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Superior Court of California
County of Los Angeles

MAY 02 2025

David W. Slayton, Executive Officer/Clerk of Court

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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.**

Case No. BA068880

**PEOPLE'S OPPOSITION TO
DEFENDANT'S MOTION TO
DISQUALIFY DISTRICT ATTORNEY**

Date: May 9, 2025
Time: 8:30 a.m.
Dept: S

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

23 This opposition shall be based on the attached memorandum of points and authorities, the
24 declarations and exhibits filed in preparation for the hearing on this motion, the court file, and
25 any other argument or evidence to be presented on or before a hearing on this matter.
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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."

I.

INTRODUCTION

The defense conflates a conflict of interest with zealous advocacy. In our adversarial system of justice, the parties often do not agree. This was true at jury trial when Erik and Lyle each testified that they killed their parents because they feared their parents would kill them, and the prosecution disagreed. This was true when the People sought to withdraw the previous administration's resentencing request, and the defense disagreed. This was true when the People asked this Court to request and review the Parole Board's latest risk assessment to evaluate Erik and Lyle's risk for future violence, and the defense disagreed. These disagreements are neither novel nor improper. They are often necessary hallmarks of our adversarial system's search for the truth.

In this case, there is absolutely no evidence or articulable explanation for any impermissible bias, let alone a conflict of interest. Disagreeing with the opposing side's position is not a conflict of interest, it is simply a disagreement. It is not uncommon to have opposing positions. That is how our system of justice works. Here, when the previously elected District Attorney aligned himself with the defense and sought resentencing, the defense did not allege a conflict. At that point, the Menendez family members were split into two groups, those that favored resentencing and those that did not. Their positions were diametrically opposed. Agreeing with one side necessarily meant disagreeing with the other. There was no conflict of interest alleged. There was no bias alleged. But because the People's position coincided with that of the defense at that time, the defense was happy.

Upon taking his oath of office, and as promised, the current elected District Attorney commenced a thorough, unbiased, and months-long reinvestigation into the appropriateness of

1 resentencing in this case assisted by prosecutors with decades of experience. This investigation
2 was careful and took time. It involved the review of 10,000s of pages of transcripts and records,
3 countless hours of video evidence, voluminous pleadings, extensive legal research, and the
4 viewpoints of numerous witnesses and parties on each side of the issue. It was only **after** the
5 District Attorney's Office concluded this thorough reinvestigation that a decision was made to
6 seek withdrawal of the original resentencing motion, because the Menendez brothers were not
7 yet ready to be resentenced. That decision was supported in an 87-page request to withdraw the
8 prior resentencing motion that laid out in comprehensive detail the facts and law not considered
9 by the prior motion.
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12 Like the prior administration's position which was contrary to one side of the Menendez
13 family, the current position of the District Attorney's Office is *still* contrary to the position of
14 one side of the Menendez family. This shift is based solely on a thorough review of the evidence
15 and the law and not upon any bias, political motive, conflict of interest, or some other incentive.
16 As stated by this Court in disallowing the People to withdraw the original resentencing motion,
17 ". . . it doesn't say anything in [section 1172.1] that there's a requirement that there be done an
18 analysis into insight. And the people's argument is that the prior administration did not do that.
19 Well, they weren't required to do it. And I understand you making your argument saying you
20 guys should not be resentenced. **That's a legitimate argument for you to make based on**
21 **everything that you're arguing.** It's a new administration." (Transcript of Proceedings of April
22 11, 2025, p. 128 [emphasis added].)
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25 Rather than confront head-on the "legitimate argument" of the current District Attorney's
26 factual and legal position which no longer supports resentencing at this time, the defense has
27 decided to sidestep the central issue of resentencing and instead take the drastic and desperate
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1 step of attempting to recuse the entire Office of the Los Angeles County District Attorney. Their
2 supposed arguments for recusal are, however, devoid of merit: the rehiring of Kathleen Cady as
3 the Bureau Director over Victim Services, the intraoffice and interoffice transfers of previously
4 assigned prosecutors Brock Lunsford and Nancy Theberge, and the purported Marsy's Law
5 violations.² With respect to rehiring Ms. Cady, a former career prosecutor with tremendous
6 experience as a victim's rights advocate who has been proactively walled off from this case to
7 avoid any appearance of a conflict of interest, the defense does not articulate how a conflict has
8 occurred. Indeed, none exists. Moreover, none of the other purported facts alleged by the
9 defense—such as internal staffing changes within the Office, or the courtroom use of “gruesome
10 photos” of the murder scene³—had anything to do with the actual merits of this case nor
11 constitute a basis for recusal. The entire defense argument over recusal boils down to the
12 defense not being happy with the current District Attorney's position on resentencing; therefore
13 it concludes the Office and the District Attorney himself must be so biased that they should be
14 thrown off the case. This desperate argument may work in a press interview but fails in a court
15 of law based on an adversarial system of justice. Accordingly, the motion for recusal should be
16 summarily denied as a matter of law, obviating the need for an evidentiary hearing.
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22 ² At the April 17, 2025 hearing, counsel for the Menendez family members adamantly contended that, among other
23 things, District Attorney Nathan Hochman was unfairly biased in this case because he lived in the same city as the
24 Menendez family at the time of the 1989 murders and had attended the same high school as the Menendez brothers.
25 (Reporter's Transcript, April 17, 2025, p. 16-18). Though inflammatory and designed to be press-worthy, these
allegations of a supposed conflict of interest were ridiculous when made. Apparently, their ridiculousness has been
realized by the defense such that these allegations were not included in the defense's written recusal motion.

