SUPREME COURT OF LOUISIANA

No. _____

LARRY ROY,
Respondent

VERSUS

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,
Applicant

From the Order of May 27 2025,
9th Judicial District, Division B,
Civil Case No. 235,372,
Honorable Lowell C. "Chris" Hazel, presiding

THE STATE'S APPLICATION FOR A SUPERVISORY WRIT

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SUPREME COURT OF LOUISIANA
CRIMINAL
WRIT APPLICATION FILING SHEET

TO BE COMPLETED BY COUNSEL OR PRO SE LITIGANT FILING APPLICATION

CASE TITLE: Larry Roy v. Darrel Vannoy, Warden, Louisiana State Penitentiary

APPLICANT PARTY NAME(S): Darrel Vannoy, Warden, Louisiana State Penitentiary

Have there been any other filings in this Court in this matter: ■ YES □ NO

Are you seeking a Stay Order? □ YES ■ NO. If so, you MUST complete a criminal priority form.

Are you seeking Priority Treatment? □ YES ■ NO. If so, you MUST complete a criminal priority form.

Does this pleading contain confidential information? □ YES ■ NO. If so, please file a motion to seal.

Does any pleading contain a constitutional challenge to any Louisiana codal or statutory provision? □ YES ■ NO

If yes, which pleading? _____

If yes, has the Office of the Louisiana Attorney General been notified pursuant to La. R.S. 13:4448? □ YES □ NO

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Is the pleading being filed: ■ In proper person. □ In forma pauperis

Are there any pro se litigants involved in this matter: □ YES ■ NO

TYPE OF PLEADING

□ Felony (death penalty) □ Felony (non-death penalty) □ Misdemeanor ■ Post-Conviction (death penalty)

□ Post-Conviction (non-death penalty) □ Criminal other

LOWER COURT INFORMATION

Parish and Judicial District Court: Rapides Parish, 9th JDC Docket No: 235372

Judge and Section: Honorable Lowell C. "Chris" Hazel Date of Ruling: May 27, 2025

APPELLATE COURT INFORMATION

Circuit: N/A Docket No.: N/A Applicant: N/A Filing date: N/A

Was this pleading simultaneously filed? □ YES □ NO

Ruling date: _____ Action: _____

Panel of Judges: _____ En Banc: □

REHEARING INFORMATION

Applicant: N/A Filing date: N/A Ruling date: N/A

Action: _____ Panel of Judges: _____ En Banc: □

PRESENT STATUS

□ pre-trial

■ hearing; scheduled date: TBD

□ trial. Scheduled date: _____

□ trial in progress

Is there a stay now in effect? ■ YES □ NO

VERIFICATION

I certify that the above information and all of the information contained in this application is true and correct to the best of my knowledge and that all relevant pleadings and rulings, as required by Supreme Court Rule X, are attached to this filing. I further certify that a copy of this application has been mailed or delivered to the appropriate court of appeal, to the lower court judge, and to all other counsel and unrepresented parties.

Date: June 13, 2025 Signature: /s/ Morgan E. Brungard

(Rev. 12/2022)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Other Authorities

APPENDIX OF EXHIBITS

INTRODUCTION

This case is one of five nearly identical post-conviction-relief (PCR) cases that will arrive at the Court this month—all with conflicting lower court decisions on common questions of law that transcend these five cases and affect numerous others pending across the State. These cases, in particular, are deeply important to Louisiana because they arise in the capital context and implicate fundamental questions of finality and justice. Accordingly, the State respectfully requests that the Court grant review across all five cases, consolidate them for briefing and argument, and issue a single authoritative decision eliminating the confusion in the lower courts. In the alternative, the Court should grant review in one case (the *Frank* case discussed below) and hold the four remaining cases in abeyance pending a decision in *Frank*.

Here is the key information. The five companion cases and their respective writ due dates are:

(1) Today, the State seeks review here (*Larry Roy v. Darrel Vannoy*, No. 235,372, 9th Jud. Dist. Ct.).

(2) In three days, the State will seek review in *Antoinette Frank v. Burl Cain*, No. 375-992, Orleans Crim. Dist. Ct. (writ application due June 16).

(3) In ten days,[1] the inmate will seek review in *Robert Miller v. Timothy Hooper*, No. 1-97-0656, 19th Jud. Dist. Ct. (writ application due June 23, 2025).

(4) In seventeen days, the inmate will seek review in *Marcus Reed v. Darrell Vannoy*, No. 289,870, 1st Jud. Dist. Ct. (writ application due June 30, 2025).

(5) In seventeen days, the State will seek review in *David Bowie v. Timothy Hooper*, No. 03-96-0326, 19th Jud. Dist. Ct (writ application due June 30, 2025).

These five capital cases share common defense counsel, common procedural histories, and common legal questions—not least because they followed the same playbook:

(1) The inmate filed a "shell" petition and requested appointed counsel.

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[1] The parties in *Miller* have requested a two-week extension of the writ return date. That request remains pending as of the date of this filing.

(2) The court appointed counsel.

(3) Counsel litigated the case for some period of time (or sometimes not at all).

(4) The State became unable to secure lethal-injection drugs.

(5) So, counsel stopped litigating.

(6) The PCR cases became stagnant for years, even decades, while witness memories faded and original trial lawyers passed away.

