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Lyle and Erik Menendez

IN THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA

LOS ANGELES COUNTY

ERIK MENENDEZ, Petitioner, On Habeas Corpus.	No.: Court of Appeal Case No. B104022 Superior Court Case No. BA068880
LYLE MENENDEZ, Petitioner, On Habeas Corpus.	

PETITION FOR WRIT OF HABEAS CORPUS

IN THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA

LOS ANGELES COUNTY

ERIK MENENDEZ, Petitioner, On Habeas Corpus. _____ LYLE MENENDEZ, Petitioner, On Habeas Corpus. _____	No.: Court of Appeal Case No. B104022 Superior Court Case No. BA068880 PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION: A SINGLE QUESTION

In April 1993, brothers Erik and Lyle Menendez were charged with first degree murder in the shooting deaths of their parents, Kitty and Jose Menendez. There were two trials. The first trial began in June of 1993. The second began in October of 1995.

The theory of defense at both trials was straightforward. Neither Erik nor Lyle denied the shooting. Instead, the crime was manslaughter, not murder. The killings occurred in imperfect self-defense, after a lifetime of physical and sexual abuse from their parents. The sexual abuse began when the brothers were just children and, along with the sexual abuse, there were death threats should the abuse ever be disclosed. Thus in determining if this was an imperfect self-defense case of manslaughter, or a case of premeditated murder, jurors had one critical factual question to decide: were Erik and Lyle victims of sexual abuse?

The state's theory in both trials was also straightforward. Erik and Lyle were lying about the sexual abuse. It never happened. They had killed their parents not in imperfect self-defense, but to inherit their parents' money.

Although the theories were the same in both trials, the evidence at the two trials was very different. At the first trial, for example, Lyle's older cousin, Diane Vandermolen, testified that when she was 16, she stayed at the Menendez home for the summer. One night when Lyle was only eight years old, he came into her room and asked if he could sleep in her room; he was scared to sleep in his own room because Jose Menendez was touching Lyle's genitals and forcing Lyle to touch his (Jose's) genitals as well. (RT 11797.) Diane told Kitty, who angrily dragged Lyle upstairs by his arm. (RT 11798-11799.) Erik and Lyle's cousin, Andy Cano, testified that when Erik was only 13 years old, he (Erik) swore Andy to secrecy, told him that Jose Menendez was massaging his genitals, and asked if Andy's father did the same. (https://www.courttv.com/title/68-ca-v-menendez-witness-testimony/ at 2:25:11 - 2:28:04, last accessed 2/1/23).[1] Similarly, jurors heard from family members, close friends, and a variety of coaches and

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[1] Petitioners no longer have access to transcripts of the first trial, which resulted in a hung jury. But a video of the first trial can be found at the Court TV website. The video of Andy Cano's testimony from October 12, 1993 is at https://www.courttv.com/title/68-ca-v-menendez-witness-testimony/ which was last accessed on 2/1/23. Because of the length of the first trial, the video is divided on the Court TV website into 121 separate electronic folders, numbered 1 (containing opening statements) through 121 (containing a discussion regarding a retrial after the juries were unable to reach a verdict). The video containing Andy Cano's testimony is in folder 68.

Mr. Cano is called at the two hour, 17 minute and 20 second mark of this video. The cites provided in text are cites to the time at which the referenced quote can be found. Thus, the cite to 2:25:11 - 2:28:04 refers to the portion of the examination occurring between the two hour, twenty five minute and eleven second mark and the two hour, twenty eight and four second mark of that day's testimony. Aside from record references to the first trial contained in prior briefing on file with the reviewing courts, similar cites to the first trial will be made throughout this document.

teachers, who described numerous incidents of physical and mental abuse they saw the brothers suffer at the hands of their parents, ranging from physical assaults on the boys to public humiliation and mocking. And jurors heard about a chilling rule in the Menendez home: when Jose Menendez was in the bedroom with one of the boys, no one was allowed to walk down the hallway past the bedrooms. (https://www.courttv.com/title /32-ca-v-menendez-kathleen-simonton/ at 1:27:06 - 1:27:28 [Jose Menendez's niece Kathy Simonton].)

