SUPREME COURT OF LOUISIANA

No. _____

ANTOINETTE FRANK,
Respondent

VERSUS

KRISTEN THOMAS, WARDEN, LOUISIANA CORRECTIONAL INSTITUTE FOR WOMEN,
Applicant

From the Orders of May 15, 2025,
Orleans Parish Criminal District Court, Section D,
Civil Case No. 375-992,
Honorable Kimya M. Holmes, presiding

THE STATE'S APPLICATION FOR A SUPERVISORY WRIT

ELIZABETH B. MURRILL
Attorney General
MORGAN BRUNGARD (La #40298)
Deputy Solicitor General
LOUISIANA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
1885 N. Third St.
Baton Rouge, LA 70802
BrungardM@ag.louisiana.gov

Counsel for the State of Louisiana

SUPREME COURT OF LOUISIANA
CRIMINAL
WRIT APPLICATION FILING SHEET

TO BE COMPLETED BY COUNSEL OR PRO SE LITIGANT FILING APPLICATION

CASE TITLE: Antoinette Frank v. Kristen Thomas, Warden, Louisiana Correctional Institute for Women

APPLICANT PARTY NAME(S): Kristen Thomas, Warden, Louisiana Correctional Institute for Women

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

LEAD COUNSEL / PRO SE LITIGANT INFORMATION

APPLICANT:

Lead Counsel Name: Morgan Brungard Bar Roll No. 40298

Email address: BrungardB@ag.louisiana.gov Cell No. 225-999-6864

RESPONDENT:

Lead Counsel Name: Naila K. Campbell Bar Roll No. 36819

Email address: NCampbell@mcfj.org Cell No. (504) 212-2110

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: Orleans Parish, Criminal Dist. Ct. Section D Docket No: 375-992

Judge and Section: Honorable Kimya M. Holmes Date of Ruling: May 15, 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: 12/15/25

□ 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 16, 2025 Signature: /s/ Morgan E. Brungard (Rev. 12/2022)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

APPENDIX OF EXHIBITS

INTRODUCTION

This case is the second 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 countless 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 this case (as it is the best vehicle for these issues) and hold the four other cases in abeyance pending a decision here.

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

(1) Three days ago, the State sought review in *Roy v. Vannoy*, No. 2025-KP-759, (La. June 13, 2025).

(2) Today, the State seeks review in this case, *Antoinette Frank v. Burl Cain*, No. 375-992, Orleans Crim. Dist. Ct.

(3) In seven 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 fourteen 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 fourteen 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.

---

[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 stagnated 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 (and continue to turn) 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. *See* La Const. art. I, § 22 (guaranteeing "an adequate remedy" to "every person" "for injury to him" "administered without … unreasonable delay"). 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) *Roy*: the district court *allowed* the Attorney General's participation.

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

(b) This case (*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 pursuing 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 do so?

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

(b) This case (*Frank*): the district court found 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—

all within a two-and-a-half-week period. 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 case with *Roy* and the three 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 this case is the best individual vehicle to consider the cross-cutting issues presented—because it implicates all of those issues. Accordingly, the Court should, in the alternative, grant this writ application and hold the remaining four writ applications in abeyance pending the Court's decision here.

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. This one involves Louisiana's only female on Death Row: A former police officer who murdered three people—including her partner on the force—thirty years ago.

In 1995, Officers Antoinette Frank and Ronald Williams were partners in the New Orleans Police Department (NOPD). *State v. Frank* (*Frank I*), 1999-0553 (La. 01/17/01), 803 So. 2d 1, 5, *as revised* (Apr. 16, 2001). Frank and Williams occasionally provided off-duty security at the Kim Ahn Restaurant in New Orleans East, owned and operated by the Vu family. *Id.* On the night of March 3, 1995, Officer Williams was providing off-duty security at the restaurant. *Id.* Frank and her boyfriend, Rogers Lacaze, visited the restaurant "several times" over the course of the night. *Id.* Frank returned for a final time in the early hours of the morning as the Vu family was closing the restaurant. *Id.* Chau Vu, sister of two of the victims, went into the kitchen in the back to count money. *Id.* When she returned to the dining room at the front to pay Officer Williams for his time, she saw Frank approaching the restaurant yet again. *Id.* "Sensing something was wrong, Chau Vu ran back to the kitchen and hid the money in the microwave before returning to the front of the restaurant." *Id.*