(7) In July 2024, the State amended its statutes to allow execution by nitrogen hypoxia and, in February 2025, carried out its first such execution.

(8) Inmates' counsel filed so-called "supplemental" PCR applications.

(9) District Attorneys across the State have turned to the Attorney General for assistance in these long-dormant cases that have sprung back to action.

These cases are a big deal, especially because they involve victims and their families who have not yet seen justice. So the Attorney General has actively sought to assist District Attorneys across the State in advancing these cases to a quick and correct conclusion. Over the past six months, these efforts have revealed a number of common legal questions across the PCR cases—and wildly divergent views among the lower courts as to the correct answers. The five cases above are emblematic because they reflect divergence on three common and important questions:

(1) Whether district courts can block District Attorneys from requesting that the Attorney General exercise her constitutional authority to participate in these cases?

The answer is no under Article IV, § 8 of the Louisiana Constitution. The cases raising this question are:

(a) This case (*Roy*): the district court *allowed* the Attorney General's participation.

(b) *Frank*: the district court *did not allow* the Attorney General's participation.

(c) *Reed*: the district court *allowed* the Attorney General's participation.

(2) Whether the Code of Criminal Procedure withdraws district courts' power to decide successive PCR applications or applications where events beyond the State's control have prejudiced its ability to respond to, negate, or rebut the PCR allegations?

The answer is yes, as provided by Articles 930.4 and 930.8 of the Louisiana Code of Criminal Procedure. The cases raising this question are:

(a) This case (*Roy*): the district court found that it *had* authority to decide the PCR claims despite the inmate's 14-year delay.

(b) *Frank*: the district court found that it *had* authority to decide the PCR claims despite their successive nature and the inmate's 14-year delay in pursing them.

(c) *Miller*: the district court found that it *did not have* authority to decide the PCR claims because the inmate's 14-year delay in "supplementing" his shell application was unreasonable and thus constituted abandonment, rendering his "supplement" a successive application.

(d) *Reed*: the district court found that it *did not have* authority to decide the PCR allegations because the inmate's 8-year delay materially prejudiced the State's ability to respond to, negate, or rebut the allegations.

(e) *Bowie*: the district court found that it *had* authority to decide the PCR allegations because they were not successive.

(3) Whether the State bears the burden to litigate against itself by advancing PCR claims when inmates fail to act?

The answer is no, as mandated by Article 930.8(B) of the Louisiana Code of Criminal Procedure. The cases raising this question are:

(a) This case (*Roy*): the district court found that *the State* failed to advance the inmate's claims during his 20-year failure to act.

(b) *Frank*: the district court that *the State* failed to advance the inmate's claims during her 14-year failure to act.

(c) *Miller*: the district court found that *the inmate* failed to advance his claims during his 14-year failure to act.

(d) *Reed*: the district court found that *the inmate* failed to advance his claims during his 8-year failure to act.

* * *

These questions (and others like them) are being litigated in district courts all across the State. And now, a sizable sample of these cases will arrive at the Court within the next two-and-a-half weeks. In some of the cases (like this one), the State seeks this Court's intervention; in others, it is the inmates who will seek that relief. In *all* cases, the State, the inmates, and the district courts need the clarity and

uniformity that only this Court can provide. The Court has recognized as much. *See State v. Leger*, 2017-0416 (La. 1/14/19), 261 So. 3d 766, 766 (Crichton, J., dissenting) ("[T]his [C]ourt has yet to articulate a standard to determine whether the state's ability to respond to an application for post-conviction relief has been materially prejudiced by events not under the control of the State which have transpired since the date of the original conviction.").

This is thus the ideal time to provide that needed clarity. The Court should consolidate this matter with the four forthcoming companion PCR cases seeking this Court's review, set a consolidated briefing schedule, and hear consolidated oral arguments. In the alternative, the State respectfully suggests that the *Frank* case is the best individual vehicle to consider the cross-cutting issues presented—because it implicates all of those issues. Accordingly, the Court should, alternatively, grant the forthcoming writ application in *Frank* and hold the remaining four writ applications in abeyance pending the Court's decision in *Frank*.

RULE X(1)(A) CONSIDERATIONS

(1) The district court's decision here belongs to a group of at least five companion district-court decisions in capital PCR cases rendered within weeks of each other that conflict on multiple identical issues of law, including state constitutional issues involving the separation of powers and the Attorney General's authority to advise and assist District Attorneys (at their request) with PCR proceedings.

(2) The district courts in these companion cases have decided significant issues of law that the Court has recognized have not been, and should be, resolved by the Court. *See Leger*, 261 So. 3d at 766 (Crichton, J., dissenting).

(3) Some of these cases have erroneously interpreted and applied the laws of this State, and their decisions are causing material injustice and significantly affecting the public interest. Not least among these issues are district courts' (a) failure to heed statutory limits on their own jurisdiction, (b) placement of the burden on the State to litigate against itself when inmates fail to pursue their PCR claims, and (c) routine abdication of their mandatory gatekeeping function to dismiss facially-invalid claims.

(4) Some of these cases have so far departed from proper judicial proceedings and so abused their power such that this Court should exercise supervision. The errors of law noted in (1)–(3) above fall into this category because they involve constitutional separation-of-powers issues where courts have acted beyond their authority.

STATEMENT OF THE CASE

Each of these companion cases involves the brutal murder of a Louisiana citizen and a lengthy delay in justice.