26 ³ At the hearing on the motion to withdraw the resentencing petition, the People displayed a single crime-scene
27 photograph depicting the victims after they were shot. The People contend that the photograph was necessary to
28 explain, among other things, why the motion to withdraw should have been granted, and how serious the
defendants' rehabilitation must be before they are resentenced. The family members brought a Marsy's Law Motion
because they were not given notice that the photograph would be shown. This Court has already heard argument on
the motion and found that the photograph was necessary to show, and that the relationships of the parties in this case
created an atypical situation.

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II.

**ZEALOUS ADVOCACY DOES NOT CONSTITUTE LEGAL GROUNDS TO
DISQUALIFY AN ENTIRE DISTRICT ATTORNEY'S OFFICE**

Penal Code section 1424 states, in relevant part: “a motion to disqualify a district attorney from performing an authorized duty . . . may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.” (Penal Code Section 1424(a)(1).) The California Supreme Court has established a two-part test to determine if recusal of a prosecutor or district attorney’s office is required: (1) Whether there is a conflict of interest; and (2) whether the conflict of interest is so severe as to disqualify the district attorney from acting. (*People v. Eubanks* (1996) 14 Cal.4th 580, 594.) “[D]efendants bear the burden of demonstrating a genuine conflict; in the absence of any such conflict, a trial court should not interfere with the People’s prerogative to select who is to represent them.” (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 709.)

For the first prong, a conflict of interest within the meaning of section 1424 exists “whenever the circumstances of a case evidence a reasonable possibility that the DA’s office may not exercise its discretionary function in an evenhanded manner.” (*People v. Connor* (1983) 34 Cal. 3d 141, 148.) With the respect to the second prong, the conflict must be so severe as to disqualify the District Attorney from acting. (*People v. Neely* (1999) 70 Cal.App.th 767.) Put another way, “the trial court **must find it likely** the defendant will be treated unfairly.” (*Id.* at 776 [emphasis added].)

It has been repeatedly held in the context of recusing an entire district attorney’s office that evidence “necessary to support so drastic a remedy” must be even more persuasive. Disqualification of an entire prosecutorial office from a case is disfavored by the courts, absent a

1 substantial reason related to the proper administration of justice. (*People v. Hernandez* (1991)
2 235 Cal.App.3d 674, 679-80; *People v. Merritt* (1993) 19 Cal.App.4th 1573, 1578-79.) In order
3 to uphold a trial court's order recusing an entire prosecutorial office, an appellate court must
4 agree "that there was no other alternative available but to recuse the entire district attorney's
5 office." (*Merritt, supra*, at p. 1579.)
6

7 Importantly, it is well settled that zealous advocacy, alone, does not create a conflict of
8 interest. As stated by the California Supreme Court, "We begin with the unexceptionable
9 proposition that the good faith assertion of legal argument, without more, does not establish a
10 conflict." (*People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 746.) "**Zealous**
11 **advocacy in pursuit of convictions forms an essential part of the prosecutor's proper duties**
12 **and does not show the prosecutor's participation was improper.**" (*People v. Vasquez* (2006)
13 39 Cal.4th 47, 65 [emphasis added].) "In an adversary system, [prosecutors] are necessarily
14 permitted to be zealous in their enforcement of the law." (*Marshall v. Jerrico, Inc.* (1980) 446
15 U.S. 238, 248.) "So long as their zeal remains within legal limits . . . the lawful execution of
16 their duty does not establish as a matter of law that they have surrendered their independence and
17 impartiality." (*Hambarian v. Superior Court* (2022) 27 Cal.4th 826, 843.)
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20 Here, as explained below, other than the fact that they do not agree with, or like, the
21 current legal position of the District Attorney's Office, the defense has completely failed to
22 articulate any legitimate conflict of interest which would create a likelihood that the defendants
23 would be treated unfairly.
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III.

**THE DEFENSE HAS NOT ARTICULATED ANY CONFLICT OF INTEREST IN THIS
CASE REQUIRING RECUSAL**

The defense urges this Court to find three potential conflicts of interest justifying
recusal: the rehiring of Kathleen Cady as the Bureau Director over Victim Services, the
interoffice transfers of previously assigned prosecutors Brock Lunsford and Nancy Theberge,
and purported Marsy's Law violations. However, as explained below, each of these alleged
conflicts are unsupported by the facts and the law. Importantly, the defense has not, and cannot,
articulate why any actual conflict of interest exists, and no evidentiary hearing is necessary.

