

MINUTE ORDER  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 06/16/23

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CASE NO. BA068880

THE PEOPLE OF THE STATE OF CALIFORNIA  
VS.  
DEFENDANT 01: ERIK GALEN MENENDEZ

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COUNT 01: 187(A) PC FEL  
COUNT 02: 187(A) PC FEL  
COUNT 03: 182(1) PC FEL

ON 06/15/23 AT 130 PM IN CENTRAL DISTRICT DEPT 100

CASE CALLED FOR JUDICIAL ACTION

PARTIES: WILLIAM C. RYAN (JUDGE) NONE (CLERK)  
NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

\*\*\* NO LEGAL FILE \*\*\*

.  
REQUEST FOR INFORMAL RESPONSE

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TO THE DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES:

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THE COURT HAS READ AND CONSIDERED THE PETITION FOR WRIT OF

HABEAS CORPUS, FILED MAY 3, 2023, BY PETITIONERS ERIK AND LYLE MENENDEZ. PETITIONERS ARE EACH SERVING TWO CONSECUTIVE TERMS OF LIFE WITHOUT THE POSSIBILITY OF PAROLE AT R.J. DONOVAN CORRECTIONAL FACILITY IN SAN DIEGO, CALIFORNIA.

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IN 1993, PETITIONERS, WHO ARE BROTHERS, WERE TRIED FOR THE FIRST TIME FOR THE MURDER OF THEIR PARENTS, KITTY MENENDEZ AND JOSE MENENDEZ. IN THIS FIRST TRIAL, PROSECUTORS ARGUED THAT THE BROTHERS KILLED THEIR PARENTS TO INHERIT THEIR PARENTS' MONEY. PETITIONERS ADMITTED THEY SHOT THEIR PARENTS BUT ARGUED IMPERFECT SELF-DEFENSE AND PRESENTED 5 WITNESSES WHO TESTIFIED TO THEIR KNOWLEDGE OF JOSE'S PHYSICAL AND/OR SEXUAL ABUSE OF PETITIONERS. THOUGH TRIED TOGETHER, PETITIONERS HAD SEPARATE JURIES. BOTH JURIES IN THE FIRST TRIAL HUNG.

CASE NO. BA068880  
DEF NO. 01

DATE PRINTED 06/16/23

IN 1996, PETITIONERS WERE RETRIED. AT THIS SECOND TRIAL, THE PARTIES' THEORIES REMAINED ESSENTIALLY THE SAME, BUT MUCH OF THE EVIDENCE OF ABUSE WAS EXCLUDED. THE ONLY WITNESS WHO TESTIFIED TO THE ABUSE WAS ANDY CANO, A COUSIN OF PETITIONERS'. THIS TIME, BECAUSE OF THIS EXCLUSION, THE PROSECUTION ARGUED THAT THE BROTHERS FABRICATED THE ABUSE ALLEGATIONS, THERE WAS NO WAY TO CORROBORATE THESE ALLEGATIONS, JOSE WAS NOT THE KIND OF MAN THAT WOULD ABUSE HIS SONS, AND CANO LIED ON THE STAND. THE JURY REJECTED PETITIONERS' IMPERFECT SELF-DEFENSE THEORY AND CONVICTED PETITIONERS OF TWO COUNTS OF FIRST DEGREE MURDER WITH LYING-IN-WAIT AND MULTIPLE MURDER SPECIAL CIRCUMSTANCE ALLEGATIONS, PLUS ONE COUNT OF CONSPIRACY TO MURDER THEIR PARENTS. THEIR CONVICTIONS WERE AFFIRMED IN FULL ON APPEAL.

(PEOPLE V. MENENDEZ (B104022, FEB. 27, 1998) ¿NONPUB. OPN.¿.)

PETITIONERS FILED THE INSTANT HABEAS PETITION ALLEGING THE DISCOVERY OF TWO NEW PIECES OF EVIDENCE THAT WOULD HAVE MORE LIKELY THAN NOT CHANGED THE OUTCOME OF THEIR TRIAL. (PEN. CODE, 1473, SUBD. (B)(3(A).) FIRST, PETITIONERS PRESENT A LETTER FROM ERIK TO CANO, WHICH PETITIONERS ALLEGE CORROBORATES CANO'S TESTIMONY AND THE SEXUAL ABUSE ALLEGATIONS PETITIONERS MADE AT TRIAL. (PETN. AT P. 4; EXH. A.) SECOND, PETITIONERS PRESENT A DECLARATION OF ROY ROSSELLO, A MEMBER OF THE POPULAR 1980'S BAND NAMED MENUDO, ADMITTING HE WAS ANALLY RAPED AND ORALLY COPULATED BY JOSE IN 1983 OR 1984. (EXH. F.) PETITIONERS ALLEGE THAT THIS NEW ADMISSION COUNTERS THE PROSECUTION'S ARGUMENT THAT JOSE WAS "'RESTRAINED AND FORGIVING"', "'NOT A VIOLENT AND BRUTAL MAN'", AND "'NOT THE KIND OF MAN" THAT WOULD ABUSE HIS CHILDREN". (PETN. AT P. 5.)

