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Superior Court of California
County of Los Angeles

MAY 02 2025

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G. ZALDANA

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
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16 **PEOPLE OF THE STATE OF**
17 **CALIFORNIA,**

Plaintiff,

18
19 **v.**

20 **ERIK GALEN MENENDEZ AND**
21 **JOSEPH LYLE MENENDEZ,**

Defendants.
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Case No. BA068880

OPPOSITION TO MOTION TO RECUSE
LOS ANGELES COUNTY DISTRICT
ATTORNEY

Date: May 9, 2025
Time: 8:30 a.m.
Dept: S
Judge: The Honorable Michael Jesic

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The Office of the Attorney General hereby submits the following opposition to defendants' motion to recuse the Los Angeles County District Attorney's Office.

INTRODUCTION

Defendants Erik and Lyle Menendez have filed a motion pursuant to Penal Code section 1424, arguing the elected District Attorney of Los Angeles County and his entire staff of prosecutors must be disqualified from representing the People at the upcoming resentencing hearing in the instant case because: (1) upon his election, the District Attorney transferred to new assignments two prosecutors in his office, Brock Lunsford and Nancy Theberge, who previously worked on the instant resentencing matter; (2) the District Attorney hired Kathleen Cady to head the Office of Victim Services and Cady had previously represented Milton Andersen, Kitty Menendez's brother, who opposed resentencing; (3) the District Attorney ethically screened Cady from any involvement in the case, but no one from Victim Services has contacted the victims' or the defendants' family members; (4) Cady is also a board member for a victim's rights group, Justice for Murdered Children, members of which posed for a photograph with the District Attorney at a rally opposing resentencing in this case; (5) the District Attorney and other members of his office, including Steve Katz, Seth Carmack, Habib Balian and Ethan Mullius, met with a group of the victims' and defendants' family members, without the presence of anyone from Victim's Services, and, during the meeting, the District Attorney showed a lack of compassion and focused only on how he had been personally treated; (6) the District Attorney's Office sought a continuance without alerting the victims' and defendants' family members; and (7) prosecutors displayed crime scene photographs at a hearing without warning the victims' and defendants' family members.

The defendants here confuse disagreement with a legally cognizable conflict of interest. The evidence presented does not satisfy the stringent legal standard under Penal Code section 1424 for an office-wide recusal. First, the transfer of two members of his Office who previously supported resentencing is not sufficient to establish a disabling, office-wide conflict of interest. Second, even if Ms. Cady's prior representation of Kitty Menendez's brother could present a potential conflict, the District Attorney's Office has walled her off from this matter. Moreover,

1 defendants may not assert Marsy's Law rights on behalf of person(s) they victimized, and, in any
2 event, disqualification of the elected District Attorney, and his entire office, is not an available
3 remedy for alleged violations of Marsy's Law. To the extent defendants' arguments can be
4 construed as a claim that the alleged Marsy's Law violations demonstrate bias toward *defendants*
5 by the District Attorney, they failed to demonstrate any alleged violations were motivated by or a
6 product of bias against the defendants. As such, defendants have failed to identify a disqualifying
7 conflict that demonstrates a reasonable possibility that the assigned prosecutors may not exercise
8 discretionary functions in an evenhanded manner, nor have they established that any alleged
9 conflict is so grave as to render it more likely than not they will not receive unfair treatment if the
10 case continues to be handled by the Los Angeles County District Attorney's Office.

11 ARGUMENT

12 I. THE RECUSAL STANDARDS PURSUANT TO PENAL CODE SECTION 1424 13 ARE INTENDED TO BE STRINGENT

14 Defendants seek recusal of the District Attorney and his entire staff pursuant to Penal Code
15 section 1424, a narrow remedy available only under the rare circumstances in which a defendant
16 has come forward with competent evidence of an actual or apparent conflict of interest creating a
17 *real* possibility of unfair proceedings, and even then, the defendant must further show that
18 disqualification of the District Attorney and his entire staff is the *only* remedy for the alleged
19 conflict.

20 A. Recusal is permitted only when a defendant identifies and supports with 21 competent evidence a conflict of interest so great that it is more likely than 22 not he will be treated unfairly

23 The standards governing recusal pursuant to Penal Code section 1424 are well settled.¹ A
24 motion to recuse a district attorney "may not be granted unless the evidence shows that a conflict
25 of interest exists that would render it unlikely that the defendant would receive a fair trial." (§
26 1424, subd. (a).) Section 1424 establishes a two-part test: The first part asks whether there is a
27 conflict of interest. A "conflict" exists whenever the circumstances of a case evidence a
28 reasonable possibility that the District Attorney may not exercise its discretionary function in an

¹ All undesignated statutory references are to the Penal Code.

