

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : COUNTY CRIMINAL TERM  
-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Indictment # 9369-91

-against-

**NOTICE OF MOTION**

LUIS CALVENTE,

Defendant.

-----X  
PLEASE TAKE NOTICE, that upon the annexed affirmation of PATRICK MICHAEL MEGARO, ESQ., an attorney duly admitted to practice law before the Courts of the State of New York, the annexed exhibits and the prior proceedings herein, the undersigned will move this Court at the Courthouse thereof, located at 320 Jay Street, Brooklyn, New York 11201, on April 28, 2017 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an Order:

1. Modifying Defendants Sex Offender Registration Level pursuant to Correction Law § 168-o, and
2. Granting such other and further relief as may be just, proper and equitable.

Dated: March 8, 2017

Respectfully Submitted,

  
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Patrick Michael Megaro, Esq.  
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Orlando, Florida 32801  
(o) 407-255-2168  
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pmegaro@halscottmegaro.com  
Florida Bar ID # 738913  
New Jersey Bar ID # 3634-2002  
New York Bar ID # 4094983  
North Carolina Bar ID # 46770  
Texas Bar ID # 24091024  
Washington State Bar ID # 50050

*New York Address:*  
118-35 Queens Boulevard, # 400  
Forest Hills, New York 11375

To:  
Kings County District Attorney  
350 Jay Street  
Brooklyn, New York 11201

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : COUNTY CRIMINAL TERM

Indictment # 9369-91

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**AFFIRMATION IN SUPPORT  
OF MOTION**

LUIS CALVENTE,

Defendant.

-----X

PATRICK MICHAEL MEGARO, ESQ., an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms as follows:

1. I am the attorney of record for the Petitioner-Defendant in the above-captioned matter, and as such I am fully familiar with the facts and circumstances of this case.

2. Calvente moves for re-classification pursuant to Corrections Law § 168-o (2), and requests that the Board re-examine his classification as a Level 3 sex offender. He meets the requirements for a reduced classification set out in the Board's requirements because it has been over twenty (20) years since his final classification, he is not incarcerated or facing pending charges, he has remained at liberty for more than twenty (20) continuous years, he has not petitioned for modification for more than four years, and there is evidence through new and updated information that demonstrates a reduced risk of re-offense and a reduced degree of dangerousness. Calvente requests to be found to be a Level 1 risk, that is, a low risk of re-offense. The facts set forth below and in the supporting documentation are submitted in support of the modification.

3. Unless otherwise specified, all allegations of fact are based upon inspection of the record of this case or upon conversations with Assistant District Attorneys, Petitioner-Defendant, and others.

4. The following exhibits are attached:

- A. Sex Offender Registry
- B. Psychological Evaluation by Marc Janoson, dated September 1, 2016
- C. Medical Records
- D. Letters of Reference
- E. First Petition to Modify SORA Risk Level, dated March 6, 2012
- F. State of New York Board Examiners of Sex Offenders Recommendation, dated November 5, 2012
- G. Affidavit in Support of Defendant's Petition to Modify Level of Notification, dated January 26, 2017

5. Pursuant to Correction Law § 168-o (2), a sex offender may petition the Court which conducted the initial determination for an order modifying his risk level. Once the court receives the defendant's petition, it must forward it to the Board and request an updated recommendation. See CL § 168-o (4). In contrast to a sex offender seeking a downward departure at an initial risk level determination proceeding, who bears a burden of proof by a preponderance of the evidence, a sex offender petitioning for a downward modification must prove "the facts [and reasons] supporting the requested modification by clear and convincing evidence" CL § 168-o (2); see People v Wyatt, 89 AD3d 112, 125, 127-128 (2d Dep't 2011); People v Lashway, 112 AD3d 1235, 1236 (3d Dep't 2013); see e.g. People v Gillotti, 23 NY3d 841, 860-861 (2014). The trial court's determination will not be disturbed absent an abuse of discretion. See Lashway, 112 AD3d at 1236 [internal citations omitted].