Using a stolen key, Frank entered the restaurant and quickly walked to the back of the building, pushing Chau Vu, Quoc Vu (Chau's brother), and an unrelated restaurant employee in front of her. *Id.* While Frank was in the back, Lacaze entered the restaurant and shot Officer Williams in the back and head. *Id.* As "[s]hots rang out," Frank "ran back to the front of the restaurant." *Id.*

Chau Vu, Quoc Vu, and the employee hid in a cooler in the kitchen, where they had a partial view of the front of the restaurant. *Id.* Chau saw Frank seemingly searching for something. *Id.* Frank moved out of Chau's line of sight, and then all three individuals hiding in the cooler heard additional gunshots. *Id.* As Frank moved in and out of Chau's and Quoc's field of vision, Quoc saw Frank search the area where

the Vus kept their money. *Id.* Quoc then saw Frank move to another area. There were more gunshots, and then Frank and Lacaze left. *Id.* Quoc later discovered the bullet-ridden bodies of his sister and brother, Ha and Cuong, in that area. *Id.*

"Quoc emerged from the cooler and called 911 to report the murders." *Id.* The police soon arrived on the scene, followed shortly by Frank herself in a police car, masquerading as a responding officer. *Id.* Feigning innocence, Frank approached Chau and asked her what had happened. *Id.* Chau then "found another officer and reported what she had witnessed." *Id.*

Later that day, Frank and Lacaze were both arrested and charged with three counts of first-degree murder for the deaths of Officer Williams, Ha Vu, and Cuong Vu. *Id.* Their trials were severed. *Id.* at 6. In July 1995, Lacaze was tried first, found guilty as charged, and sentenced to death. *Id.* Two months later, in September 1995, Frank's six-day trial resulted in a unanimous guilty verdict on all counts. *Id.* One day later, the jury recommended a sentence of death. *Id.* On October 20, 1995, the trial court formally sentenced Frank to death. *Id.*

In 2001, on direct appeal, this Court affirmed Frank's conviction for three counts of first-degree murder. *Id.* at 4–5. This Court, however, reversed the finding that she was not indigent and remanded the case to the trial court to determine whether Frank's indigence entitled her to a state-funded expert for the sentencing phase. *Id.* at 5. This Court instructed that, if the trial court concluded that the lack of state-funded experts had prejudiced Frank, then the trial court was to "vacate [her] sentence and order a new penalty phase at which [she would] have the benefit of that expert assistance." *Id.*

The remand proceedings revealed that Frank actually was "provided access to a mitigation expert by her attorney and refused to be interviewed by him." *State v. Frank* (*Frank II*), 1999-0553 (La. 5/22/07), 957 So. 2d 724, 739. Accordingly, the trial court held that Frank herself was to blame for the lack of mitigation testimony and

therefore was not entitled to another sentencing hearing. *Id.* at 739–40. On appeal again, this Court in *Frank II* agreed: "the district court's error in not declaring her indigent" had "not denied [her] access to mitigation expert assistance." *Id.* at 739. Instead, "she refused the services of the mitigation expert of her own volition. There was no interference by a state actor that denied her access to mental health expert assistance." *Id.*

The *Frank II* Court affirmed Frank's sentence. *Id.* at 751. *Frank II* also instructed that, after the time for seeking a writ of certiorari from the United States Supreme Court had passed, the trial court was to notify the Louisiana Indigent Defense Assistance Board. *Id.* The trial court was to give the Board "reasonable time" to enroll, file an application for post-conviction relief, and "litigate expeditiously the claims raised in that original application, if filed, in the state courts." *Id.*

This Court denied Frank's request for rehearing of its *Frank II* decision. *Id.* In 2008, the United States Supreme Court denied certiorari. *See Frank v. Louisiana*, 552 U.S. 1189 (2008).

