

United States Senate

SELECT COMMITTEE ON ETHICS

April 26, 2018

The Honorable Robert Menendez
United States Senate
Washington, DC 20510

Public Letter of Admonition

Dear Senator Menendez:

Pursuant to its authority under Senate Resolution 338, the Select Committee on Ethics (the Committee) has conducted an inquiry into allegations related to your interactions with Dr. Salomon Melgen. The Committee has found that over a six-year period you knowingly and repeatedly accepted gifts of significant value from Dr. Melgen without obtaining required Committee approval, and that you failed to publicly disclose certain gifts as required by Senate Rule and federal law. Additionally, while accepting these gifts, you used your position as a Member of the Senate to advance Dr. Melgen's personal and business interests. The Committee has determined that this conduct violated Senate Rules, federal law, and applicable standards of conduct. Accordingly, the Committee issues you this Public Letter of Admonition, and also directs you to repay the fair market value of all impermissible gifts not already repaid.

The Committee began its review of this matter in late 2012, and, consistent with its precedent, deferred its inquiry while the U.S. Department of Justice pursued a criminal investigation into your conduct. At the conclusion of your trial in November 2017, the Committee resumed its process.

Over the course of its review, the Committee developed a comprehensive factual record to determine whether your conduct violated any rule, law, or standard of conduct within the Committee's jurisdiction. The Committee reviewed your written submissions, your financial disclosure filings, and other publicly available information. In addition, the Committee obtained and reviewed information from the Department of Justice's criminal investigation and prosecution, which spanned more than five years and culminated in an 11-week trial against you and Dr. Melgen. Specifically, the Committee reviewed 257 exhibits and the trial testimony of 57 witnesses. The Committee notes that the trial record includes not only the evidence presented against you, but also your robust defense. At trial, through your attorney, you questioned the credibility of the evidence against you, raised mitigating facts and theories, and introduced evidence regarding the motivation for your actions. As in past matters, the Committee found that the criminal proceeding provided a wealth of credible and reliable information, which the Committee did not need to independently duplicate.

Based upon the totality of the evidence, the Committee has concluded as follows:

1. From 2006 through 2013, you accepted numerous things of value from Dr. Melgen, including, but not limited to, travel on private and commercial flights, a luxury hotel stay in Paris, and lodging on 19 occasions at a Dominican Republic villa. You did not pay fair market value for, or, where required, obtain necessary written approval from the Committee to accept these gifts.
2. Over the course of several years, you failed to list gifts you had accepted from Dr. Melgen on your public Financial Disclosure Reports, as you were legally required to do.
3. During the same time period in which you accepted these gifts, you used your position as a Member of the Senate to advance Dr. Melgen's personal and business interests. At Dr. Melgen's request, you:
 - a. Intervened in a matter where the Centers for Medicare & Medicaid Services (CMS) found that Dr. Melgen had overbilled Medicare by more than \$8.9 million. This intervention included persistent advocacy before multiple senior CMS officials over the course of three years, reaching, at its height, your meeting with the Secretary of Health and Human Services.
 - b. Advocated before federal agencies on behalf of ICSSI, a port security services company owned by Dr. Melgen. This advocacy included an in-person meeting with a senior official in which you requested that the U.S. Department of State intervene in a contract dispute between ICSSI and the Dominican Republic. During this meeting, you threatened to hold a public hearing and to call the official to testify if the State Department failed to resolve the matter. You also acted to protect ICSSI's contract to provide scanning services in the Dominican Republic by requesting that U.S. Customs and Border Protection delay its planned donation of screening equipment.
 - c. Assisted foreign nationals obtain visas to visit Dr. Melgen in the United States, including, in one case, appealing directly to a U.S. ambassador to seek reconsideration of a visa denial.

Notably, you have not disputed the fact that you accepted numerous gifts from Dr. Melgen and took official actions related to his interests. Standing alone, your acceptance of and failure to disclose gifts violated Senate Rule 35 (Gifts), Senate Rule 34 (Public Financial Disclosure), and the Ethics in Government Act of 1978, as amended. Your repeated acceptance of private plane flights from Dr. Melgen is particularly troubling given that it coincided with the passage and implementation of the Honest Leadership and Open Government Act of 2007, a law passed in response to an ethics scandal and aimed, at least in part, at severely curtailing public officials' acceptance of free travel on private planes. This law was passed shortly after you joined the Senate, with your vote. Further, your decision to accept and your failure to disclose

numerous gifts while simultaneously using your Senate office in furtherance of Dr. Melgen's interests created, at a minimum, the appearance of impropriety.

A Senator should be "ever conscious that public office is a public trust." *Code of Ethics for Government Service* ¶ 10. A Senator is expected to place "loyalty to the highest moral principles and to country" above loyalty to others. *Id.* ¶ 1. A Senator should "[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." *Id.* ¶ 5. A Senator is also expected to exercise discretion in accepting gifts, and be "particularly sensitive" not only to the frequency and value of gifts, but also to the "possible motives of the donor." *Senate Ethics Manual* (2003 ed.) at 21-22.

You demonstrated disregard for these standards by placing your Senate office in Dr. Melgen's service at the same time you repeatedly accepted gifts of significant value from him. Your assistance to Dr. Melgen under these circumstances demonstrated poor judgment, and it risked undermining the public's confidence in the Senate. As such, your actions reflected discredit upon the Senate.

In determining the appropriate conclusion to this matter, the Committee considered several factors. First, the Committee reviewed evidence that suggested your actions on behalf of Dr. Melgen were consistent with your long-held policy beliefs related to effective Medicare policies and post-9/11 port security. These are worthy causes. However, the fact that a cause is worthy does not negate the duty to ensure compliance with ethical standards.

Second, the Committee understands that you are committed to assisting constituents. Indeed, the Committee has long recognized that "[r]esponding to inquiries of petitioners and assisting them before executive or independent government officials and agencies" is an "appropriate exercise of the representational function of each Member of Congress, as well as an important function of congressional oversight." *Senate Ethics Manual* at 177. Your assistance to Dr. Melgen, however, went well beyond Senate norms. You took action, over the course of several years, on behalf of one specific individual who repeatedly gave you many valuable gifts and who was also among your closest friends, which included direct contact with officials at the highest levels of government.

Third, the Committee is aware that you have described Dr. Melgen as your closest friend and "brother," but this makes your assistance to him no less troubling. Your Senate office and its attendant resources and power are not personal to you. Senators must closely guard against even the appearance that their families or friends are entitled to use these resources and power for their own personal gain.

Fourth, the Committee acknowledges that you have repaid some of the gifts Dr. Melgen provided. The Committee, however, has determined that such repayment does not erase the violation, given both the lapse of time between acceptance and repayment, and the circumstances that prompted your repayment.

Finally, the Committee considered the fact that your criminal trial did not result in a conviction. The criminal system, however, neither enforces nor supplants the Senate's rules or standards of conduct, and the Committee's action stands independent from that result.

For the reasons set forth above, the Committee concludes that your actions violated Senate Rules and related statutes, and reflected discredit upon the Senate. Accordingly, you must repay the fair market value of all impermissible gifts not already repaid, and amend your Financial Disclosure Reports to include all reportable gifts. Finally, by this letter, you are hereby severely admonished.

Sincerely,



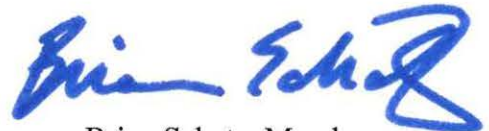
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