

1 MARK GERAGOS
(State Bar # 108325)
2 644 South Figueroa Street
Los Angeles, CA 90017
3 (213) 625-3900
Mark@geragos.com

4 CLIFF GARDNER
5 1448 San Pablo Avenue
Berkeley, CA 94702
6 (510) 524-1093
Casetris@aol.com

7 Attorneys for Petitioners
8 Lyle and Erik Menendez

9

10

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
LOS ANGELES COUNTY

11

12

13

14 ERIK MENENDEZ,)
15)
16 Petitioner,)
17 On Habeas Corpus.)
18 _____)

No.:
Court of Appeal Case No.
B104022
Superior Court Case No.
BA068880

19

20 LYLE MENENDEZ,)
21 Petitioner,)
22 On Habeas Corpus.)
23 _____)

24

25

PETITION FOR WRIT OF HABEAS CORPUS

26

27

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1
2 IN THE SUPERIOR COURT
3 OF THE STATE OF CALIFORNIA
4 LOS ANGELES COUNTY

5 ERIK MENENDEZ,) No.:
6)
7 Petitioner,) Court of Appeal Case No.
8) B104022
9 On Habeas Corpus.) Superior Court Case No.
10) BA068880
11) PETITION FOR WRIT OF HABEAS
12) CORPUS
13)
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14 INTRODUCTION: A SINGLE QUESTION

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

20 The theory of defense at both trials was straightforward. Neither Erik nor Lyle
21 denied the shooting. Instead, the crime was manslaughter, not murder. The killings
22 occurred in imperfect self-defense, after a lifetime of physical and sexual abuse from their
23 parents. The sexual abuse began when the brothers were just children and, along with the
24 sexual abuse, there were death threats should the abuse ever be disclosed. Thus in
25 determining if this was an imperfect self-defense case of manslaughter, or a case of
26 premeditated murder, jurors had one critical factual question to decide: were Erik and
27 Lyle victims of sexual abuse?
28

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

4
5 Although the theories were the same in both trials, the evidence at the two trials
6 was very different. At the first trial, for example, Lyle's older cousin, Diane
7 Vandermolen, testified that when she was 16, she stayed at the Menendez home for the
8 summer. One night when Lyle was only eight years old, he came into her room and asked
9 if he could sleep in her room; he was scared to sleep in his own room because Jose
10 Menendez was touching Lyle's genitals and forcing Lyle to touch his (Jose's) genitals as
11 well. (RT 11797.) Diane told Kitty, who angrily dragged Lyle upstairs by his arm. (RT
12 11798-11799.) Erik and Lyle's cousin, Andy Cano, testified that when Erik was only 13
13 years old, he (Erik) swore Andy to secrecy, told him that Jose Menendez was massaging
14 his genitals, and asked if Andy's father did the same. ([https://www.court tv.com/title/
15 68-ca-v-menendez-witness-testimony/](https://www.court tv.com/title/68-ca-v-menendez-witness-testimony/) at 2:25:11 - 2:28:04, last accessed 2/1/23).¹
16 Similarly, jurors heard from family members, close friends, and a variety of coaches and
17

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

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

1 teachers, who described numerous incidents of physical and mental abuse they saw the
2 brothers suffer at the hands of their parents, ranging from physical assaults on the boys to
3 public humiliation and mocking. And jurors heard about a chilling rule in the Menendez
4 home: when Jose Menendez was in the bedroom with one of the boys, no one was
5 allowed to walk down the hallway past the bedrooms. ([https://www.courttv.com/title](https://www.courttv.com/title/32-ca-v-menendez-kathleen-simonton/)
6 [/32-ca-v-menendez-kathleen-simonton/](https://www.courttv.com/title/32-ca-v-menendez-kathleen-simonton/) at 1:27:06 - 1:27:28 [Jose Menendez’s niece
7 Kathy Simonton].)

