

National Legal and Policy Center

"promoting ethics in public life"



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Since 1991

August 7, 2018

Office of Information Policy
U.S. Department of Justice
1425 New York Avenue, N.W.
Suite 11050
Washington, D.C. 20530

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Sir/Madam,

National Legal and Policy Center (NLPC) respectfully requests all records related to investigations conducted by the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) of United States Senator Robert Menendez (D-NJ) since January 1, 2012, including but not limited to DOJ's decision to drop all criminal charges against Menendez, as announced on January 31, 2018.

NLPC requests these records, regardless of format, including electronic records, audiotapes, written notes, and videotapes, pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552, et seq., DOJ regulations, 28 C.F.R Part 16. NLPC excludes from the request records covered by grand jury secrecy pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure.

The DOJ conducted an investigation of Senator Menendez related to federal corruption charges, including using his official position to further the business of Salomon Melgen, a doctor and one of Menendez's top donors. Menendez and Melgen were indicted on April 1, 2015 on a variety of corruption charges. Following an 11-week trial that resulted in a hung jury, the Department of Justice chose not to retry Senator Menendez and dropped the charges against the disgraced Senator. (See Exhibit A).

Please search for all responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically and with searchable functionality. Our request includes any letters, emails, facsimiles, telephone messages, voicemail messages, and any notes regarding discussions about the investigation, including transcripts, notes, or minutes of meetings and telephone conversations. In addition, we request any attachments to these records.

In the event some portions of the request are exempt from disclosure, please disclose the rationality for the exempt portions. We also ask that you index the documents that are exempt from disclosure, as required under *Vaughn v. Rosen*; 484 F. 2d 820 (D.C. Cir. 1973), *cert denied*, 415 U.S. 977 (1072).

Among the actions of which Menendez is accused: taking free rides on Melgen's private jets to luxurious resorts around the world; failure to report or disclose these gifts of travel; arranging for Melgen's foreign-born girlfriends get visas to the United States; intervening with federal authorities to thwart an investigation of the massive fraud of which Melgen was eventually convicted; and pressuring State Department officials to act to further Melgen's business interests in the Dominican Republic. (See Exhibits B & C.) The requested documents would shed light on the conduct of the DOJ and FBI in conducting the investigation into Senator Menendez and the decision to not retry the Senator. While the DOJ chose to drop the charges, Senator Menendez's activities still could have been illegal or in violation of the rules of the Senate, and the requested records would bring these activities to light.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k), NLPC requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government and expenditures, and the disclosures will likely contribute to a better understanding of relevant government procedures by NLPC and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

These records are likely to contribute to greater public awareness of possible criminal behavior by Senator Menendez and why the DOJ decided to drop the charges.

NLPC is a non-profit organization under 501(c)(3) of the Internal Revenue Code. NLPC is committed to promoting ethics in public life through monitoring and reporting of public officials to ensure the integrity of those who hold public office. NLPC will analyze the information responsive to this request, and will share its analysis with the public. In addition, NLPC will disseminate any documents it acquires from this request to the public through its website.

Under these circumstances, NLPC satisfies fully the criteria for a fee waiver.

News Media Fee Waiver Request

NLPC asks that it not be charged search or review fees for this request because NLPC qualifies as a "representative of the news media" pursuant to the FOIA. In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) the Court of Appeals for the District of Columbia Circuit found the National Security Archive was representative of the news media under the FOIA, which allowed for "representative of the news media" to be interpreted broadly.

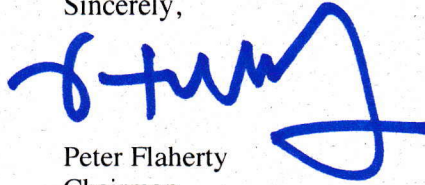
NLPC disseminates information to the public in several ways, including a frequently visited website that is updated daily. Additionally, NLPC publishes an online newsletter with regular updates regarding NLPC's activities and information the organization has received from government entities. Lastly, NLPC publishes blog posts that reports on and analyzes newsworthy developments regarding government ethics and corruption.

Based on these extensive publication activities, NLPC qualifies for a fee waiver as a "representative of the news media" under the FOIA and agency regulations.

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NLPC welcomes the opportunity to discuss with you whether and to what extent this request can be modified to better enable the DOJ to process it within FOIA deadlines. If you have any questions about this request or foresee any problems in realizing fully the requested records, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter Flaherty". The signature is stylized and cursive, with a large loop at the end.