6. In 1992, Calvente pled guilty to Rape in the First Degree before Honorable Michael R. Juviler, Indictment no. 9369-91, Kings County. He was sentenced to two to six years' imprisonment, and was conditionally released to Community Supervision in 1996. After his release, he voluntarily continued treatment with Dr. Scarlabad for two years and fulfilled supervision in 1998. See Exhibit G.

7. Calvente has a stable lifestyle and support from family and friends that contribute to a

low risk of re-offense. He has owned his home since 1979 and lives with his wife of fifty-three (53) years, his son, two granddaughters, and great granddaughter. See Exhibit G. Calvente is currently retired and is an active member of his church. See Exhibit G. Exhibit D are letters from his family that attest to his hard-earned support and stability Calvente enjoys in his life. These letters speak to his positive role in his family and his community.

8. Calvente also suffers from dyslexia, diabetes, hypertension, high cholesterol, erectile dysfunction, dyspnea, dizziness, glaucoma, and coronary artery disease. See Exhibit C. Unfortunately, these conditions have confined him to his home because he cannot see, he gets confused, and has shortness of breath, which in turn make it difficult for him to travel from Brooklyn to Manhattan to the Sex Offender Registry. As a result of his physical condition, Calvente is at a reduced risk of re-offense.

9. Calvente’s most recent psychological evaluation attached as Exhibit B had the following results:

| <u>Assessment</u> | <u>Score</u> | <u>Evaluation</u>  |
|-------------------|--------------|--|
| MMPI-2            | Low Risk     | Emotional and behavioral controls are intact. Low Risk for enacting sexual/aggressive impulses |
| Static-99R        | Low Risk     | Low risk for being charged or convicted of another sexual offense.                             |
| MMSE              | 24           | Mild cognitive impairment.   |

10. Prior alcohol and drug abuse may have played a role in Calvente’s previous crimes. Since 1996, Calvente has successfully abstained from the abuse of alcohol and drugs. Calvente’s medical records indicate that he has been substance-free. See Exhibit B; Exhibit C.

11. Calvente was released from prison in 1996. His record indicates he has not been charged or convicted of any new offenses since that time. He has been offense-free in the community in excess of twenty (20) years. “Studies have shown that the likelihood of recidivating

decreases for most offenders after the first five to ten years following release from incarceration and becomes substantially lower after 10 years in the community (Epperson et al., Hanson & Thornton, 2000; Prentky et al., 1997).

12. Calvente is currently 74 years old. Studies have shown that recidivism rates steadily decline with age and are significantly lower for persons aged fifty or older. A., *Effect of Age at Release on Long Term Sexual Re-Offense Rates in Civilly Committed Sexual Offenders*, *Sex Abuse* 19:43-59 (2007); Fazel, Sjostedt, Langstrom & Grann, *Risk Factors for Criminal Recidivism in Older Sexual Offenders*, *Sexual Abuse: A Journal of Research and Treatment*, Vol. 18, No. 2 (April 2006); Hanson, R.K., *Does Static-99 Predict Recidivism Among Older Offenders?*, *Sex Abuse*, 18: 343-355 (2006) (Older offenders had lower sexual recidivism rates than would be expected based on their static-99 risk categories); Thornton, D., *Age & Sexual Recidivism: A Variable Connection*, *Sexual Abuse: A Journal of Research & Treatment*, 18(2): 123-135 (2006); Barbaree, Blanchard & Langton, *The Development of Sexual Aggression Through the Lifespan*, *Ann.N.Y. Acad.Sci.* 989:59-71 (2003); R. Karl Hanson, *Recidivism and Age: Follow-up Data on 4, 673 Sexual Offenders*, *Journal of Interpersonal Violence*, Vol. 17, No. 10, 1046-1062 (October 2002). See *Doe No. 151564 v. SORB*, 456 Mass. 612, 621-623 (2010) (It was arbitrary and capricious for the board to classify Doe without considering evidence that recidivism risk decreases with age); *Doe 17723 v. SORB*, 2011 Mass. App. Unpub. LEXIS 460 (April 11, 2011) (1.23 decision) (Hearing Examiner's decision not to consider Doe's age as a mitigating factor in his classification was based on substantial error).

