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ALEXANDER, J., with whom MULLINS, C. J., and DANNEHY, J., join, dissenting. The majority's conclusion in this habeas appeal blurs the line in our *Napue/Giglio*¹ jurisprudence as to when a prosecutor is obligated to correct false or misleading testimony by a cooperating witness. I respectfully disagree with the majority's decision to remand this case for further proceedings to determine whether the "past practice" of the New London state's attorney's office, which was never raised at trial, created an understanding between a cooperating witness, Samuel Gomez, and the state that he would receive consideration in exchange for his testimony at the criminal trial of the petitioner, Darnell Moore. The petitioner does not ask this court to remand for further fact-finding, and the record does not support this action in light of the habeas court's specific factual finding that credits the testimony of Gomez, Gomez' defense counsel, and three prosecutors denying the existence of any such understanding. Indeed, the habeas court explicitly found that "[t]here [was] no evidence of an express intention by the state not to prosecute Gomez; nor [was] there evidence of even an informal understanding or unexpressed intention." I, therefore, respectfully dissent.

The following facts are relevant in determining whether a tacit agreement existed in this case. In August 2010, the petitioner shot and killed the victim, Namdi Smart, in Norwich. Gomez drove the petitioner to and from the scene, and supplied the firearm that the petitioner used to shoot the victim. In April 2011, eight months after the petitioner was arrested and charged with murder, police officers interviewed Gomez, and he confessed to his involvement in the crime. Following the interview, Gomez was arrested and charged with, inter alia, carrying a pistol or revolver without a permit in violation of General Statutes (Rev. to 2009) § 29-35 (a) and hindering prosecution in the second degree in violation of General

¹*Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972); *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).

Statutes §53a-166. Gomez subsequently posted bond and hired Attorney Peter Catania to represent him.

The petitioner's criminal trial in the Superior Court in the judicial district of New London commenced in December 2012, while Gomez' charges remained pending. On the second day of trial, the state called Gomez as a witness. Prior to his testimony and outside the presence of the jury, defense counsel, Attorney Norm Pattis, questioned the representation by the prosecutor, David Smith, that the state had not offered Gomez any benefit in exchange for his testimony. Pattis then requested permission to call Catania as a witness to question him about his conversations with the New London state's attorney's office and the presiding judge in New London. Following an objection by Smith, the court denied Pattis' request.²

Gomez testified about the events of the victim's murder, including admitting to his personal involvement in the crime and identifying the petitioner as the perpetrator. During cross-examination, Pattis questioned Gomez about his motivation for testifying. Gomez denied believing or expecting that testifying against the petitioner might result in his receiving a favorable plea bargain from the state with respect to his pending charges. Pattis asked Gomez, "[y]ou're just here to do the right thing, correct?" Gomez replied, "[y]up." When asked about why he had yet to plead guilty to his pending charges, Gomez stated that he did not know. At the conclusion of Pattis' cross-examination, the following colloquy occurred:

"[Pattis]: You fully intend to cut a deal with the state after your testimony in this case, don't you?

"[Gomez]: I'm hoping for the best.

"[Pattis]: And what you're hoping for in this case is that the testimony you offer helps you out at sentencing, correct?

²In his direct appeal, the petitioner did not challenge the trial court's denial of Pattis' request to call Catania as a witness. See *State v. Moore*, 169 Conn. App. 470, 473, 151 A.3d 412 (2016), appeal dismissed, 334 Conn. 275, 221 A.3d 40 (2019).

“[Gomez]: Yeah.”

During redirect examination, the prosecutor asked Gomez whether any offer had been made to him concerning his pending charges. Gomez replied, “[n]o.” The jury found the petitioner guilty of murder, and, on March 5, 2013, the trial court sentenced him to a total effective sentence of fifty-three years of incarceration. The petitioner’s conviction was upheld on direct appeal. See *State v. Moore*, 169 Conn. App. 470, 473, 499, 151 A.3d 412 (2016), appeal dismissed, 334 Conn. 275, 221 A.3d 40 (2019).