1 evenhanded manner. If competent facts show the existence of such a conflict, the second step
2 then asks: Was this conflict so grave as to render it unlikely that defendant will receive fair
3 treatment during all portions of the criminal proceedings? (*People v. Petrisca* (2006) 138
4 Cal.App.4th 189, 194; *People v. Conner* (1983) 34 Cal.3d 141, 148.)² “Defendant bears the
5 burden of demonstrating a conflict of that nature.” (*People v. Ramirez* (2022) 13 Cal.5th 997,
6 1029.)

7 While a “conflict” exists whenever there is a “reasonable possibility that the DA’s office
8 may not exercise its discretionary function in an evenhanded manner,” the conflict is disabling
9 only if it is “so grave as to render it unlikely that defendant will receive fair treatment.”
10 (*Eubanks, supra*, 14 Cal.4th at p. 594, citations omitted; see *Bell, supra*, 7 Cal.5th at p. 97 [“But
11 recusal is not required unless, under the second prong, the possibility of unfair treatment ‘is so
12 great that it is more likely than not the defendant will be treated unfairly during some portion of
13 the criminal proceedings’”]; *Gamache, supra*, 48 Cal.4th at p. 363 [“[T]he possibility that a
14 prosecutor might be influenced does not alone establish the requisite likelihood or probability that
15 a defendant will be treated unfairly”].)

16 Put another way, “the mere existence of a conflict, by itself, is not sufficient to require
17 recusal of the district attorney.” (*Packer v. Superior Court* (2014) 60 Cal.4th 695, 709.) Thus,
18 even if a court finds a “‘reasonable possibility’ that a District Attorney’s Office might not
19 exercise, or might not have already exercised, its discretionary function in an evenhanded
20 manner,” “such a determination would satisfy only the first part of the two-part test” and recusal
21 must be denied unless the defendant has also made a competent showing that the conflict is “so
22 grave” that “prosecution by that office would render fair treatment unlikely.” (*Snow, supra*, 30
23 Cal.4th at p. 86.) To that end, a court “must consider the entire complex of facts surrounding the
24

25 ² Accord, *People v. Bell* (2019) 7 Cal.5th 70, 98; *People v. Gamache* (2010) 48 Cal.4th
26 347, 362; *People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 746; *Hollywood v.*
27 *Superior Court* (2008) 43 Cal.4th 721, 727-728; *Haraguchi v. Superior Court* (2008) 43 Cal.4th
28 706, 711, 713; *People v. Vasquez* (2006) 39 Cal.4th 47, 56; *People v. Griffin* (2004) 33 Cal.4th
536, 569; *People v. Maury* (2003) 30 Cal.4th 342, 437, fn. 23; *People v. Snow* (2003) 30 Cal.4th
43, 86-87; *Hambarian v. Superior Court* (2002) 27 Cal.4th 826, 833; *People v. Millwee* (1998) 18
Cal.4th 96, 122-124; *People v. Eubanks* (1996) 14 Cal.4th 580, 592.

1 conflict to determine whether the conflict makes fair and impartial treatment of the defendant
2 unlikely.” (*Eubanks, supra*, 14 Cal.4th at p. 599.)

3 Section 1424 was enacted in response to the substantial increase in unnecessary recusals
4 allowed under the prior, abrogated “appearance of conflict” standard of *People v. Superior Court*
5 (*Greer*) (1977) 19 Cal.3d 255. (*Vasquez, supra*, 39 Cal.4th at pp. 58-59.) Under section 1424, a
6 competent showing of an actual conflict or an appearance of a conflict will not warrant recusal
7 unless the defendant also makes a competent showing of a real likelihood that he or she will not
8 receive a fair trial. As the Supreme Court has held:

9 [W]hether the prosecutor’s conflict is characterized as actual or only apparent, the
10 potential for prejudice to the defendant—the likelihood that the defendant will not
11 receive a fair trial—must be real, not merely apparent, and must rise to the level of a
12 likelihood of unfairness. Thus, section 1424, unlike the *Greer* standard, does not
13 allow disqualification merely because the district attorney’s further participation in
14 the prosecution would be unseemly, would appear improper, or would tend to reduce
15 public confidence in the impartiality and integrity of the criminal justice system.
16 (*Eubanks, supra*, 14 Cal.4th at p. 592, italics in original.)

17 Because “enactment of section 1424 eliminated the appearance of impropriety as an
18 independent ground for prosecutorial disqualification” (*Eubanks, supra*, 14 Cal.4th at p. 592),
19 recusal is not appropriate upon “the trial court’s feeling that it would be cleaner or better for the
20 Attorney General to handle the case, or that it would be ‘more appropriate’ for that office to
21 conduct the prosecution” (*People v. Cannedy* (2009) 176 Cal.App.4th 1474, 1486). (See also
22 *Petrisca, supra*, 138 Cal.App.4th at p. 196 [“The prosecutor’s degree of comfort or self-imposed
23 pressure has no bearing on whether a conflict exists or whether a defendant will receive a fair
24 trial”].) “Only an actual likelihood of unfair treatment, not a subjective perception of
25 impropriety, can warrant a court taking the significant step of recusing an individual prosecutor or
26 prosecutor’s office.” (*Haraguchi, supra*, 43 Cal.4th at p. 719, italics in original.) “Mere
27 speculation is not enough.” (*People v. Pomar* (2023) 95 Cal.App.5th 504, 515.)