Two months later, in April 2008, Petitioner filed her "shell" PCR Petition. *See State ex rel. Frank v. Cain* (*Frank III*), 2008-0933 (La. 5/16/08), 980 So. 2d 699, 699 (Mem). That shell Petition (as its name indicates) failed to specify how or why her criminal proceedings were constitutionally defective. *Id.* So the trial court denied relief and issued a warrant setting the execution for July 15, 2008. *Id.* Frank sought a supervisory writ from this Court. *Id.*

In May 2008, this Court granted review and "directed" the district court to "recall the warrant." *Id.* The Court also "amended" the June 10, 2008 deadline for filing "a comprehensive supplemental petition containing all [PCR] claims for post-conviction relief" to give Frank another ninety days "from that date"—or September 8, 2008. *Id.* She then let eighty-nine of those days pass before, "[o]n the last day of the extension of time already granted by this court," seeking "another motion for an

extension of time in which to file a supplemental application." *State ex rel. Frank v. Cain* (*Frank IV*), 2008-2393 (La. 5/20/09), 10 So. 3d 717, 717 (Mem) (Traylor, J., dissenting). The district court must have denied that request because it denied her shell petition and issued a warrant "setting an execution date of December 8, 2008." *Id.*

In October 2008, Frank "filed an application for supervisory writ and moved this [C]ourt to extend the deadline for filing her supplemental application for post-conviction relief." *Id.* at 717 (majority opinion). She wanted this Court "to overturn the denial of her 'shell' application … and to vacate the wa[rr]ant signed by the trial court setting an execution date of December 8, 2008." *Id.* (Traylor, J., dissenting). The interests of Frank's PCR counsel, the Capital Post Conviction Project of Louisiana (CPCPL),[2] were behind their extension request: "CPCPL assert[ed] that [Frank's PRC case was] fourteenth in line on its list of death row inmates awaiting the filing of post conviction applications, as though their priority system outweigh[ed] orders from this [C]ourt." *Id.* at 718. That "priority system [was] one of the reasons that [CPCPL] claim[ed] it [was] unable to comply with [*Frank III*'s] order. . . ." *Id.*

In November 2008, "this Court vacated the warrant of execution issued by the trial judge and stayed further proceedings below pending [its] consideration of [Frank's] motion." *Id.* at 717 (majority opinion).

In May 2009, Justice Kimball issued an order "extend[ing] the deadline for the filing of [Frank's] supplemental application for post-conviction relief … in the district court on or before 5:00 p.m., July 1, 2009," and required her to "do so without further extensions of time." *Id.* Justice Traylor, for his part, "believe[d] the solution to [CPCPL's backlog] problem" was to "relieve CPCPL of its appointment, set a rule to

[2] In 2022, CPCPL changed its name to Mwalimu Center for Justice but has never stopped representing Frank. *See* Financial Statements and Independent Auditor's Report: Capital Post Conviction Project of Louisiana DBA-Mwalimu Center for Justice 17 (Dec. 31, 2021), https://tinyurl.com/5e5b2wzd.

determine whether its behavior [was] sanctionable, and direct that the district court appoint outside counsel for this death row inmate." *Id.* at 718 (Traylor, J., dissenting).

On remand, Frank again delayed. She let the countdown to "5:00 p.m., July 1, 2009," *id.* at 717 (majority opinion), run all the way down to the very last day. On July 1, 2009, she filed her 2009 Supplement. Ex. A, App.1–242 (2009 Petition for Post-Conviction Relief). And then, she did nothing in this case *for more than 14 years*. Despite being represented by counsel, Frank and her attorneys never requested:

- A determination that she had made a prima facie case. *See* La. Code of Crim. P. art. 927(A) (requiring courts to identify which claims, "if established, would entitle the petitioner to relief" before ordering the State to respond);

- A briefing schedule for the State's procedural objections or answer. *See id.* (requiring that, where courts find a prima facie showing, they "shall order [the State] to file any procedural objections … or an answer on the merits if there are no procedural objections, within a specified period not in excess of thirty days");

- An evidentiary hearing. *See* La. Code of Crim. P. art. 930(A) ("An evidentiary hearing for the taking of testimony or other evidence shall be ordered whenever there are questions of fact which cannot properly be resolved [through other means].");

- Discovery. *See* La. Code of Crim. P. art. 929(B) (authorizing courts to allow "oral depositions of the petitioner and witnesses" and "requests for admissions of fact and of genuineness of documents"); or even

- A status conference.