On March 14, 2013, Gomez pleaded guilty under the *Alford*³ doctrine to one count of hindering prosecution in the third degree in violation of General Statutes (Rev. to 2009) §53a-167. During the plea hearing, the prosecutor, Stephen Carney, recommended to the court that Gomez be sentenced to five years of incarceration, execution suspended, with three years of probation. The court accepted Gomez’ plea. At the conclusion of the plea hearing, Catania stated that “there [were] no prior deals, prior to today, nothing arranged with the state.”

Gomez’ sentencing hearing was held on June 21, 2013, with State’s Attorney Paul J. Narducci filling in for Carney. The trial court sentenced Gomez in accordance with the plea agreement, and the state nolleed all of his other charges in three part B cases.

The petitioner commenced this habeas action in 2015 and filed the operative third amended petition for a writ of habeas corpus in April 2021. Relevant to this appeal, the petitioner claimed that his due process rights were violated when the state knowingly solicited false testimony from Gomez concerning an agreement for consideration in exchange for his testimony and, then, allowed it to go uncorrected at trial. A one day habeas trial was held on March 30, 2022, at which the petitioner testified and presented the testimony of Gomez, Pattis, Catania, Carney, Smith, and Narducci. Consistent with

³*North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

his testimony at the petitioner’s criminal trial, Gomez denied discussing a leniency agreement with the prosecutor. Catania likewise testified that there was no formal or informal agreement with the state, but there was “a hope that . . . Gomez’ testimony would put him in a better light and better favor to . . . the court regarding his own case, but there [were] no specific agreements. There was . . . nothing . . . set down. That was what our . . . hope was in his cooperation, but there was nothing promised from the state.” The prosecutors, Carney, Smith, and Narducci,⁴ each testified that there was no agreement between the state and Gomez prior to the petitioner’s criminal trial.

The habeas court credited the testimony, both individually and collectively, provided by Gomez, Catania, Carney, Smith, and Narducci, and found that there was no agreement, formal or informal, between the state and Gomez, and no unexpressed intention by the state to extend leniency to Gomez. Accordingly, the habeas court rendered judgment denying the petition, which the Appellate Court subsequently affirmed. See *Moore v. Commissioner of Correction*, 227 Conn. App. 487, 489, 519, 321 A.3d 470 (2024).

The present case turns on whether, notwithstanding the habeas court’s specific finding to the contrary, the record supports the conclusion that the state was obligated but failed to correct Gomez’ testimony at trial with respect to his motivation to testify against the petitioner. The petitioner claims that several events surrounding the disposition of Gomez’ criminal case compel that conclusion. The petitioner relies on the delay in Gomez’ case leading up to the petitioner’s trial, Gomez’ inculpatory testimony, and Gomez’ lenient plea agreement and sentence soon after the petitioner’s conviction.⁵ I disagree.

⁴Narducci’s only involvement in Gomez’ case was appearing in lieu of Carney during Gomez’ sentencing. He testified that, to his knowledge, there was no plea arrangement or leniency agreement between Gomez and the state.

⁵The petitioner also asks this court to take judicial notice of several transcripts from Gomez’ court file. I agree with the majority’s decision to decline this invitation.

Even when considered collectively, this circumstantial evidence does not provide a sufficient basis from which the habeas court reasonably could infer the existence of an agreement between the state and Gomez.

I begin with the standard of review and the relevant legal principles. “Whether a prosecutor knowingly presented false or misleading testimony [in violation of a defendant’s due process rights] presents a mixed question of law and fact, with the [habeas] court’s factual findings subject to review for clear error and the legal conclusions that the court drew from those facts subject to de novo review.” (Internal quotation marks omitted.) *State v. Komisarjevsky*, 338 Conn. 526, 645, 258 A.3d 1166, cert. denied, ___ U.S. ___, 142 S. Ct. 617, 211 L. Ed. 2d 384 (2021).