1 In sum, section 1424 requires a defendant to make an affirmative, competent, and factual
2 showing of the “real, not merely apparent, potential for unfair treatment.” (*Vasquez, supra*, 39
3 Cal.4th at p. 56; see also *Packer, supra*, 60 Cal.4th at p. 710 [“defendant’s burden to allege facts
4 which, if credited, establish: (1) a ‘conflict of interest’; and (2) that the conflict is ‘so grave as to
5 make a “fair trial” unlikely”].) “The application of that test appropriately is characterized as
6 primarily factual.” (*Haworth* (2010) 50 Cal.4th 372, 387; see also *Eubanks, supra*, 14 Cal.4th at
7 p. 592; *People v. Breaux* (1991) 1 Cal.4th 281, 294; *Conner, supra*, 34 Cal.3d at p. 148.)

8 **B. Office-wide recusal may only be granted when there has been an**
9 **“especially persuasive” showing of a disabling conflict, and recusal cannot**
10 **be granted where an ethical wall can be erected**

11 The showing must be “especially persuasive” when a defendant seeks recusal of an entire
12 independent prosecuting agency, rather than merely one assigned prosecutor. (*People v.*
13 *Hamilton* (1988) 46 Cal.3d 123, 139.) “The recusal of an entire prosecutorial office is a serious
14 step, imposing a substantial burden on the People, and the Legislature and courts may reasonably
15 insist upon a showing that such a step is necessary to assure a fair trial.” (*Hamilton, supra*, 48
16 Cal.3d at p. 1156; accord, *People v. Bryant, Smith and Wheeler*. (2014) 60 Cal.4th 335, 374.) As
17 such, “[t]he threshold necessary for recusing an entire office is higher than that for an individual
18 prosecutor.” (*People v. Polanski* (2009) 180 Cal.App.4th 507, 562; see also *Spaccia v. Superior*
19 *Court* (2012) 209 Cal.App.4th 93, 106-107.) Officewide recusal requires a commitment of
20 resources of a second prosecutorial agency and potentially a costly duplication of work. It also
21 prevents the district attorney from carrying out the statutory duties of his or her elected office and
22 deprives county residents of the services of their locally elected representative. (*People ex rel.*
23 *Younger v. Superior Court (Rabaca)* (1978) 86 Cal.App.3d 180, 204; accord, *Eubanks, supra*, 14
24 Cal.4th at p. 593, fn. 6; *Cannedy, supra*, 176 Cal.App.4th at pp. 1481-1482.)

25 Recusal of an entire office is required only where the conflict of the district attorney is
26 substantially likely to affect the entire office to such an extent that it would preclude any deputy
27 from filing and prosecuting the case in an evenhanded manner. (*Hamilton, supra*, 46 Cal.3d at p.
28 139.) To grant recusal of an entire staff there must be “no other alternative available but to recuse
the entire District Attorney’s Office.” (*People v. Merritt* (1993) 19 Cal.App.4th 1573, 1579; see

1 also *Bryant, Smith and Wheeler, supra*, 60 Cal.4th at p. 374 [“The prosecutors whose conduct
2 was questioned were removed from the case. The remaining question is whether any Los
3 Angeles deputy district attorney could fairly prosecute”].) The creation of an ethical screen
4 around the deputy or employee with the alleged conflict is usually sufficient to avoid recusal of
5 an entire office. (See *Gamache, supra*, 48 Cal.4th at pp. 365-366 [the larger the office, the less
6 likely that recusal is warranted]; *Millsap* (1999) 70 Cal.App.4th 196, 202 [the Los Angeles
7 County District Attorney’s Office “is said to be the largest prosecutorial office in the nation”].)

8 **II. DEFENDANTS HAVE NOT SET FORTH WITH COMPETENT EVIDENCE**
9 **THE EXISTENCE OF A DISABLING CONFLICT OF INTEREST PURSUANT**
10 **TO PENAL CODE SECTION 1424**

11 Defendants argue the newly elected District Attorney’s actions demonstrate a disabling
12 conflict of interest pursuant to section 1424. The actions identified by defendants include the
13 District Attorney’s transferring to new assignments members of his Office who supported the
14 prior District Attorney’s motion to resentence the defendants and appointing Kathleen Cady, who
15 previously represented Milton Andersen, Kitty Menendez’s brother, who opposed resentencing,
16 to head the Office of Victim Services. (Mot. at pp. 4-6, 11-12.)