Respondent Larry Roy[2] is widely known as the "Cheneyville Slasher," a moniker he earned for his brutal murder of Rosetta Silas and Freddie Richard, Jr., and cold-blooded attack on Sally Richard and her sons, David and Frederick Richard. *See State v. Roy*, 95-0638 (La. 10/04/96), 681 So. 2d 1230.

Sally Richard was married to Freddie Richard, Jr., with whom she had two sons: David and Frederick. *Id.* at 1232. Mr. and Mrs. Richard divorced, and Mrs. Richard began a relationship with Roy. *Id.* For a time, Roy lived with Mrs. Richard, David (age 10), Frederick (age 8), and Mrs. Richard's 75-year-old aunt, Rosetta Silas, in Mrs. Richard's home in Cheneyville, Louisiana. *Id.*

In early 1993, Sally Richard broke up with Roy and reconciled with Mr. Richard. *Id.* On May 2, 1993, the Richards and their children encountered Roy at a convenience store. *Id.* Roy cautioned Mrs. Richard: "Things are going to be on tonight." *Id.* The Richards returned home and went to sleep. *Id.* Mr. and Mrs. Richard shared a bed, and their two sons slept next to the bed in sleeping bags. *Id.*

At approximately 1:30 a.m., Roy entered the Richards' home. *Id.* He barged into the bedroom where the Richards and children were sleeping. *Id.* Roy attacked Mr. Richard, and a struggle ensued. *Id.* As Mr. Richard fought to protect Mrs. Richard and their children, Mrs. Richard grabbed a phone to call for help. *Id.* Roy then informed her that the telephone was "dead." *Id.* at 1233. Help was not coming.

Roy drew a knife and stabbed Mr. Richard to death. *Id.* As Roy murdered her husband, Mrs. Richard attempted to flee the bedroom with her children, but Roy stopped her. *Id.* Still armed with his knife, Roy forced the children to lay down on the

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[2] Roy's Petition for Post-Conviction Relief is available at Exhibit A, App.1 (Petition for Post-Conviction Relief).

floor in the hall outside the bedroom. *Id.* Then, he forced Mrs. Richard to accompany him to the room of her elderly aunt, Rosetta Silas. *Id.* After finding Ms. Silas, Roy demanded money. *Id.* She gave him fifty dollars from under her mattress, which Roy counted while demanding to know if there was more money. *Id.*

Roy then carried Mrs. Richard into the kitchen and interrogated her on why she had told someone that he had slashed her tires, apparently referencing a prior incident. *Id.* Next, Roy brought Mrs. Richard to the living room and placed her lying face-down on the floor beside a sofa. *Id.* After locating a telephone cord, Roy used it to tie Mrs. Richard's hands behind her back. *Id.*

With Mrs. Richard tied up and defenseless, Roy pulled her head back and slit her throat, telling her that "[a]bout time the police get here all [y'all] going to be dead." *Id.* Mrs. Richard's children suffered similarly horrific injuries. Roy tied Frederick's hands behind his back and then slit his throat. *Id.* Turning to David, Roy placed a pillowcase over David's head, tied David's hands behind back, pulled David's head back, and slit his throat. *Id.*

After brutally and methodically incapacitating Mrs. Richard and her two sons, Roy returned to Ms. Silas's bedroom to kill her. *Id.* As Roy proceeded back through the house to kill Ms. Silas, Mrs. Richard and her sons managed to escape. *Id.* While exiting the house, they heard Rosetta Silas screaming. *Id.* Ms. Silas was later found stabbed to death in her bedroom. *Id.*

Mrs. Richard, David, and Frederick each managed to survive the attack. *Id.* Roy murdered Ms. Silas and Mr. Richard. *Id.* Mrs. Richard and her children ultimately testified at Roy's trial. *Id.*

After fleeing, Roy was arrested two days later in Bunkie, Louisiana, and was charged with two counts of first-degree murder. *Id.* At trial, Roy attempted to establish an intoxication defense. *Id.* He testified that he had consumed "several beers and a half pint of gin" as well as "$140.00 of crack cocaine which he smoked

prior to the [attack]." *Id.* Roy further claimed that, as a result of his intoxication, he "could not remember his whereabouts or activities from sometime Monday morning [(the time of the attack)] until his arrest." *Id.* Despite testifying that he had no memory of that period, Roy denied entering Mrs. Richard's home, killing Mr. Richard and Ms. Silas, and attacking Mrs. Richard and her two minor sons. *Id.*

The jury found Roy guilty as charged on both counts. *Id.* The jury also found the presence of five aggravating circumstances in connection with the first murder count (Ms. Silas) and three aggravating circumstances in connection with the second count (Mr. Richard), imposing the death penalty separately for each count. *Id.* On August 30, 1994, the trial court accepted the jury's determination and sentenced Roy to death. *Id.*

In 1996, this Court affirmed Roy's conviction and sentence. *Id.* at 1243. The Court denied Roy's request for rehearing the following month. *Id.* In 1997, the United States Supreme Court denied Roy's petition for writ of certiorari. *See Roy v. Louisiana*, 520 U.S. 1188 (1997).