As outlined by the United States Supreme Court in *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), and *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972), “[d]ue process is . . . offended if the state, although not soliciting false evidence, allows it to go uncorrected when it appears. . . . If a [state] witness falsely denies having struck a bargain with the state, or substantially mischaracterizes the nature of the inducement, the state is obliged to correct the misconception.” (Internal quotation marks omitted.) *State v. Johnson*, 345 Conn. 174, 204, 283 A.3d 477 (2022). Thus, “[t]o establish a *Napue/Giglio* violation . . . the [defendant] must demonstrate that the state’s witnesses provided material, false or substantially misleading testimony that the prosecutor failed to correct.” (Internal quotation marks omitted.) *State v. Komisarjevsky*, *supra*, 338 Conn. 645.

“The prerequisite of any claim under . . . *Napue* and *Giglio* . . . is the existence of an undisclosed agreement or understanding between the cooperating witness and the state.” (Emphasis omitted; internal quotation marks omitted.) *Gomez v. Commissioner of Correction*, 336 Conn. 168, 180, 243 A.3d 1163 (2020). In recent years, we have explained that such agreements are not limited

to formal promises. See, e.g., *Marquez v. Commissioner of Correction*, 330 Conn. 575, 603–604, 198 A.3d 562 (2019); see also *Brown v. Commissioner of Correction*, 230 Conn. App. 384, 412, 330 A.3d 134, cert. denied, 351 Conn. 921, 333 A.3d 103 (2025). Instead, “evidence that reasonably suggests that an informal understanding between the state and a cooperating witness exists, or reasonably may be viewed as an inducement by the state, falls within the ambit of what must be disclosed.” *Brown v. Commissioner of Correction*, supra, 412. Although an “agreement or understanding” for purposes of *Napue/Giglio* is broadly defined; see, e.g., *Johnson v. Commissioner of Correction*, 238 Conn. App. 714, 732–33, 357 A.3d 729 (2026); at a minimum, there must be evidence of “an affirmative inducement made by the state to a cooperating witness . . . that gives rise to a mutual understanding” (Citation omitted; internal quotation marks omitted.) *Brown v. Commissioner of Correction*, supra, 422 n.14; see also *Akrawi v. Booker*, 572 F.3d 252, 263 (6th Cir. 2009).

At the petitioner’s habeas trial, Gomez and four attorneys, Catania, Carney, Smith, and Narducci, each denied that an agreement or understanding, formal or informal, existed between Gomez and the state. Gomez testified that, although the state made him no promises to that effect, he testified in hopes of receiving favorable treatment. Gomez also testified that he was never approached by Carney or Smith, that he never met with the prosecutors prior to the petitioner’s trial, and that Catania never approached him about an offer from the state. Carney and Smith both testified that they did not personally solicit favorable testimony from Gomez and that they were aware of their prosecutorial duty to disclose the existence of any such agreements. Carney explained that, leading up to the petitioner’s trial, “there was a definite effort to not make an offer to . . . Gomez regarding testimony so that we wouldn’t . . . color or influence his testimony in any sort of way.” He further stated that Gomez’ sentence recommendation was formulated only after Smith reported to him that Gomez

had testified at the petitioner’s trial. The habeas court credited this testimony, which was consistent with both Gomez’ criminal trial testimony and Catania’s statement to the court during Gomez’ plea hearing that “no prior deals” existed. Significantly, the petitioner presented no evidence at his habeas trial that contradicted or cast doubt on this testimony.⁶

Notably, the majority does not deem clearly erroneous the habeas court’s finding that there was no formal or informal agreement. Nor could it. The probative force of five individuals involved in the underlying trial—from either side of the claimed “understanding”—each of whom asserted that no agreement or understanding existed, and whose testimony went uncontradicted at the habeas trial, renders it impossible to conclude that the habeas court’s finding was not supported by the record. See, e.g., *Barlow v. Commissioner of Correction*, 343 Conn. 347, 357–58, 273 A.3d 680 (2022). A decision otherwise would necessitate the conclusion that Gomez and four attorneys perjured themselves before the habeas court and that the habeas court’s assessment of their credibility was incorrect.