**A. The re-hiring of Kathleen Cady, a former Los Angeles Deputy District Attorney
and leading victims' advocate, does not create a conflict of interest.**

As stated, a conflict of interest requiring disqualification under section 1424 must
demonstrate a "reasonable possibility that the [district attorney's] office may not exercise its
discretionary function in an evenhanded manner." (*Conner, supra*, 34 Cal.3d at p. 148.)
Importantly, "the potential for prejudice to the defendant--the likelihood that the defendant will
not receive a fair trial--must be real, not merely apparent, and must rise to the level of a
likelihood of unfairness. Thus, section 1424 . . . does not allow disqualification merely because
the district attorney's further participation in the prosecution would be unseemly, would appear
improper, or would tend to reduce public confidence in the impartiality and integrity of the
criminal justice system. [Citations.]" (*Eubanks, supra*, 14 Cal.4th at p. 592.) Simply stated, "the
trial court must find it **likely** the defendant will be treated unfairly." (*People v. Millwee* (1998)
18 Cal.4th 96, 123 [emphasis added].)

Here, the defense attempts to argue that the rehiring of Ms. Cady constitutes a conflict of
interest requiring recusal. However, the defense has not, and cannot, articulate exactly how

rehiring Ms. Cady constitutes an impermissible conflict, let alone creates a situation where it **unlikely** that the defendant can be treated fairly. Ms. Cady was a prosecutor with the Los Angeles County District Attorney's Office for almost 30 years. In that time, she gained tremendous prosecutorial experience and became skilled in representing the interests of countless victims. Ms. Cady retired in 2017. Upon taking office, former elected District Attorney George Gascon implemented many policies which left victims unrepresented by the District Attorney's Office. At that time, Ms. Cady began working pro bono as a victim's rights attorney to fill this void. In the process, she represented hundreds of victims including Kitty Menendez' brother, Milton Anderson. On October 23, 2024, Ms. Cady presented Mr. Anderson's interests in writing to the court. (*See* Application to File an Amicus Curiae Brief and Amicus Curiae Brief re Habeas Claim and Any Potential Resentencing Petition, Defense Motion, Exhibit B.)

Ms. Cady did **not** represent either Erik or Lyle Menendez. Consequently, Ms. Cady **did not and could not obtain** confidential information from either defendant during the course of her representation. Ms. Cady did **not** gain any advantage over the Menendez brothers through her representation of Milton Anderson. Accordingly, there's no confidential information, let alone admissible confidential information, that Ms. Cady could have received from her client, Milton Anderson, which would affect the ability of the District Attorney's Office to treat the defendants unfairly. (*See People v. Griffin* (2004) 33 Cal.4th 536, 570 [holding the fact that DA investigator previously worked for defendant's brother's attorney did not create a conflict of interest requiring recusal because "there was no showing as to what confidential information [the DA investigator] might have obtained about defendant's case while working as an investigator on defendant's brother Elzie's case"].) Moreover, unlike a case in which defense counsel keeps the confidences of their clients pursuant to the attorney-client privilege, here, victim Milton

1 Anderson wanted his views to be openly known to the prosecution. Therefore, the rehiring of
2 Ms. Cady by the District Attorney's Office does not, by law, constitute a conflict of interest
3 requiring recusal.

4
5 Notwithstanding the fact that no conflict of interest can be articulated, the District
6 Attorney's Office took a cautious, proactive approach and walled Ms. Cady off from
7 involvement in this case to avoid any appearance of a conflict of interest once she started
8 working for the Office. She therefore has not had any contact with the attorneys handling the
9 resentencing analysis and motion, including the District Attorney himself, nor has she given any
10 input into this case. Unable to actually articulate any legitimate conflict of interest involving Ms.
11 Cady, the defense instead uses smoke and mirrors to argue that "walling off" Ms. Cady somehow
12 acts as an acknowledgement that a conflict exists. This logic defies reason. Taking a cautious,
13 yet legally unnecessary, proactive step to avoid the appearance of impropriety does not create a
14 conflict. On the contrary, it demonstrates a prudent approach to avoid even an appearance of a
15 conflict.
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18 A deputy district attorney's prior employment representing a defendant, let alone a
19 victim's family member, is not grounds for recusal of an entire district attorney's office where
20 the deputy district attorney is not personally prosecuting his or her prior clients. (*People v.*
21 *Chadwick* (1980) 106 Cal.App. 3d 108; *People v Hamilton* (1985) 41 Cal 3d 211.)
22

23 In *Chadwick*, a case decided before the passage of Penal Code section 1424, defendants
24 sought to recuse the entire Santa Barbara District Attorney's Office because a deputy district
25 attorney had previously been a felony public defender. In his new position at the Santa Barbara
26 District Attorney's Office, the prosecutor was assigned "solely to juvenile court cases" and had
27 "no connection with the prosecution of the cases he had handled as a public defender." (*Id.* at
28

