

1 LYLE MENENDEZ
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2 R.J. Donovan Correctional Facility
480 Alta Road
3 San Diego, CA 92179

4 ERIK MENENDEZ
K14101
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480 Alta Road
6 San Diego, CA 92179

7 In Pro Per

8
9 IN THE SUPERIOR COURT
10 OF THE STATE OF CALIFORNIA
11 LOS ANGELES COUNTY

12 LYLE MENENDEZ,

13
14 Petitioner,

15 On Habeas Corpus.
16
17

18 ERIK MENENDEZ,

19
20 Petitioner,

21 On Habeas Corpus.
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No.:

Court of Appeal Case No.
B104022

Superior Court Case No.
BA068880

DECLARATION OF CLIFF
GARDNER

23 I, Cliff Gardner, declare:
24

25 1. I am a lawyer licensed to practice in California. Because Lyle Menendez
26 was indigent, in September of 1996, I was appointed to represent him on appeal in *People*
27 *v. Menendez*, B104022. I have not represented Lyle Menendez since 2005.
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1 2. At some point in early 2018, I was told about a letter Erik Menendez wrote
2 to his cousin Andy Cano, a letter that had been offered into evidence and excluded. I do
3 not recall how I learned about this. Although I had read the trial record many years
4 earlier, when I represented Lyle on appeal and in subsequent federal habeas proceedings,
5 I did not recall such a letter having been offered and excluded. I contacted Terri Towery,
6 one of Lyle's trial attorneys, and asked if she had ever heard of this letter. She had not. I
7 advised Mr. Menendez to get a copy of the letter if he could.

8
9 3. During the course of my representation I met Robert Rand, a journalist who
10 had covered the two trials. In April of 2018, Mr. Rand provided me with a letter he had
11 obtained from Marta Cano, Andy's mother. A copy of that letter is attached to this
12 declaration as Attachment 1. Mr. Rand also told me that he had numerous tape recorded
13 interviews (in the hundreds as I recall) -- some with people who were called as witnesses
14 and some with people who were never called -- from his years of working on the case,
15 and he was having these interviews transcribed to see if there was any additional evidence
16 in the case.

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18 4. After reading the letter from Erik to Andy, I still did not have any
19 recollection of such a letter ever having been offered at trial. But because my memory of
20 the trial record was many years old, I advised Lyle Menendez to review the records from
21 the two trials to see if the letter had been offered into evidence but excluded by the trial
22 judge. Given the content of the letter, if the evidence had not been offered and excluded,
23 it might qualify as new evidence on which a habeas petition could be based. Assuming
24 the evidence was new, and in light of Mr. Rand's statement that he was having his
25 witness interviews transcribed, I advised Lyle Menendez that (1) California courts looked
26 with disfavor upon piecemeal presentation of habeas claims in a series of habeas petitions
27 and (2) to avoid piecemeal presentation of any future claims which might arise should
28 these transcriptions reveal relevant evidence that had not been presented at trial, it would

1 be best to wait until the transcriptions were completed before pursuing a round of habeas
2 relief.

3
4 5. In November of 2022, I learned that during an interview for a documentary,
5 Roy Rossello -- a member of the boy band Menudo -- admitted that he had been raped by
6 Jose Menendez.

7
8 I declare under penalty of perjury that the foregoing is true and correct. Executed
9 this 24th day of April, 2023 in Berkeley, California.

10
11 
12 Cliff Gardner