 U.S. at 86, permits upholding the TCCA's denial of habeas relief on any reasonable ground supported by the record—including (1) that the state habeas court never found that Flader knew Jeresano falsely testified, a required finding under *Napue*; and (2) its implicit finding that Flader, who practiced exclusively in Texas, was unfamiliar with federal sentencing practice, and was uncertain of Jeresano's knowledge of her letter, did not know that Jeresano's testimony about his federal sentencing agreement was false. Uvukansi's failure to address the *Wilson* issue makes this case a poor vehicle for review.

But regardless of whether *Wilson* applies, the state habeas court's finding that Flader disclosed Jeresano's potential sentencing agreement to the court and opposing counsel before trial, its implicit finding that the false testimony was not provided knowingly, and its explicit finding that the false testimony was immaterial, Pet. App. 131a; Resp't App. 31a–41a,

support denial of habeas relief under *Napue*, 360 U.S. at 264—which requires a *Brady*-like violation that is knowing and material. Uvukansi's failure to challenge those findings forecloses his claim and provides further reason to deny review. 28 U.S.C. § 2254(e)(1).

Uvukansi fares no better on the merits. The Fifth Circuit correctly held, before *Glossip* was decided, that no clearly established law applied *Chapman*'s harmless-error standard to a § 2254 naked *Napue* claim, as *United States v. Bagley*, 473 U.S. 667 (1985) and *Kyles v. Whitley*, 514 U.S. 419 (1995), addressed *Brady*-like violations. No *Brady*-like violation occurred here because Flader fully disclosed to the court and opposing counsel pre-trial that Jeresano could receive a sentencing benefit in exchange for his testimony against Uvukansi. Moreover, corrective trial testimony informed the jury that Jeresano would likely receive a sentencing benefit for testifying against Uvukansi. No precedent holds or even suggests that such circumstances require a finding of materiality, rendering the TCCA's denial of habeas relief reasonable and the Fifth Circuit's holding correct.

ARGUMENT

I. The Court Cannot Reach Uvukansi's Questions Presented Without First Resolving an Antecedent Legal Issue Regarding the Application of the "Look-Through" Presumption in *Wilson v. Sellers*.

In search of a conflict to justify certiorari, Uvukansi asserts that the TCCA unequivocally misapplied this Court's precedent regarding the test for materiality for

false-evidence claims under *Napue* and *Giglio*. *See* Pet. Cert. at i–ii. Specifically, he contends the state courts erroneously required him "to prove by a preponderance of the evidence that the perjured testimony affected the verdict instead of requiring the State to prove beyond a reasonable doubt that it did not affect the verdict." Pet. Cert. at 21. However, the TCCA denied his claim in a summary, unreasoned, unpublished, single-sentence order. Pet. App. 75a. Recognizing the TCCA's summary denial says nothing about the relevant legal standard, Uvukansi shifts his focus to the state habeas trial court's recommendations to the TCCA and argues that the TCCA presumptively adopted the trial court's recommendations under *Wilson*, 584 U.S. at 125. *See* Cert. Pet. at 17. To be sure, the Court in *Wilson* held that where the relevant state court decision to deny a claim is unreasoned, a "federal court should 'look through' the unexplained decision to the last related state-court decision"—if any—providing the relevant rationale and "then presume that the unexplained decision adopted the same reasoning." 584 U.S. at 125. However, the State may rebut the look-through presumption by showing the unexplained affirmance most likely relied on different grounds than the lower state court's decision. *Id*.

As he did in the Fifth Circuit, the Director continues to maintain the *Wilson* presumption does not apply to Texas' parochial postconviction scheme—or at least that its presumption has been rebutted in this case.[5]

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[5] Although the Director raised this argument below, the Fifth Circuit rejected it. *See Uvukansi*, 126 F.4th at 389 ("Here, we find

Before reaching Uvukansi's Questions Presented, this Court must first resolve an antecedent question—whether the look-through presumption as described in *Wilson* applies to the TCCA's denial.