The role of this court on appeal is not to “retry the case or [to] evaluate the credibility of the witnesses. . . . Rather, we must defer to the [trier of fact’s] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude.” (Internal quotation marks omitted.) *Sanchez v. Commissioner of Correction*, 314 Conn. 585, 604, 103 A.3d 954 (2014). Indeed, it is “[t]he habeas judge, as the trier of facts, [who] is the *sole arbiter* of the credibility of witnesses” (Citation omitted; emphasis in original; internal quotation marks omitted.) *Gaines v. Commissioner of Correction*, 306 Conn. 664, 690, 51 A.3d 948 (2012). In the present case, the habeas court expressly credited the testimony of Gomez, Catania, Carney, Smith,

⁶Pattis could not recall cross-examining Gomez about his motivation for testifying. The petitioner had no recollection of anyone informing him of a plea offer between Gomez and the state.

and Narducci. I would defer to this credibility assessment and conclude that this evidence supports the inference that the habeas court drew from it, namely, that there was no mutual understanding between Gomez and the state with respect to his testimony or any unexpressed intention by the state to extend leniency to Gomez. See, e.g., *Brown v. Commissioner of Correction*, 228 Conn. App. 309, 317–18, 324 A.3d 144, cert. denied, 350 Conn. 927, 326 A.3d 250 (2024); *Diaz v. Commissioner of Correction*, 174 Conn. App. 776, 801–802, 166 A.3d 815, cert. denied, 327 Conn. 957, 172 A.3d 204 (2017).

Notwithstanding the testimony presented at the habeas trial and the habeas court’s finding that there was no mutual understanding, the petitioner asks this court to consider the circumstances surrounding the disposition of Gomez’ case as circumstantial evidence that an agreement existed. This evidence is unavailing.

In support of his claim, the petitioner relies on the following facts. During Gomez’ first appearance in the part A court, which occurred seventeen months before the petitioner’s trial, Catania stated to the court that Gomez’ case had been transferred to part A “because of . . . issues with wanting statements from . . . Gomez.” Following this appearance, no action was taken in Gomez’ case until the conclusion of the petitioner’s trial, at which Gomez testified and inculpated himself. Nine days after the petitioner was sentenced, Gomez entered a plea of guilty, and Carney made the following sentence recommendation to the court: “[The] state’s recommendation . . . is five years, suspended, with three years [of] probation. Your Honor, we make the recommendation with the acknowledgement that [Gomez] did testify at the trial regarding [the petitioner] And I understand that . . . Smith found his testimony to be both credible and highly probative, and I believe that the conviction was secured largely because [Gomez] came forward [with] some peril to himself and gave forthright information to the jury. We are, in consideration, recommending a fully suspended sentence then.”

The petitioner argues that, without an agreement or understanding, Gomez' charges would have been disposed of earlier, Gomez would not have testified at his own peril, and Gomez would not have received a lenient plea agreement and sentence. I disagree. The habeas court was made aware of this evidence and nevertheless found the testimony presented at trial to be credible.

