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October 19, 2023

Honorable Christopher A. Coons, Chair
Honorable James Lankford, Vice-Chair
Senate Select Committee on Ethics
Hart Building, Room 220
Washington, DC 20510
Email: mailbox_office@ethics.senate.gov

Re: Complaint against Senator Robert Menendez (D-NJ) and Request for Investigation and Expulsion of Senator Menendez from the United States Senate

Dear Chairman Coons and Vice Chairman Lankford:

Pursuant to Rule 2(a) of the Rules of Procedure of the Senate Ethics Committee, the National Legal and Policy Center (NLPC) hereby files this complaint against Senator Robert Menendez alleging that he has violated major federal criminal laws, the Senate Code of Official Conduct, and has otherwise engaged in corrupt and improper conduct which reflects negatively upon the Senate. He should be expelled from the Senate.

As more fully described in the recent superseding indictment and widely described in press accounts, Senator Menendez, his wife, and three New Jersey businessmen, “willfully and knowingly combined, conspired, confederated, and agreed together and with each other” to have Senator Menendez act as an agent of the Government of Egypt and Egyptian officials.¹ In return for this and other illegal conduct (which Senator Mendez had the audacity to characterize as legitimate constituent services) he and his wife received bribes and other illegal gratuities of over \$480,000 in cash — much of it stuffed into envelopes and hidden in clothing and closets in his home — along with gold bars, a luxury Mercedes Benz, and personal items.

Interests of NLPC

Founded in 1991, NLPC is a Washington, D.C.-area based national nonprofit organization dedicated to promoting ethics in government as well as corporate integrity. With

¹ Erica Orden, “*Menendez accused of acting as foreign agent for Egypt while helming Senate Foreign Relations Committee*” Politico (Oct. 12, 2023).
<https://www.politico.com/news/2023/10/12/menendez-accused-of-acting-as-foreign-agent-for-egypt-while-helming-senate-foreign-relations-committee-00121225>

respect to ethics in government, NLPC's Government Integrity Project has filed numerous ethics complaints against government officials, office holders, nonprofit policy groups, and political candidates with the Federal Election Commission, Congressional Ethics Committees, the IRS, and the Department of Justice.²

With respect to Senator Menendez, NLPC investigated his earlier misconduct for which he was indicted in 2018 regarding bribes and gifts he received from benefactor Dr. Salomon Melgen, who was later found guilty for widespread Medicare fraud. NLPC was instrumental in uncovering Senator Menendez's efforts to get the State Department to approve a multi-million-dollar port security contract in the Dominican Republic for Dr. Melgen who had an interest in the project.³ While there was a hung jury in that case, this Committee subsequently "severely admonished" Senator Menendez on April 26, 2018.

Senator Menendez did not learn his lesson in that case but as the current indictment alleges, his criminal conduct continued from 2018 to 2022. Peter Flaherty, Chairman of NLPC, has appropriately characterized Senator Menendez as a career politician and career criminal.⁴

The Ethics Committee Is Required to Conduct a Preliminary Inquiry

On information and belief, no other person or entity has filed a formal complaint with this Committee regarding Senator Menendez's misconduct. While the Committee can undertake an investigation of misconduct on its own accord, the Committee has announced that it will defer any action until the pending criminal charges against Senator Menendez have been resolved. Such a delay is unwarranted for several reasons.

First, under Rule 3(b) of the Committee's rules, the Committee "**shall promptly** commence a preliminary inquiry whenever it has received a sworn complaint, or other allegation of, or information about, alleged misconduct or violations pursuant to Rule 2." (emphasis added). There is no exception in this rule for conduct that is under investigation in criminal or civil proceedings. If the Committee wishes to promulgate such a rule, it may do so, but it cannot abdicate its duty to conduct its own investigation once a complaint has been filed.

Moreover, the proffered reason given for deferring any investigation is that the Committee does not want to interfere with the criminal case is not compelling. Yet there are often parallel congressional investigations regarding conduct that is also subject to criminal

²See, e.g., NLPC, "*Office of Congressional Ethics Says AOC May Have Broken House Rules and Federal Law*" (Mar. 3, 2023) <https://nlpc.org/government-integrity-project/office-of-congressional-ethics-says-aoc-may-have-broken-house-rules-and-federal-law/>.