17 The elected district attorney is not partial or biased, let alone exhibiting a disabling conflict,
18 solely because he has different priorities and may believe in the use of different means to achieve
19 justice than his predecessor. (See, e.g., *Walsh v. Heilman* (7th Cir. 2006) 472 F.3d 504, 506 [“If
20 the people are to choose policy at the polls, the representatives they elect must be able to make
21 enough changes in the bureaucracy to put the winning side’s program into effect rather than be
22 frustrated by a permanent officialdom with its own ideas about governance. [Those that did not
23 prevail in the election] may return to office some day, and then it is they who will see the wisdom
24 of allowing change in the positions where discretion is reposed”].) “District attorneys, as
25 people, inevitably hold individual personal values and allegiances and feel varying emotions
26 relating to their work. As public officeholders, they may also have political ambitions or
27 apprehensions. But that a public prosecutor might feel unusually strongly about a particular
28 prosecution . . . does not inevitably indicate an actual conflict of interest, much less a
constitutional bar to prosecution.” (*Vasquez, supra*, 39 Cal.4th at p. 63.) Indeed, as noted by the

1 California Supreme Court in *Eubanks*, *supra*, 14 Cal.4th 580, discussing the nature of a
2 prosecuting attorney's impartiality:

3 The nature of the impartiality required of the public prosecutor follows from the
4 prosecutor's role as representative of the People as a body, rather than as individuals.
5 "The prosecutor speaks not solely for the victim, or the police, or those who support
6 them, but for all the People. That body of 'The People' includes the defendant and
7 his family and those who care about him. It also includes the vast majority of citizens
8 who know nothing about a particular case, but who give over to the prosecutor the
9 authority to seek a just result in their name." (Corrigan, On Prosecutorial Ethics
10 (1986) 13 Hastings Const. L.Q. 537, 538-539.) Thus the district attorney is expected
11 to exercise his or her discretionary functions in the interests of the People at large,
12 and not under the influence or control of an interested individual. (*People v. Superior*
13 *Court (Greer)*, *supra*, 19 Cal.3d at p. 267, 137 Cal.Rptr. 476, 561 P.2d 1164.)
14 (*Id.* at pp. 589-590.)

15 The District Attorney may also take a position that might be at odds with that of a crime
16 victim's family members. He may disagree with a crime victim concerning the proper charges to
17 file, how a case should be litigated, whether (and on what terms) a case should be settled, or what
18 punishment should be sought in the event of a defendant's conviction. And there might be times
19 when a crime victim is dissatisfied with the way a case is handled or resolved. This does not
20 create a conflict. (See *Humberto S.*, *supra*, 43 Cal.4th at pp. 754-755 [noting a conflict could
21 arise if the interests of the prosecutor and victim diverged and the prosecutor chose "to elevate the
22 victim's interests over their duty to act fairly"]; *People v. Parmar* (2001) 86 Cal.App.4th 781, 809
23 ["In general, a prosecutor's conduct in pursuit of [his] duties, even if erroneous, will not support
24 disqualification"].)

25 In this case, even if, as the defense alleges (see Motion at pp. 4, 11, 15, 17), the District
26 Attorney transferred Lunsford to another unit because Lunsford declined to review his previous
27 recommendation or to amend it to conform to the District Attorney's current position, and the
28 District Attorney transferred Theberge to another county agency for similar reasons, defendants

1 have not identified a conflict. These types of actions do not demonstrate that the District
2 Attorney has a personal or financial stake in the outcome of defendants' resentencing hearing, nor
3 do they evidence a disabling conflict of interest pursuant to section 1424. They simply reflect an
4 exercise of discretion by the District Attorney to take a particular legal position and to assign
5 personnel who are willing and able to convey the District Attorney's position. Further, there has
6 been no showing or allegation that the currently assigned prosecutors have an improper bias or
7 personal interest in the instant case.

8 Additionally, Cady's appointment as the District Attorney's Head of Victim Services did
9 not create a disabling conflict of interest. Cady previously represented a victim—Kitty
10 Menendez's brother, Milton Andersen—not a defendant. And there has been no showing or
11 allegation that Cady possesses confidential or privileged information relating to the defense or
12 defense strategy or that she harbors an improper bias or has any personal interest in the
13 resentencing hearing. Such conflicts usually arise in a context entirely different from the instant
14 case, in which a defense attorney joins the agency now prosecuting his former client. (See, e.g.,
15 *People v. Superior Court (Greer)*, *supra*, 19 Cal.3d at p. 261.) In any event, it appears that Cady
16 has been ethically screened from involvement or input in the instant case. (See *People v.*
17 *Hamilton*, *supra*, 46 Cal.3d at pp. 138-141; *People v. Lopez* (1984) 155 Cal.App.3d 813, 827.)