1 112, 113.) The appellate court upheld the trial court's denial of defendants' recusal motion.
2 The court stated that "[n]o one disputes" that the deputy district attorney was "precluded from
3 prosecuting any of the clients he represented in these cases" because "[s]uch unconsented
4 representation would be a gross violation of professional ethics and due process." (*Id.* at 116.)
5 However, the court held this was not an issue because the deputy district attorney "not only will
6 not prosecute these cases, he had been entirely removed from them." (*Id.*) Further, in addressing
7 the defense argument that the prosecutor's knowledge of his former cases should be imputed to
8 the entire office, the court held that any special knowledge the prosecutor possessed from that
9 prior representation could not be imputed to the District Attorney's Office as a whole, stating,
10 "We are asked to disqualify the entire office of prosecutor on the basis that such information
11 should be deemed to be shared, however, much we know that it is not. We decline to reach so
12 drastic a result on so fictitious a basis." (*Id.* at 118.)
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15 Here, Ms. Cady did not previously represent a defendant in a criminal case, as did the
16 prosecutor in *Chadwick*. She therefore cannot possess any "special knowledge" instrumental to
17 the defense of either Erik or Lyle. If that were the case, recusal of her individually might be
18 justified. But that's not the situation in this case. She is not even the handling prosecutor in
19 these resentencing proceedings and therefore, even if she could have had any confidential
20 knowledge, she would not be in a position to use it. Accordingly, if there was no basis for a
21 recusal in *Chadwick*, there can be no basis for a recusal here.
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23
24 The defense completely fails to articulate how the hiring of Ms. Cady created a likelihood
25 that the defendants were treated unfairly. Instead, they offer nothing more than speculation,
26 innuendo, and conjecture. Even if the Court finds that her return to the District Attorney's Office
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1 created a conflict, she has not been involved in this case and has not had any input or
2 involvement on any decision.

3 **B. It is within the discretion of the District Attorney's Office to appropriately staff**
4 **cases, and intraoffice and interoffice transfers do not create a conflict of interest.**

5 Again unable to articulate any actual conflict of interest, the defense next asserts that
6 intraoffice and interoffice transfers of individual prosecutors who were formerly assigned to this
7 case somehow demonstrates a conflict of interest requiring recusal. However, the defense has
8 been unable to cite a single case where an internal staffing change such as an intraoffice or
9 interoffice transfer justifies recusal. The reason is simple—none exists. The plain truth is that
10 intraoffice and interoffice transfers have nothing to do with conflicts of interest.

11 As a preliminary matter, the burden of proof upon a recusal motion rests at all times upon
12 the party seeking recusal: “[D]efendants bear the burden of demonstrating a genuine conflict; in
13 the absence of any such conflict, a trial court should not interfere with the People’s prerogative
14 to select who is to represent them.” (*Haraguchi, supra*, 43 Cal.4th at p. 709; see also *People v.*
15 *Petrisca* (2006) 138 Cal.App.4th 189, 195 [burden of proof].) Here, the defense attempts to
16 insert itself upon the People’s internal case staffing decisions by complaining about the
17 reassignment of formerly assigned DDAs Theberge and Lunsford. The defense, however, does
18 not get to choose which prosecutors it would like to have assigned to any particular case, which
19 is the sole purview of the District Attorney’s Office. The defense has provided neither factual
20 evidence nor any case law explaining how Mr. Lunsford’s or Ms. Theberge’s transfers were
21 improper nor how the current District Attorney was precluded from bringing on different, highly
22 experienced prosecutors to assist in the case.

23 Indeed, Section 1424 specifies that upon briefing, a trial judge “shall review the
24 affidavits” and determine whether an evidentiary hearing is appropriate. (*Spaccia v. Superior*
25 *Court* (2012) 209 Cal.App.4th 93, 109-112 [explaining that the trial court may deny an
26 evidentiary hearing when the moving party has failed to make a prima facie showing of facts
27 based on admissible evidence which would sustain the motion if credited by the court].) Here,
28 the defense has strategically chosen to provide no affidavits or declarations regarding the

1 reassignments of Mr. Lunsford or Ms. Theberge and has failed to make any prima facie showing
2 for recusal. Instead, the defense offers hearsay documents involving pure speculation, innuendo,
3 and conjecture. Therefore, having failed to provide either legal authority or factual support for
4 their allegations regarding the Office's prosecutorial staffing decisions, these claims must fail as
5 a matter of law. The People categorically deny any impropriety in their internal staffing
6 decisions, and specifically deny that these decisions were based on any type of improper animus
7 or bias toward anyone. Alleging that intraoffice or interoffice transfers demonstrate a conflict of
8 interest is a last-ditch attempt to avoid the impact of the legitimate prosecutorial change of
9 position regarding this case by recusing the entire District Attorney's Office. This approach is
10 antithetical to our adversary system of justice.

11 It bears emphasis that of course the People can decide to change a legal position which
12 was taken in court regarding a criminal case. (*Neely, supra*, 70 Cal.App.4th at pp. 776-77
13 [discussing the "prosecutorial philosophy" of a newly-elected district attorney which differed
14 from his predecessor regarding whether to seek the death penalty, and reversing a recusal order
15 for lack of a conflict of interest on that basis].) To conclude otherwise would mean that the
16 prosecution could never correct a previous position which was found to be erroneous later upon
17 further study and consideration, as the District Attorney's Office has done here. "[G]ood faith
18 assertion of legal argument, without more, does not establish a conflict." (*Humberto S., supra*,
19 43 Cal.4th at p. 747.)