While it is fair to say that the prosecutors at the first trial remained skeptical of the defendants' claims of sexual abuse, in light of the evidence actually introduced as to sexual and physical abuse, they hedged their bets. "[I]f you believe in the sexual abuse that happened, that does not mean the defendants are not guilty of murder, because they are two separate things." (https://www.courttv.com/title/109-ca-v-menendez-lyle-menendez-prosecution-closing-arguments/ at 1:35:06-1:35-45.) "We do not execute child molesters in California . . . . And these defendants cannot execute them either." (*Id*. at 1:37:50-1:38:19.) "Vigilantism is something we cannot tolerate because then what happens? What if you decide your neighbor is a child molester and you go kill your neighbor?" (*Id*. at 1:39:09.)

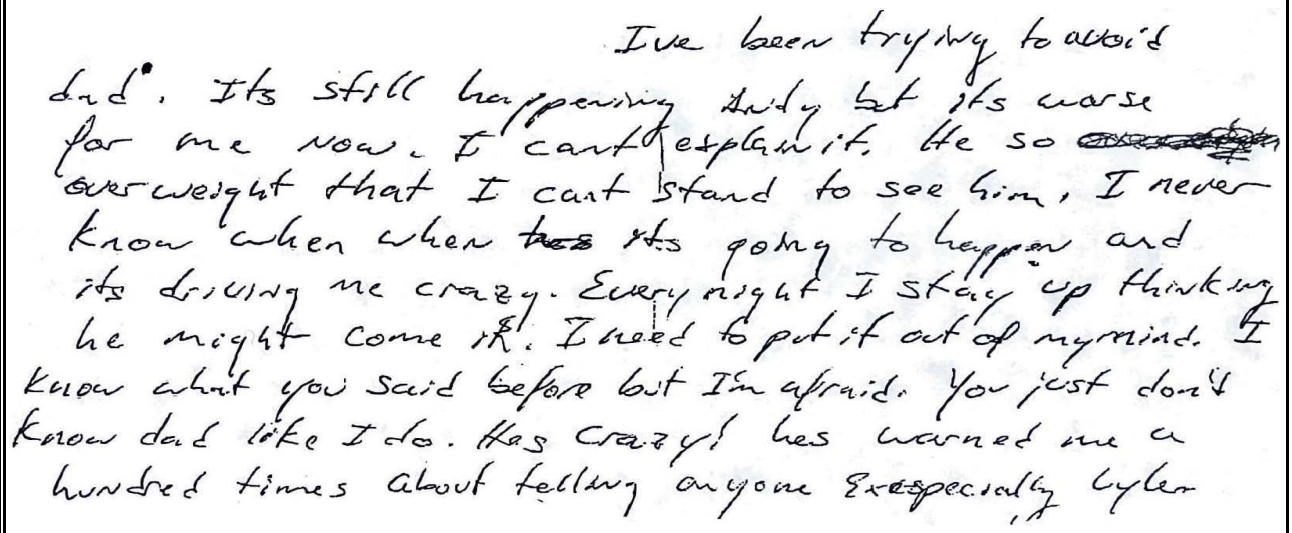
Although defendants were tried together at the first trial, they had separate juries. After lengthy deliberations, the jurors in Lyle Menendez's case were hung 6-6 between murder and manslaughter for each of the two murder charges. The jurors in Erik Menendez's case were hung 6-6 between murder and manslaughter as to one of the murder counts, and 8-4 between murder and manslaughter as to the second count. The state elected to retry the case.