18 A conflict is established where the elected or assigned prosecutor has a direct personal
19 and/or financial interest in a prosecution such that it is likely to impact their discretionary
20 decision-making, but neither factor is present here even accepting the defendants' allegations as
21 true. (See, e.g., *People ex rel. Clancy v. Superior Court* (1985) 39 Cal.3d 740, 746 [upholding
22 removal of a contract attorney for the city who was paid a contingency fee and had a financial
23 stake in the outcome and noting that "[w]hen a government attorney has a personal interest in the
24 litigation, the neutrality so essential to the system is violated"]; *Commonwealth v. Lutes* (2002)
25 793 A.2d 949, 956 ["When the [elected] district attorney has a direct financial interest in the
26 outcome of a prosecution, a conflict of interest exists which requires the substitution of the AG's
27 Office and which is not cured by the assignment of the case to an assistant district attorney"]; see
28 also *Hambarian v. Superior Court*, *supra*, 27 Cal.4th at p. 835 [disqualification warranted where

1 financial assistance provided is of “a nature and magnitude likely to put the prosecutor’s
2 discretionary decisionmaking within the influence or control of an interested party”]; *Eubanks*,
3 *supra*, 14 Cal.4th at pp. 598-601 [substantial financial contribution by victim to district attorney’s
4 office combined with the fact that the case had weak evidentiary support justified trial court’s
5 order disqualifying district attorney’s office].)

6 In *Hollywood v. Superior Court*, *supra*, 43 Cal.4th 721, the Court held that recusal was not
7 available merely because the prosecutor had assisted a filmmaker with a movie about the pending
8 criminal case. The Court explained the prosecutor had:

9 the same interest in burnishing his legacy that every attorney has in a high-profile
10 case—indeed, that every attorney on both sides in this case has. Success in high-
11 profile cases brings acclaim; it is endemic to such matters. Moreover, if the high-
12 profile nature of a case presents incentives to handle the matter in any way contrary to
13 the evenhanded dispensation of justice, the problem is not one recusal can solve, as
14 the same issue would arise equally for any theoretical replacement prosecutor. In
15 such matters, we must rely on our prosecutors to carry out their fiduciary obligation
16 to exercise their discretionary duties fairly and justly—to afford every defendant,
17 whether suspected of crimes high or petty, equal treatment under the law.

18 (*Id.* at p. 734.)

19 In contrast, the Court of Appeal in *People v. Pomar* (2023) 95 Cal.App.5th 504, held that
20 the trial court did not abuse its discretion when it granted recusal of the elected District Attorney
21 and her entire office due to the District Attorney’s “deep, personal interest” in the case at issue.
22 The murder victim, Mallory, was the District Attorney’s cousin by marriage, and the Court of
23 Appeal noted that the District Attorney believed in the guilt of the defendants (Pomar and
24 Mitchell), harbored animosity toward them for their role in the victim’s death and made
25 statements in the press before her election criticizing the prosecution. (*Id.* at p. 518.) The Court
26 of Appeal additionally determined that the trial court did not abuse its discretion when recusing
27 the entire Office in a second prosecution of Pomar and a different codefendant, Young, after
28 concluding that the District Attorney’s “animosity toward Pomar for his role in the drive-by

1 shooting of her husband's cousin extended to his role in the drive-by shooting in the
2 Pomar/Young case." The Court noted that the District Attorney's "public statements tying the
3 two cases together" such that "they had become inextricably intertwined in the eyes of the ADAs
4 in the Office, as well as the public" and her "belief that the prosecution of Pomar in the Mallory
5 case was doomed due to the lack of gang charges would likely influence ADAs 'consciously or
6 unconsciously' to be more aggressive in prosecuting Pomar in the Pomar/Young case." (*Id.* at p.
7 518.) None of the circumstances, actions, or statements identified in *Pomar* are present here.³

8 To the extent defendants suggest the District Attorney was overzealous, overzealousness or
9 even instances of misconduct are not a basis for recusal. (See *Young v. United States ex rel.*
10 *Vuitton et Fils S.A.* (1987) 481 U.S. 787, 807, fn. 18, citation omitted ["prosecutors may on
11 occasion be overzealous and become overly committed to obtaining a conviction. That problem,
12 however, is personal, not structural . . ." and "does not have its roots in a conflict of interest"];
13 *Bryant, Smith and Wheeler, supra*, 60 Cal.4th at p. 375 ["[r]ecusal is not a mechanism to punish
14 past prosecutorial misconduct. Instead, it is employed if necessary to ensure that future
15 proceedings will be fair. '[S]ection 1424 does not exist as a free-form vehicle through which to
16 express judicial condemnation of distasteful, or even improper, prosecutorial actions.'
17 [Citation]"]; see also *Marshall v. Jerico, Inc.* (1980) 446 U.S. 238, 248 [prosecutors have "wide
18 discretion" in the enforcement process, "need not be entirely 'neutral and detached,'" and "are
19 necessarily permitted to be zealous in their enforcement of the law"]; *Vasquez, supra*, 39 Cal.4th
20 at p. 65 ["Zealous advocacy in pursuit of convictions forms an essential part of the prosecutor's
21 proper duties and does not show the prosecutor's participation was improper"].) In any event,
22 defendants' own motion and the prior hearings in this matter reflect that the District Attorney
23 considered the evidence, the law, and the opinions of the 20 or more family members who met
24 with him before he took a position on resentencing. (Mot. at p. 7.) This suggests only a carefully
25 considered and proper exercise of prosecutorial discretion.