Even if we were to accept the circumstantial evidence relied on by the petitioner, pure speculation is required to conclude that there was an understanding between Gomez and the state with respect to his testimony at the petitioner's criminal trial. Cf., e.g., *New Hartford v. Connecticut Resources Recovery Authority*, 291 Conn. 502, 510, 970 A.2d 578 (2009). The record does not support anything more than a finding that Gomez, at the advice of Catania, *unilaterally hoped* that testifying against the petitioner might result in his receiving consideration from the state on his pending charges. The state does not have a duty to disclose such mere hope of consideration by a cooperating witness. See, e.g., *Brown v. Commissioner of Correction*, *supra*, 230 Conn. App. 422 n.14. By extension, the state also has no duty to correct that same testimony. The fact that this hope was realized does not, without more, require us to disturb a habeas court's finding that there was no preexisting understanding. Indeed, "[t]he government is free to reward witnesses for their cooperation with favorable treatment in pending criminal cases without disclosing to the defendant its intention to do so" *Shabazz v. Artuz*, 336 F.3d 154, 165 (2d Cir. 2003). "[T]he fact that [the prosecutor] recommended a [lesser] sentence, standing alone, does not establish the existence of a preexisting promise of leniency in exchange for testimony." *Greene v. Commissioner of Correction*, 330 Conn. 1, 30, 190 A.3d 851 (2018), cert. denied sub nom. *Greene v. Semple*, 586 U.S. 1167, 139 S. Ct. 1219, 203 L. Ed. 2d 238 (2019).

The essence of a *Napue/Giglio* violation is a lack of disclosure of the truth to the jury. See, e.g., *Gomez v. Commissioner of Correction*, *supra*, 336 Conn. 181–82.

Here, the jury was informed during cross-examination of Gomez’ incentive to testify against the petitioner—his personal hope that his testimony may result in a lesser sentence from the state. There is no *Napue/Giglio* violation when the “jury . . . [is] made aware that [the witness] had testified with the aspiration . . . of receiving consideration in the form of a reduced period of incarceration.” *Young v. Commissioner of Correction*, 219 Conn. App. 171, 195, 294 A.3d 29, cert. denied, 347 Conn. 905, 297 A.3d 567 (2023).

Other than *Gomez v. Commissioner of Correction*, supra, 336 Conn. 168,⁷ the petitioner cites no cases in which this court has inferred the existence of an agreement between a cooperating witness and the state on facts similar to those comprising the present record, with express findings to the contrary by the trier of fact. My independent research, like that of the Appellate Court, has revealed no authority to that effect.⁸ See *Moore v.*

⁷The petitioner principally relies on this court’s decision in *Gomez*, which he contends permits this court to infer an agreement based on the facts of the present case. I agree with the majority that the petitioner misapprehends the holding of *Gomez* and that it is not persuasive in the present case.

In *Gomez*, at issue was whether a witness had lied during her testimony at the petitioner’s criminal trial about *ultimately receiving a benefit* from her earlier testimony at the bond hearing of the petitioner’s codefendant. See *Gomez v. Commissioner of Correction*, supra, 336 Conn. 176. The facts establishing that understanding were undisputed, and the bond hearing transcript revealed that the witness did receive a benefit. See id., 176–78. In the present case, at issue is whether a *preexisting* understanding for leniency existed between Gomez and the state. There is little doubt that Gomez *ultimately* received a benefit at least partially attributable to his testimony—indeed, during Gomez’ plea hearing, Carney recommended a favorable sentence to the court on the ground that “the [petitioner’s] conviction was secured largely because [Gomez] came forward [with] some peril to himself” Gomez’ benefit, however, arrived *after* his testimony at the petitioner’s criminal trial, with no evidence that it was to be expected before that time. I am, therefore, unpersuaded by the petitioner’s reliance on *Gomez*.

⁸The majority relies on *United States v. Shaffer*, 789 F.2d 682 (9th Cir. 1986), and *Ware v. State*, 348 Md. 19, 702 A.2d 699 (1997), to contend that, “[i]n both [cases], the actions of the prosecutor created an expectation in the witness,” which amounted to “implied agreement[s] . . . [that] had the potential to alter the jury’s assessment of the witness’ credibility

Commissioner of Correction, supra, 227 Conn. App. 510. Rather, this court and the Appellate Court have, on many occasions, *declined* to infer that an agreement existed simply because a cooperating witness received favorable treatment from the state. See, e.g., *State v. Ouellette*, 295 Conn. 173, 188–89, 989 A.2d 1048 (2010); *Johnson v. Commissioner of Correction*, supra, 238 Conn. App. 733–34; *Brown v. Commissioner of Correction*, supra, 228 Conn. App. 317–18; *Diaz v. Commissioner of Correction*, supra, 174 Conn. App. 801–802.