8
9 While it is fair to say that the prosecutors at the first trial remained skeptical of the
10 defendants’ claims of sexual abuse, in light of the evidence actually introduced as to
11 sexual and physical abuse, they hedged their bets. “[I]f you believe in the sexual abuse
12 that happened, that does not mean the defendants are not guilty of murder, because they
13 are two separate things.” ([https://www.courttv.com/title/109-ca-v-menendez-lyle-](https://www.courttv.com/title/109-ca-v-menendez-lyle-menendez-prosecution-closing-arguments/)
14 [menendez-prosecution-closing-arguments/](https://www.courttv.com/title/109-ca-v-menendez-lyle-menendez-prosecution-closing-arguments/) at 1:35:06-1:35:45.) “We do not execute child
15 molesters in California And these defendants cannot execute them either.” (*Id.* at
16 1:37:50-1:38:19.) “Vigilantism is something we cannot tolerate because then what
17 happens? What if you decide your neighbor is a child molester and you go kill your
18 neighbor?” (*Id.* at 1:39:09.)

19
20 Although defendants were tried together at the first trial, they had separate juries.
21 After lengthy deliberations, the jurors in Lyle Menendez’s case were hung 6-6 between
22 murder and manslaughter for each of the two murder charges. The jurors in Erik
23 Menendez’s case were hung 6-6 between murder and manslaughter as to one of the
24 murder counts, and 8-4 between murder and manslaughter as to the second count. The
25 state elected to retry the case.

26
27 As noted, the second trial began in October 1995. At this trial, much of the
28 defense evidence, including Diane Vandermolen’s testimony, was excluded. So the

1 prosecutor's emphasis changed as well. Based on the evidence presented at the second
2 trial, there was no longer any need to hedge bets; the prosecutor told jurors that the sexual
3 "abuse [allegations] in this case [were] a total fabrication." (RT 50869.) There was "no
4 way of corroborating" these allegations. (RT 50868.) "The abuse never happened." (RT
5 51088.) "There is no corroboration of sexual abuse." (RT 51378.) The "allegation[s] of
6 physical and sexual abuse are not corroborated." (RT 51469.) Jose Menendez was not
7 the "kind of man that would be abusing his sons." (RT 50991.) He was "restrained and
8 forgiving. [He was] not a violent and brutal man." (RT 51472.) Both petitioners were
9 convicted of first degree murder.

10
11 But now new evidence has surfaced in two areas. First, Jose Menendez's younger
12 sister, Marta Cano, discovered a letter her son Andy received from Erik approximately
13 eight months before the August 1989 shooting. As noted above, Andy had testified that
14 Erik told him about the molestation when he (Erik) was 13 years old. (RT 48140.) In his
15 closing argument at the second trial, the prosecutor told jurors in no uncertain terms that
16 Andy was lying. (302 RT 51481-51485, 51487.)

17
18 But this letter to Andy corroborates the sexual abuse allegations. Although this
19 letter is discussed in much greater detail below, in it Erik conveys chilling information to
20 Andy:

21 I've been trying to avoid
22 dad. Its still happening Andy but its worse
23 for me now. I cant explain it. He so ~~overweight~~
24 overweight that I cant stand to see him, I never
25 know when when ~~hes~~ its going to happen and
26 its driving me crazy. Every night I stay up thinking
27 he might come in. I need to put it out of my mind. I
28 know what you said before but Im afraid. You just dont
know dad like I do. Hes crazy! hes warned me a
hundred times about telling anyone especially Tyler

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

2
3 But there is more. As the above quotes from the prosecutor's closing make clear,
4 the state's theory was that Jose Menendez was simply "not the kind of man" who would
5 abuse children. He was "not a violent and brutal man," but "restrained and forgiving."
6 What we now know, however, is that -- in fact -- Jose Menendez did abuse children. Jose
7 Menendez was a high executive at RCA in the 1980s. During that time RCA signed
8 Menudo, a Latin boy band. Roy Rossello, who joined the band as a 13 year-old in 1983
9 has recently come forward to admit that he was anally raped twice, and orally copulated,
10 by Jose Menendez when Roy was only 13 or 14 years old. (See Declaration of Roy
11 Rossello ("Rossello Declaration"), attached as Exhibit F.)