With Roy's appellate remedies exhausted, the district court issued a death warrant and set Roy's execution date for October 22, 1997. Exhibit B, App.31 (State's Motion to Dismiss Application for Post-Conviction Relief with Exhibits). The district court later recalled that warrant, issued a new warrant, and gave Roy until February 1998 to file a PCR application. *Id.*

On February 13, 1998, Roy filed his PCR application. In response, the State raised various procedural objections, and the district court issued multiple subpoenas to testify. *Id.* At some point, the district court took the State's procedural objections under advisement. App.32. The district court later set an evidentiary hearing for October 1999. *Id.* It appears that hearing never happened because, almost two years after the hearing date had passed, the district court continued that hearing indefinitely. *Id.*

In May 2001, this Court granted in part Roy's application for a supervisory or remedial writ and "directed" the district court "to hold an evidentiary hearing" on two of Roy's PCR claims: (1) "ineffective assistance" of counsel (trial and appellate) and (2) "suppress[ion] of material exculpatory evidence." *Roy v. Cain*, 2000-2214 (La. 5/11/01), 792 So. 2d 3, 3–4. Because all of Roy's other claims were "defaulted," this Court denied his writ application "[i]n all other respects." *Id.* at 4.

On remand, the district court scheduled the ordered hearing for October 2001. App.32. It appears that hearing also did not occur. App.33. The district court rescheduled the hearing for January 14, 2002, but *neither Roy nor his attorney* showed up. *Id.* A few months later, the district court tried again to reschedule the hearing—this time for October 2002. That hearing, like the ones before it, did not happen. *Id.*

In 2004, the docket shows that Roy moved to issue subpoenas duces tecum. *Id.* The docket also shows that the State moved for a protective order and that the district court held a "protective order hearing" in July 2004. *Id.* Later, the parties jointly proposed a consent order resolving the subpoena dispute. The joint proposal explained that the district court had set "a contradictory hearing" on Roy's "Motion for Issuance of Subpoenas Duces Tecum" for July 16, 2004. *Id.* Because the three people to whom the subpoenas were directed had expressed no objection, the parties later agreed that there was "no need for the [July 16] hearing." *Id.* Instead, the parties proposed that the district court enter the following order: "it is ORDERED that the applicant's Motion for Issuance of Subpoenas Duces Tecum be and is hereby GRANTED." *Id.*; App.61. The most important part of their agreement, however, is the next part:

> At the appropriate time, applicant and the State may issue subpoenas duces tecum to Attorney Cliff Strider, Attorney Thomas Searcy, and Melou James to appear and produce to the Court "any and all documents or items within their possession and/or subject to their control relating in any form or fashion to the investigation, prosecution, defense, trial, sentencing, and/or appeal of State v. Larry Roy." When a hearing is set for the return of the subpoenas duces tecum, the State will have opportunity to object on the basis of any exception or privilege prior to the documents being released to defense counsel Phyllis Mann.

App.61.

That agreement indicates that the purpose of Roy's desired subpoenas was to gather testimony and "documents" relevant to his claims of ineffective assistance of counsel and suppression of exculpatory evidence. *Id.* The docket reflects that the district court "granted" that Consent Order on August 23, 2004. App.42.

From that point on, *Roy did nothing*. Not a thing. There is no evidence that he ever issued those subpoenas or requested that the district court issue those subpoenas. There is no evidence that the district court ever held "a hearing for the return of the subpoenas," that, in turn, would have triggered the State's right "to object" to "releas[ing]" privileged or work-product "documents" to his "defense counsel." App.61. There is no evidence that he ever requested that the district court hold that hearing. Instead, he sat on his hands for 20 years and would have stayed that way indefinitely.

Unsurprisingly, therefore, the State—in the face of Roy's 20-year delay in advancing this purely optional proceeding (*see infra* at 19)—asked the district court to reissue the warrant for execution and set a date to carry out Roy's sentence. App.42. If the State had not done so, Roy never would have cared to enforce what he now says is his "right to pursue post-conviction relief through counsel." *See* Exhibit C, App.64–106 (Response to the State's Motion to Dismiss Application for Post Conviction Relief). He never would have tried to enforce his contractual rights under the Consent Order to issue subpoenas or hold the hearing that is the gateway to the documents he erroneously claims "the state suppressed." *Roy*, 792 So. 2d at 4; s*ee La. Dep't of Wildlife & Fisheries v. Comite Dirt Pit, Inc.*, 2016-0897 (La. App. 1 Cir.

2/17/17), 214 So. 3d 874, 879 ("A consent judgment constitutes a compromise, which is a contract whereby the parties, through concession by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship.").

When the State moved to reissue the warrant, "[i]t was at [that] time that [the judge's] office was contacted by Ms. Blythe Taplin, [Roy's] counsel" to have an ex parte communication about the State's motion. Exhibit D, App.116 (Transcript of May 12, 2025 Hearing). "[S]he was contending" over the phone with the judge "that she had beg[u]n communications with the Rapides Parish DA's office about the status of [Roy's] case and that [the DA's Office was] aware [that] post conviction proceedings were still pending." *Id.* Ms. Blythe then filed (on Roy's behalf) a Motion to Recall Warrant and Stay Execution—Roy's first filing in twenty years. *Id.*; *see also* App.42.