First, the state habeas trial court never directly addressed a due process claim under *Napue*, but rather under *Ex parte Weinstein*, a more recent TCCA case concerning an *Ex parte Chabot* claim. Pet. App. 116a. This is critical because Texas courts have recognized a federal due process protection in excess of that recognized by this Court.

The trial court found Flader was not aware of the federal sentencing issue; and it implicitly found she did not know Jeresano was testifying falsely. Pet. App. 117a–18a. Uvukansi must, but failed to, rebut the presumption of correctness afforded those factual findings. 28 U.S.C. § 2254(e)(1). And because the findings are silent regarding the *Napue* claim, federal courts must still apply *Harrington v. Richter*, 562 U.S. 86 (2011) when analyzing the reasonableness of the TCCA's denial of relief for that claim. That is, the denial and facts from the record favoring the denial must be given due deference under AEDPA. *Richter*, 562 U.S. at 100–01; *Williams v. Taylor*, 529 U.S. 362, 412 (2000). Uvukansi failed to show *no* fair-minded jurist would agree that his *Napue* claim lacked merit. *Richter*, 562 U.S. at 101; *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004).

Second, even if the trial court had explicitly concluded Uvukansi must prove materiality for a *Napue*

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that the State has not rebutted *Wilson*'s 'look through' presumption.").

violation, the TCCA declined to adopt the findings and conclusions. ROA.3497. The TCCA cannot be found to have unreasonably applied *Bagley* and *Chapman* when it did not explicitly adopt any legal conclusion made contrary to that precedent. As the Director argued to the circuit below, this look-through presumption would typically be rebutted in matters like this one where the TCCA chose not to adopt the recommendations of the lower habeas court.

Wilson involved Georgia's unique postconviction procedures, under which the state trial courts possess original habeas jurisdiction to consider and resolve a state habeas application in the first instance. That decision may then be directly appealed to the Georgia Supreme Court ("GSC"), which uses a modified form of discretionary / mandatory review to determine whether to exercise its discretionary jurisdiction to take the habeas appeal. *See Wilson v. Warden*, 834 F.3d 1227, 1232 (11th Cir. 2016), *rev'd on other grounds*, *Wilson*, 584 U.S. 122.

Texas's habeas procedures differ. Its criminal code provides exclusive means to review a final felony conviction. *See* Tex. Code Crim. Proc. Art. 11.07, § 5 ("After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner."). This necessarily means that "[j]urisdiction to grant postconviction habeas corpus relief on a final felony conviction rests exclusively with" the TCCA. *Bd. of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995). To be sure, to invoke the TCCA's exclusive habeas jurisdiction, a state habeas applicant must first

file a postconviction application in the convicting trial court. *See* Tex. Code Crim. Proc. Art. 11.07, § 3(b) ("An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court in which the conviction being challenged was obtained. . . ."). However, the convicting court lacks subject matter jurisdiction to enter final judgment granting or denying postconviction habeas relief for felony matters. *See Keene*, 910 S.W.2d at 484 (holding that state district court "acted without authority in purporting to grant Delgado postconviction habeas corpus relief" because TCCA "enjoys the exclusive authority to grant relief in such a proceeding."). Rather, the trial court functions like a special master, always subject to the TCCA's original jurisdiction and final adjudication. *See id.* at 483–84.

Moreover, an Article 11.07 applicant does not "appeal" the trial court's findings and recommendations in the traditional sense. Rather, upon the conclusion of the lower court proceedings, the entire habeas record is automatically transferred to the TCCA for its final and original resolution. *See*, *e.g.*, Tex. Code Crim. Proc. Art. 11.07 ("After the convicting court makes findings of fact . . . the clerk of the convicting court shall immediately transmit to the [TCCA], under one cover, the application, any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact."). The trial court's subservient role in this regard is particularly evident in relation to its findings and recommendations. For instance, the TCCA resolves pure conclusions of law

de novo. *Ex Parte Weinstein*, 421 S.W.3d at 664. Relevant here, for determining "whether a witness's testimony is perjurious or false under a deferential standard," the TCCA "review[s] the ultimate legal conclusion of whether such testimony was 'material' de novo." *Id*. (internal quotations removed). And as for the trial court's proposed findings of fact, the TCCA is the "ultimate fact finder." *Ex parte Thuesen*, 546 S.W.3d 145, 157 (Tex. Crim. App. 2017). In *Wilson*, the GSC determined whether to conduct its own independent, discretionary review of the lower court's final state habeas judgment as part of a unitary appellate procedure. 584 U.S. at 122. But unlike the GSC, the TCCA necessarily and finally resolves all claims directly.