*Discussion of other factors that may support lowering classification risk – completion of probation, hardship suffered as result of classification, acceptance in community, and any others.*

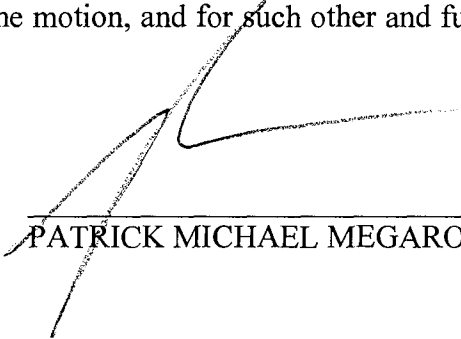
13. Calvente meets the requirements for reclassification at this time, and has proved by clear and convincing evidence, with supporting documentation, that his risk and degree has been mitigated through new and updated information pursuant to Corrections Law § 168-o (2). This is Calvente's second petition for modification of his SORA risk level and it has been almost five years since the Board determined his risk had not been mitigated. During this time Calvente has continued to demonstrate that he has learned to make the right decisions. In the face of pressure from the community he has responded honestly and openly about his past. Calvente has spent the last twenty (20) years building a life that gives every assurance that he will not reoffend. He is sober and continues to work hard to understand the issues that triggered his offenses. His good works have yielded him tremendous community and family support.

14. Calvente understands that if this petition is granted, he will still be required to register as a sex offender, and would have to register yearly. What would change is the notification level, and allow his name and other information not to be included on the State's Internet website.

15. For the reasons stated herein in support of the instant motion, and based upon the official Court records, the Affidavits submitted in support of this motion, and the Exhibits attached, your affirmant respectfully requests that this Court grant this motion in its entirety.

WHEREFORE, your affirmant requests that this motion be granted in its entirety, or in the alternative, an evidentiary hearing scheduled on the motion, and for such other and further relief as this Court may deem just, proper and equitable

Dated: March 8, 2017



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PATRICK MICHAEL MEGARO, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : COUNTY CRIMINAL TERM

Indictment # 9369-91

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**AFFIRMATION OF SERVICE**

LUIS CALVENTE,

Calvente.

-----X

PATRICK MICHAEL MEGARO, ESQ., an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms as follows:

I am over the age of 18 years and am not a party to the within action; I maintain my offices at 118-35 Queens Boulevard, Suite 400, Forest Hills, New York 11375

On March 8, 2017, I filed and served by USPS mail the within Notice of Motion, Affirmation, Affidavit, and Exhibits upon the following parties:

Kings County District Attorney  
350 Jay Street  
Brooklyn, New York 11201

Dated: March 8, 2017



\_\_\_\_\_  
PATRICK MICHAEL MEGARO, ESQ.

Indictment # 9369-91

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : COUNTY CRIMINAL TERM

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

LUIS CALVENTE,

Defendant.

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NOTICE OF MOTION, AFFIRMATION, AFFIDAVIT, EXHIBITS,  
AFFIRMATION OF SERVICE

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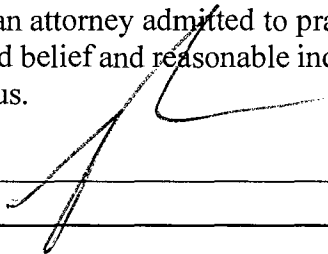
**PATRICK MICHAEL MEGARO, ESQ.**  
**Attorney for : Defendant**

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: 3/9/2017

Signature: 

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Service of a copy of the within: \_\_\_\_\_ is hereby admitted.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_