20 In considering a motion for recusal, it must be *presumed* that a district attorney properly
21 and conscientiously will discharge his or her duties and has performed official duties properly.
22 (*People v. Superior Court (Martin)* (1979) 98 Cal.App.3d 515, 521.) Here, it is only by
23 **assuming** the opposite—that the legal position taken by former elected District Attorney George
24 Gascon was correct, rather than misguided and without merit—that the defense also **assumes**
25 that the People's current legal position in this case must be based upon some unreasonable action
26 or wrongful conflict of interest. Not so. The District Attorney's Office has carefully considered
27 this case and sought only to act in the interests of justice. The Court has recognized as such,
28

1 stating that the District Attorney's Office has made a "legitimate argument" regarding its
2 position on resentencing.

3 **C. Any purported Marsy's Law violations do not create a conflict of interest.**

4 The last category of issues the defense argues justifies recusal all fall under the category
5 of purported Marsy's Law violations. The defense alleges that the District Attorney's Office, by
6 walling off Kathleen Cady, has deprived the Menendez family members of victim services. The
7 defense also alleges other purported violations, including the display of gruesome homicide
8 photographs without requisite notice. Although the People dispute the legitimacy of these
9 claims,⁴ some have already been litigated and addressed by this Court. The Menendez family
10 members are represented by an attorney who has taken, and presumably will continue to take,
11 actions to enforce their interests.⁵ Again, however, the defense fails to articulate how any
12 purported Marsy's Law violation interferes with the defendants' rights to obtain fair treatment.

13 Marsy's Law was adopted by the voters as a constitutional amendment in November of
14 2008. It permits a "victim, the retained attorney of a victim, a lawful representative of the victim,
15 or the prosecuting attorney upon request of the victim [to] enforce the rights enumerated in
16 subdivision (b) in any trial or appellate court." The purpose of the law is to ensure that victims
17 are afforded justice and due process, kept informed, treated with fairness and respect, and given
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20 ⁴ One of the claims made by the defense is that on January 3, 2025, the District Attorney met with 20 family
21 members of Jose and Kitty Menendez and "proceeded to verbally and emotionally re-traumatize [them]" by being
22 "hostile, dismissive, and patronizing." (Defense Motion, p. 8.) The spurious nature of these arguments becomes
23 clear by examining what the family told the media about this meeting the day it occurred, January 3, 2025.
24 Anamaria Baralt, the family spokesperson, told ABC News, "We did have a meeting with the district attorney and
25 we're grateful for his time. I want to reiterate our position as a family . . . that this 35-year process has been
incredibly traumatizing for us. . . ." (See Exhibit 1.) There was no mention of hostilities or intimidating behavior.
In fact, the 35-year "process" started by Erik and Lyle was the stated reason for the trauma they have experienced.
Clearly, the family wants Erik and Lyle out of prison immediately, and their anger towards the District Attorney's
Office began when it was announced that the District Attorney would legitimately seek to withdraw the resentencing
motion.

26 ⁵ As the Court noted at the hearing on the purported Marsy's Law violations, this case presents a unique and
27 complicated relationship between the Menendez family members and the District Attorney's Office. The Menendez
28 family members are both family members of the murdered victims Jose and Kitty Menendez and family members of
the murderers themselves, Eric and Lyle Menendez. Notwithstanding the complicated nature of this relationship, the
fact that the Menendez family members have counsel, and the fact that the District Attorney is the first District
Attorney to meet directly with the Menendez family members for over three hours, the People will provide the
family members with a Victim Services Representative if so desired.

1 the opportunity to be heard at various stages of the criminal investigation and proceeding. (*In re*
2 *Vicks* (2013) 56 Cal.4th 274, 282-283.)

3 To that end, subdivision (b) contains a list of seventeen specific rights. (California
4 Constitution Article I, Section 28(b)(1).) For example, victims have the right “to refuse an
5 interview, deposition, or discovery request by the defendant, the defendant’s attorney, or any
6 other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of
7 any such interview to which the victim consents.” (*Id.* at Section (b)(5).) They have the right to
8 “be heard, upon request, at any proceeding, including any delinquency proceeding, involving a
9 post-arrest release decision, plea, sentencing, post- conviction release decision, or any
10 proceeding in which a right of the victim is at issue.” (*Id.* at Section (b)(8).) They have rights to
11 information concerning sentencing, probation, and parole hearings. (*Id.* at (b)(10), (11), (12) and
12 (15).) They have rights of restitution. (*Id.* at (b)(13).)