Instead, she sat on her hands for well over a decade, taking zero action toward the relief she insisted (and continues to insist) she is entitled to. After 14 years of inaction but just weeks after the State's nitrogen-hypoxia legislation went into effect, she filed her 2024 PCR Petition on July 30, 2024. Ex. B, App.243–309 (2024 Petition for Post-Conviction Relief). Her 2024 Petition repeats claims from her underlying criminal proceedings and previous PCR Petitions and adds entirely new claims. *See generally id.*

In 2025, the district court ordered the State to file a response on or before March 31, 2025, and set the matter for a status hearing on the same date. Ex. C,

App.312–13 (Transcript of February 18, 2025 Hearing). On March 14, 2025, Orleans Parish District Attorney Jason Williams formally requested the Attorney General's assistance and asked her to assume the defense of this case pursuant to her authority under Article IV, § 8 of the Louisiana Constitution. Ex. D, App.316 (Formal Request for Attorney General's Assistance and Prosecution).

When the Attorney General learned of the State's deadline to respond to Frank's 2024 PCR Petition, the Attorney General's Office contacted Frank's counsel and informed them that the State would be filing a motion for a thirty-day extension. Ex. E, App.321–22 (Transcript of March 31, 2025 Hearing). Frank's counsel had no opposition, App.322, and the State filed an unopposed extension motion, Ex. O, App.745 (Orleans Parish Criminal District Court Docket Master).

Counsel for Frank and representatives for the District Attorney and the Attorney General appeared at the March 31, 2025 hearing. App.318. After the Attorney General's Office made an appearance at the hearing, Frank's counsel confirmed that she did not oppose the State's thirty-day extension request, but requested leave to file written objections to the District Attorney's request that the Attorney General assist with the State's defense. App.322, 334.

At the March 31, 2025 hearing, the district court was shocked to learn that nothing had happened in this case for over a decade. The district court then blamed the State for failing to play both plaintiff and defendant—despite the fact that the court had never identified which of Frank's PCR claims (if any) were potentially meritorious and thus warranted a response from the State as required by Code of Criminal Procedure Article 927. As the district court saw it:

> And so, I guess this is [wherein] lies the problem. It hasn't been thirty[ ]days. It's been sixteen years. The fact that no one moved on this in sixteen years, is shameful. The fact that you all State, or whoever wants to be representing of the State, has known about this 2/18 and decided last week to file a motion to extend time. It wasn't like and Ms. Campbell [Frank's lead counsel] you can sit down because this has absolutely nothing to do with you at this point. . . . If [the State] knew that it was impractical for you all to respond to something that you all have had in your possession for sixteen years. Sixteen years, not sixteen days, not sixteen weeks, not sixteen months. Sixteen years! . . . [T]he deadline is today and I'm denying it. Next.

App.330–31.

The State explained that it does not bear the burden of proof in the PCR proceedings; it is the defendant who bears the burden. App.331–32. And Frank's counsel reiterated that she had no opposition to the State's request for an extension of time. App.334. The district court then set April 14 as Frank's deadline for objecting to the Attorney General's involvement and April 28 as the State's deadline for responding to both those written objections and the PCR Petitions. App.335–36. The district court announced May 15 as its day for ruling on any forthcoming objections to the Attorney General's involvement and the PCR Petitions. App.336.

Frank complied with her deadline. *See* Ex. F, App.339–59 (Frank's "Objection to the Attorney General's Participation in PCR Proceedings"). The State, for its part, timely (1) moved to dismiss the PCR Petitions and stay proceedings pending resolution of the 930.8(B) Hearing (Ex. G, App.361–423 (State's Motion to Dismiss Post-Conviction Relief Petitions and Stay Proceedings Pending Article 930.8(B) Hearing)), (2) opposed Frank's attempt to exclude the Attorney General (Ex. H, App.634–40 (State's Opposition to Frank's Objection to the Attorney General's Participation in Post-Conviction Relief Proceedings with Exhibits)), and (3) moved to enroll additional counsel from the Attorney General's Office, (Ex. I, App.641–45 (State's Motion to Enroll Additional Counsel)).