THE DISTRICT ATTORNEY IS REQUESTED TO FILE A RESPONSE TO THE CLAIMS ALLEGED IN THE PETITION, GENERALLY. THE COURT ALSO SPECIFICALLY REQUESTS THAT THE DISTRICT ATTORNEY ADDRESS WHETHER THE LETTER TO CANO "COULD NOT HAVE BEEN DISCOVERED PRIOR TO

TRIAL BY THE EXERCISE OF DUE DILIGENCE" AND WHETHER, GIVEN THE EXCLUSION OF THE WITNESSES' TESTIMONY REGARDING THE PHYSICAL AND SEXUAL ABUSE, THE LETTER TO CANO AND THE ROSSELLO DECLARATION WOULD BE "ADMISSIBLE AND NOT MERELY CUMULATIVE, CORROBORATIVE, COLLATERAL, OR IMPEACHING". (¿ 1473, SUBD. (B)(3)(B).) PETITIONERS MAY REPLY TO THE RESPONSE WITHIN 30 DAYS AFTER FILING AND SERVICE OF THE RESPONSE. UNLESS FURTHER ORDERS ARE ISSUED BY THE COURT, THE MATTER WILL BE DEEMED SUBMITTED UPON RECEIPT OF PETITIONERS' REPLY OR AFTER THE EXPIRATION OF THE TIME FOR FILING THE REPLY.

THE CLERK IS ORDERED TO SERVE A COPY OF THIS ORDER UPON MARK GERAGOS, ESQ., AND CLIFF GARDNER, ESQ., AS COUNSEL FOR PETITIONERS AND UPON THE OFFICE OF THE DISTRICT ATTORNEY, AS COUNSEL FOR RESPONDENT, THE PEOPLE OF THE STATE OF CALIFORNIA.

CASE NO. BA068880  
DEF NO. 01

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\*\*\* FOOT NOTE \*\*\*

.  
¿ BECAUSE PETITIONERS AND BOTH VICTIMS SHARE THE SAME LAST NAME,  
EACH WILL BE SUBSEQUENTLY REFERRED TO BY THEIR FIRST NAME.

.  
THE COURT ORDER IS SIGNED AND FILED THIS DATE.

.  
A TRUE COPY OF THIS MINUTE ORDER IS SENT VIA U.S. MAIL TO THE  
FOLLOWING PARTIES:

.  
MARK GERAGOS, ESQ.  
644 S. FIGUEROA ST.

.  
LOS ANGELES, CA 90017  
CLIFF GARDNER, ESQ.  
1448 SAN PABLO AVE.  
BERKELEY, CA 94702

.  
OFFICE OF THE DISTRICT ATTORNEY  
HABEAS CORPUS LITIGATION TEAM  
POST-CONVICTION AND DISCOVERY DIVISION  
320 WEST TEMPLE ST.  
SUITE 540  
LOS ANGELES, CA 90012  
ATTN: JUDITH PETTIGREW, DEPUTY-IN-CHARGE

.  
\*\*\* ENTRY BY: T. DAVIS \*\*\*

NEXT SCHEDULED EVENT:  
PROCEEDINGS TERMINATED

MINUTE ORDER  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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VS.  
DEFENDANT 02: JOSEPH LYLE MENENDEZ  
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COUNT 01: 187(A) PC FEL  
COUNT 02: 187(A) PC FEL  
COUNT 03: 182(1) PC FEL

ON 06/15/23 AT 130 PM IN CENTRAL DISTRICT DEPT 100

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JOY WADA (REP) NONE (DDA)

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CASE NO. BA068880  
DEF NO. 02

DATE PRINTED 06/16/23

IN 1996, PETITIONERS WERE RETRIED. AT THIS SECOND TRIAL, THE PARTIES' THEORIES REMAINED ESSENTIALLY THE SAME, BUT MUCH OF THE EVIDENCE OF ABUSE WAS EXCLUDED. THE ONLY WITNESS WHO TESTIFIED TO THE ABUSE WAS ANDY CANO, A COUSIN OF PETITIONERS'. THIS TIME, BECAUSE OF THIS EXCLUSION, THE PROSECUTION ARGUED THAT THE BROTHERS FABRICATED THE ABUSE ALLEGATIONS, THERE WAS NO WAY TO CORROBORATE THESE ALLEGATIONS, JOSE WAS NOT THE KIND OF MAN THAT WOULD ABUSE HIS SONS, AND CANO LIED ON THE STAND. THE JURY REJECTED PETITIONERS' IMPERFECT SELF-DEFENSE THEORY AND CONVICTED PETITIONERS OF TWO COUNTS OF FIRST DEGREE MURDER WITH LYING-IN-WAIT AND MULTIPLE MURDER SPECIAL CIRCUMSTANCE ALLEGATIONS, PLUS ONE COUNT OF CONSPIRACY TO MURDER THEIR PARENTS. THEIR CONVICTIONS WERE AFFIRMED IN FULL ON APPEAL.

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HABEAS CORPUS LITIGATION TEAM  
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