12
13 In short the new evidence not only shows that Jose Menendez was very much a
14 violent and brutal man who would sexually abuse children, but it strongly suggests that --
15 in fact -- he was still abusing Erik Menendez as late as December 1988. Just as the
16 defense had argued all along.

17
18 These issues will be discussed below in the attached Memorandum. But it is
19 important to note that at this early stage of the proceedings, this Court is not tasked with
20 making credibility assessments or deciding if relief is required. Instead, the court has a
21 much simpler task; it must "assum[e] the petitioner's factual allegations are true" and
22 assess whether petitioners have established a prima facie case for relief on any of their
23 claims. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) If so, an Order to Show Cause
24 should issue and the state should be required to file an Answer to the Petition which
25 formally admits or denies the factual allegations of the Petition. (*Ibid.*)

26
27 As discussed in the memorandum which accompanies this Petition, following
28 *Duvall's* mandate to assume the truth of the factual allegations of the Petition, petitioners

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

6
7 PETITION FOR WRIT OF HABEAS CORPUS

8
9 **Jurisdictional Allegations**

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

12
13 I.

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

17
18 II.

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

24
25
26 _____
27 ² As noted above, petitioners no longer have access to a transcript of the first
28 trial. But for the Court's convenience, a PDF of transcripts from the second trial has been
attached on a DVD as Exhibit J.

1 III.

2 Petitioners pled not guilty. They were tried by jury.

3
4 IV.

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

9
10 V.

11 On October 5, 1998 Lyle Menendez filed a habeas corpus petition in the state
12 supreme court. That petition was denied without comment on March 31, 1999. On April
13 30, 1999, Erik Menendez filed a habeas corpus petition in the state supreme court. On
14 July 28, 1999, that petition was denied without comment. Both defendants filed habeas
15 corpus petitions in federal court which were denied. As to the matters raised in paragraph
16 VI of this petition, no other petitions for writ of habeas corpus have been filed.
17 Petitioners have no adequate remedy at law.

18
19 **Claims for Relief**

20 VI.

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

- 27
28 a. On August 20, 1989, Jose and Kitty Menendez were shot and killed.

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

4
5 c. At trial, petitioners did not deny the shooting with which they were
6 charged. To the contrary, as defense counsel explained in an opening
7 statement made before the state even began its case-in-chief, petitioners
8 admitted their participation in the shooting. (RT 36216-36219, 36245.)
9 The defense was that the shooting was in imperfect self-defense,
10 petitioners did not harbor the mental state needed for first degree murder
11 and were therefore guilty of manslaughter.

12
13 d. Petitioners were tried twice.

14
15 e. At the first trial, petitioners had separate juries.

16
17 f. At the first trial, jurors heard testimony from:

18
19 1. Diane Vandermolen. Diane was the niece of Jose and Kitty
20 Menendez who stayed with them during the summer of 1976
21 when Lyle was 8 years old. She testified that one night 8-year
22 old Lyle came down to her bedroom and asked if he could sleep
23 in her room because “he and his dad had been touching each
24 other” in the “genital area.” (RT 11797.) When Diane
25 immediately told Kitty about this, Kitty dragged Lyle away by
26 the arm. (RT 11798-11799.)

27
28 2. Peter Cano. Mr. Cano was Lyle’s uncle, married to Kitty’s

1 sister. Peter testified that when Lyle was five years old, he saw
2 Jose take a full punch at Lyle, hitting him in the chest; when Mr.
3 Cano gave Jose a “piece of his mind,” Jose told him he would
4 raise his sons as he saw fit and Mr. Cano could leave. Mr. Cano
5 did leave, and never again returned to the Menendez home. (RT
6 13341-13345.)

