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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 **PEOPLE OF THE STATE OF CALIFORNIA,**

15 **Plaintiff,**

16 **v.**

17 **ERIK GALEN MENENDEZ,**
18 **JOSEPH LYLE MENENDEZ,**

19 **Defendants.**
20
21
22

Case No. BA068880

**PEOPLE'S REPLY TO
DEFENDANT'S REPLY TO
PEOPLE'S MOTION TO
WITHDRAW MOTION
REQUESTING 1172.1 RECALL OF
SENTENCE & RESENTENCING
HEARING**

Date: April 11, 2025
Time: 8:30 a.m.
Dept: S

23 **TO THE HONORABLE MICHAEL V. JESIC, JUDGE PRESIDING; DEFENDANTS**
24 **ERIK GALEN MENENDEZ AND JOSEPH LYLE MENENDEZ;¹ AND THEIR**
ATTORNEYS OF RECORD:

25 This reply shall be based on the attached memorandum of points and authorities, the
26
27

28 ¹ Defendant Erik Galen Menendez will be referred to as "Erik Menendez" or "Erik" and defendant Joseph Lyle Menendez will be referred to as "Lyle Menendez" or "Lyle." Collectively, they will be referred to as "Defendants" or the "Menendez brothers."

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Superior Court of California
County of Los Angeles

APR 04 2025

David W. Slayton, Executive Officer/Clerk of Court

1 declarations and exhibits filed in preparation for the hearing on this motion, the record of
2 conviction, and any other argument or evidence to be presented at a hearing on this matter.

3
4 **I.**

5 **INTRODUCTION**

6 Thirty-five years have passed. The iPhone was invented. 911 happened. Covid
7 happened. And, the Menendez Brothers are still lying. They still falsely maintain that, on
8 August 20, 1989, their parents were going to rush out of the family den with firearms and murder
9 them. They still falsely claim that, due to their fear of imminent death, they had no choice but to
10 rush in first and execute their parents with shotguns. Erik maintained these obvious lies in 2024
11 when he unequivocally announced on Netflix, “All I had in my head was if my mom and dad
12 exit that room before I get there, I’m going to die.” (“Menendez Brothers” [Netflix 2024].)
13 Lyle similarly maintained this false narrative in 2017 when he emphatically told Keith Morrison
14 on Dateline that he feared his father would kill him. Lyle responded to Mr. Morrison’s
15 questioning of why Lyle didn’t just leave the home on August, 20, 1989 by stating, “[L]eave and
16 do what? Leave and just wait for yourself to be killed in a parking lot?” (“Unthinkable: The
17 Menendez Brothers” [Dateline NBC November 17, 2017].)

18
19
20 Even though Erik and Lyle continue, in public, to maintain this counter-factual self-
21 defense story, Defendants’ Reply to People’s Motion to Withdraw Motion Requesting 1172.1
22 Recall of Sentence & Resentencing Hearing (“Defendants’ Reply”) completely ignores this fact
23 and never even mentions the term “self-defense.” Even though Erik testified, at both trials, that
24 he killed his parents, not because of any sexual abuse, but because he feared they would kill him.
25 (94 RT 1585; 95 RT 18870; 257 RT 43073.) Even though Lyle testified, unequivocally, that he
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27
28

1 ran to get his gun because he believed, “It’s happening. They’re going to kill us.” (88 RT
2 14625-26.) No mention of self-defense. Not even once.

3 Instead, Defendants’ Reply attempts to refocus the issue on the sexual abuse allegations,
4 stating that “the crime was manslaughter, not murder, based on a lifetime of sexual abuse” and
5 that “the question of sexual abuse was the centerpiece of the whole case.” (Defendants’ Reply,
6 pp. 1:7, 5:7-8.) The defense does this, even though the jury clearly rejected any manslaughter
7 and self-defense claims and convicted the defendants of both: 1) two counts of lying-in-wait
8 first-degree murder, and 2) conspiring to murder their parents. There was ample testimony at
9 both trials about self-defense, and yet the defense has strategically ignored this testimony and
10 focused on the alleged abuse. The defense must do this because Erik and Lyle have given them
11 no choice. They continue to perpetuate the same self-defense lies that they first uttered almost
12 35 years ago. To recognize this fact would be to recognize that, at their core, Erik and Lyle have
13 not changed. The defense must instead refocus the issue on the alleged sexual abuse, hoping to
14 distract this Court from the illegitimacy and absurdity of the defendants’ self-defense trial
15 testimony and continued lies to support this false claim.