As noted, the second trial began in October 1995. At this trial, much of the defense evidence, including Diane Vandermolen's testimony, was excluded. So the

prosecutor's emphasis changed as well. Based on the evidence presented at the second trial, there was no longer any need to hedge bets; the prosecutor told jurors that the sexual "abuse [allegations] in this case [were] a total fabrication." (RT 50869.) There was "no way of corroborating" these allegations. (RT 50868.) "The abuse never happened." (RT 51088.) "There is no corroboration of sexual abuse." (RT 51378.) The "allegation[s] of physical and sexual abuse are not corroborated." (RT 51469.) Jose Menendez was not the "kind of man that would be abusing his sons." (RT 50991.) He was "restrained and forgiving. [He was] not a violent and brutal man." (RT 51472.) Both petitioners were convicted of first degree murder.

But now new evidence has surfaced in two areas. First, Jose Menendez's younger sister, Marta Cano, discovered a letter her son Andy received from Erik approximately eight months before the August 1989 shooting. As noted above, Andy had testified that Erik told him about the molestation when he (Erik) was 13 years old. (RT 48140.) In his closing argument at the second trial, the prosecutor told jurors in no uncertain terms that Andy was lying. (302 RT 51481-51485, 51487.)

But this letter to Andy corroborates the sexual abuse allegations. Although this letter is discussed in much greater detail below, in it Erik conveys chilling information to Andy:


Ive been trying to avoid dad. Its still happening Andy but its worse for me now. I cant explain it. He so overweight that I cant stand to see him, I never know when when ~~hes~~ its going to happen and its driving me crazy. Every night I stay up thinking he might come in. I need to put it out of my mind. I know what you said before but Im afraid. You just don't know dad like I do. Hes Crazy! hes warned me a hundred times about telling anyone Exespecially Lyle

(*See* Letter from Erik Menendez to Andy Cano, attached as Exhibit A.)

But there is more. As the above quotes from the prosecutor's closing make clear, the state's theory was that Jose Menendez was simply "not the kind of man" who would abuse children. He was "not a violent and brutal man," but "restrained and forgiving." What we now know, however, is that -- in fact -- Jose Menendez did abuse children. Jose Menendez was a high executive at RCA in the 1980s. During that time RCA signed Menudo, a Latin boy band. Roy Rossello, who joined the band as a 13 year-old in 1983 has recently come forward to admit that he was anally raped twice, and orally copulated, by Jose Menendez when Roy was only 13 or 14 years old. (*See* Declaration of Roy Rossello ("Rossello Declaration"), attached as Exhibit F.)

In short the new evidence not only shows that Jose Menendez was very much a violent and brutal man who would sexually abuse children, but it strongly suggests that -- in fact -- he was still abusing Erik Menendez as late as December 1988. Just as the defense had argued all along.

These issues will be discussed below in the attached Memorandum. But it is important to note that at this early stage of the proceedings, this Court is not tasked with making credibility assessments or deciding if relief is required. Instead, the court has a much simpler task; it must "assum[e] the petitioner's factual allegations are true" and assess whether petitioners have established a prima facie case for relief on any of their claims. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) If so, an Order to Show Cause should issue and the state should be required to file an Answer to the Petition which formally admits or denies the factual allegations of the Petition. (*Ibid*.)

As discussed in the memorandum which accompanies this Petition, following *Duvall*'s mandate to assume the truth of the factual allegations of the Petition, petitioners

have established a prima facie case for relief. To resolve this case, jurors had to decide a single, critical question: was Jose Menendez molesting his sons? Jurors making this determination did not know of Erik's letter to his cousin Andy, and they did not know that Jose Menendez had previously raped a 14 year-old boy. An Order to Show Cause should issue and the state required to file an Answer to the Petition.[2]

PETITION FOR WRIT OF HABEAS CORPUS

Jurisdictional Allegations

Petitioners Erik and Lyle Menendez file this Petition for Writ of Habeas Corpus. By this verified petition petitioners allege as follows:

I.

Petitioners are unlawfully confined by the California Department of Corrections and Rehabilitation pursuant to a judgment of the Los Angeles County Superior Court in *People v. Menendez*, No. BA068880.

II.

Petitioners were each convicted of two counts of first degree murder, with lying-in-wait and multiple murder special circumstance allegations, and one count of conspiracy to murder. The trial court imposed consecutive life without parole terms on each defendant for the murder charges. The trial court stayed the 25 year-to-life term for the conspiracy charge pursuant to Penal Code section 654.