26
27 ³ Moreover, even on the unusual facts in *Pomar*, the Court recognized that the trial courts
28 "could have reasonably concluded that Jenkins's [the elected District Attorney's] conflict was
insufficient to support recusal under section 1424." (*Id.* at p. 520.)

1 **III. RECUSAL IS NOT AVAILABLE FOR ALLEGED VIOLATIONS OF**
2 **MARSEY'S LAW**

3 Defendants also complain about “repeated violations of Marsey’s [sic] law and the [District
4 Attorney’s Legal Policies Manual]” which “mirrors, and gives voice to, requirements set forth in
5 Marsey’s [sic] law.” (Mot. at 6-7; pp. 18-19, fn. 7.) To the extent defendants purport to argue or
6 assert Marsy’s Law rights on behalf of the victims, those arguments are not properly raised
7 because only the victims themselves, their attorneys, their lawful representatives, or a prosecutor
8 (at the victim’s request) may seek enforcement of those rights. Additionally, while a crime
9 victim’s legitimate concerns and request for enforcement of their rights under Marsy’s Law can
10 and should be heard by courts, recusal of the District Attorney is not an available remedy for
11 alleged violations of Marsy’s Law. Finally, to the extent defendants’ arguments can be construed
12 as a claim that any purported Marsy’s Law violations reflect bias by the District Attorney against
13 them that is likely to render their resentencing hearing unfair, they failed to demonstrate any
14 conflict.

15 **A. The Victims’ Rights Under Marsy’s Law**

16 Marsy’s Law, which was adopted by voters in November 2008, substantially amended
17 article I, section 28, of the California Constitution, popularly known as the “Victims’ Bill of
18 Rights.” Marsy’s Law is named after a murder victim whose family “were often treated as
19 though they had no rights” and first learned of the killer’s pretrial release on bail when they saw
20 him at the grocery store. (*In re Vicks* (2013) 56 Cal.4th 274, 282.) They later “endured the
21 trauma of frequent parole hearings and constant anxiety that Marsy’s killer would be released.”
22 (*Ibid.*)

23 The purpose of Marsy’s Law is to ensure that, throughout the criminal justice system,
24 victims are afforded justice and due process, kept informed, treated with fairness and respect, and
25 heard in various prosecutorial and judicial decisions. (*Vicks, supra*, 56 Cal.4th at pp. 282-283,
26 309-310; Cal. Const., art. I, § 28, subds. (a)-(b).) “Victims” within the meaning of the law
27 include direct victims and their family members. (Cal. Const., art. I, § 28, subd. (e).) Marsy’s
28 Law contemplates and guarantees that a prosecutor will confer with these victims upon request,

1 consider victim safety in reaching case resolutions, and consider and enforce victims' rights.
2 (E.g., Cal. Const., art. I, § 28, subds. (b)(2), (3), (9), (13).) Marsy's Law did not remove
3 prosecutorial discretion as to charging and other decisions in criminal cases; rather, it aims to
4 ensure prosecutors will not exercise such discretion without input from, and consideration of,
5 victims who wish to be part of the process. (*Vicks, supra*, 56 Cal.4th at p. 310 ["[I]t is not critical
6 that a victim's participation be relevant to the ultimate decision; rather, what is important is that
7 the victim be acknowledged and respected"].)

8 Victims have many rights under Marsy's law, including the right to expect that people who
9 commit felonies will be appropriately tried and punished (Cal. Const., art. I, § 28, subd. (a)(4)), to
10 expect that an imposed sentence will be carried out (*id.* at subd. (a)(5)), to be treated with fairness
11 and respect (*id.* at subd. (b)(1)), to be reasonably protected from the defendant (*id.* at subd.
12 (b)(2)), to confer with the prosecutor regarding charging decisions and pretrial dispositions upon
13 request (*id.* at subd. (b)(6)), to get "reasonable notice" of public hearings upon request (*id.* at
14 subd. (b)(7)), to be present and heard upon request at any proceeding in which a right of the
15 victim is at issue (*id.* at subds. (b)(7)-(8)), and to have their safety considered before any post-
16 judgment release decision is made (*id.* at subd. (b)(16)).