16 The defense also attempts to divert attention from the key issue—whether Erik and Lyle
17 have truly changed—by inaccurately discussing irrelevant District Attorney office transfers,
18 improperly portraying Erik and Lyle as unsophisticated youthful offenders, citing cases that do
19 not fit the facts of this case, and misconstruing the persuasive value of the Sirhan Sirhan case.

20 In contending that Erik and Lyle are rehabilitated and have accepted responsibility for
21 their crimes, the defense states, “[F]rom the day they were convicted, and as they matured in
22 prison over the many years since trial, in both court filings and public interviews, they have both
23 taken responsibility for the shooting and expressed deep remorse.” (Defendants’ Reply, p.

1 15:31-24.) The defense notes that, over the years, Erik and Lyle have expressed that they “feel
2 awful and wish we could go back,” that they “completely regret” what they did, and that they
3 wish they could “undo” what they did. (Defendant’s Reply, pp. 15-16.) However, the defense
4 conflates true rehabilitation with feelings of remorse and regret. But these concepts are very
5 different. There is no doubt Erik and Lyle regret killing their parents and wish they could go
6 back in time and change things. But Erik and Lyle’s current feelings are not new. In fact, during
7 direct examination in his first trial on September 20, 1993, Lyle said, “I just miss the connection
8 I had with him [his father] and I felt, I guess, very guilty, and seeing my grandmother and people
9 hurt.” (89 RT 14703.) Yet during that same trial, where Lyle expressed his remorse and regret
10 to the jury, he also testified to an implausible set of events anchored on the core testimony of
11 self-defense. At that same trial, while expressing remorse and regret, Erik and Lyle also
12 attempted to, and actually did, conscript people to lie on their behalf under oath. Nothing is new.
13 Nothing has changed. No doubt, the world has changed. But Erik and Lyle have not.

14
15 Although remorse and regret are necessary for one to achieve rehabilitation, they are
16 separate concepts. At its core, true rehabilitation must include a full and complete recognition
17 and understanding that what one has done is wrong. One must understand and acknowledge the
18 seriousness of one’s crimes. One must understand and acknowledge the depravity of one’s
19 conduct. Most relevant for Erik and Lyle, to be truly rehabilitated, they must understand and
20 acknowledge the lies they told to cover up and mitigate their murderous conduct. Until this
21 complete recognition and understanding occurs, Erik and Lyle cannot be rehabilitated and still
22 pose an unreasonable risk of danger to the community.

23
24 Contrary to the defense position, Erik and Lyle have never acknowledged the vast
25 majority of the lies they told at trial. As the jury found, the fact remains that Erik and Lyle
26

1 premeditated and planned to murder their parents. They then brutally executed them with
2 shotguns in a methodical and calculated manner to stage the crime as a Mafia killing, picked up
3 all the shotgun shells and dumped the evidence of their crimes in a gas station trash can and over
4 a hill, tried to execute their pre-planned alibi, and then dramatically lied during a 911 call and to
5 the police once they arrived. When caught and prosecuted, they changed their lies multiple times
6 over a number of years and even asked multiple witnesses to lie on their behalf. When the
7 evidence known to them changed, they came up with new lies to explain their conduct. These
8 outrageous lies occurred when Erik was not just 18 years old, but 18-24 years old, and Lyle was
9 not just 21 years old, but 21-27 years old—after they had the assistance of skilled and highly
10 experienced counsel. Among many other lies, they have never acknowledged the following:
11

