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County of Los Angeles

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David W. Slayton, Executive Officer/Clerk of Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff,** **v.** **ERIK GALEN MENENDEZ,** **JOSEPH LYLE MENENDEZ,** **Defendants.**	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

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

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

[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."

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

I.

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

- Erik and Lyle lied when they claimed that their parents were going to kill them, and they had to act in self-defense by murdering them first.

- To support their self-defense claims, Erik and Lyle tried to suborn perjury by asking Erik's friend, Brian Eslaminia, to testify that they borrowed one of his handguns the night before the murder to defend themselves against their parents.

- To support their self-defense claims, Erik and Lyle lied when they testified that they went to Big 5 Sporting Goods in Santa Monica the day before the murders and tried to purchase handguns.

- Erik and Lyle lied when they testified the purpose of their 120-mile drive to San Diego was not to buy shotguns when, in fact, that was the reason they made the trip.

- Erik and Lyle lied when they testified that the reason they provided a fake identification and fictitious address to buy the shotguns was because they did not have their California driver's licenses in their possession when, in fact, they were trying to conceal their connection to the shotguns and ammunition purchased in San Diego.

- 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.

- Erik and Lyle lied when they testified that they did not plan their alibi before the murders.

- Lyle lied when he denied that he did not ask Perry Berman to come to their home for the purpose of being a witness to Erik and Lyle discovered their parents' mutilated bodies.

- Erik and Lyle lied when they testified they did not stage the murders to look like a Mafia-style hit.

- Lyle tried to suborn perjury by recruiting his girlfriend, Jamie Pisarcik, to falsely testify that his father had drugged and violently raped her.

- Erik and Lyle lied when they testified that their mother was so dangerous and unpredictable that she tried to poison the whole family.

- Erik and Lyle suborned perjury when they solicited Lyle's girlfriend, Traci Baker, to testify that she was present when their mother tried to poison their family.

- Erik and Lyle lied when they testified that they thought their parents would kill them during their Saturday afternoon fishing trip.

- Erik and Lyle lied when they testified that they burst into the den with their shotguns, that it was too dark to see, but that their parents were standing up and/or moving towards them.

- Erik and Lyle lied when they testified that they rushed into the den and shot their parents in self-defense because they feared that their parents were going to shoot them first that evening.

- Erik and Lyle lied when they testified that Dr. Oziel blackmailed them into confessing on tape to murdering their parents.

In sum, Erik and Lyle have not changed. They continue to lie about their crimes and the fact that they perjured a wildly mendacious self-defense story to justify killing their parents. Accordingly, Erik and Lyle have not been rehabilitated. The prior District Attorney did not appear to consider this crucial fact (Erik and Lyle's complete lack of insight) in his analysis. The 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

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

II.

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

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

Here, after conducting a substantial reevaluation of the entire case, including the review of most of the over 50,000 pages of trial transcripts, thousands of pages of exhibits pleadings,

and prison records, hundreds of hours of videotaped testimony, and interviews with the Menendez family members, defense counsel, prior prosecutors, and law enforcement, the People now assert that they should not put forward a motion for resentencing based on a rehabilitation analysis that excluded the most fundamental aspect of rehabilitation and public safety—whether an inmate continues to perpetuate a false narrative to mitigate the severity of his crimes.

III.

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

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

The defense agrees with the basic legal principle that a defendant's "lack of insight into his crime and failure to take responsibility for it may constitute some evidence that he currently poses an unreasonable danger to society." (Defendants' Reply, p. 13:15-18.) This concept is grounded in common sense. If someone premeditates and commits a brutal and violent murder, lies to cover up their crime, changes their lies over time to meet the evidence against them, and

continues to lie about the crime for over 35 years, they obviously pose an unreasonable danger to society, no matter how much they regret and feel bad about what they did.[2]

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

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

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

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

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

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

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[3] As pointed out in our prior pleading, Sirhan has the lowest prison risk score of 19 (the same score as the Menendez brothers), the lowest California Static Assessment Score of LOW (the same as the Menendez brothers), committed the crime before the age of 25 (the same as the Menendez brothers), had engaged in decades of successful rehabilitation and education in prison (the same as the Menendez brothers), and had victim family members advocating for release (the same as the Menendez brothers). Indeed, unlike the Menendez brothers, Sirhan had the 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.