Following Ms. Blythe's ex parte phone call with the judge, the district court acted in quick order. The next day, on February 11, 2025, the district court granted the Motion to Recall Warrant and Stay Execution. App.42. The day after that, the State filed a Motion to Cause Issuance of Execution Warrant, which the district court denied one day later without a hearing. *Id.* Roy then filed a Motion for Briefing Schedule and Contradictory Hearing. In accordance with the briefing schedule, the State filed its "Motion to Dismiss Application for Post-Conviction Relief" on March 18, 2025, arguing that Roy's prejudicial delay in pursuing relief warranted dismissal of this purely optional proceeding (*see infra* at 19). App.8–19. Roy filed his Response on April 7, 2025. App.64–76. The district court ultimately heard argument on the State's motion on May 12, 2025. App.108; *see also* Exhibit E, App.165–71 (Written Reasons on Contradictory Hearing).

The hearing on the State's Motion was chaotic. At the end of Ms. Taplin's argument, in front of a room full of her client's victims and their family members, Ms. Taplin stated that she "just want[ed] to address one other issue … before we go off the record, which is the filing of execution warrants." App.151. She asked the State

"to please cease this behavior because … my client's mother has to see on the news every time it happens that her son is about to be executed." *Id.* From the gallery, Ms. Silas' son cried out, "What about my mother?" *Id.* To which Ms. Taplin said she "underst[ood] how much pain" was "on all sides." *Id.* That unleashed chaos. As the transcript says: "**AT 10:59 AM ONE OF THE VICTIMS IN THIS MATTER ATTEMPTED TO ATTACK DEFENDANT[.] THERE [WAS] TOTAL CHAOS AND DISRUPTION IN THE COURTROOM.**" App.158. That victim was only 8 years old when Roy slit his throat, leaving him voiceless, and murdered his father.[3]

Eventually, the district court gaveled the courtroom back to order. App.158. In the words of the district court: "We're still on the record. Let the record reflect that there was [an] individual that went after Mr. Roy and that our law enforcement and our bailiffs restrained him. I think that he's been removed. All right. We are back on dates." *Id.* Ms. Taplin then inquired: "sorry, if Mr. Roy could be brought back in[?]" *Id.* The district court denied that request: "No. This isn't a circus, ma'am, this is a courtroom. Okay. All right. Let the record reflect, that the Court is ordering that Mr. Roy stay out until, I think, in the future when we have an evidentiary hearing. … [W]e're going to need, obviously, extra security." App.159.

Ultimately, the district court denied the State's Motion to Dismiss; while the court recognized that the State had been prejudiced by Roy's delay, it nevertheless concluded that the State had not been *materially* prejudiced. App.169–70. The district court also ordered that the parties conduct the evidentiary hearing that this Court ordered in 2004, but stayed that hearing pending this writ application. App.157–58. Ms. Taplin then informed the court that she had filed "a motion to compel discovery and disclosure of the District Attorney files" to address "the issue back in 2004." App.160. The court instructed to "let the writs come back" and then the parties would

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[3] *See* Colin Vedros, *'Cheneyville Slasher' Victim Attempts Attack During Court Hearing In 9th JDC*, KLAB (May 12, 2025) https://tinyurl.com/2s3ab52m; Colin Vedros, *Rapides DA Speaks On Attempted Attack On 'Cheneyville Slasher' In Court*, KLAB (May 13, 2025) https://tinyurl.com/44bpbnz4.

"communicat[e]" about where the case would "go from there." App.160–61. In closing, the district court set June 13 as the State's filing date for this application and June 27 as Roy's response date. *Id.* This application timely follows.

ASSIGNMENTS OF ERROR

(1) The district court committed legal error by placing the burden "to prosecute" on the State. App.170.

(2) The district court committed legal error by placing the burden to "control the docket" on "the prosecution." App.170.

(3) The district court misinterpreted the State's burden of proof by requiring the State to disprove that "this prejudice was [not] in the State's control," App.170, *i.e.*, whether the State was able to *correct the prejudice*, rather than requiring the State to show that the prejudice-causing "*events* [were] not under the control of the state," La. Code Crim. P. art. 930.8(B) (emphasis added).

(4) The district court erred by concluding that an inmate's failure to act is an event under the control of the State. App.170.

(5) The district court erred by failing to dismiss, as a threshold matter, all claims relating to Roy's sentence, for which post-conviction relief is not available.

(6) The district court committed legal error by holding that a twenty-year delay is not *per se* prejudicial. App.169.

(7) The district court acted beyond its authority and misinterpreted the PCR statutes by allowing Roy to materially prejudice the State's ability to respond to, negate, or rebut the PCR allegations by stalling proceedings for twenty years and allowing witness memories to fade and one of his original trial lawyers to die.

(8) The district court erred by finding that Roy's twenty-year delay and the corresponding fading of witness memories and death of original trial counsel did not materially prejudice the State's ability to respond to, negate, or rebut the PCR allegations.

(9) The district court erred by finding Roy's twenty-year "failure to act" *after* the State agreed to continue a hearing and missed a briefing deadline in 2004 was under the State's control.

(10) The district court acted beyond its authority by excusing Roy's twenty-year "failure to act" *after* the State agreed to continue a hearing and missed a briefing deadline in 2004.

(11) The district court erred by admitting evidence that (a) Roy offered solely as a proffer, (b) exceeded the scope of the evidence allowed by Article 930.8(B), (c) exceeded the scope of the State's motion, and (d) was irrelevant. (Unbriefed.)