Peter Flaherty
Chairman

EXHIBIT A

Justice Dept. won't retry Sen. Bob Menendez

By Laura Jarrett, Dan Berman and Sarah Jorgensen, CNN
January 31, 2018

<https://www.cnn.com/2018/01/31/politics/menendez-charges-dismiss/index.html>

(CNN)The Justice Department Wednesday filed to dismiss its remaining charges against Sen. Bob Menendez, bringing the legal case that has hovered over the New Jersey Democrat for years to a close.

An 11-week trial last fall resulted in a hung jury. Prosecutors had accused the senator of accepting bribes from Dr. Salomon Melgen, a wealthy ophthalmologist in Florida, in return for political favors. The charges against Melgen were also dropped.

"Given the impact of the Court's Jan. 24 order on the charges and the evidence admissible in a retrial, the United States has determined that it will not retry the defendants on the remaining charges," DOJ spokeswoman Nicole Navas Oxman said.

"From the very beginning, I never wavered in my innocence and my belief that justice would prevail," Menendez said in a statement Wednesday. "I am grateful that the Department of Justice has taken the time to reevaluate its case and come to the appropriate conclusion. I thank God for hearing my prayers and for giving me strength during this difficult time. I have devoted my life to serving the people of New Jersey, and am forever thankful for all who have stood by me."

Melgen attorney Kirk Ogrosky called the case an "ill-fated adventure" by the FBI and Justice Department "that destroyed my client's life."

"Dr. Melgen is now and has always been innocent of the charges brought in New Jersey. He did not ever give anything to his best friend of over 20 years with an expectation that he would get something in return," Ogrosky said. "We take no pleasure in seeing justice done at this stage in a case that should never have been brought. All that said, justice today is better than continuing on to inevitable acquittals on the remaining counts. We hope that this type of meritless case is never again brought by DOJ."

After last fall's trial ended, one juror told reporters the jury was split 10-2 on all counts in favor of acquittal.

"In light of the results of a three month trial, all the jury said and the granting of our motion for acquittal on significant counts, we are pleased and grateful that the Justice Department made the right decision to end this case," Menendez attorney Abbe Lowell said Wednesday.

In November when the trial ended in a mistrial, Menendez criticized the Justice Department.

"The way this case started was wrong, the way it was investigated was wrong, the way it was prosecuted was wrong and the way it was tried was wrong as well," Menendez told reporters outside the courthouse. "Certain elements of the FBI and of our state cannot understand or, even worse, accept that the Latino kid from Union City and Hudson County can grow up and be a US senator and be honest."

Menendez faced charges of conspiracy, bribery and honest services fraud related to allegedly abusing the power of his office that could have carried decades in prison. Prosecutors said Menendez pressured high-level officials in the Obama administration and other career diplomats to help Melgen resolve his business

disputes in exchange for political contributions, a luxurious hotel suite at the Park Hyatt in Paris and free rides on Melgen's private jet that Menendez failed to report on his Senate disclosure form.

Defense lawyers argued that Menendez and Melgen were longtime friends with no corrupt intent to commit a federal crime.

EXHIBIT B

Senator Has Long Ties to Donor Under Scrutiny

By RAYMOND HERNANDEZ and FRANCES ROBLES

JAN. 31, 2013

<https://www.nytimes.com/2013/02/01/nyregion/senator-menendezs-ties-to-political-donor-are-scrutinized.html>

Dr. Salomon E. Melgen, a wealthy Florida eye surgeon, has always been happy to help out his friend, Senator Robert Menendez of New Jersey.

He rushed to the senator's side when Mr. Menendez's mother died, flew him around on his private jet and delivered hundreds of thousands of dollars to benefit Mr. Menendez and the national Democratic Party.

Mr. Menendez, a Democrat, has also been helpful to Dr. Melgen, according to records and interviews, in ways that could bring the doctor a highly lucrative windfall.

Two years ago, Dr. Melgen, despite an apparent lack of experience in border security issues, bought an ownership interest in a company that had a long-dormant contract with the Dominican Republic to provide port security. Mr. Menendez, who is chairman of the Senate subcommittee that holds sway over the Dominican Republic, subsequently urged officials in the State and Commerce Departments to intervene so the contract would be enforced, at an estimated value of \$500 million.