7
8 3. Marianne Cano. Marianne was another cousin who stayed with
9 the Menendez family over a vacation. She testified to Jose
10 humiliating, mocking and belittling Eric and Lyle; she was so
11 uncomfortable, she refused to stay at the Menendez home any
12 longer. (RT 12207-12208, 12224-12226.)

13
14 4. Jessica Goldsmith. Ms. Goldsmith testified that when visiting the
15 Menendez home when Lyle was 9, he was climbing on the
16 staircase, hanging from it and became scared. When he asked
17 Jose to help him down, Jose told Lyle to “stay up there until you
18 learn to be a man.” When Lyle began to cry, Jose punched him
19 in the stomach and told him to “learn not to cry.” (RT 12646.)

20
21 5. Andy Cano. Andy was a cousin and friend of Erik’s. Andy
22 testified that when Erik was 12 or 13 years old, Erik told him
23 that Jose was giving him massages in the genital area and
24 massaging his penis. Erik asked Andy if his father did the
25 same thing, and swore him to secrecy.

26
27 g. During closing arguments at the first trial, the prosecutor urged jurors to
28 find that no sexual abuse had occurred. In light of the evidence

1 presented, and recognizing that there was evidence which -- if believed
2 -- corroborated the sexual abuse claim, the prosecutor alternatively
3 argued that the abuse made no difference. The prosecutor told jurors:
4

5 1. “[I]f you believe . . . the sexual abuse that happened, that does
6 not mean the defendants are not guilty of murder, because they
7 are two separate things.”
8

9 2. “We do not execute child molesters in California And
10 these defendants cannot execute them either.”
11

12 3. “Vigilantism is something we cannot tolerate because then what
13 happens? What if you decide your neighbor is a child molester
14 and you go kill your neighbor?”
15

16 h. In light of the evidence presented, Lyle Menendez’s jury at the first trial,
17 was hung on all three counts. As to the count one murder charge with
18 respect to Jose Menendez, jurors were hung six for voluntary
19 manslaughter, three for second degree murder and three for first degree
20 murder. (RT 26185.) As to the count two murder charge with respect
21 to Kitty Menendez, jurors were hung five votes for voluntary
22 manslaughter, one vote for involuntary manslaughter, three votes for
23 second degree murder and three vote for first degree murder. (*Ibid.*)
24 As to the count three conspiracy charge, there were six votes for
25 acquittal, three votes for conspiracy to commit second degree murder
26 and three votes for conspiracy to commit first degree murder. (*Ibid.*)
27

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

1 on all three counts. As to the count one murder charge with respect to
2 Jose Menendez, jurors were hung six for voluntary manslaughter, one
3 for second degree murder and five for first degree murder. (RT 26185.)
4 As to the count two murder charge with respect to Kitty Menendez,
5 jurors were hung four votes for voluntary manslaughter, three votes for
6 second degree murder and five votes for first degree murder. (RT
7 26186) As to the count three conspiracy charge, there were six votes for
8 acquittal, one vote for conspiracy to commit second degree murder and
9 five votes for conspiracy to commit first degree murder. (*Ibid.*)

10
11 j. At the second trial, there was only one jury for the two defendants.

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

20
21 l. In light of the evidence excluded at the second trial, the prosecutor
22 doubled down on the position that no abuse occurred. The
23 prosecutor argued:

24
25 1. The “abuse [allegations] in this case [were] a total
26 fabrication.” (RT 50869.)

27
28 2. There was “no way of corroborating” these allegations. (RT

1 50868.)

2
3 3. “The abuse never happened.” (RT 51088.)

4
5 4. “There is no corroboration of sexual abuse.” (RT 51378.)

6
7 5. The “allegation[s] of physical and sexual abuse are not
8 corroborated.” (RT 51469.)

9
10 6. Jose Menendez was not the “kind of man that would be
11 abusing his sons;” instead, he was “restrained and forgiving.
12 [He was] not a violent and brutal man.” (RT 50991, 51472.)