[4] The defense also claims that the People inappropriately relied on Erik and Lyle's administrative violations and counselling chronos in evaluating whether to withdraw its resentencing motion. However, these violations were not provided to demonstrate, by themselves, that Erik and Lyle have been violent in prison. Rather, they were provided to the Court as part of a comprehensive analysis of Erik and Lyle's rehabilitation or lack thereof. These violations were provided, **in full**, to the Court. In evaluating whether the Menendez brothers pose an unreasonable risk of 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.

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

die." That position is not imperfect self-defense. That position is not manslaughter. That position is simply not guilty of any crime.

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

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

- To support their self-defense claim, Erik and Lyle had to create an impression that their father posed a violent danger. To do so, Lyle attempted to recruit his girlfriend, Jamie Pisarcik, to testify that Jose Menendez drugged and violently raped her. She refused to do so.

- Erik and Lyle also needed to support their false fear that their parents were going to kill them on August 20, 1989. To do so, they attempted to recruit Erik's friend, Brian Eslaminia, to falsely testify that the day before the murders they were so fearful of their parents that they tried to borrow one of his handguns. Lyle's script, contained in a letter to Eslaminia, was discovered, confirming this attempt to suborn perjury. To support this false "we were fearful that both our parents would kill us" narrative, they also recruited Lyle's girlfriend, Traci Baker, to falsely testify that Kitty Menendez was violent and dangerous and tried to poison the family. Baker followed through and provided perjured testimony on this topic, as did Erik and Lyle. Thereafter, another Lyle's script contained in a letter to Baker was discovered. As as a result, Baker did not testify in the second trial.

- To support their fake fear that their parents were going to kill them, Erik and Lyle also falsely testified that they went to Big-5 Sporting Goods in Santa Monica to purchase handguns to defend themselves, an impossibility since that Big-5 Sporting Goods store had not sold handguns in the prior three years. They also drove 120 miles to San Diego to purchase shotguns using a fake identification and fictitious address, even though they could have purchased those shotguns at the Big-5 store in Santa Monica, so that they could distance themselves from the guns that would be used in the premeditated murder.

- Lyle and Erik testified that when they ultimately used the shotguns, Erik went to his room to get his shotgun and Lyle ran to the guesthouse to get his. They both then ran out to Erik's car and loaded the ammunition which, for some reason, they had not already loaded into the shotguns that they kept in their rooms for self-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

transfers. The defense alleges that Brock Lunsford, Nancy Theberge, and Kathleen Cady were all transferred (or hired) due to their involvement and opinions in this resentencing matter.[5] However, the transfers and hires in 2024 are entirely independent of the facts of this case. Theberge and Lunsford's evaluation of the case and the transfers in 2024 obviously had no bearing on Lyle and Erik's decision to lie repeatedly throughout the trial, to solicit witnesses to lie on their behalf, or to continue to lie about the self-defense and suborning perjury over the past 30 years. The District Attorney's evaluation of this resentencing motion was separate and apart from Theberge and Lunsford's evaluation. The foundation of the People's analysis rests on Erik and Lyle's lack of insight. In fact, it appears that neither Lunsford nor Theberge even considered insight in their initial analysis, or downplayed it so significantly that it was never even raised in the moving papers. Focusing on the crucial issue of lack of insight and lack of complete acceptance of responsibility for one's actions is not a "political" decision by a District Attorney; it is demanded by the facts and the law and a legitimate basis on which to change course on a resentencing motion.

[5] Every District Attorney has the right to assign the administrative staff of his choosing. Not surprisingly, this happens in every change of administration. Upon assuming the office of District Attorney, dozens of people were transferred. The District Attorney attempted to transfer the career deputy public defenders who were brought to our office under the prior District Attorney and lacked prosecutorial experience back to the Public Defender's office or another subdivision of the county. Theberge was among the career deputy public defenders who were transferred back to the Public Defender's office. Lunsford's position as Assistant Head Deputy of the Post Conviction Litigation and Discovery division was eliminated and he was transferred to a different position at the same grade and step level, earning the same pay. Prior to making any decision on this case, the District Attorney met with Mr. 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

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By: 

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