13 Nowhere on the list is a right to seek recusal of the prosecutor or the entire District
14 Attorney’s Office. As with the other enumerated rights, the California Legislature could have
15 vested such a right in crime victims, but it did not. The absence of a specific right of standing to
16 seek recusal among a catalogue of other specific rights indicates that the omission was
17 purposeful. Indeed, the Legislature made clear that the Law “does not create any cause of action
18 for compensation or damages against the State, any political subdivision of the State, any officer,
19 employee, or agent of the state or any of its political subdivisions, or any officer or employee of
20 the court.” (California Constitution Article I, Section 28(c)(2).)

21 In other words, although Marsy’s Law affords victims important rights of enforcement, it
22 does not grant them the direct right to seek recusal of a prosecutor. Nor does it elevate them to
23 the status of a party in a criminal case. The jurisprudence prior to and since the adoption of
24 Marsy’s Law firmly establishes that victims are not parties. “The parties to a criminal action are
25 the People, in whose sovereign name it is prosecuted, and the person accused . . . the victim of
26 the crime is not a party.” (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451; *Crump v. Appellate*
27 *Division of Superior Court* (2019) 37 Cal.App.5th 222, 240.) A motion to recuse under Section
28 1424 must be brought by “a moving party.” (Section 1424(a)(1).) Thus, neither Marsy’s Law

1 nor Section 1424 gives the victims standing to seek recusal. Likewise, the murderers (the
2 Menendez brothers) cannot seek recusal on behalf of the victim family members of the people
3 they murdered (Jose and Kitty Menendez). Their attempt to disguise this request as an inherent
4 conflict of interest should be rejected by this Court. The defense cannot show how any
5 purported Marsy's Law violation affects the defendants' right to be treated fairly in these
6 proceedings. All the defense has demonstrated is that it dislikes the current position of the
7 District Attorney's Office. This is not a valid justification for recusal.

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10 **IV.**

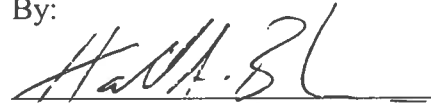
11 **CONCLUSION**

12 For the foregoing reasons, the People request the Court deny the defense's motion in its
13 entirety and deny an evidentiary hearing.

14
15 Dated: May 2, 2025

NATHAN J. HOCHMAN
District Attorney

17 By:

18 

19 HABIB A. BALIAN
Deputy District Attorney

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21 ETHAN J. MILIUS
Deputy District Attorney

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23 SETH CARMACK
Deputy District Attorney
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Exhibit 1

Menendez brothers latest: DA has 'productive' meeting with family but hasn't yet made decision

The Menendez brothers are serving two consecutive terms of life without parole.

By [Emily Shapiro](#)

January 3, 2025, 6:54 PM



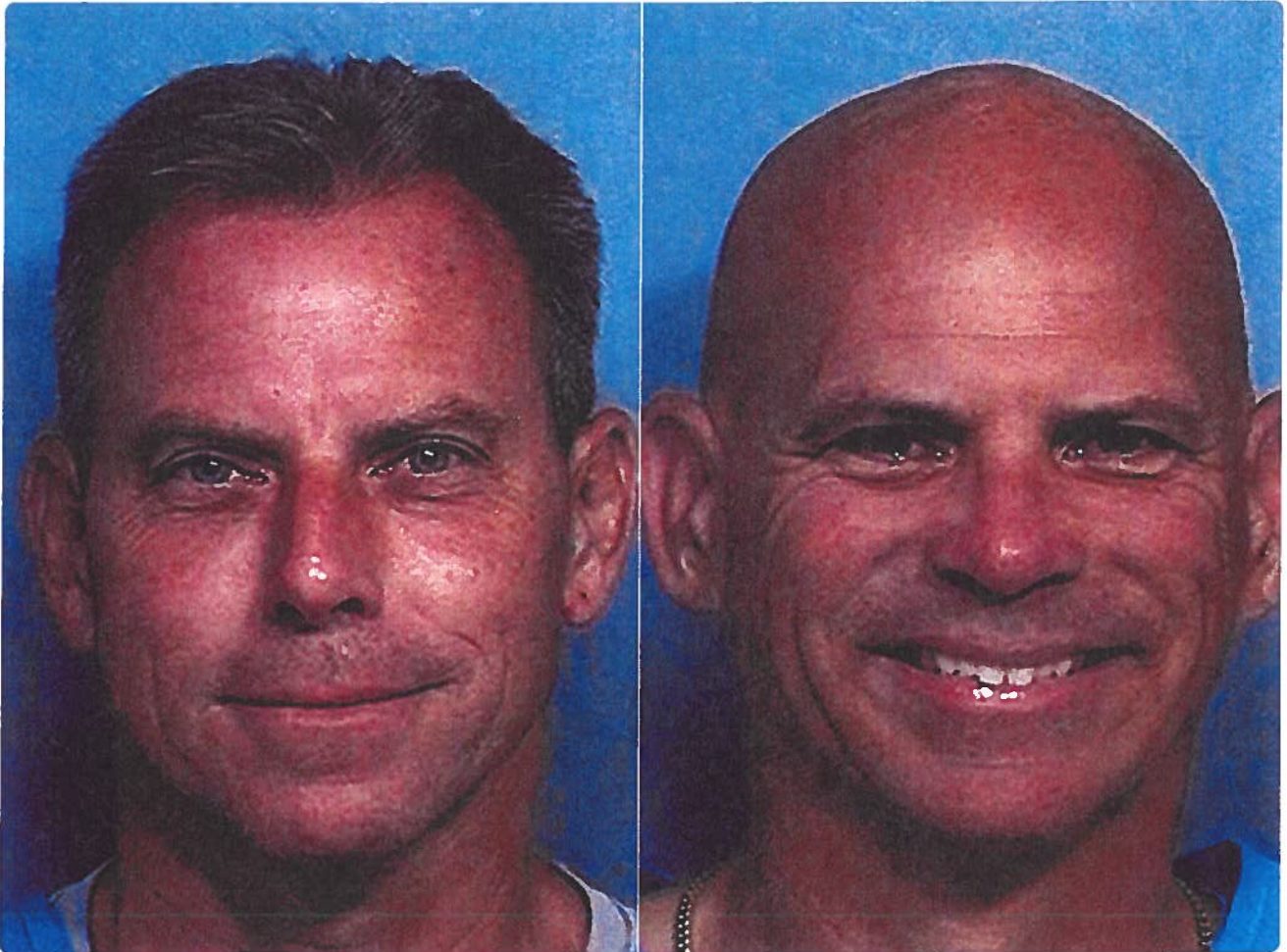
DA meets with family of Menendez brothers in 'productive meeting' It is still unclear as to whether the family's push will change his mind about the future of the brothers.