ARGUMENT

The State respectfully requests that this Court grant review here and in each of the companion cases of *Frank*, *Miller*, *Reed*, and *Bowie*, consolidate them, and set full briefing and argument. These cases present common legal issues that are currently being litigated across the State—and as to which the district courts are expressly disagreeing with each other. The judiciary, the litigants, and the public would thus benefit from a single authoritative decision from this Court that resolves these issues across all cases, eliminating the confusion and waste of resources caused by piecemeal appeals and further disagreement among the lower courts. In the alternative, the Court could accomplish the same result by granting review in *Frank* and holding the remaining four writ applications in abeyance pending a decision in *Frank*.

I. THE COURT SHOULD CONSOLIDATE THIS CASE WITH THE FORTHCOMING WRITS IN *MILLER*, *FRANK*, *BOWIE*, AND *REED*, GRANT REVIEW, AND SET FULL MERITS BRIEFING AND ARGUMENT.

A. There Are Conflicting Decisions Among the Lower Courts (La. Sup. Ct. Rule X(1)(a)(1)).

Lower courts are in disagreement on nearly every aspect of post-conviction relief and desperately require guidance from above. The current uncertainty ranges from substantive questions of law, to the appropriate procedure for PCR claims, to the scope of the Attorney General's constitutional authority to represent the State.

i. The Courts Disagree over the Attorney General's Role in PCR Proceedings.

The Attorney General is "the chief legal officer of the state" with "authority" to act as she deems "necessary for the assertion or protection of any right or interest of the state." La. Const. art. IV, § 8. She "shall have authority" to "intervene in any civil action or proceeding" or, "upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case." *Id.* And she has asserted that authority to aid District Attorneys (at their request) in the five companion capital

PCR cases here, and will continue to do so as more capital PCR proceedings revive or newly arise and District Attorneys seek her advice and assistance.

In many PCR cases, however, the inmates' counsel are challenging the Attorney General's authority to assist District Attorneys. The district court here correctly allowed the Attorney General to participate at the District Attorney's request. So did the district courts in *Miller*, *Reed*, and *Bowie*. *See Miller v. Hooper*, No. 1-97-0656, 19th Jud. Dist. Ct.; *Reed v. Vannoy*, No. 289,870, 1st Jud. Dist. Ct.; *Bowie v. Hooper*, No. 03-96-0326, 19th Jud. Dist. Ct. But not the district court in *Frank*. *See Frank v. Cain*, No. 375-992, Orleans Crim. Dist. Ct. Consequently, these companion cases collectively raise the question of whether the Attorney General has the constitutional right to represent the State and bring needed attention, resources, and consistency to capital PCR proceedings.

The answer is yes. PCR proceedings are "not criminal litigation." *State v. Harris*, 2018-1012 (La. 7/9/20), 10–11, 340 So. 3d 845, 853 (quoting *State ex rel. Glover v. State*, 93-2330 (La. 9/5/95), 660 So. 2d 1189, 1197), *abrogated on other grounds by State ex rel. Olivieri v. State*, 2000-0172 (La. 2/21/01), 779 So. 2d 735. Instead, PCR proceedings are "*collateral* action[s]" that are "procedural in nature" with "both criminal and civil legal characteristics." *Id.* (first quoting *Harrison v. Norris*, 569 So.2d 585, 590 (La. App. 2 Cir. 10/31/90), then quoting *Glover*, 660 So. 2d at 1197). Accordingly, the Attorney General unquestionably has the constitutional authority to participate here.

The split between the district courts here, in *Miller*, in *Bowie*, and in *Reed*, on one side, and the *Frank* court, on the other side, has caused unwarranted confusion as to the Attorney General's authority to represent the State's interest in protecting the finality of its judgments. In fact, it is becoming routine for inmates' counsel—not only in these companion cases but in other PCR cases in which the Attorney General

is involved—to challenge the Attorney General's authority as a first order of business. The Court should resolve this important question now.

ii. The District Courts Disagree as to Whether Inmates' Lengthy, Unexcused, and Unwarranted Delays Are Materially Prejudicial to the State.

The companion cases also illustrate the district courts' disparate treatment of the State's objections under Louisiana Code of Criminal Procedure Articles 930.4 and 930.8. This Court has acknowledged that, at present, there is no precedent establishing standards as to what constitutes prejudice under Article 930.8(B). *Leger*, 261 So. 3d at 766 (Crichton, J., dissenting). Thus, decisions by the lower courts are all over the map.

The State's argument on the issue is simple: Where inmates have sat on their hands for years without pushing their applications forward, the State, at some juncture, becomes materially prejudiced as a matter of law due to decaying memories and evidence. This comports with precedent across jurisdictions. *See People v. Valdez*, 178 P.3d 1269, 1276 (Colo. App. 2007) (finding that the state was prejudiced by a seven-year delay in filing a PCR motion); *Johnson v. United States*, 49 M.J. 569, 574 (NM. Ct. Crim. App. 1998) (finding that prejudice could be presumed after a twenty-nine year delay); *McCray v. State*, 699 So. 2d 1366, 1368 (Fla. 1997) (finding that a delay of more than five years from conviction is unreasonable and prejudices the State); *Woods v. State*, 506 N.E.2d 487, 488 (Ind. Ct. App. 1987) (finding that a delay of twenty-five years raises a strong presumption that the State would be prejudiced).