At the May 15 hearing, the district court cut straight to ruling. After asking counsel to make their appearances, the district court skipped oral argument and

denied every one of the State's filings out of hand. Ex. J, App.647–62 (Transcript of May 15, 2025 Hearing). The court had prewritten reasons ready to (a) block the District Attorney and Attorney General from working together to defend the State against Frank's PCR claims and (b) deny the State's Procedural Objections. App.656, 653.

The Written Reasons first reasoned that PCR proceedings are neither civil nor criminal and thus "no provision in the law and Louisiana Constitution allows for the Attorney General's participation in this case." Ex. K, App.664 (Written Reasons on State's Motion to Enroll Additional Counsel). The Written Reasons then focused on the State's argument that the 2024 Petition was a procedurally-barred successive petition, not a true supplement. The trial court disagreed, holding that the 2024 PCR Petition was "a supplement to the 2009 Application," not a successive petition, because "the 2009 Application was never litigated or ruled upon." Ex. L, App.670 (Written Reasons on State's Procedural Objections). The district court concluded by scheduling an evidentiary hearing—on all 50 or more of Frank's PCR claims—for December 15, 2025. Ex. M, App.672 (District Court's Ruling Setting Evidentiary Hearing). The State noted its intent to apply for supervisory review, and the district court set June 16 as the State's writ return date. This application follows.

ASSIGNMENTS OF ERROR

(1) The district court violated the Louisiana Constitution's separation of powers by blocking the executive branch's (District Attorney and Attorney General) prerogative to decide how best to defend the State against Frank's PCR claims.

(2) The district court violated Louisiana Code of Criminal Procedure Article 930.2 by placing the burden on the State to litigate Frank's claims against itself when she failed to do so.

(3) The district court disobeyed Louisiana Code of Criminal Procedure Article 927 by prematurely ordering the State to respond to all claims in Frank's PCR Petitions *before* identifying and dismissing any facially invalid claims that, even if established, would not entitle Frank to relief.

(4) The district court disobeyed Louisiana Code of Criminal Procedure Article 930.3 by failing to dismiss, as a threshold matter, all claims relating to Frank's sentence, for which post-conviction relief is unavailable.

(5) The district court disobeyed Louisiana Code of Criminal Procedure Article 930.8(B) by denying the State's request for an Article 930.8(B) hearing limited to the issue of prejudice.

(6) The district court erred under Article 930.8(B) by allowing Frank and her counsel to materially prejudice the State's ability to respond to, negate, or rebut the PCR allegations by stalling proceedings for fourteen years and allowing witness memories to fade and her original trial lawyers to die.

(7) The district court erred under Louisiana Code of Criminal Procedure Article 930.4 by failing to dismiss Frank's 2024 PCR Petition as a successive petition.

ARGUMENT

The State respectfully requests that this Court grant review here and in each of the companion cases of *Roy*, *Miller*, *Reed*, and *Bowie*, consolidate them, and set full briefing and argument. These cases present common legal issues that currently are 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 thus would 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 here and holding the remaining four writ applications in abeyance pending its resolution of this case.

I. THE COURT SHOULD CONSOLIDATE THIS CASE WITH *ROY* AND THE FORTHCOMING WRITS IN *MILLER*, *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 District 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," in addition to her constitutional mandate to "exercise other powers and perform other duties authorized by th[e] constitution *or* by law." *Id.* (emphasis added). And she has asserted that authority to aid District Attorneys (at their request) in the five companion capital PCR cases here,

and she 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 courts correctly allowed the Attorney General to participate at the District Attorney's request in *Roy*, *Miller*, *Reed*, and *Bowie*. *See Roy*, 2025-KP-759, (La. June 13, 2025); *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 this district court. *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.

But the district court here disagreed. The district court viewed PCR proceedings as a loophole in the Attorney General's constitutional authority to assert or protect the State's interests in "civil" and "criminal" matters (La. Const. art. IV, § 8) because PCR proceedings are neither. App.665–68.

That error stems in part from the way this Court has characterized PCR proceedings*, see Harris*, 340 So. 3d at 853; *Glover*, 660 So. 2d at 1197; *Olivieri*, 779

So. 2d at 735, which has created discovery and evidentiary problems in PCR proceedings. No one knows which Code of Procedure—Criminal or Civil—to apply, and so courts are operating without any such rules. The *Roy* court's many evidentiary errors are a prime example. *See Roy*, No. 2025-KP-759, (La. June 13, 2025) (Transcript of May 12, 2025 Hearing, attached to application as Ex. D, App.107–62). As is the loophole the district court created here.