[2] As noted above, petitioners no longer have access to a transcript of the first trial. But for the Court's convenience, a PDF of transcripts from the second trial has been attached on a DVD as Exhibit J.

III.

Petitioners pled not guilty. They were tried by jury.

IV.

Petitioners appealed their convictions to the Court of Appeal, Second Appellate District. On February 27, 1998 the appellate court affirmed the convictions in an unpublished opinion. Petitioners each filed timely Petitions for Review in the California Supreme Court which was denied on May 27, 1998.

V.

On October 5, 1998 Lyle Menendez filed a habeas corpus petition in the state supreme court. That petition was denied without comment on March 31, 1999. On April 30, 1999, Erik Menendez filed a habeas corpus petition in the state supreme court. On July 28, 1999, that petition was denied without comment. Both defendants filed habeas corpus petitions in federal court which were denied. As to the matters raised in paragraph VI of this petition, no other petitions for writ of habeas corpus have been filed. Petitioners have no adequate remedy at law.

Claims for Relief

VI.

Petitioner's judgment of conviction has been unlawfully and unconstitutionally imposed in violation of his constitutional rights as guaranteed by the state constitution as well as the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Newly discovered evidence directly supports the defense presented at trial and just as directly undercuts the state's case against petitioner. The following facts now known to petitioners support this claim:

a. On August 20, 1989, Jose and Kitty Menendez were shot and killed.

b In April of 1993 the state charged petitioners with three counts: two counts of special circumstance murder and one count of conspiracy to murder. (CT 548-550.)

c. At trial, petitioners did not deny the shooting with which they were charged. To the contrary, as defense counsel explained in an opening statement made before the state even began its case-in-chief, petitioners admitted their participation in the shooting. (RT 36216-36219, 36245.) The defense was that the shooting was in imperfect self-defense, petitioners did not harbor the mental state needed for first degree murder and were therefore guilty of manslaughter.

d. Petitioners were tried twice.

e. At the first trial, petitioners had separate juries.

f. At the first trial, jurors heard testimony from:

1. Diane Vandermolen. Diane was the niece of Jose and Kitty Menendez who stayed with them during the summer of 1976 when Lyle was 8 years old. She testified that one night 8-year old Lyle came down to her bedroom and asked if he could sleep in her room because "he and his dad had been touching each other" in the "genital area." (RT 11797.) When Diane immediately told Kitty about this, Kitty dragged Lyle away by the arm. (RT 11798-11799.)

2. Peter Cano. Mr. Cano was Lyle's uncle, married to Kitty's

sister. Peter testified that when Lyle was five years old, he saw Jose take a full punch at Lyle, hitting him in the chest; when Mr. Cano gave Jose a "piece of his mind," Jose told him he would raise his sons as he saw fit and Mr. Cano could leave. Mr. Cano did leave, and never again returned to the Menendez home. (RT 13341-13345.)

3. Marianne Cano. Marianne was another cousin who stayed with the Menendez family over a vacation. She testified to Jose humiliating, mocking and belittling Eric and Lyle; she was so uncomfortable, she refused to stay at the Menendez home any longer. (RT 12207-12208, 12224-12226.)

4. Jessica Goldsmith. Ms. Goldsmith testified that when visiting the Menendez home when Lyle was 9, he was climbing on the staircase, hanging from it and became scared. When he asked Jose to help him down, Jose told Lyle to "stay up there until you learn to be a man." When Lyle began to cry, Jose punched him in the stomach and told him to "learn not to cry." (RT 12646.)

5. Andy Cano. Andy was a cousin and friend of Erik's. Andy testified that when Erik was 12 or 13 years old, Erik told him that Jose was giving him massages in the genital area and massaging his penis. Erik asked Andy if his father did the same thing, and swore him to secrecy.

g. During closing arguments at the first trial, the prosecutor urged jurors to find that no sexual abuse had occurred. In light of the evidence

presented, and recognizing that there was evidence which -- if believed -- corroborated the sexual abuse claim, the prosecutor alternatively argued that the abuse made no difference. The prosecutor told jurors:

1. "[I]f you believe . . . the sexual abuse that happened, that does not mean the defendants are not guilty of murder, because they are two separate things."