The petitioner cites to several cases involving the New London state’s attorney’s office to establish that, at the times relevant to this appeal, it had a “general practice” or “standard procedure” of making “vague” or informal promises to cooperating witnesses. See *Brown v. Commissioner of Correction*, supra, 230 Conn. App. 422–23; *Turner v. Commissioner of Correction*, 181 Conn. App. 743, 750–51, 187 A.3d 1163 (2018); *Smith v. Commissioner of Correction*, Docket No. CV-16-4008338-S, 2021 WL 4895524, *7 (Conn. Super. September 20, 2021). Unlike the majority, the petitioner does not rely on these cases to request a remand and the opportunity for further fact-finding.

In *Brown v. Commissioner of Correction*, supra, 230 Conn. App. 384, the petitioner alleged that, in violation of *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194,

and, therefore, the jury should have known about [them].” Part I of the majority opinion. These cases, which concerned prosecutorial failure to disclose agreements in violation of *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), are distinguishable. Both involved records of consideration that had been provided *before* the testimony at the defendant’s trial and prosecutorial responses to *Brady* requests that were either incomplete or explicit denials of providing such consideration. See *United States v. Shaffer*, supra, 689–91 (government did not disclose full extent of consideration given to cooperating witness, despite request for impeachment evidence); *Ware v. State*, supra, 49–51 (prosecutor testified at hearing on cooperating witness’ motion for reconsideration of sentence, which had been held in abeyance pending witness’ testimony at trial). Most significant, neither case inferred the existence of a tacit agreement in contradiction of a factual finding that no agreement of any kind existed.

10 L. Ed. 2d 215 (1963), an undisclosed agreement or understanding existed between the New London state's attorney's office, which is the same state's attorney's office involved in the present case, and a cooperating witness, Candace Foster, in which Foster would receive consideration from the state with respect to her pending charges in exchange for her testimony at the petitioner's criminal trial. *Brown v. Commissioner of Correction*, supra, 230 Conn. App. 386, 393. At the habeas trial, Narducci testified that no offers or deals were made with Foster, but then stated: "[W]hat I said virtually in all the cases that I've handled, [is] that we do not make any specific promises concerning any offers that are being made. What we do tell them [is], in the past, people who come in to testify truthfully and accurately, that information is considered by the prosecuting authorities in determining a recommendation. And if they do testify truthfully and completely and accurately, that information will be made available to the sentencing judge, but we do not make any promises, any specific promises, as it relates to any offense. . . .

"We also tell witnesses that . . . it's expected that you can testify that you're hoping for some consideration in exchange for your complete, accurate and truthful testimony." (Internal quotation marks omitted.) *Id.*, 406.

It was undisputed that Narducci conveyed this practice to Foster. *Id.*, 413. On appeal, the Appellate Court concluded that an informal understanding existed between Foster and the state that required disclosure under *Brady*. *Id.*, 414–15. The Appellate Court reasoned that Narducci's communication of the state's past practice to Foster gave rise to a mutual understanding that, if Foster testified truthfully, the state's past practice of rewarding witnesses would apply to her. *Id.*, 413.

Relying on *Brown*, the majority concludes that the present record is insufficient for this court to determine whether the habeas court incorrectly found that no agreement existed between Gomez and the state. In the majority's view, the testimony at the petitioner's habeas

trial was, perhaps, “provided under the same mistaken understanding that Narducci harbored in *Brown*—that is, that the prosecution’s practice of structuring communications with cooperating witnesses so that those witnesses can testify that they have received no promises, while nevertheless ‘hoping’ for consideration . . . does not create an informal cooperation agreement . . .” Part II of the majority opinion. I disagree with this speculative reliance on *Brown*.