- 12 • Erik and Lyle lied when they claimed that their parents were going to kill them,
13 and they had to act in self-defense by murdering them first.
- 14 • To support their self-defense claims, Erik and Lyle tried to suborn perjury by
15 asking Erik's friend, Brian Eslaminia, to testify that they borrowed one of his
16 handguns the night before the murder to defend themselves against their parents.
- 17 • To support their self-defense claims, Erik and Lyle lied when they testified that
18 they went to Big 5 Sporting Goods in Santa Monica the day before the murders
19 and tried to purchase handguns.
- 20 • Erik and Lyle lied when they testified the purpose of their 120-mile drive to San
21 Diego was not to buy shotguns when, in fact, that was the reason they made the
22 trip.
- 23 • Erik and Lyle lied when they testified that the reason they provided a fake
24 identification and fictitious address to buy the shotguns was because they did not
25 have their California driver's licenses in their possession when, in fact, they were
26 trying to conceal their connection to the shotguns and ammunition purchased in
27 San Diego.
- 28 • Erik and Lyle lied when they testified that they were so fearful of their parents
that they stayed away from their home all day Saturday, even though they were
impeached by the testimony of Grant Walker, the pool repairman, who said they
were playing tennis and disrespecting their parents in front of him.

- 1 • Erik and Lyle lied when they testified that they did not plan their alibi before the
2 murders.
- 3 • Lyle lied when he denied that he did not ask Perry Berman to come to their home
4 for the purpose of being a witness to Erik and Lyle discovered their parents'
5 mutilated bodies.
- 6 • Erik and Lyle lied when they testified they did not stage the murders to look like a
7 Mafia-style hit.
- 8 • Lyle tried to suborn perjury by recruiting his girlfriend, Jamie Pisarcik, to falsely
9 testify that his father had drugged and violently raped her.
- 10 • Erik and Lyle lied when they testified that their mother was so dangerous and
11 unpredictable that she tried to poison the whole family.
- 12 • Erik and Lyle suborned perjury when they solicited Lyle's girlfriend, Traci Baker,
13 to testify that she was present when their mother tried to poison their family.
- 14 • Erik and Lyle lied when they testified that they thought their parents would kill
15 them during their Saturday afternoon fishing trip.
- 16 • Erik and Lyle lied when they testified that they burst into the den with their
17 shotguns, that it was too dark to see, but that their parents were standing up and/or
18 moving towards them.
- 19 • Erik and Lyle lied when they testified that they rushed into the den and shot their
20 parents in self-defense because they feared that their parents were going to shoot
21 them first that evening.
- 22 • Erik and Lyle lied when they testified that Dr. Oziel blackmailed them into
23 confessing on tape to murdering their parents.

24 In sum, Erik and Lyle have not changed. They continue to lie about their crimes and the
25 fact that they perjured a wildly mendacious self-defense story to justify killing their parents.
26 Accordingly, Erik and Lyle have not been rehabilitated. The prior District Attorney did not
27 appear to consider this crucial fact (Erik and Lyle's complete lack of insight) in his analysis. The
28 current District Attorney believes that, to be truly rehabilitated, one must learn from their
 mistakes. But to do so, one must first fully recognize, acknowledge, and accept complete
 responsibility for the full breadth of one's criminal conduct including, in this case, the central lie

1 of self-defense and all the lies involved in suborning and attempting to suborn perjury to cover
2 up those crimes. That has not been done by the Menendez brothers to date. If they were to ever
3 unequivocally and sincerely recognize, acknowledge, and accept responsibility for the full range
4 of their criminal conduct, these future new insights should certainly be considered by the Court
5 and will be evaluated by the People to determine whether to take a different position in a
6 resentencing motion. **Though this pathway was offered to the Menendez brothers, they have**
7 **chosen to stubbornly remain buried in their over 30-year-old bunker of lies, deceit, and**
8 **denials.** In ensuring true rehabilitation and public safety, this complete lack of insight is
9 undoubtedly a legitimate concern. As such, this Court should allow the District Attorney to
10 withdraw the previously filed resentencing motion under *Vaesau*.
11