17 The rights conferred by Marsy's Law are enforceable and personally held by victims. (Cal.
18 Const., art. I, § 28, subd. (a)(3).) They are enforceable by victims, their attorneys, a lawful
19 representative, "or the prosecuting attorney upon request" in any trial or appellate court with
20 jurisdiction over the case. (*Id.* at subds. (a)(3) & (c)(1).) Marsy's Law also recognizes that the
21 "broader shared collective rights" of victims and the People of California are enforceable
22 "through good-faith efforts and actions of California's elected, appointed, and publicly employed
23 officials." (*Id.* at subd. (a)(4).) However, the enforcement provision of Marsy's Law "does not
24 create any cause of action for compensation or damages against the State, any political
25 subdivision of the State, any officer, employee, or agent of the State or of any of its political
26 subdivisions, or any officer or employee of the court." (Cal. Const., art. I, § 28, subd. (c)(2).)

1 **B. Marsy's Law provides that victims may seek enforcement of their**
2 **enumerated rights, but it does not permit a defendant to do so on a victim's**
3 **behalf or provide a basis for recusal of the LADA as a remedy for a**
4 **violation**

5 Marsy's Law creates personal rights for crime victims that are enforceable in court by the
6 victims themselves, their attorneys, their lawful representatives, or a prosecutor upon request of a
7 victim. (Cal. Const., art. I, § 28, subd. (a)(3) & (c)(1).) There is no provision permitting a
8 defendant to argue or assert Marsy's Law rights on behalf of the person(s) they victimized, and
9 understandably so. To the extent defendants attempt to do so here, their arguments are improper
10 and should be rejected.

11 To the extent the victims here are seeking enforcement of any rights set forth in Marsy's
12 Law, they are entitled and encouraged to do so. However, recusal of the District Attorney is not
13 an available remedy for any violations of those rights. Nothing in Marsy's Law confers the right
14 to seek recusal of a prosecutor as an enforcement mechanism, and the law governing recusals
15 expressly applies only to a criminal defendant (§ 1424 [establishing that a disqualification
16 "motion may not be granted unless the evidence shows that a conflict of interest exists that would
17 render it unlikely that the *defendant* would receive a fair trial"], italics added).

18 Victims can assert any rights conferred by Marsy's Law by making a request of the
19 prosecution (see Cal. Const., art. I, § 28, subds. (b)(6)-(8) [right to confer and right to notice
20 available "upon request"]), and they can address any concerns with the court and ask for
21 enforcement. To the extent the victims would like support from a district attorney victim
22 advocate, they can make that request of the prosecutor. To the extent the victims believe they
23 have been unable to confer with the prosecutor (Cal. Const., art. I, § 28, subd. (b)(6)), or they
24 believe they received inadequate notice of hearings (id. at subd. (b)(7)) or insufficient warnings
25 before photographs were shown, the Court can order the prosecutor to confer or provide notice or
26 it can provide notice itself. If the victims feel that their right to be heard was violated (id. at
27 subds. (b)(7)-(8)), the Court can provide the victims with a forum to air their concerns. If there
28 were a situation where a victim believed that a prosecutor engaged in misconduct or violated
 ethical rules in a manner implicating the victims' Marsy's Law rights, the Court can not only

1 provide the victims an opportunity to be heard but also make findings and issue appropriate
2 orders regarding the prosecutor's conduct. In the most egregious cases, the Court can potentially
3 impose sanctions or issue a contempt order. But Marsy's Law cannot be read to provide a basis
4 for recusal of a prosecutor as an enforcement mechanism.

5 To the extent defendants claim that any purported Marsy's Law violations reflect bias by
6 the District Attorney against *defendants* that would demonstrate a substantial likelihood they will
7 receive an unfair resentencing hearing, their claims fall short. Defendants have not explained
8 how any alleged Marsy's Law violations evince bias against them, and it appears there has been
9 compliance with Marsy's Law in any event. Defendants' own motion and prior hearings in this
10 matter reflect that the District Attorney personally met with 20 or more members of Kitty and
11 Jose Menendez's family before taking a position on resentencing. (See Mot. at 7; April 25, 2025,
12 Hearing, RT at pp. 16-26; Cal. Const., art. I, § 28, subd. (b)(6) [right to confer with prosecutor].)
13 Further, Cady's prior work as a victim advocate for another family member did not create a
14 conflict of interest, but the District Attorney nevertheless walled her off from the instant matter
15 and resentencing hearing apparently out of an abundance of caution.⁴

16 Some of the family member victims also asserted their rights through counsel at the April
17 17, 2025, proceedings in this Court, and this Court heard their concerns. (April 17, 2025, Hearing
18 at pp. 16-26.) The Court agreed that it was necessary for the assigned deputy district attorney to
19 show relevant photographs of the murder scene and asked him to notify the family ahead of time
20 in future proceedings, and he agreed. (April 17, 2025, Hearing at pp. 22-25.) The Court did not
21 indicate that it found any Marsy's Law violations.