Some district courts have agreed with the State (*Miller* and *Reed*). Others have disagreed (*Roy* and *Frank*). Absent guidance from this Court, lower courts will continue to inconsistently apply the law. All parties would benefit from this Court determining what constitutes material prejudice under Article 930.8(B) and what is required to establish such prejudice.

The import of these rulings is magnified by Article 930.8(E). Whenever delay or other events that the State does not control materially prejudice the State's ability to mount a defense against a PCR application, the reviewing court is divested of jurisdiction. Both the court and the district attorney lack the power to "waive[] or excuse[]" material prejudice to the State. La. Code Crim. P. art. 930.8(E). Because Article 930.8(B)'s prejudice provisions are "jurisdictional" in nature, *id.*, they are a separation-of-powers-protecting mechanism to ensure that neither the judicial branch nor the executive branch (through the District Attorney) undo the legislature's policy choices about PCR proceedings.

After all, PCR proceedings (including timelines) are not constitutionally guaranteed, so they necessarily must be a matter of legislative policy-making. *See State v. Chester*, 2009-1019 (La. 2/10/10), 27 So. 3d 837, 838 (explaining that even an "inmate on death row" can "waive statutory post-conviction remedies altogether"); *State ex rel. Glover v. State*, 93-2330 (La. 9/5/95), 660 So. 2d 1189, 1194 ("[T]he United States Constitution does not require states to provide post conviction remedies for persons convicted in state courts so long as the states have provided some avenue of direct review of the conviction."), *abrogated on other grounds by State ex rel. Olivieri v. State*, 2000-0172 (La. 2/21/01), 779 So. 2d 735); *Pennsylvania v. Finley*, 481 U.S. 551, 556–57 (1987) ("Postconviction relief … is not part of the criminal proceeding itself," and "States have no obligation to provide this avenue of relief[.]" (internal citation omitted)); *Murray v. Giarratano*, 492 U.S. 1, 10 (1989) (plurality op.) ("State collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal.").

The prejudice provisions, in particular, statutory cabin how long inmates have to challenge the State's criminal process before the State's interest in providing collateral review of criminal proceedings starts to give way to the State's interest in

the finality of its judgments. It is by design that the prejudice provisions are located in the "Time Limitations" article. And at some point, the State and public suffer from waiting too long to enforce valid judgments—without any court ever finding otherwise. That is why the Legislature, when enacting the PCR statutory scheme, put in place guardrails that some district courts simply (and sadly) are choosing to just ignore. *See*, *e.g.*, *State v. Taylor*, 2024-00907 (La. 3/18/25), 402 So. 3d 1204, 1205 (per curiam) (Crain, J., concurring) (noting that the Legislature amended Articles 930.4 and 930.8 to disallow waivers by the State and that, if filed today, the petition "could not be considered by the court" due to lack of jurisdiction); *State v. King*, 2021-01513 (La. 12/21/21), 329 So. 3d 819 (per curiam) (explaining that the Legislature in Act 251 of 2013 amended the law "to make the procedural bars against successive filings mandatory").

Courts also have inconsistently complied with the clear statutory requirement to hold hearings limited to the issue of prejudice under Article 930.8(B). *See* La. Code Crim. P. art. 930.8(B) (mandating dismissal when "the court finds, after a hearing limited to that issue, that the state's ability to respond to, negate, or rebut such allegations has been materially prejudiced thereby"). In *Frank*, for example, the district court refused to hear any argument and denied the State's objection without any consideration, expressly confirming that no hearing would even be conducted. In stark contrast, the district courts here and in the other companion cases did conduct a hearing limited to the issue of prejudice.

The State, the inmates, the lawyers, the public, and the victims all desperately need this Court's guidance on this issue. Respectfully, the rights at stake for both the State and the inmates are far too vital for the parties to try to divine this Court's reasoning from brief *per curiam* decisions. Yet that has been precisely so for years. Unless the Court renders a detailed opinion, inmates and the State will continue to receive inconsistent rulings across the many district courts based solely on which

district judge happens to be slotted to hear the case. Absent this Court's intervention, every case is and will continue to be a matter of first impression for the district courts. With four more companion cases headed to the Court in short order, a rare opportunity has arrived to provide that clarity across several cases at one time by consolidating and ordering full briefing and argument.

iii. The District Courts Have Split on the State's Burden under Article 930.8(B).

Article 930.8, entitled "Time limitations; exceptions; *prejudicial delay,*" states in section B that a PCR petition "shall be dismissed upon a showing by the state of prejudice to its ability to respond to, negate, or rebut the allegations of the petition caused by events not under the control of the state which transpired since the date of original conviction." La. Code Crim. P. art. 930.8 (emphasis added). The article explicitly contemplates that the State can be prejudiced by inmates' delays.

But in this case and in *Frank*, the district courts flipped the script and instead ruled that it is the *State's* obligation to push the *inmate's* claims forward. *See* App.170 (holding the State responsible for Roy's twenty-year delay *after* the State supposedly agreed to continue a hearing and missed a briefing deadline in 2004 and rejecting the idea that Roy had any obligation to "file a motion to compel or other motions" to move his case forward); *Frank v. Cain*, No. 375-992, Orleans Crim. Dist. Ct.