12 II.

13 **THE PEOPLE AND THE DEFENSE AGREE THAT THIS COURT SHOULD ALLOW** 14 **WITHDRAWAL OF THE ORIGINAL RESENTENCING MOTION IF THE COURT** 15 **FINDS THAT THE DISTRICT ATTORNEY HAS A LEGITIMATE REASON TO** 16 **REQUEST A WITHDRAWAL** 17

18 The People and defense agree that a resentencing motion should not and cannot be
19 withdrawn based on a mere “change in the political winds.” However, as the defense correctly
20 asserts in their reply, the People **should** be able to withdraw if the District Attorney identifies “a
21 legitimate basis” for doing so. (Defendant’s Reply, p. 3.) The resentencing provisions of Penal
22 Code section 1172.1 provide the District Attorney with truly awesome powers. If granted, a
23 petition provides the power to change a life sentence without the possibility of parole to a
24 sentence that potentially releases an inmate. This power should not be exercised lightly.
25

26 Here, after conducting a substantial reevaluation of the entire case, including the review
27 of most of the over 50,000 pages of trial transcripts, thousands of pages of exhibits pleadings,
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1 and prison records, hundreds of hours of videotaped testimony, and interviews with the
2 Menendez family members, defense counsel, prior prosecutors, and law enforcement, the People
3 now assert that they should not put forward a motion for resentencing based on a rehabilitation
4 analysis that excluded the most fundamental aspect of rehabilitation and public safety—whether
5 an inmate continues to perpetuate a false narrative to mitigate the severity of his crimes.
6

7 III.

8 **THE PEOPLE AND DEFENSE AGREE THAT AN INMATE’S LACK OF INSIGHT** 9 **INTO THEIR CRIMES CONSTITUTES EVIDENCE THAT THE INMATE** 10 **CURRENTLY POSES AN UNREASONABLE DANGER TO SOCIETY—ERIK AND** 11 **LYLE’S COMPLETE LACK OF INSIGHT JUSTIFIES WITHDRAWAL**

12 Erik and Lyle Menendez have made substantial efforts towards rehabilitation from
13 prison. The initial resentencing motion recognized this fact. The People still recognize this fact.
14 But when tasked with ensuring public safety, as the District Attorney is tasked, this can only be a
15 part of the equation. The full test is whether, despite all of their rehabilitative efforts and
16 education, Erik and Lyle have learned the most important lesson. Have they learned that it is
17 wrong to try to get away with a violent murder by perpetuating a lie? Have they truly changed?
18 Quite simply, this is called “insight.”
19

20 The defense agrees with the basic legal principle that a defendant’s “lack of insight into
21 his crime and failure to take responsibility for it may constitute some evidence that he currently
22 poses an unreasonable danger to society.” (Defendants’ Reply, p. 13:15-18.) This concept is
23 grounded in common sense. If someone premeditates and commits a brutal and violent murder,
24 lies to cover up their crime, changes their lies over time to meet the evidence against them, and
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1 continues to lie about the crime for over 35 years, they obviously pose an unreasonable danger to
2 society, no matter how much they regret and feel bad about what they did.²

3 In our motion, the People point to the Governor's rationale in overturning a grant of
4 parole in the case of Sirhan Sirhan as instructive authority on insight. In attempting to
5 distinguish the use of the Sirhan case, the defense argues that the Sirhan case is opposite because
6 Sirhan initially accepted responsibility for his crime but later recanted his involvement, whereas
7 the Menendez brothers "from the day were convicted, and as they matured in prison over the
8 many years since trial, in both court filings and public interviews, they have both taken
9 responsibility for the shooting and expressed deep remorse." (Defendant's Reply, p. 15:21-24.)
10 Nothing could be further from the truth. Although the Menendez brothers, as the defense
11 correctly points out, admitted shooting their parents, once they were actually arrested and
12 charged, they subsequently changed their lies to explain the evidence as it developed, then
13 falsely claimed self-defense, then recruited others to lie on their behalf to support their false self-
14 defense claims, and continue to lie to this day.