There are important distinctions between the present case and *Brown*. In *Brown*, Narducci testified that he had *communicated* the past practice of the New London state’s attorney’s office to Foster, thus triggering a mutual understanding for consideration. See *Brown v. Commissioner of Correction*, *supra*, 230 Conn. App. 412–13 and n.7. In the present case, however, there was no evidence that Gomez ever spoke to the prosecutors prior to the petitioner’s trial. Gomez testified at the habeas trial that he did not meet with the prosecutors and that he was never approached by Carney or Smith. The habeas court credited this testimony. Thus, even if the habeas court finds on remand that, at the time of the petitioner’s trial, the New London state’s attorney’s office was engaged in the same practice discussed in *Brown*, missing in the present case is mutuality—that is, any evidence that Gomez was personally made aware of this practice or induced to testify because of this practice. See *id.*, 422 n.14 (obligation to disclose is triggered based on *mutual* understanding). Furthermore, at issue in *Brown* was whether the state had violated *Brady* by failing to *disclose* its implied understanding with Foster. *Id.*, 389, 403. The present case, in contrast, is focused on whether the state was obligated to *correct* false or misleading testimony given at trial. Although “*Napue* and *Brady* are ‘cousin[s]’” representing similar principles; *Gomez v. Commissioner of Correction*, *supra*, 336 Conn. 182; the constitutional demands under each case are unique. The majority focuses on whether the New London state’s attorney’s office was engaged in the same practice outlined in *Brown*. At no point in the majority’s

opinion, however, does it specify which part of Gomez' trial testimony would warrant correction if the habeas court on remand unveils that such a practice was in place. Gomez testified that he never spoke to prosecutors before trial. Accordingly, it is unclear which statements Gomez made at trial would require correction.

The majority further holds that a remand in the present case is necessary because, given that *Brown* was decided after the petitioner's habeas trial, Carney, Smith, and Narducci may have testified under a "misapprehension" about what constitutes an "agreement" for purposes of *Napue/Giglio*. I do not agree that *Brown* broke new ground.

In 2019, three years before the petitioner's habeas trial, this court contemplated the effects of "the state's practice of informal, off-the-record leniency understandings with cooperating witnesses." *Marquez v. Commissioner of Correction*, supra, 330 Conn. 603. In *Marquez*, this court stated: "Although it might very well be accurate that no definitive promises have been made by the state, and, even if any possible outcomes [for a cooperating witness] as described to counsel might be 'tentative,' experienced counsel operating in a courthouse in which he or she is familiar with the practices of prosecutors and presiding judges can comfortably advise the witness of the possible credit that might follow from his testimony. . . . [T]hese 'hypothetical' outcomes serve as a real incentive to motivate a witness to testify for the state." *Id.*, 604. *Marquez* clarified what was already well established, namely, that *Napue/Giglio* obligates a prosecutor to correct testimony at trial that "substantially mischaracterizes the nature of the inducement [to testify]" *State v. Paradise*, 213 Conn. 388, 400, 567 A.2d 1221 (1990), overruled in part on other grounds by *State v. Skakel*, 276 Conn. 633, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006). I, therefore, do not agree with the majority's presumption that the prosecutors in the present case may have been unaware that they had an obligation to

correct any testimony from Gomez that misled the jury as to an agreement.