13
14 7. Andy Cano was lying. (RT 51481-51485, 51487.)

15
16 m. The jury at the second trial convicted both petitioners as charged.

17
18 n. In evaluating the prosecutor’s position that “the abuse never
19 happened” and that Andy Cano was lying, jurors never heard:

20
21 1. In December 1988, Erik Menendez wrote a letter to his
22 cousin, Andy Cano. The letter first describes a “company
23 party” held at the Menendez home for the holidays.

24
25 2. In the letter, Erik writes:

26
27 At times I wish I could talk to her [mom] about things you
28 know? Some day. . . Especially dad and I but the way she

1 worships him and tells him everything, I (sic) so afraid she'll
2 tell him whatever I say. I just can't risk it."

3

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

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

- 21
- 22 1. Menudo was a Latin boys band formed in 1977 by

23

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

1 music produced Edgardo Diaz.

- 2
- 3 2. In the fall of 1983, Menudo signed a multi-year deal
4 with RCA records. (*See The Pop Life*, New York
5 Times (11-23-1983), attached as Exhibit E.)
- 6
- 7 3. At the time, Jose Menendez was an executive at RCA.
- 8
- 9 4. In 1983, 13-year old Roy Rossello joined the group.
10 (Declaration of Roy Rossello (“Rossello Declaration”),
11 attached as Exhibit F, at para. 1.)
- 12
- 13 5. In the fall of 1983 or 1984, Menudo was appearing in
14 New York City. (Rossello Declaration at para. 2.)
- 15
- 16 6. During the trip to New York, Edgardo Diaz asked Roy
17 to “do a favor,” instructing him to go downstairs at the
18 hotel and join Jose Menendez in a limousine.
19 (Rossello Declaration at para. 3.)
- 20
- 21 7. Roy did so, and was taken to a home in New Jersey,
22 given wine by Jose Menendez and anally raped. Roy
23 lost consciousness and woke up back in his hotel. He
24 was bleeding from the anus. He was in unbearable
25 pain for a week. (Rossello Declaration at para. 6.)
- 26
- 27 8. Jose Menendez orally copulated Roy in a bathroom
28 prior to a Menudo concert in New York. (Rossello

1 Declaration at para. 7.) Later that same night, Jose
2 Menendez anally raped Roy in a hotel room in New
3 York city. (Rossello Declaration at para. 8.)
4

- 5 p. Had jurors seen the letter Erik Menendez wrote to Andy Cano, and
6 learned that Jose Menendez anally raped and orally copulated a 13 or
7 14 year-old boy in 1984, the prosecutor would not have been able to
8 argue that “the abuse never happened,” “[t]here is no corroboration
9 of sexual abuse,” Jose Menendez was not the “kind of man that
10 would” abuse children and was “not a violent and brutal man.” (RT
11 51472.)
12

13 **Timeliness Allegations**

14 VII.

15 Generally, courts will not address the merits of habeas petitions filed with
16 substantial unexplained delay. The following factual allegations show this petition is
17 properly before the Court:
18

- 19 a. Lyle and Erik Menendez are indigent; in 1996 they were each given
20 appointed counsel pursuant to the appellate court’s indigent
21 appointment process. (See *People v. Menendez et al.*, Docket report,
22 Entry of 9/10/1996, attached as Exhibit G.) Petitioners have been
23 and are without funds to perform any habeas investigation. (Erik
24 Menendez Declaration at para. 2-3; Declaration of Lyle Menendez,
25 (“Lyle Menendez Declaration”) attached as Exhibit H, at para. 2-3.)
26
27
28