15 The defense argument that the Sirhan analogy is inapplicable because Sirhan initially
16 admitted his crimes, but later changed his position and denied his crimes, makes no sense. Here,
17 Erik and Lyle's lack of insight into their crimes is even more egregious than Sirhan's. Unlike
18 Erik and Lyle, at least Sirhan Sirhan initially admitted his crime. Is it somehow better that,
19 unlike Sirhan, Erik and Lyle lied at trial and continue to perpetuate the same lie today? Does
20 that somehow mitigate their current lack of insight? The defense misses the crucial point of the
21 Sirhan analogy. Sirhan explains how an inmate's state of mind at the time of potential release
22

23 ² The defense suggests on several occasions in their reply that Erik and Lyle's youthful age at the time of the
24 murders mitigates their lies and conduct. Although it is well-settled that youth is a highly mitigating factor, both
25 Erik and Lyle are now fully matured adults who continue to perpetuate the same lies they crafted when they were 18
26 and 21 years old.

1 from prison demonstrates that inmate's lack of insight and current dangerousness, even if there
2 are other factors that mitigate in favor of rehabilitation.³ Like in the Sirhan case, both Erik and
3 Lyle still deny full responsibility for their crimes. They continue to assert that they feared their
4 parents would kill them; thus justifying a preemptive strike. As explained below, this was a
5 blatant lie. It certainly is a legitimate reason to withdraw an imprudent resentencing request.⁴

7 Citing *In re Palermo* (2009) 171 Cal.App.4th 1096, the defense next contends that
8 because Erik and Lyle admit that they shot their parents, but contend that the appropriate charge
9 for their crimes was manslaughter instead of murder, they do not lack insight into their crimes.
10 The defense reliance on *Palermo* is misplaced.

12 First, in *Palermo*, the defendant, a profoundly deaf individual with a fourth-grade reading
13 level, shot his girlfriend while she was using the restroom. The defendant alleged that he had
14 obtained his revolver, emptied the bullets, and then fired the weapon twice without discharge.

17 ³ As pointed out in our prior pleading, Sirhan has the lowest prison risk score of 19 (the same score as the Menendez
18 brothers), the lowest California Static Assessment Score of LOW (the same as the Menendez brothers), committed
19 the crime before the age of 25 (the same as the Menendez brothers), had engaged in decades of successful
20 rehabilitation and education in prison (the same as the Menendez brothers), and had victim family members
21 advocating for release (the same as the Menendez brothers). Indeed, unlike the Menendez brothers, Sirhan had the
22 additional pro-rehabilitation factors of being almost 25 years older than them, in diminished health, and having
served over 20 years more in prison. Notwithstanding all these factors mitigating in favor of rehabilitation,
Governor Newsom correctly observed that Sirhan's failure to exhibit full insight into his crimes outweighed these
factors and demonstrated his failure to be fully rehabilitated and his continued unreasonable risk of danger to public
safety. So too should the Menendez brothers' failure to exhibit full insight into their crimes outweigh any pro-
rehabilitation factors because they continue to pose an unreasonable risk of danger to public safety.

23 ⁴ The defense also claims that the People inappropriately relied on Erik and Lyle's administrative violations and
24 counselling chronos in evaluating whether to withdraw its resentencing motion. However, these violations were not
25 provided to demonstrate, by themselves, that Erik and Lyle have been violent in prison. Rather, they were provided
26 to the Court as part of a comprehensive analysis of Erik and Lyle's rehabilitation or lack thereof. These violations
27 were provided, **in full**, to the Court. In evaluating whether the Menendez brothers pose an unreasonable risk of
28 danger to the community, their entire pattern of prison conduct – positive and negative – must be presented and
assessed. Although not all violent, these violations clearly demonstrate a continued pattern of self-serving behavior
and dishonesty in prison. In 2018, Erik was caught with a cellphone in prison and provided perjured testimony
during a hearing. In 2021, he was again cited for possessing a cell phone. He clearly did not learn. Just last year in
2024, Lyle similarly was cited for possessing a cellphone. Quite simply, Erik and Lyle still believe that they can
ignore the rules to satisfy their own desires. Certainly this is a legitimate consideration for the District Attorney
when evaluating whether to initiate resentencing proceedings on a special-circumstance murder case.