22 Defendants fail to demonstrate how any Marsy's Law factor reveals bias against them by
23 the District Attorney. As they have not demonstrated that the District Attorney has any personal
24 or financial stake in the instant resentencing hearing, nor has there been a finding of any Marsy's
25 Law violations, defendants' motion to disqualify the District Attorney should be denied.

26
27 ⁴ Defendants' arguments about Cady's prior representation of Milton Andersen seem to
28 suggest that they believe some of the family members' opinions on resentencing are entitled to
consideration while others—Milton Andersen's—are not.

1 **IV. NO EVIDENTIARY HEARING IS REQUIRED BECAUSE DEFENDANTS**
2 **HAVE NOT SET FORTH WITH COMPETENT FACTS ESTABLISHING THE**
3 **EXISTENCE OF A DISABLING CONFLICT OF INTEREST PURSUANT TO**
4 **PENAL CODE SECTION 1424**

5 As set forth above, defendants have failed to meet their burden of demonstrating a genuine
6 conflict. (*People v. Pierce* (2019) 38 Cal.App.5th 321, 342 [“The defendant bears the burden of
7 demonstrating a genuine conflict”].) Moreover, there has been no showing of relevant evidence
8 that would be discovered in any such hearing. Even fully credited, the recited facts do not
9 establish a prima facie case for recusal because they do not evidence a disabling conflict for the
10 elected District Attorney and his entire staff of prosecutors. Accordingly, there is no need for an
11 evidentiary hearing.

12 “California law affords numerous examples of a trial court’s authority, in ruling upon
13 motions, to resolve evidentiary disputes without resorting to live testimony.” (*People v. Superior*
14 *Court (Zamudio)* (2000) 23 Cal.4th 183, 201, citing § 1050, subd. (b) [affidavits or declarations
15 sufficient to support motion for continuance]; *People v. Cox* (1991) 53 Cal.3d 618, 697 [whether
16 to conduct live hearing on new trial motion alleging juror misconduct is within court’s
17 discretion]; *Garcia v. Superior Court* (1984) 156 Cal.App.3d 670, 681-682 [evidentiary hearing
18 on motion to disqualify trial judge not required]; *People v. Eastman* (1944) 67 Cal.App.2d 357,
19 359 [implying court properly could rule on motion to vacate judgment of conviction on affidavits
20 only].)

21 Pursuant to section 1424, upon the filing of a motion to recuse, “the judge reviews the
22 affidavits and determines whether an evidentiary hearing is necessary.” (*Polanski, supra*, 180
23 Cal.App.4th at p. 562.) “[T]he party seeking an evidentiary hearing must make a prima facie
24 showing by affidavit; a prima facie showing refers to those facts demonstrated by admissible
25 evidence, which would sustain a favorable decision if the evidence submitted by the movant is
26 credited.” (*Spaccia, supra*, 209 Cal.App.4th at pp. 111-112.) Thus, to be entitled to an
27 evidentiary hearing in the recusal context, the defendant must demonstrate, with admissible,
28 competent evidence, both a prima facie showing of an actual or apparent conflict of interest and a
prima facie showing of an actual likelihood that the defendant will receive an unfair trial. (*Id.* at

1 pp. 111-112, & fn. 33; see also *Packer, supra*, 60 Cal.4th at p. 698 ["An evidentiary hearing may
2 be required if the defendant's affidavits establish a prima facie showing for recusal; that is, if the
3 facts demonstrated by the affidavits, if credited, would require recusal"].)

4 Here, as set forth above, defendants have not established a prima facie showing for recusal
5 because they have not set forth facts, competently demonstrated by affidavits, which, if credited,
6 would require recusal of either the assigned prosecutors or the entire staff of the elected District
7 Attorney of Los Angeles County. As a result, the request for an evidentiary hearing should be
8 denied.

9
10 **CONCLUSION**

11 For the foregoing reasons, the Office of the Attorney General respectfully requests that the
12 Court deny the motion to disqualify the Los Angeles County District Attorney's Office.

13 Dated: May 2, 2025

Respectfully submitted,

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DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: **People v. Erik Galen Menendez and Joseph Lyle Menendez**
No.: **BA068880**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230. My electronic service address is Lisa.Ng@doj.ca.gov. I am familiar with the business practice at the Office of the Attorney General for collection and processing of U.S. Mails. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the internal outgoing mails that same day in the ordinary course of business.

On May 2, 2025, I served the attached **OPPOSITION TO MOTION TO RECUSE LOS ANGELES COUNTY DISTRICT ATTORNEY** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

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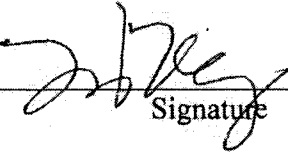
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 2, 2025, at Los Angeles, California.

Lisa P. Ng
Declarant


Signature

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