Furthermore, the TCCA was not required to explicitly reject part or all the recommendations simply to indicate it had not adopted them. *See, e.g., Ex parte Reed*, 271 S.W.3d at 728. That is, when the TCCA "determine[s] that the trial judge's findings and conclusions that are supported by the record require clarification or supplementation," the TCCA "*may* exercise [its] judgment and make findings and conclusions that the record supports and that are necessary to [its] independent review and ultimate disposition." *Id*. (emphasis added). Nonetheless, "where a given finding or conclusion is immaterial to the issue or is irrelevant to our disposition," the TCCA may still "decline to enter an alternative or contrary finding or conclusion." *Id*. And the decision whether to grant or deny relief "rests exclusively with" the TCCA. *Keene*, 910 S.W.2d at 483 (emphasis added).

Most critically, the TCCA historically distinguishes between denying a given state habeas application "without written order," and denying the same "without written order on the trial court's findings." *See e.g., Ex Parte Durham*, No. WR-63,905-13, 2014 WL 2126629, at *1 (Tex. Crim. App. May 21, 2014) ("The writ application was denied in June 2006 without written order on the trial court's findings without a hearing."). Here, the TCCA did not explicitly adopt the trial court's findings and conclusions when it denied relief, ROA.3497, as the Director argued before the Fifth Circuit. With this unreasoned, summary denial, Uvukansi cannot meet his AEDPA burden because the record demonstrates "a reasonable justification" for the TCCA's decision. *Richter*, 562 U.S. at 109.

II. Should this Court Determine that *Wilson*'s Unrebutted Presumption Applies to the TCCA's Denial, Uvukansi's Claim of Being Unreasonably Required to Prove Materiality Does Not Merit Certiorari Review.

Even using *Wilson*'s look-through doctrine, the Court should still deny Uvukansi's petition. Again, the trial court did not analyze materiality under *Napue*, but under *Ex parte Weinstein and Ex parte Chabot*, because it never found Flader knowingly presented false testimony.

However, if this Court determines the TCCA's denial relied on a conclusion that Uvukansi failed to show materiality under *Napue*, the TCCA's denial was still not unreasonable under AEDPA. The Fifth Circuit, among many sister circuits, have respectfully observed

this Court has not clearly established the State must disprove materiality beyond a reasonable doubt for a naked *Napue* allegation in the § 2254 context.

A. Uvukansi has not met his burden under AEDPA even with his theory that the State must disprove materiality for a naked *Napue* claim.

In his state application, Uvukansi argued his due process rights were violated by the State's presentation of false testimony. ROA.6168, 6175–80. This is not a *Napue* claim; it is an *Ex parte Chabot* claim. Consequently, the trial court analyzed his claim as a state law claim.[6]

The state court factually determined "there was no quid pro quo arrangement between the State and Jeresano." Pet. App. 117a; Resp't App. 7b (Flader's habeas testimony), 33b–35b (Wasserstein corroborating he never spoke with Flader about the § 5K1.1 motion and her letter was not necessary for the motion). Specifically, the lower state court found Flader's potential letter "was not a condition precedent for the U.S. Attorney's Office to file a 5K1.1 motion." Pet. App. 117a; Resp't App. 41b–42b (Wasserstein's testimony supporting this finding). Although, after defining a "promise," the trial court found both Flader's letter and the federal prosecutor's § 5K1.1 motion were promises

[6] The trial court confirmed in a footnote that it characterized Uvukansi's allegation as "the State present[ng] and fail[ing] to correct false testimony, not prosecutorial misconduct." Pet. App. 133a.

made in exchange for Jeresano's testimony. Pet. App. 119a–20a.