The split between this district court, on one side, and the district courts in *Roy*, *Miller*, *Bowie*, and *Reed*, 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. This 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 Article 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 of the five district courts in these companion cases have agreed with the State (*Miller* and *Reed*). Others have disagreed (*Roy* and this case). Absent guidance from this Court, lower courts will continue to apply the law inconsistently. All parties would benefit from this Court's determination of 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"); *Glover*, 660 So. 2d at 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."); *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, statutorily 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 sadly are choosing just to 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"). Here, 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.

App.660. In stark contrast, the district courts in 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 the *Roy* case already at the Court, *Roy*, No. 2025-KP-759 (La. June 13, 2025), and three 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.

This Court expressly held as much almost thirty years ago in *Carlin v. Cain* 97-2390 (La. 3/13/98), 706 So. 2d 968 (per curiam). This Court has described Article 930.8(B) as a "laches-like provision" that "authorize[s] the dismissal of any timely-filed application … when the state shows that [an inmate's] delay has prejudiced its ability to respond to the application." *Id.* at 968–69 (citing *State ex rel. Medford v. Whitley*, 95–1187 (La.1/26/96), 666 So.2d 652; *State ex rel Winn v. State*, 95–0898

(La.10/2/96), 685 So.2d 104; *State ex rel. Cormier v. State*, 95–2208 (La.10/4/96), 680 So.2d 1168). This Court then held that "the new facts exception to the time bar" is "subject to the opportunity provided the state by [Article] 930.8(B) to show prejudice arising from the [inmate's] delay." *Id.* at 969. There is no principled reason why other exceptions to the time bar—like the exception for inmates "sentenced to death," La. Code Crim. P. art. 930.4(A)(4)—should not also be "subject to the opportunity provided the state by [Article] 930.8(B) to show prejudice arising from the [inmate's] delay." *Carlin*, 706 So. 2d at 969.

Inmates and their lawyers are presumed to know that *Carlin* is the law and that any delay prejudicing the State would result in loss of their claims. *Cf. Maltby v. Gauthier*, 506 So. 2d 1190, 1193 n.6 (La. 1987) (civil case holding that "[t]he statute under consideration … expressly gave the claimant eleven months to assert her claim, but the claimant was aware of her claim and was presumed to know the law which shortened her time for asserting the known claim"); *State v. Sugasti*, 2001-3407 (La. 6/21/02), 820 So. 2d 518, 522 (criminal case holding that "[e]veryone is presumed to know the law, including the penalty provisions that apply")

But in this case and in *Roy*, 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.330–35 (holding the State responsible for Frank's fourteen-year delay); *Roy*, 2025-KP-759 (La. June 13, 2025) (Written Reasons on Contradictory Hearing, attached to application as Ex. E, App.165–70)(holding the State responsible for Roy's twenty-year delay).

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." Ex. N, App.693–94 (Transcript of February 20, 2025 Hearing in *Miller v. State,* No. 01-97-0656 (19th Jud. Dist. Ct. Feb. 20, 2025)). As Justice Crain stated in his concurrence in *Johnson*: "Our 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." *Johnson*, 402 So. 3d at 1207 (Crain, J., concurring). The rulings by this district court and the *Roy* 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 risks failing." *Id.*

In the absence of on-point authority and actionable standards from this Court, some outlier district courts (this one and *Roy*) 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 inmates 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 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.

Likewise, the Court should provide clarity on how to apply Article 930.4's jurisdictional bar on successive petitions. The court in *Miller* found that it lacked jurisdiction under Article 930.4 to consider a "supplemental" petition because the inmate's "unreasonable" fourteen-year delay constituted abandonment of his original petition, and therefore his subsequent petition was "successive." App.693–99 (Transcript of February 20, 2025 Hearing in *Miller v. State,* No. 01-97-0656 (19th Jud. Dist. Ct. Feb. 20, 2025)). The district courts here and in *Bowie* went the opposite direction, holding that the "supplemental" petitions were not successive despite being filed after nearly identical periods of inaction from Frank (*see* App.670) and Bowie.