2. "We do not execute child molesters in California . . . . And these defendants cannot execute them either."

3. "Vigilantism is something we cannot tolerate because then what happens? What if you decide your neighbor is a child molester and you go kill your neighbor?"

h. In light of the evidence presented, Lyle Menendez's jury at the first trial, was hung on all three counts. As to the count one murder charge with respect to Jose Menendez, jurors were hung six for voluntary manslaughter, three for second degree murder and three for first degree murder. (RT 26185.) As to the count two murder charge with respect to Kitty Menendez, jurors were hung five votes for voluntary manslaughter, one vote for involuntary manslaughter, three votes for second degree murder and three vote for first degree murder. (*Ibid.*) As to the count three conspiracy charge, there were six votes for acquittal, three votes for conspiracy to commit second degree murder and three votes for conspiracy to commit first degree murder. (*Ibid.*)

I. In light of the evidence presented, Erik Menendez's jury was also hung

on all three counts. As to the count one murder charge with respect to Jose Menendez, jurors were hung six for voluntary manslaughter, one for second degree murder and five for first degree murder. (RT 26185.) As to the count two murder charge with respect to Kitty Menendez, jurors were hung four votes for voluntary manslaughter, three votes for second degree murder and five votes for first degree murder. (RT 26186) As to the count three conspiracy charge, there were six votes for acquittal, one vote for conspiracy to commit second degree murder and five votes for conspiracy to commit first degree murder. (*Ibid.*)

j. At the second trial, there was only one jury for the two defendants.

k. At the second trial, the court excluded substantial amounts of defense evidence, including the above described testimony from Diane Vandermolen, Peter Cano, Marianne Cano and Jessica Goldsmith. In addition, the court excluded evidence of an essay Lyle wrote for school in 1982 entitled "I Will Change Your Verdict" about a man put on death row for killing the man who had sexually molested his 12 year old son. (CT 12251-12252.)

l. In light of the evidence excluded at the second trial, the prosecutor doubled down on the position that no abuse occurred. The prosecutor argued:

1. The "abuse [allegations] in this case [were] a total fabrication." (RT 50869.)

2. There was "no way of corroborating" these allegations. (RT

50868.)

3. "The abuse never happened." (RT 51088.)

4. "There is no corroboration of sexual abuse." (RT 51378.)

5. The "allegation[s] of physical and sexual abuse are not corroborated." (RT 51469.)

6. Jose Menendez was not the "kind of man that would be abusing his sons;" instead, he was "restrained and forgiving. [He was] not a violent and brutal man." (RT 50991, 51472.)

7. Andy Cano was lying. (RT 51481-51485, 51487.)

m. The jury at the second trial convicted both petitioners as charged.

n. In evaluating the prosecutor's position that "the abuse never happened" and that Andy Cano was lying, jurors never heard:

1. In December 1988, Erik Menendez wrote a letter to his cousin, Andy Cano. The letter first describes a "company party" held at the Menendez home for the holidays.

2. In the letter, Erik writes:

At times I wish I could talk to her [mom] about things you know? Some day. . . Especially dad and I but the way she

> worships him and tells him everything, I (sic) so afraid she'll tell him whatever I say. I just can't risk it."
>
> . . . .
>
> Its (sic) still happening Andy but its worse for me now. I can't explain it. He's so overweight that I can't stand to see him. I never know when its (sic) going to happen and its driving me crazy. Every night I stay up thinking he might come in. I need to put it out of my mind. I know what you said before but I'm afraid. You just don't know dad like I do. He's crazy! He's warned me a hundred times about telling anyone especially Lyle. Am I a serious whimpus? I don't know I'll make it through this. I can handle it, Andy. I need to stop thinking about it. (Exhibit A.)[3]

o. In evaluating the prosecutor's argument that Jose Menendez was "not a violent and brutal man" and "not the kind of man" that would abuse children, jurors never knew that in 1984, Jose Menendez, who was an executive at RCA Records, anally raped 14-year old Stephen ("Roy") Rossello Diaz, a member of the Latin boy group Menudo. Specifically, jurors never heard:

1. Menudo was a Latin boys band formed in 1977 by

[3] Andy Cano died from a drug overdose in 2003. (Declaration of Erik Menendez, para. 4, attached as Exhibit B.) Andy's mother, Marta Cano, provided a copy of the letter to journalist Robert Rand in April 2018. (Letter from Marta Cano, attached as Exhibit C.) Mr. Rand provided the letter to Mr. Menendez's former appellate counsel -- who last represented Mr. Menendez in 2005 -- in April 2018. (Declaration of Cliff Gardner ("Gardner Declaration") attached as Exhibit D, at para. 3.)

music produced Edgardo Diaz.

2. In the fall of 1983, Menudo signed a multi-year deal with RCA records. (*See* The Pop Life, New York Times (11-23-1983), attached as Exhibit E.)

3. At the time, Jose Menendez was an executive at RCA.

4. In 1983, 13-year old Roy Rossello joined the group. (Declaration of Roy Rossello ("Rossello Declaration"), attached as Exhibit F, at para. 1.)

5. In the fall of 1983 or 1984, Menudo was appearing in New York City. (Rossello Declaration at para. 2.)

6. During the trip to New York, Edgardo Diaz asked Roy to "do a favor," instructing him to go downstairs at the hotel and join Jose Menendez in a limousine. (Rossello Declaration at para. 3.)

7. Roy did so, and was taken to a home in New Jersey, given wine by Jose Menendez and anally raped. Roy lost consciousness and woke up back in his hotel. He was bleeding from the anus. He was in unbearable pain for a week. (Rossello Declaration at para. 6.)

8. Jose Menendez orally copulated Roy in a bathroom prior to a Menudo concert in New York. (Rossello

Declaration at para. 7.) Later that same night, Jose Menendez anally raped Roy in a hotel room in New York city. (Rossello Declaration at para. 8.)

p. Had jurors seen the letter Erik Menendez wrote to Andy Cano, and learned that Jose Menendez anally raped and orally copulated a 13 or 14 year-old boy in 1984, the prosecutor would not have been able to argue that "the abuse never happened," "[t]here is no corroboration of sexual abuse," Jose Menendez was not the "kind of man that would" abuse children and was "not a violent and brutal man." (RT 51472.)

Timeliness Allegations

VII.

Generally, courts will not address the merits of habeas petitions filed with substantial unexplained delay. The following factual allegations show this petition is properly before the Court:

a. Lyle and Erik Menendez are indigent; in 1996 they were each given appointed counsel pursuant to the appellate court's indigent appointment process. (See People v. Menendez et al., Docket report, Entry of 9/10/1996, attached as Exhibit G.) Petitioners have been and are without funds to perform any habeas investigation. (Erik Menendez Declaration at para. 2-3; Declaration of Lyle Menendez, ("Lyle Menendez Declaration") attached as Exhibit H, at para. 2-3.)

b. In 2015, Erik and Lyle heard about the a letter Erik had written to Andy Cano through a Barbara Walters special that said the letter had been offered at trial but excluded by the trial judge. (Erik Menendez Declaration at para. 5; Lyle Menendez Declaration at para. 4.)

c. Beginning in 2018, Erik and Lyle learned that their trial lawyers could not recall ever seeing such a letter. (Erik Menendez Declaration at para. 6; Lyle Menendez Declaration at para. 5.) They were advised to obtain a copy; in 2018, journalist Robert Rand provided a copy of the Andy Cano letter to Cliff Gardner, Lyle Menendez's former appointed appellate counsel. (Gardner Declaration at para. 3.)