Flader also testified she told only Wasserstein about her intent to write a letter to the federal court, and although she assumed Wasserstein told Jeresano of her intent, she was uncertain whether Jeresano knew about it. Resp't App. 9b–12b (Flader's testimony), 40b–41b (Wasserstein confirming). The trial court found Flader credibly believed her letter held little importance and would not "affect [Jeresano's] sentence." Pet. App. 118a. It further found Flader, who practices only Texas law, was and remained "unfamiliar with the nuances of federal sentencing guidelines." Pet. App. 117a. Then it found Jeresano's testimony misleading when he denied being offered any promises for testifying, and found he falsely testified no one told him his sentence could be reduced. Pet. App. 119a–23a. Yet, the trial court did not find Flader knowingly presented this false testimony. Rather, the record indicates she credibly misunderstood the significance of a § 5K1.1 motion and was uncertain if Wasserstein informed Jeresano of her future letter. Pet. App. 117a–18a; Resp't App. 12a–13a, 9b–12b, 17b, 32b–35b. Without the "knowing" element of the presented false testimony, the trial court's recommendations implicitly ruled no *Napue* violation occurred. The trial court then turned to any Texas law violation.

In *Ex Parte Weinstein*, 421 S.W.3d at 664, for state habeas relief, the TCCA "must determine (1) whether the testimony was, in fact, false, and, if so, (2) whether the testimony was material. *Id.* at 665; *see also Ex parte Chabot*, 300 S.W.3d at 772. Texas law requires no showing that the prosecutor *knowingly* presented false

testimony. *Ex parte Chabot*, at 771; *Ex parte Weinstein*, 421 S.W.3d at 665. Here, when the trial court found Jeresano's testimony was false, it next determined whether the false testimony was material. Pet. App. 117a–34a. It never found a knowing element; and its factual findings support the conclusion Flader acted unknowingly. *Id.* Its conclusion that Uvukansi must prove materiality by a preponderance of the evidence was part of its analysis under *Ex parte Weinstein*, not *Napue*. Pet. App. 134a. And implicitly, it found *Napue* inapplicable because Uvukansi had not shown Flader knowingly presented false testimony.

The concurring opinion in *Ex parte Weinstein* examined the difference between the state claim and a *Napue* claim. *Ex Parte Weinstein*, 421 S.W.3d at 669–73. Judge Keller noted this Court "has held that the [materiality] standard is essentially the same as the *Chapman* harmless error test for constitutional errors on direct appeal." *Id*. at 669. But Judge Keller wanted "to emphasize that the standard of materiality for the State's unknowing use of false evidence (a claim not recognized by the Supreme Court)," requires more of a habeas petitioner "than the standard employed by [this] Court for the State's knowing use of false evidence." *Id*. at 670.

Judge Keller discussed several logical reasons behind requiring a habeas petitioner to show materiality for the unknowing presentation of false testimony. *Id*. at 670–71. One major point turned on finality. Judge Keller reasoned "[a] prosecutor who knowingly uses false evidence should understand that the case is a ticking time bomb that is likely to explode the moment the defendant *discovers* what has

happened." *Id*. at 671 (emphasis added). The State could "hardly maintain a significant expectation of finality in proceedings in which the prosecutor has acted in such a way." *Id*. However, "if the defendant fails to raise the claim at his first opportunity or if the defendant is dilatory in raising his claim," then the State's "finality interests may become more significant…" *Id*.

Here, Uvukansi did not discover the false testimony after his conviction; he knew about it *before trial*, when Flader fully disclosed everything to the court and Uvukansi's attorney. And certainly, the trial court did not find the knowing requirement under *Napue*. Uvukansi's claim failed because he did not overcome the presumption of correctness afforded the factual findings concerning Flader's credibly unknowing actions and inactions. Pet. App. 117a–34a. And for a demonstration of incorrectness, "it is not enough to show that 'reasonable minds reviewing the record might disagree about the finding in question.'" *Davenport*, 596 U.S. at 135 (2022) (quoting *Brumfield v. Cain*, 576 U.S. 305, 314 (2015)). Uvukansi must overcome the presumption with clear and convincing evidence. 28 U.S.C. §2254(e)(1). He did not even attempt meeting this burden. Thus, the courts below properly rejected his claim.