- 1 b. In 2015, Erik and Lyle heard about the a letter Erik had written to
2 Andy Cano through a Barbara Walters special that said the letter had
3 been offered at trial but excluded by the trial judge. (Erik Menendez
4 Declaration at para. 5; Lyle Menendez Declaration at para. 4.)
5
6 c. Beginning in 2018, Erik and Lyle learned that their trial lawyers
7 could not recall ever seeing such a letter. (Erik Menendez
8 Declaration at para. 6; Lyle Menendez Declaration at para. 5.) They
9 were advised to obtain a copy; in 2018, journalist Robert Rand
10 provided a copy of the Andy Cano letter to Cliff Gardner, Lyle
11 Menendez’s former appointed appellate counsel. (Gardner
12 Declaration at para. 3.)
13
14 d. Mr. Gardner did not recall ever seeing this letter before. (Gardner
15 Declaration at para. 4; Erik Menendez Declaration at para. 7; Lyle
16 Menendez Declaration at para. 7.) But because Mr. Gardner had not
17 actually reviewed the trial transcripts in so many years, he advised
18 petitioners to review the trial transcripts to see if the Andy Cano
19 letter was new evidence or whether, instead, it had been offered and
20 excluded as the 2015 Barbara Walters special had indicated.
21 (Gardner Declaration at para. 4; Erik Menendez Declaration at para.
22 7; Lyle Menendez Declaration at para. 7.)
23
24 e. At that point in 2018, neither Erik nor Lyle had copies of the
25 transcripts of trial. (Erik Menendez Declaration at para. 8; Lyle
26 Menendez Declaration at para. 8.)
27
28

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

8
9 g. At that point in 2020, transcriptions of interviews with potential
10 witnesses were still being transcribed. (Gardner Declaration at para.
11 3; Erik Menendez Declaration at para. 9; Lyle Menendez Declaration
12 at para. 9.)

13
14
15 h. In November of 2022, Gardner learned that during an interview for a
16 documentary, Roy Rossello -- a member of the boy band Menudo --
17 had admitted that he had been raped by Jose Menendez. (Gardner
18 Declaration at para. 5.) Mr. Rossello provided a signed declaration
19 in April 2023.

20
21 I. This petition is being filed within five months of obtaining Mr.
22 Rossello's declaration.

23
24 WHEREFORE, petitioners pray that this Court:
25
26
27
28

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

4
5 2. Order respondent to file and serve a copy of the record on appeal;

6
7
8 3. After full consideration of the issues raised in the petition, and the
9 factual allegations of the Petition and supporting memorandum, issue an Order to Show
10 Cause requiring the state to show cause why relief should not be granted;

11
12 4. After the state files an Answer, and petitioners file a Traverse, vacate
13 the judgment and sentence imposed upon petitioners or, in the alternative;

14
15 5. Depending on whether the state denies material factual allegations of
16 the Petition, permit discovery and an evidentiary hearing at which petitioners may offer
17 proof concerning the allegations of the Petition which have been placed in dispute; and;
18

19
20 6. Grant such other and further relief as may be appropriate.
21

22 DATED:

5/2/23

Respectfully submitted,

24 MARK GERAGOS
25 CLIFF GARDNER

26 

27 Cliff Gardner

28 Attorney for Petitioners

1
2
3 VERIFICATION

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

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

11
12
13
14 
15 Cliff Gardner

1 CERTIFICATE OF SERVICE

2 I, the undersigned, declare as follows: I am a citizen of the United
3 States, over the age of 18 years and not a party to the within action. My business address
4 is 1448 San Pablo Avenue, Berkeley, California 94702.
5

6
7 On May 3, 2023, I served the within:

8
9 PETITION FOR WRIT OF HABEAS CORPUS

10 upon the parties names below by depositing a true copy in a United States mailbox in
11 Berkeley, California, in a sealed envelope, postage prepaid, and addressed as follows:
12

13 Mr. Lyle Menendez, K13758
14 R.J. Donovan Correctional Facility
15 480 Alta Road
San Diego, CA 92179

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

16
17 Mr. Erik Menendez, K14101
R.J. Donovan Correctional Facility
18 480 Alta Road
San Diego, CA 92179

19
20 I declare under penalty of perjury that the foregoing is true. Executed
21 on May 3, 2023 in Berkeley, California.

22 
23

24 Declarant
25
26
27
28