d. Mr. Gardner did not recall ever seeing this letter before. (Gardner Declaration at para. 4; Erik Menendez Declaration at para. 7; Lyle Menendez Declaration at para. 7.) But because Mr. Gardner had not actually reviewed the trial transcripts in so many years, he advised petitioners to review the trial transcripts to see if the Andy Cano letter was new evidence or whether, instead, it had been offered and excluded as the 2015 Barbara Walters special had indicated. (Gardner Declaration at para. 4; Erik Menendez Declaration at para. 7; Lyle Menendez Declaration at para. 7.)

e. At that point in 2018, neither Erik nor Lyle had copies of the transcripts of trial. (Erik Menendez Declaration at para. 8; Lyle Menendez Declaration at para. 8.)

f. In late 2020, Court TV posted on its website a transcript of the second trial and a video of the first trial. (Erik Menendez Declaration at para. 8; Lyle Menendez Declaration at para. 8.) With assistance from their family, petitioners were able to determine that the letter had not been offered (and excluded) at either trial. (Erik Menendez Declaration at para. 8; Lyle Menendez Declaration at para. 8.)

g. At that point in 2020, transcriptions of interviews with potential witnesses were still being transcribed. (Gardner Declaration at para. 3; Erik Menendez Declaration at para. 9; Lyle Menendez Declaration at para. 9.)

h. In November of 2022, Gardner learned that during an interview for a documentary, Roy Rossello -- a member of the boy band Menudo -- had admitted that he had been raped by Jose Menendez. (Gardner Declaration at para. 5.) Mr. Rossello provided a signed declaration in April 2023.

I. This petition is being filed within five months of obtaining Mr. Rossello's declaration.

WHEREFORE, petitioners pray that this Court:

1. Take judicial notice of the transcripts and court records in *People v. Menendez*, Los Angeles Superior Court Number BA068880 and *People v. Menendez* Court of Appeal case number B104022;

2. Order respondent to file and serve a copy of the record on appeal;

3. After full consideration of the issues raised in the petition, and the factual allegations of the Petition and supporting memorandum, issue an Order to Show Cause requiring the state to show cause why relief should not be granted;

4. After the state files an Answer, and petitioners file a Traverse, vacate the judgment and sentence imposed upon petitioners or, in the alternative;

5. Depending on whether the state denies material factual allegations of the Petition, permit discovery and an evidentiary hearing at which petitioners may offer proof concerning the allegations of the Petition which have been placed in dispute; and;

6. Grant such other and further relief as may be appropriate.

DATED: 5/2/23

Respectfully submitted,

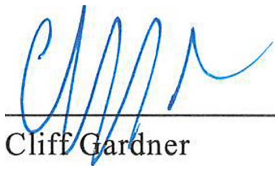
MARK GERAGOS
CLIFF GARDNER

Cliff Gardner
Attorney for Petitioners

VERIFICATION

I, Cliff Gardner, declare that I am one of the attorneys for Lyle and Erik Menendez. I make this verification for Petitioners because of their absence from the county where I have my office. I have read the attached Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities in Support Thereof and believe the matters stated therein to be true. On that basis, I allege they are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of May, 2023 in Berkeley, California.



Cliff Gardner

CERTIFICATE OF SERVICE

I, the undersigned, declare as follows: I am a citizen of the United States, over the age of 18 years and not a party to the within action. My business address is 1448 San Pablo Avenue, Berkeley, California 94702.

On May 3, 2023, I served the within:

PETITION FOR WRIT OF HABEAS CORPUS

upon the parties names below by depositing a true copy in a United States mailbox in Berkeley, California, in a sealed envelope, postage prepaid, and addressed as follows:

Mr. Lyle Menendez, K13758
R.J. Donovan Correctional Facility
480 Alta Road
San Diego, CA 92179

Office of the District Attorney
211 West Temple Street
Suite 1200
Los Angeles, CA 90012

Mr. Erik Menendez, K14101
R.J. Donovan Correctional Facility
480 Alta Road
San Diego, CA 92179

I declare under penalty of perjury that the foregoing is true. Executed on May 3, 2023 in Berkeley, California.

Declarant