B. *Bagley* did not clearly establish that materiality for a § 2254 *Napue* claim disconnected from *Brady* must be disproven by the State.

Even if the lower trial court determined Flader knowingly used Jeresano's false testimony, there

certainly was nothing withheld by the State in violation of *Brady*. The *Bagley* footnote indicated that the *Chapman* standard would apply to *Napue* issues, but the *Bagley* Court considered the § 2255 matter through the lens of a *Brady* violation. Likewise, the *Kyles* Court did not clearly apply *Chapman* to a materiality analysis, especially not for a *Napue* claim raised outside the *Brady* context under § 2254. And even recently, while this Court applied the *Chapman* standard to a *Napue* claim, that matter was also cloaked in severe *Brady* violations seeking certiorari from a state habeas proceeding. *Glossip v. Oklahoma*, 145 S. Ct. 612 (2025). Here, in a § 2254 review of a naked *Napue* claim, the State fully disclosed all known impeachment evidence before trial. Resp't App. 2a–5a. The Fifth Circuit correctly ruled this Court has not clearly established *Chapman* applies in this circumstance. Nothing in this Court's precedent explicitly provided the State must disprove materiality once a § 2254 petitioner shows false testimony was knowingly presented when full *Brady* disclosure was made.

The Fifth Circuit ruled this Court "has left ambiguous whether materiality is an element of a *Napue* violation." *Uvukansi*, 126 F.4th at 390. Supporting this conclusion, it noted "[t]he practice of other circuits suggests the Supreme Court has not clearly placed the burden of proof on the State," while many sister circuits "treat[] materiality as an element," for the habeas petitioner to prove. *Id.* at 390–91. This understanding was correct at the time of that opinion and certainly when the TCCA denied relief. *See Williams*, 529 U.S. at 388 ("We all agree that state-court judgments must be upheld unless, after the closest

examination of the state-court judgment, a federal court is firmly convinced that a federal constitutional right has been violated."); *Bagley*, 473 U.S. at 685.

Uvukansi points to *Bagley* and *Chapman* as the clearly established Supreme Court precedent requiring the burden shift to the State. Pet. Writ Cert. 20. But again, *Chapman* 368 U.S. at 18−20, was a direct review matter, not decided in a habeas context. And subsequently, the Court plainly held a lesser standard of harmfulness applies in habeas matters, while *Chapman*'s applied on direct appeal. *Brecht*, 507 U.S. at 637. *Bagley*, a § 2255 matter concerning *Brady*, ruled that under *Chapman* the State must disprove materiality beyond a reasonable doubt. 473 U.S. at 671, 673–80 n.9. But later, the Court issued its opinion in *Kyles*, 514 U.S. at 435−38, which discussed how *Bagley* and *Chapman* affected the materiality standard in a habeas context. The Court's analysis in *Kyles* likens *Napue*'s materiality to the prejudice element in *Strickland*, 466 U.S. at 688. *Kyles*, 514 U.S. at 434. Reviewing courts could reasonably interpret *Kyles* to require, like *Brecht*'s harm and *Strickland*'s prejudice, a habeas petitioner to show materiality. *Id.* at 434–35. And finally, *Davenport* solidified this interpretation. 596 U.S. at 133–34 (again contrasting *Chapman* for direct appeals, the Court ruled that, for federal habeas relief, a petitioner must meet his burden under AEDPA and *Brecht*). As such, amidst this varied precedent, *Bagley*'s holding cannot be clearly established concerning *Chapman*'s applicability in a § 2254 matter for a naked *Napue* claim.