1 He therefore assumed that the weapon was, in fact, empty. He then opened the bathroom door,
2 played “cowboy” with the weapon, and pretended to fire it at the victim. He claimed the
3 shooting was accidental and that he never intended to kill the victim. (*Palermo*, 171 Cal.App.4th
4 at 1101-02.) The jury convicted the defendant of second-degree murder. After trial, the
5 defendant continued to contend that “he thought the gun was unloaded, he never meant to kill the
6 victim, and that he was shocked that he was convicted of murder rather than manslaughter.” (*Id.*
7 at 1103.) At his parole hearing, defendant maintained this position. (*Id.* at 1110.) His prison
8 record was very good. In holding that the defendant’s belief that the killing was manslaughter
9 instead of murder did not support a conclusion that he lacked insight into the crime, the court
10 noted, among other things, that “the killing of the victim was not so calculated and evil as to
11 indicate, without more, that he remains a continuing danger to the public 21 years later” and that
12 “he has expressed remorse and accepted full responsibility for the killing, albeit believing he is
13 guilty only of manslaughter.” (*Id.* at 1112.) Accordingly, as noted in Defendants’ Reply, the
14 *Palermo* court placed great emphasis on the fact that the defendant admitted responsibility by
15 contending that the killing was a manslaughter instead of a murder. Here, by contrast, Erik and
16 Lyle, who were not profoundly deaf with a 4th grade reading level but bright and well-educated
17 young men at the time of the murders, do not contend that they are guilty of manslaughter. They
18 contend that they are not guilty of any form of homicide since they killed in self-defense. As
19 best stated by Erik as recent as 2024 on Netflix, “What the attorneys were arguing was it was the
20 honest but the unreasonable belief that I was going to die which I didn’t agree with because I
21 believed that it was an honest and reasonable belief that I was going to die. I believe that any
22 person, if they lived my life, I don’t see how they couldn’t have believed that they were about to
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1 die.” That position is not imperfect self-defense. That position is not manslaughter. That
2 position is simply not guilty of any crime.

3 Second, unlike the defendant in *Palermo* who shot his girlfriend while pretending to play
4 cowboy thinking that the gun was empty and was convicted of second-degree murder, here the
5 Menendez brothers engaged in premeditated, willful, and deliberate first-degree murder by
6 taking calculated steps before, during, and after the murder. Such steps included distancing
7 themselves from the murder weapons, fabricating a pre-planned alibi, staging the killings as a
8 vicious Mafia hit, methodically disposing of the evidence after the murders, lying to the police,
9 family, friends, and the media about who killed their parents, and then crafting a series of lies
10 and fabrications to justify their murderous deeds while suborning and attempting to suborn
11 perjury as part of their cover-up. Thus, while the *Palermo* court could reach the conclusion that
12 that defendant’s killing was not “so calculated and evil,” the facts well support the opposite
13 conclusion in the Menendez brothers’ case.

14 Third, *Palermo* acknowledges the well-stated rule that a defendant cannot have insight
15 unless his or her “version of the shooting of the victim was not physically impossible and did not
16 strain credulity such that his denial of an intentional killing was delusional.” (*Id.* at 1112.) As
17 noted in Defendants’ Reply, and quoting *In re McClendon* (2003) 113 Cal.App.4th 315, “where
18 an inmates version of the offense is impossible or highly implausible on its face, continued
19 adherence to that theory may support an inference of current dangerousness.” (Defendant’s
20 Reply, p. 18, fn. 8.) Here, to say that Erik and Lyle’s version of events on August 20, 1989 is
21 “highly implausible on its face” is an understatement. In addition to the facts outlined above, the
22 following are a few of the many facts which demonstrate that Erik and Lyle’s self-defense claim
23 was an outright lie, let alone facially implausible:

- 1 • To support their self-defense claim, Erik and Lyle had to create an impression that
2 their father posed a violent danger. To do so, Lyle attempted to recruit his
3 girlfriend, Jamie Pisarcik, to testify that Jose Menendez drugged and violently
4 raped her. She refused to do so.
- 5 • Erik and Lyle also needed to support their false fear that their parents were going
6 to kill them on August 20, 1989. To do so, they attempted to recruit Erik's friend,
7 Brian Eslaminia, to falsely testify that the day before the murders they were so
8 fearful of their parents that they tried to borrow one of his handguns. Lyle's
9 script, contained in a letter to Eslaminia, was discovered, confirming this attempt
10 to suborn perjury. To support this false "we were fearful that both our parents
11 would kill us" narrative, they also recruited Lyle's girlfriend, Traci Baker, to
12 falsely testify that Kitty Menendez was violent and dangerous and tried to poison
13 the family. Baker followed through and provided perjured testimony on this
14 topic, as did Erik and Lyle. Thereafter, another Lyle's script contained in a letter
15 to Baker was discovered. As a result, Baker did not testify in the second trial.
- 16 • To support their fake fear that their parents were going to kill them, Erik and Lyle
17 also falsely testified that they went to Big-5 Sporting Goods in Santa Monica to
18 purchase handguns to defend themselves, an impossibility since that Big-5
19 Sporting Goods store had not sold handguns in the prior three years. They also
20 drove 120 miles to San Diego to purchase shotguns using a fake identification and
21 fictitious address, even though they could have purchased those shotguns at the
22 Big-5 store in Santa Monica, so that they could distance themselves from the guns
23 that would be used in the premeditated murder.
- 24 • Lyle and Erik testified that when they ultimately used the shotguns, Erik went to
25 his room to get his shotgun and Lyle ran to the guesthouse to get his. They both
26 then ran out to Erik's car and loaded the ammunition which, for some reason, they
27 had not already loaded into the shotguns that they kept in their rooms for self-
28 defense against their parents. (88 RT 14626:1-14627:5.) The entire description
illustrates how unreasonable the idea of maintaining shotguns for self-defense
against their parents was. It makes no rational sense that even if they decided that
they would keep shotguns for self-defense, they would not keep them loaded and
at their disposal. Erik and Lyle needed an explanation as to why they murdered
both their parents with shotguns after they finally got caught murdering their
parents with shotguns. Their original intention was to not be caught, and they
never intended for law enforcement to track the guns back to them. When law
enforcement did, they had to come up with a new story that accounted for the
evidence. They also had to account for the fact that they feared not just that their
father was going to kill them but their mother as well, even at the point at which
she had been shot and was lying bleeding on the ground. Their story that they had
to reload to shoot their mother at point-blank range in the face because they had
an actual fear she was going to kill them at this point also strains all credulity.

- Lyle and Erik alleged that they didn't flee the family home because their father was all powerful and would have found and killed them. As Lyle testified, "[W]e should stay in the house where it might be more difficult to just kill us without anyone knowing, and we would at least know where they are." (88 RT 14580:2-13.) How would staying in the house make it "more difficult to just kill us without anyone knowing?" If anything, it would make it easier to be killed. It would be easier to hide the murder. They would be staying in the same house with the people who wanted to kill them. This is just a blatant lie to cover up the fact that the people intending on doing the killing were Erik and Lyle, and the people they intended on killing were their unsuspecting parents. They had to explain why they purchased shotguns on Friday and continued to stay with people that they claimed wanted to kill them before killing those people on Sunday.
- Erik and Lyle both testified that their fear of their parents was so severe that they stayed away from the home as much as possible on Saturday. On Saturday, after they tried to practice using their shotguns at a shooting range and purchased more ammunition, they testified that they drove around all day to avoid being home. This story is demonstrably false because Grant Walker, the Menendez pool repairman, was repairing the spa that day and saw both boys at home cursing at, and arguing with, their parents at the home that day.