The Los Angeles County district attorney met with the [Menendez brothers'](#) relatives on Friday, but said he is still reviewing the facts in the case and hasn't yet decided if he's in support of the brothers' bid for freedom.

LA County District Attorney Nathan Hochman said that when he came into office on Dec. 3, he promised to review all the facts in Erik and Lyle Menendez's case. He said that effort has involved reviewing thousands of pages of

confidential prison records, trial transcripts, speaking to all the prosecutors and defense attorneys involved and reviewing court filings.

Hochman said that effort continues, noting that he's not finished reviewing all the prison files from the brothers' decades behind bars.



In these booking photos taken Oct. 10, 2024, Erik and Lyle Menendez are shown.
CRDC

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Over 20 Menendez relatives met with Hochman on Friday in their continued push for the brothers' release from prison.

Hochman described the conversation as "very productive" and "in some ways, an informal, off-the-record discussion."

"They gave me all their thoughts about what should happen, their experiences they wanted to share, the ultimate direction they wanted this case to go," he said.

Hochman did not reveal the details of the conversation.

In a brief address to reporters, Anamaria Baralt, cousin of the Menendez brothers, spoke out after the family's meeting with Hochman Friday afternoon.

"We did have a meeting with the district attorney and we're grateful for his time," she said in a statement. "I want to reiterate our position as a family and as the victims' families that this 35-year process has been incredibly traumatizing for us as I'm sure that you can all imagine."

She said she the family was hoping to see an immediate release of the brothers, saying that going before a parole board "will only serve to re-traumatize us."

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The previous district attorney, George Gascón, announced in October that he was recommending the brothers' sentence of life without the possibility of parole be removed, and they should instead be sentenced for murder, which would be a sentence of 50 years to life. Because both brothers were under 26 at the time of the crimes, they would be eligible for parole immediately with the new sentence.

The DA's office said its resentencing recommendations take into account many factors, including rehabilitation in prison, and abuse or trauma that contributed to the crime. Gascón praised the work Lyle and Erik Menendez did behind bars to rehabilitate themselves and help other inmates.

Weeks after Gascón's announcement, he lost his race for reelection to Hochman.