Nor may Uvukansi rely on *Glossip*, 145 S. Ct. 612, which was decided years after the TCCA denied habeas

relief. Even if the portion Uvukansi relies on were more than dictum, the *Glossip* Court did not clearly establish *Chapman*'s burden shift applies in a § 2254 matter for a naked *Napue* claim. First, *Glossip* also involved significant *Brady* violations. 145 S. Ct. at 618 ("the State disclosed eight boxes of previously withheld documents from Glossip's trial," two decades after the fact). Second, *Glossip* was not a § 2254 challenge. *Id*. at 624 (Glossip petitioned the Court after the Oklahoma Court of Criminal Appeals procedurally barred him from habeas relief).

The courts below properly denied Uvukansi federal habeas relief. Even had he demonstrated Flader knowingly presented false testimony, Uvukansi cannot meet his AEDPA burden. This Court has not clearly established in a § 2254 matter, for a *Napue* violation fully disconnected from *Brady*, the State must meet the *Chapman* harmlessness standard.

III. The Fifth Circuit Correctly Recognized this Court Has Not Clearly Prohibited a "Curative Approach" for Any Materiality of False Credibility Testimony By Using Later Impeachment Evidence.

Uvukansi claims the trial court negated materiality because the false testimony pertained to credibility and not inculpability. Pet. Cert. Br. 23–26. The Fifth Circuit properly rejected this contention, determining the trial court "simply considered the fact that the false testimony only went to Jeresano's credibility as a factor in judging its materiality." *Uvukansi*, 126 F.4th at 391. The trial court concluded the false testimony's "force was diminished by later testimony impeaching

Jeresano's credibility." *Id.* The court below further ruled the Court had not "clearly bar[ed] this curative approach" at the time the TCCA denied relief; thus, his claim was foreclosed. *Id.* The TCCA's denial presented nothing unreasonable based on clearly established federal law, even if the trial court had analyzed materiality under *Napue* as well as *Ex parte Weinstein*.

When the TCCA reviewed Uvukansi's case, this Court's clearly established precedent defined materiality as a "'reasonable probability' of a different result." *Kyles*, 514 U.S. at 434 (quoting *Bagley*, 473 U.S. at 678). That is, the correction of any false testimony "would have made a different result reasonably probable." *Id.* at 441. A different outcome becomes "reasonably probable" when the correction of any false testimony "would have resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense." *Id.*

Here, the state trial court found the false testimony immaterial because "the jury could have determined that Jeresano gave false testimony but that they still believed he properly identified the shooter." Pet. App. 131a. It additionally found the false testimony was "not closely tied to the veracity of his testimony identifying the shooter," therefore, no "reasonable inference [can] be drawn [to hold] he had to be lying about the identity of the shooter." *Id*. The findings reasoned "the jury had a right to still believe Jeresano's testimony identifying [Uvukansi] as the shooter even though they may have believed he was impeached with evidence at trial, and even if they would have heard about the letter...." *Id*. at 131a–32a.

Uvukansi does not challenge these findings as a factual matter. Instead, he attacks this reasoning by arguing it directly violates *Napue*, which does not allow for such a distinction. Pet. Cert. Br. 25. But Uvukansi ignores the context of the quote he cites from *Napue*, which did not concern materiality. *Id*. The Court addressed whether false credibility testimony could ever be a due process violation even if knowingly presented. *Napue*, 360 U.S. at 269 ("The principle that a State may not knowingly use false evidence…does not cease…merely because the false testimony goes only to the credibility…"). Thus, the Court only rejected the *categorical* view that false credibility testimony can never violate due process. *Id.*

Uvukansi's argument thus falters. Nothing in *Napue* or any other precedent prevented the TCCA's acknowledging the testimony pertained only to credibility as one factor in its materiality analysis. When this Court has not "broken sufficient legal ground," establishing constitutional law, "lower federal courts cannot themselves establish such a principle with clarity sufficient to satisfy the AEDPA bar" under either the "contrary to" or "unreasonable application" standard. *Williams*, 529 U.S. at 381; *see also Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) (Appellate courts may "look to circuit precedent to ascertain whether…the particular point in issue is clearly established," but they cannot "canvass circuit decisions to determine whether a particular rule of law is so widely accepted," to predict this Court's rule of law) (citations omitted).