In sum, the overwhelming evidence demonstrates that Erik and Lyle fabricated their self-defense claim. Their story does not make sense. It is therefore facially implausible and cannot form the basis for current insight under a *Palermo* analysis. Here, the District Attorney has properly considered both Erik and Lyle's current attitude toward these murders in determining whether they have been rehabilitated. The prior District Attorney did not. This is certainly a legitimate and important consideration in determining whether to potentially release an inmate convicted of murder.

IV.

THE TRANSFER OF DISTRICT ATTORNEY PERSONNEL HAS NO RELEVANCE TO ERIK AND LYLE'S COMPLETE LACK OF INSIGHT INTO THEIR CRIMES OR THE PEOPLE'S LEGITIMATE REASONS TO WITHDRAW

In a final attempt to distract this Court from the legitimate reasons why the People seek to withdraw their resentencing motion, the defense has asserted another red-herring—internal office

1 transfers. The defense alleges that Brock Lunsford, Nancy Theberge, and Kathleen Cady were
2 all transferred (or hired) due to their involvement and opinions in this resentencing matter.⁵
3 However, the transfers and hires in 2024 are entirely independent of the facts of this case.
4 Theberge and Lunsford's evaluation of the case and the transfers in 2024 obviously had no
5 bearing on Lyle and Erik's decision to lie repeatedly throughout the trial, to solicit witnesses to
6 lie on their behalf, or to continue to lie about the self-defense and suborning perjury over the past
7 30 years. The District Attorney's evaluation of this resentencing motion was separate and apart
8 from Theberge and Lunsford's evaluation. The foundation of the People's analysis rests on Erik
9 and Lyle's lack of insight. In fact, it appears that neither Lunsford nor Theberge even considered
10 insight in their initial analysis, or downplayed it so significantly that it was never even raised in
11 the moving papers. Focusing on the crucial issue of lack of insight and lack of complete
12 acceptance of responsibility for one's actions is not a "political" decision by a District Attorney;
13 it is demanded by the facts and the law and a legitimate basis on which to change course on a
14 resentencing motion.
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20 ⁵ Every District Attorney has the right to assign the administrative staff of his choosing. Not surprisingly, this
21 happens in every change of administration. Upon assuming the office of District Attorney, dozens of people were
22 transferred. The District Attorney attempted to transfer the career deputy public defenders who were brought to our
23 office under the prior District Attorney and lacked prosecutorial experience back to the Public Defender's office or
24 another subdivision of the county. Theberge was among the career deputy public defenders who were transferred
25 back to the Public Defender's office. Lunsford's position as Assistant Head Deputy of the Post Conviction
26 Litigation and Discovery division was eliminated and he was transferred to a different position at the same grade
27 and step level, earning the same pay. Prior to making any decision on this case, the District Attorney met with Mr.
28 Lunsford to learn his thought process in recommending resentencing. Mr. Lunsford told the District Attorney that
his analysis was based primarily on his review of the prison records. In his analysis, Lunsford assumed that the
abuse allegations were lies and that what the original trial prosecutors said at trial about the Menendez brothers and
their lies were true. Mr. Lunsford's analysis therefore did not include an in-depth analysis of whether the Menendez
brothers have exhibited true insight into their crimes. The District Attorney disagrees with any analysis of
resentencing which does not also include a thorough analysis of whether an inmate has exhibited full insight into
their crimes. He believed that a lack of insight is an important and legitimate factor that should be given serious
consideration. Notwithstanding Mr. Lunsford's approach to resentencing in this case, the District attorney again met
with Lunsford and specifically invited him to participate on the current Menendez team reviewing the original
resentencing motion. Mr. Lunsford stated that he had already provided his thinking on the resentencing issues in the
pleading he had filed and did not accept the offer to join the team.

V.

CONCLUSION

For the foregoing legitimate reasons, the People request the Court allow the People to withdraw their initial motion for resentencing.

Dated: April 4, 2025

NATHAN J. HOCHMAN
District Attorney

By:



HABIB A. BALIAN
Deputy District Attorney



ETHAN J. MILIUS
Deputy District Attorney



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