This week, a team of agents from the Federal Bureau of Investigation raided Dr. Melgen's offices in West Palm Beach, removing 30 boxes of documents and other material, and the senator now finds himself defending his relationship with a major political benefactor just as he is on the verge of reaching the most prestigious post of his career — the chairmanship of the Senate Foreign Relations Committee.

An F.B.I. spokesman declined to describe the focus of the agency's inquiry. A law enforcement official cautioned that there were many issues involving Dr. Melgen that could be under scrutiny.

On Wednesday, Dr. Melgen released a statement through his lawyer: "The government has not informed Dr. Melgen what its concerns are. However, we are confident that Dr. Melgen has acted appropriately at all times."

Mr. Menendez, who was re-elected last year, declined to be interviewed. His office issued a statement, saying, in part, "Dr. Melgen has been a friend and political supporter of Senator Menendez for many years," and an aide said in an interview that the senator had done nothing improper in advocating for Dr. Melgen's business interests.

Aides to the senator said, however, that Mr. Menendez had accepted two round-trip flights aboard Dr. Melgen's jet for personal vacations in the Dominican Republic in 2010. He failed to report them as gifts or reimburse Dr. Melgen at the time, as required, and this month he sent the doctor a check to cover the cost of the flights.

The friendship between the two men goes back to the 1990s, when Mr. Menendez, who entered the House of Representatives in 1993, began regularly visiting the Dominican Republic. They spent holidays together, often in the Dominican Republic, where Dr. Melgen has a home in Casa de Campo, a gated oceanfront resort where houses cost as much as \$20 million and which has been home to some of the country's richest residents, like Oscar de la Renta.

Both enjoyed a good cigar and playing golf; Casa de Campo has several places to play, designed by the renowned course architect Pete Dye.

Dr. Melgen, who friends say longed to play the role of power broker, and his wife began donating to Mr. Menendez's Congressional campaigns in the late 1990s, and their contributions grew, along with their friendship, over the years. By the time of the 2009-10 election cycle, when Mr. Menendez took charge of the Democratic Senatorial Campaign Committee, Dr. Melgen became an important fund-raiser for the effort. In May 2010, he flew the senator to the Dominican Republic and held a fund-raiser at his home. He and his wife gave the committee \$60,000 and helped raised more.

Later that summer, Dr. Melgen also flew Mr. Menendez to the Dominican Republic for the two short personal vacations, in August and September. Aides said it was simply because of sloppy paperwork that the senator did not repay Dr. Melgen at the time. After [reports](#) surfaced late last year on [The Daily Caller](#), a conservative Web site, about his travels with Dr. Melgen, the senator recently sent Dr. Melgen's company a check for \$58,500.

Also in 2010, Dr. Melgen moved to buy the ownership interest in ICSSI, a company based in the Caribbean that had been awarded a contract to provide extensive screening of cargo from ports in the Dominican Republic. The Dominican government was refusing to honor that contract, after Miguel Cocco, then the Dominican customs director, had long said the deal was an exorbitant giveaway to the company.

In a letter to the president's legal adviser, Mr. Cocco said that the deal was "against the interests of the Dominican government, due to its one-sided nature, exorbitant clauses, that it violates Dominican laws," and that there had been a "lack of transparency, commercial ethics in the granting of the contract."

Dr. Melgen brought the matter to the attention of Mr. Menendez. Estimates vary on the contract's value, but critics say it could cost as much as \$50 million annually; the original terms of the contract, approved in 2003, called for 20 years of payments.

The American Chamber of Commerce of the Dominican Republic has opposed the deal. Some Dominican business leaders have suggested that Dr. Melgen is trying to use his political connections to force the contract to be paid.

"The owners of ICSSI have been actively seeking a partner who would be able to get the contract implemented," the chamber's executive vice president, William Malamud, said. "He seemed to convince them that he had what it takes. But he has, to my knowledge, no previous experience in port security."

Aides acknowledged on Wednesday that Mr. Menendez had spoken to State Department officials about the contract. And at a hearing of the Senate Foreign Relations Subcommittee on the Western Hemisphere last July, he questioned two administration officials — Francisco J. Sánchez, the undersecretary for international trade at the Commerce Department, and Matthew Rooney, the deputy assistant secretary in the Bureau of Western Hemisphere Affairs for the State Department — about why the United States government had not been more aggressive on the issue. The senator said more security was needed given the drug trade on the island.