With no such law prohibiting this curative approach—and absent any challenge whatsoever to the underlying factual findings supporting it—the TCCA's

assessment of the facts must be given due deference under AEDPA. *Richter*, 562 U.S. at 100–01; *Williams*, 529 U.S. at 412. Here, the record clearly demonstrates that Jeresano's false credibility testimony was not material because, as the state habeas court found, it was corrected by Wasserstein's testimony. Wasserstein explained to the jury: (1) Jeresano was facing federal charges for the possession of over 10 kilograms of cocaine; (2) he was facing ten years to life of imprisonment; (3) he was facing deportation; (4) he pleaded guilty to the drug possession charge; (5) his sentencing had been continuously reset for over two years so that he could testify against Uvukansi; (6) his bond conditions were altered, including his GPS monitoring; (7) he was informed that if he testified, he could receive a reduced sentence; and (8) Wasserstein would notify the federal judge of Jeresano's cooperation. Resp't App. 31a–38a. During Flader's cross, Wasserstein admitted he had explained to Jeresano that testifying would probably help his sentencing, but there was no guarantee. Resp't App. 40a–41a.

Wasserstein's testimony regarding the § 5K1.1 motion was fully explained. Thus, Uvukansi's entire habeas claims boil down to Flader's intent to write a letter. But contrary to Uvukansi's assertions now, Pet. Cert. 14, Uvukansi's own attorney—King—believed the letter was not "the dispositive fact" and that Jeresano's impeachment came through Wasserstein's thorough testimony. Resp't App.95a–97a. Being asked twice about the letter, King replied, "that was [her] trial strategy," she did not ask about the letter "because that's obviously what [habeas counsel's] trial strategy would have been. [Hers] was different." *Id*. A reasonable

reading of this record leads a fair-minded jurist to conclude Flader's letter did not render any false testimony material, particularly considering Wasserstein's impeachment testimony informed the jury that Jeresano would likely receive a federal sentencing benefit for testifying against Uvukansi.

Uvukansi likely focuses on the letter due to its contents and the federal judge's recognition of it in open court before giving Jeresano probation. Pet. Cert. 8–9, 14, 24–26. But the jury—and Jeresano—could not know about the letter's contents or that he would receive probation. His sentencing and the letter's contents simply have no relevance to the state habeas court's materiality finding. Pet. App. 8; ROA.1354–55 (Uvukansi sentenced in June 2014), 6067–68 (Flader's letter received by Jeresano's federal sentencing judge in August 2014).

Ultimately, King chose the better strategy. She concentrated on Jeresano's understanding of the benefits for cooperating—the bond modification, no GPS monitoring, a two-year delay of his sentencing, a possible reduction of his sentence, and avoiding deportation. These more impactful impeachment facts were presented to the jury. Resp't App. 31a–38a.

Uvukansi cannot show the TCCA made any unreasonable determination of the facts based on the record. *Uvukansi*, 126 F.4th at 385–86. The finding of immateriality was not contrary to, or an unreasonable application of, clearly established law. *Id.* at 391; *Williams*, 529 US. At 413; *Richter*, 562 U.S. at 103. No precedent from this Court establishes that failing to inform the jury of every detail of a cooperating witness's potential sentencing benefit is material to a conviction

when the State disclosed every detail to the court and opposing counsel, and the jury was aware of the witness's likely federal sentencing benefit. Nor would all fair-minded jurists agree that failing to disclose the potential letter to the jury, standing alone, is material. *Richter*, 562 U.S. at 101; *Kyles*, 514 U.S. at 434; *Bagley*, 473 U.S. at 678. Again, the state habeas court found no materiality based on the other curative impeachment testimony, and Uvukansi does not challenge those underlying factual findings. The Fifth Circuit properly rejected Uvukansi's claims, and the record fully supports the TCCA's denial of a *Napue* claim absent any *Brady* violation.

CONCLUSION

The Court should deny the Petition.

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