No legal authority supports placing the obligation on the State to proactively pursue a PCR application, or more accurately, requiring the State to compel the inmates to proactively pursue their own PCR applications. The State does not bear the burden of proof. La. Code Crim. P. art. 930.2. Nor is the State the party seeking relief from the court. In an adversary court system, it is always the responsibility of the party seeking relief to actually push their case forward to obtain that relief. *See State v. Johnson*, 2024-01175 (La. 3/18/25), 402 So. 3d 1206, 1207 (Crain, J., concurring).

The district court in *Miller* understood that: "So, in this case, because the burden of proof, as said in 930.2, is on the [inmate], the [inmate] needed to make a move within those 14 years." Exhibit F, App.192–93 (*Miller* Hearing Transcript). As Justice Crain stated in his concurrence in *Johnson*, "[o]ur criminal justice system is designed as an adversarial process with the state and victims postured adversely with the accused, and the judiciary serving as the neutral arbiter, with checks throughout the process for protection of those interests." *Id.* at 1207 (Crain, J., concurring). The rulings by this district court (in the instant matter) and the *Frank* district court that the State bears the burden of pushing the inmate's case forward would reallocate the State to the side of the inmate. As Justice Crain cautioned, if these "checks are realigned, the system of criminal justice risk failing." *Id.*

In the absence of on-point authority and actionable standards from this Court, some outlier district courts (this one and *Frank*) have reversed the burden of proof and placed a burden on the State to *make* inmates timely pursue their claims for post-conviction relief. The State requests that the Court intervene and establish that it is the obligation of the inmate with the burden of proof to actually pursue their own PCR claims.

B. These Cases Present Significant Unresolved Issues of Law (La. Sup. Ct. Rule X(1)(a)(2)).

By definition, the issues above—on which the lower courts disagree—present significant unresolved legal questions. As noted, for example, this Court has not decided what constitutes material prejudice in this unique PCR context. *Leger*, 261 So. 3d at 766 (Crichton, J., dissenting). The State and litigants across the State need that answer. In the same vein, the Court should provide clarity on how to apply Article 930.4's jurisdictional bar on successive petitions. The court in *Miller* found it lacked jurisdiction under Article 930.4 to consider a "supplemental" petition because the inmate's "unreasonable" 14-year delay constituted abandonment of his original petition, and therefore his subsequent petition was "successive." App.193. The district

courts in *Frank* and *Bowie* went the opposite direction, holding that the "supplemental" petitions there were not successive despite being filed after nearly identical periods of inaction from those inmates.

Likewise, the Court should definitively answer the other significant legal questions on which the courts are divided (and answer them in the State's favor): (1) the Attorney General has the authority to participate in capital PCR proceedings when requested to do so by the District Attorney; and (2) the inmates, not the State, bear the obligation to actually pursue their requested relief.

C. The Lack of Guidance in These Cases Has Resulted in Lower Courts Erroneously Interpreting and Applying State Laws (La. Sup. Ct. Rule X(1)(a)(4)), and Grossly Departing from Proper Judicial Proceedings (La. Sup. Ct. Rule X(1)(a)(5)).

For all the same reasons, the district court here (and the district court in *Frank*) grossly misapplied the law. A holding that it is the State's obligation to push forward an inmate's PCR petition runs counter to the Code of Criminal Procedure and the base principles of an adversarial judicial system. It is not the State's obligation to ensure that the inmates are timely seeking the relief to which they claim entitlement. The district court rulings in *Roy* and *Frank* that the State was obligated to bring the inmates' claims to trial, rather than placing the burden on the inmates, threatens to upend the clear law on who bears the burden of proof in PCR proceedings.

Furthermore, it is clear that the passage of time is materially prejudicial under Article 930.8(B). All courts recognize the indisputable fact that memories fade, access to witnesses and physical evidence changes, and decades-long delays are prejudicial. The *Miller* and *Reed* courts reached the right decision; the courts here and in *Frank* did not.

II. ALTERNATIVELY, THE COURT SHOULD GRANT *FRANK* AND HOLD THE REMAINING CASES IN ABEYANCE.

The State respectfully notes that the Court may wish to grant *Frank* alone while holding the other cases in abeyance pending a decision in *Frank*. That is

because *Frank* alone implicates all of the issues presented above. In addition, *Frank* presents another important question in these cases: whether—under Article 927 and related articles of the Code of Criminal Procedure—district courts must first identify which, if any, PCR allegations are potentially meritorious before requiring the State to respond. The *Frank* court refused to comply with that gatekeeping function, ordering the State to respond on the merits and setting an evidentiary hearing for December 2025. Accordingly, *Frank* would give this Court an opportunity address all of the issues above as well as this gatekeeping one.

CONCLUSION

For these reasons, this Court should consolidate this matter with the four forthcoming companion PCR cases seeking this Court's review, set a consolidated briefing schedule, and hear consolidated oral arguments. In the alternative, the State respectfully suggests that the *Frank* case is the best individual vehicle to consider the cross-cutting issues presented. Accordingly, the Court should, in the alternative, grant the forthcoming writ application in *Frank* and hold the remaining four writ applications in abeyance pending the Court's decision in *Frank*.

Dated: June 13, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing has this date been served upon all parties to this proceeding by email or by mailing same to each by First Class United States mail, properly addressed and postage paid on this 13th day of June, 2025.

/s/ Morgan Brungard
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