"You have another company that has American investors that is seeking to — has a contract actually given to it by the — kind of ratified by the Dominican Congress to do X-ray of all of the cargo that goes through the ports, which have been problematic and for which in the past narcotics have been included in those cargo," the senator said at the hearing, according to a transcript provided by the [National Legal and Policy Center](#), a government watchdog group. "And they don't want to live by the contract either. You

have some of the other countries that I have mentioned today with arbitration awards that have gone against them, and yet they don't want to live by that. Well, what are we willing to do?"

Mr. Menendez's chief of staff, Daniel O'Brien, said there was nothing unusual about the advocacy, saying the senator had always fought for "U.S. companies that are not being treated fairly or have issues pending in foreign countries."

But Ken Boehm, the chairman of the government watchdog group, called the actions troubling. "At a minimum, the public is entitled to know more about this relationship," Mr. Boehm said. "It's a matter of transparency and accountability."

Supporters of Dr. Melgen said he and the senator were now the focus of attacks because Dominican drug traffickers want to undermine the port deal.

The friendship between the two men is a focus among prominent Latinos, especially those with interests involving the Obama administration.

"Whenever I see Menendez, I see him with this medical doctor," said Bernardo Vega, a former Dominican ambassador to the United States and now editor of a magazine that has been critical of the port deal.

In Florida political circles, one Miami Democrat explained, it is understood that anyone seeking a federal appointment that requires Mr. Menendez's blessing should first get Dr. Melgen's backing.

"If you needed Bob, you had to see Melgen," said the Democrat, who insisted on anonymity for fear of upsetting party leaders. "Everybody in Miami knew that."

In addition to the security company, in 2011 Dr. Melgen founded a Latino-oriented news Web site, Voxxi, which has also emphasized the need for the port security deal and glowingly depicted Mr. Menendez as a giant among Latinos. A former employee, who spoke on the condition of anonymity out of fear of career damage, said Dr. Melgen would often intervene in the coverage, requiring editors to play down achievements by Republicans like Senator Marco Rubio of Florida and replace it with praise for Mr. Menendez.

And Dr. Melgen may have found another route to help Mr. Menendez and his party in the elections last fall, when the senator faced Joe Kyrillos, a Republican in the New Jersey Senate, whose candidacy was heavily promoted by one of Mr. Menendez's chief antagonists — Gov. Chris Christie.

In the end, Mr. Menendez won with about 58 percent of the vote, partly because of the support he received from Majority PAC, a "super PAC" set up by former aides to Senator Harry Reid of Nevada, the Democratic majority leader.

As the campaign entered its final weeks, the PAC poured \$582,500 into New Jersey to support Mr. Menendez's re-election effort. One of the organization's biggest donors? Dr. Melgen's company, which donated \$700,000 between June and October.

EXHIBIT C

Everything you need to know about Sen. Robert Menendez's corruption saga

By Amber Phillips

April 26, 2017

https://www.washingtonpost.com/news/the-fix/wp/2017/09/05/everything-you-need-to-know-about-sen-bob-menendezs-corruption-trial/?utm_term=.7fda3bb26971

The bribery trial of Sen. Robert Menendez (D-N.J.) ended in a mistrial on Nov. 16, after jurors said they were deadlocked. (Amber Phillips, Sarah Parnass, Melissa Macaya/The Washington Post)

He escaped jail time last year, but Sen. Robert Menendez (D-N.J.) isn't entirely off scot free: He just got a strong slap on the wrist from his peers in the Senate.

On Thursday, the bipartisan Senate Ethics Committee issued Menendez a "letter of admonition," accusing the two-term senator of accepting gifts and private flights from a wealthy friend in exchange for doing the friend favors in Washington.

"[Y]our actions reflected discredit upon the Senate," the six-member panel wrote. Menendez is up for reelection in November, and it's unclear what effect, if any, this letter will have. But it does complicate his argument that even those who have looked at the evidence have concluded that he did nothing wrong.

This is just the latest chapter of a case that has spanned courtrooms and countries and is more than a decade in the making. Here's a timeline of the major events in the case.

2006: Menendez is elected to the Senate.

As soon as 2006: Menendez takes weekend and week-long vacations to the Dominican Republic, Florida and Paris with Salomon Melgen on the wealthy doctor's private jet, prosecutors would later allege.

2012: Menendez gets reelected. Melgen is a major donor, contributing about \$600,000 to super PACS to help his reelection campaign.