To support its decision to remand for further fact-finding, the majority cites *State v. Floyd*, 253 Conn. 700, 756 A.2d 799 (2000). In *Floyd*, the defendant, prior to trial, filed a motion for discovery and inspection requesting, among other things, “any inducement or reward offered to a witness . . . in return for [his] testimony . . .” (Internal quotation marks omitted.) *Id.*, 724–25. The state disclosed the arrest record of a witness, Michael Younger, as well as pending charges against him and his probation status. *Id.*, 725. At trial, Younger denied receiving any consideration for his testimony; *id.*, 726; and the prosecutor stated, during rebuttal argument, that “there was no evidence of a deal between the state and Younger by which Younger would receive favorable treatment in connection with his pending . . . charges in exchange for his testimony.” *Id.*, 729. Following the defendant’s conviction, his appellate counsel obtained information concerning Younger’s pending charges that the state had failed to disclose, specifically, that Younger ultimately received a favorable disposition of his charges. *Id.*, 730–31 and n.22. The defendant then filed a motion for rectification or augmentation of the trial court record and requested an evidentiary hearing to determine, among other things, whether the state had failed to disclose to defense counsel the existence of an agreement between the state and Younger. *Id.*, 731–32. This court forwarded the motion to the trial court, which the trial court denied. *Id.*, 732. The defendant then filed a motion with this court, requesting a review of the trial court’s denial of his motion. *Id.* This court granted the motion for review and “ordered the trial court to hold an evidentiary hearing to determine whether Younger and the state had a plea agreement when Younger testified at trial.” *Id.*

The majority’s reliance on *Floyd* is misplaced. First, the court in *Floyd* ordered the trial court to conduct an evidentiary hearing in light of appellate counsel’s

obtaining various files that newly revealed the state's failure to disclose information relating to the disposition of Younger's case. See *id.* In the present case, however, the majority does not remand for further fact-finding because new information was brought to light. Instead, the majority remands on the ground that the facts of an unrelated case, namely, *Brown*, may prompt a different line of questions and responses during the habeas proceeding. I am not aware of any case in which this court ordered a remand for an evidentiary hearing on the basis of testimony in an unrelated case that might yield new facts. Moreover, unlike in *Floyd*, the petitioner in the present case never asked this court for the relief it now directs. Indeed, the petitioner was aware of *Brown* and cited to it several times in his brief to this court, but not as a basis for a new evidentiary hearing. Instead, without providing the parties notice or an opportunity to brief or argue the issue, the majority sua sponte affords the petitioner with an opportunity to retry his case. In my view, the present record is sufficient to address the petitioner's appeal on the merits and to consider the habeas court's decision in light of how the case was actually tried.

I conclude by observing that the majority's decision in this appeal expands the outer bounds of our *Napue/Giglio* jurisprudence. Requiring the habeas court to consider whether the testimony in an unrelated case contradicts factual findings in the present case, despite the habeas court's decision to credit the testimony to the contrary by multiple officers of the court, both encourages speculation and blurs the lines of what constitutes evidence of a mutual understanding for purposes of *Napue/Giglio*. I do not believe it is our place to remand a case due to the mere suspicion of wink and nod dealmaking, particularly when "we will not lightly presume that the [prosecutor] misrepresented the true nature of the state's agreement with [the witness]. . . . Nor will we speculate as to what factors the [prosecutor] legitimately may have considered in reaching his decision" *State v. Satchwell*, 244 Conn. 547, 563, 710 A.2d 1348 (1998). There is nothing

on this record that supports this expansion of our *Napue/Giglio* jurisprudence.

The majority’s decision “place[s] prosecutors in the untenable position of being obligated to [correct testimony that is not false or misleading] or to forgo the award of favorable treatment to a participating witness for fear that they will be accused of withholding evidence of an agreement.” *Bell v. Bell*, 512 F.3d 223, 234 (6th Cir.), cert. denied, 555 U.S. 822, 129 S. Ct. 114, 172 L. Ed. 2d 35 (2008). The majority’s analysis means, as the Appellate Court aptly stated, that “no court [can] *ever* credit a witness’ testimony that he or she testified truthfully and voluntarily to their own detriment [unless the witness] also testif[ies] that they had received a promise or assurance from the state *even if no such promise or assurance was ever made.*” (Emphasis in original.) *Moore v. Commissioner of Correction*, *supra*, 227 Conn. App. 510.

Because I would affirm the Appellate Court’s judgment, I respectfully dissent.