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 *Roy*) 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 here 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 *Roy* did

not. The same goes for Article 930.4. The *Miller* court reached the right conclusion; the courts here and in *Bowie* did not.

II. ALTERNATIVELY, THE COURT SHOULD GRANT REVIEW HERE AND HOLD THE REMAINING CASES IN ABEYANCE.

The State respectfully notes that the Court may wish to grant this case alone while holding the other cases in abeyance pending its decision here. That is because this case alone implicates all of the issues presented above. In addition, this case presents other important questions in these cases: whether—under Articles 927, 930.3, 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. This Court has already "rule[d] definitively" that, under Article 930.3, PCR "claims of excessiveness or other sentencing error post-conviction" are meritless as a matter of law. *State ex rel. Melinie v. State*, 93-1380 (La. 1/12/96), 665 So. 2d 1172, 1172 (per curiam)[3]; *accord State v. Thomas*, 2008-2912 (La. 10/16/09), 19 So. 3d 466, 466 (Mem) ("[C]laims that the court imposed an excessive sentence and that he received ineffective assistance of counsel at sentencing are not cognizable on collateral review pursuant to La.C.Cr.P. art. 930.3[.]"); *State v. Boyd*, 2014-0408 (La. App. 4 Cir. 2/11/15), 164 So. 3d 259, 264 ("An ineffective-assistance-of-counsel-at-sentencing claim, however, is not cognizable in post-conviction proceedings[.]").

The district court here refused to fulfill both its general gatekeeping function under Article 927 and its specific duty under Article 930.3 and this Court's precedent to dismiss Frank's PCR claims attacking her sentence. Instead, the district court ordered the State to respond on the merits to all of Frank's 50 or more claims and set

---

[3] In *State v. Harris*, this Court recognized an exception to *Melinie* for PCR claims alleging ineffectiveness of counsel at sentencing. 2018-1012 (La. 7/9/20), 340 So. 3d 845, 858. *Harris*, however, was explicitly based upon the unique circumstances of that case, where trial counsel was alleged to be ineffective and no sentencing error was preserved by that same trial counsel in the form of a motion to reconsider sentence. *See id.* at 857 ("In the instant case, trial counsel did not object to the life sentence nor did he file a motion to reconsider sentence following the habitual adjudication proceeding, and thus, relator was limited to a bare claim of constitutional excessiveness on direct review.").

a merits trial for December 2025. App.672. Accordingly, this case 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 application with the *Roy* application, No. 2025-KP-759 (La. June 13, 2025) and the three forthcoming companion PCR applications in *Miller*, *Reed*, and *Bowie* seeking this Court's review, set a consolidated briefing schedule, and hear consolidated oral arguments. In the alternative, the State respectfully suggests that this case is the best individual vehicle to consider the cross-cutting issues presented. Accordingly, this Court should, in the alternative, grant this writ application schedule full merits briefing and argument in this case, and hold in abeyance pending the Court's decision here the writ application in *Roy*, No. 2025-KP-759 (La. June 13, 2025) (La. June 13, 2025) and the three forthcoming writ applications in *Miller*, No. 1-97-0656, 19th Jud. Dist. Ct. (writ application due June 23, 2025); *Reed*, No. 289,870, 1st Jud. Dist. Ct. (writ application due June 30, 2025); and *Bowie*, No. 03-96-0326, 19th Jud. Dist. Ct (writ application due June 30, 2025).

Dated: June 16, 2025

Respectfully submitted,

ELIZABETH B. MURRILL
Attorney General

/s/ Morgan Brungard
MORGAN BRUNGARD (LA #40298)
Deputy Solicitor General
Office of the Attorney General
P.O. Box 94005
Baton Rouge, LA 70802
Telephone: (225) 326-6000
Facsimile: (225) 326-6096
BrungardM@ag.louisiana.gov

JASON WILLIAMS
Orleans Parish District Attorney
Brad Scott (La #32680)
Assistant District Attorney
Orleans Parish District Attorney's Office
619 South White Street
New Orleans, Louisiana 70119
(504) 822-2414
bscott@orleansda.com

Counsel for the State of Louisiana

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 16th day of June, 2025.

/s/ Morgan Brungard
Morgan Brungard (LA #40298)