2012: An anonymous tipster reaches out to media outlets and the FBI to claim that Menendez was paying for underage prostitutes while in the Dominican Republic. Those allegations didn't pan out, but they spurred the government's closer look at Menendez's relationship with Melgen, The Post's Paul Kane and Carol Leonnig reported.

April 1, 2015: Menendez is indicted on federal corruption charges. It is the first time in a generation that a sitting U.S. senator is indicted by the administration of his own party.

The Justice Department accuses Menendez of using his official position to help Melgen get around U.S. government roadblocks for his business and personal ventures. Melgen is also indicted.

The indictment alleges that the men engaged in a quid pro quo since Menendez was first elected, detailing allegations that included the following:

- Menendez took 19 free rides on Melgen's private jets to luxury resorts around the world, sometimes bringing guests.
- Menendez helped three of Melgen's foreign-born girlfriends get visas to visit the United States.

- Menendez tried to help Melgen settle an \$8.9 million Medicare payment dispute, at one point asking then-Senate Majority Leader Harry M. Reid (D-Nev.) to help out.
- Melgen made more than \$600,000 in campaign donations to super PACs to get Menendez reelected in 2012.
- Menendez reached out to top State Department officials to urge them to enforce a port-security contract with the Dominican Republic that would benefit Melgen's company.

Both men deny the charges. Menendez explains that he and Melgen are old friends and that he treats Melgen like any other constituent in need.

"I'm angry and ready to fight," Menendez tells his supporters the night of the indictment.

April 2015: Menendez temporarily steps down from his position as the top-ranking Democrat on the Foreign Relations Committee as he fights the charges.

His supporters immediately zero in on the benefit that Menendez's resignation could have for then-President Barack Obama: As a Cuban American, Menendez vociferously opposed Obama's olive branch to Cuba, which was going on around the same time that Menendez stepped down.

There's no proof that the indictment was in any way connected to politics. Nonetheless, its effect was tangible in the political world: "The net result of the indictment was ... that a legislative check was removed from the Obama administration's foreign policy," said Brigid Harrison, a political-science professor at Montclair State University.

In the days before the trial, Obama-era officials defend the indictment.

June 2016: The Supreme Court unanimously overturns a public corruption conviction of former Virginia governor Robert F. McDonnell. McDonnell and his wife, Maureen, were convicted in 2014 of accepting luxury gifts and cash from a businessman in exchange for McDonnell using his office to help the businessman.

The justices took issue with what constitutes an "official act," arguing that in McDonnell's case, it was overly broad.

Menendez's attorneys perk up at this. The senator is accused of trying to influence executive decisions, not of writing laws that helped his buddy, they plan to argue, and they will ask the judge to throw the charges out altogether.

It doesn't work.

April 2017: In a separate criminal case, a Florida jury finds Melgen guilty of stealing up to \$105 million from Medicare by falsely reporting the cost of treating patients in his Palm Beach County practice. It is one of the largest Medicare health-care fraud schemes in history. He is sentenced to 17 years in prison.

September 2017: The dual trial for Menendez and Melgen begins in New Jersey. It's the first federal bribery trial of a sitting U.S. senator in more than three decades.

November 2017: After more than two months, the jury tells the judge that it is deadlocked. The trial ends as a mistrial. Menendez is jubilant. "Today is Resurrection Day," he says. " ... For those of you who were digging my political grave so they could jump into my seat, I know who you are and I won't forget."

January 2018: Prosecutors debate whether to start a second trial but end up deciding not to. A judge dismisses all charge against Menendez.

Also January 2018: The Senate Ethics Committee restarts its investigation into Menendez. It had put it on hold for five years while the criminal investigation was going on.

January-present: Menendez resumes his job as the top Democrat on the Senate Foreign Relations Committee and starts to advocate for causes — and campaign for reelection — like any other senator.

April 2018: The Senate Ethics Committee finishes its investigation and basically says it thinks Menendez was guilty of accepting bribes: “While accepting these gifts, you used your position as a Member of the Senate to advance Dr. Melgen's personal and business interests.”

November 2018: Menendez is up for reelection for a third term. Before this letter was released, he appeared to have broad support against a relatively unknown Republican challenger. As The Post's Mike DeBonis reports:

A Quinnipiac University poll published last month gave Menendez a 17-point lead, and found that fewer than 40 percent of voters believed he had engaged in “serious wrongdoing” in office.