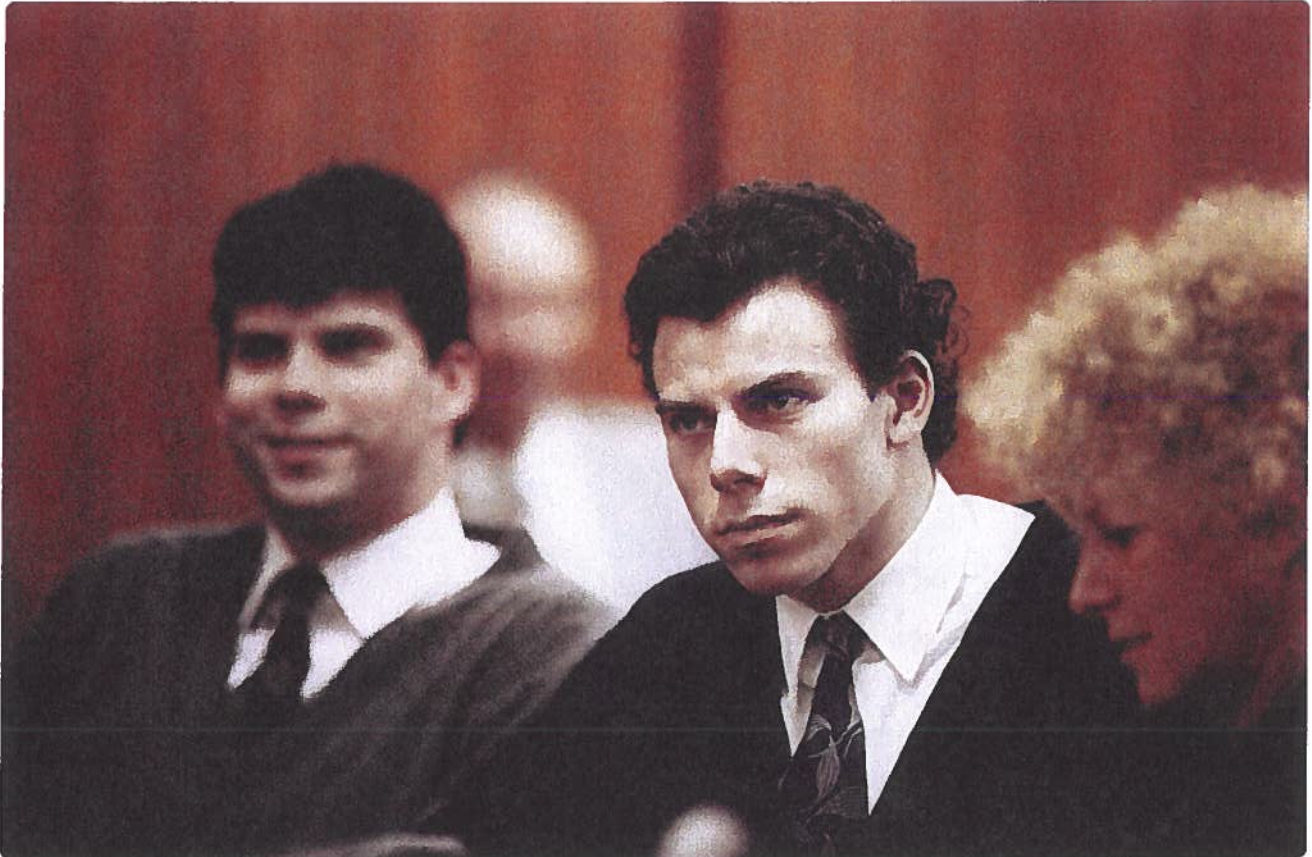
MORE: What's next for the Menendez brothers? A look at their life in prison, 3 paths to freedom→

Erik and Lyle Menendez next appear in court for a hearing in the resentencing case on Jan. 30 and Jan. 31.

This comes on the heels of an attorney for the brothers petitioning to move the case from the DA's office to the California Attorney General's Office, claiming a conflict of interest between Hochman and Kathleen Cady, whom Hochman just appointed director of the department's Bureau of Victim Services.

Cady recently resigned as attorney for Milton Anderson, the one Menendez relative who has been pushing to keep the brothers in prison.

Hochman said Friday that Cady is "walled off from the Menendez case."



Lyle, left, and Erik Menendez sit with defense attorney Leslie Abramson, right, in Beverly Hills Municipal Court during a hearing, Nov. 26, 1990.
Nick Ut/AP

[Lyle and Erik Menendez were convicted in 1996](#) of the 1989 murders of their parents, Jose and Kitty Menendez, who they gunned down in the family's Beverly Hills home.

The defense claimed the brothers acted in self-defense after enduring years of sexual abuse by their father, but prosecutors alleged they killed for money.

Lyle and Erik Menendez, who were 21 and 18 at the time of the crime, respectively, were sentenced to two consecutive life prison terms without the possibility of parole.

Besides the resentencing, the brothers have been pursuing two other [paths to freedom](#).

In 2023, the brothers filed a habeas corpus petition for a review of new evidence not presented at trial.

They also submitted a [request for clemency](#) to California Gov. Gavin Newsom. In November, Newsom said he'd defer to Hochman's "review and analysis of the Menendez case prior to making any clemency decisions."

ABC News' Amanda M. Morris contributed to this report.

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1 DECLARATION OF SERVICE BY MAIL/BY EMAIL/BY FAX

2
3 I, the undersigned, hereby declare under penalty of perjury that the following is true and
4 correct:

5 I am over 18 years of age, not party in the cause of *People v. Erik Galen Menendez and Joseph Lyle*
6 *Menendez*, Los Angeles County Superior Court case number BA068880, and I am employed in the
7 Office of the District Attorney of Los Angeles County. In the above-entitled matter, on March 10,
8 2025, I served the:

9 **PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY**
10 **DISTRICT ATTORNEY**

11 on counsel, by depositing a true copy thereof with exhibits, with postage thereon fully prepaid, in
12 the United States Mail in the City of Los Angeles, addressed as follows:

13 MARK GERAGOS
14 644 South Figueroa St.
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16 Cliff Gardner
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18 Berkeley, CA 94720

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21 300 S. Spring Street, Suite 1702
22 Los Angeles, CA 90013

23 And emailed at the following email addresses:

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26 Executed on May 2, 2025, at Los Angeles, California.
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