See generally NLPC Government Integrity Project. <https://nlpc.org/government-integrity-project/>

³ See Raymond Hernandez and Frances Robles, New York Times, "*Senator Has Long Ties to Donor Under Scrutiny*" (Jan. 31, 2013) (referencing NLPC's efforts). <https://www.nytimes.com/2013/02/01/nyregion/senator-menendezs-ties-to-political-donor-are-scrutinized.html>

⁴ <https://nlpc.org/government-integrity-project/menendez-is-a-career-criminal/>

proceedings, such as the investigation of the breach of the Capitol on January 6, 2021 while related criminal charges were investigated and prosecuted. Moreover, the Justice Department apparently has not notified the Committee that it does not want it to do its job while its own case proceeds in court. And even if it did, the Committee, as part of a separate branch of government, is not bound to accede to that request.

While the Committee may want to defer what disciplinary action it may impose or recommend until the criminal proceedings are resolved, there is no reason why it cannot open a file in this case and begin its mandated preliminary inquiry. For example, with regard to Senator Menendez's public statement in response to the indictment about the circumstances of his having hundreds of thousands of dollars stuffed in his clothes and closet, he stated:

For 30 years, I have withdrawn thousands of dollars in cash from my personal savings account, which I have kept for emergencies, and because of the history of my family facing confiscation in Cuba. Now this may seem old-fashioned, but these were monies drawn from my personal savings account based on the income that I have lawfully derived over those 30 years.⁵

While this explanation is far-fetched and likely false, especially since the indictment alleges that fingerprints of one of his co-defendants and his driver was found on one or more of the cash-filled envelopes, this Committee's investigation can easily verify the accuracy of this statement. NLPC has done a preliminary investigation of the Senator's financial disclosure forms for that last ten years and noted that while the amount in his old House Credit Union account has decreased slightly, his current Senate Credit Union account has markedly increased from the 50,000 - \$100,000 range in 2013 to the \$100,000-\$250,000 range in 2018 where it remains today.⁶

This Committee can quickly issue subpoenas for his congressional bank accounts to verify what cash withdrawals Senator Menendez made from his two accounts over the last 30 years. How would this interfere with the ongoing criminal case? If anything, the results of such an investigation may assist the Justice Department if they haven't already issued subpoenas to the Senators' bank accounts.

Congress has the exclusive power to punish and expel its Members. Under Article I of the Constitution, "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member."⁷ The Senate has delegated this authority to the Ethics Committee which is empowered to investigate

⁵ Kevin Sheehan and Josh Christenson, "*Defiant Sen. Bob Menendez claims he hid cash 'because of Cuban history' (he was born in NY)*" New York Post (Sept. 25, 2023) <https://nypost.com/2023/09/25/sen-bob-menendez-says-piles-of-cash-were-found-at-home-because-hes-cuban/>

⁶ <https://www.oann.com/video/oan-contribution/sen-menendez-pleads-not-guilty-as-calls-for-resignation-grow-louder/>

⁷ U.S. Const. art. I, § 5, cl. 2.

“violations of the Senate Code of Official Conduct” and recommend to the Senate by report or resolution appropriate disciplinary action.⁸

Many of Senator Menendez’s own colleagues, including his close friend Senator Cory Booker from New Jersey who defended him in his previous criminal case, have rightfully called upon him to resign from office because of the seriousness of the charges against him and the breach of public trust that he has committed.⁹FN. His continued presence in the Senate and a member of the Senate Foreign Relations Committee is a stain on the Senate’s reputation. While he is presumed innocent in the criminal case which requires proof beyond a reasonable doubt for conviction, it should not be an ethical standard that otherwise corrupt conduct can be tolerated as long as the Senator has not been convicted of a crime.

Conclusion

For the foregoing reasons, NLPC requests that the Ethics Committee begin its mandated preliminary inquiry and where appropriate, recommend to the Senate that he be expelled or at a minimum, publicly censured. Unfortunately, Senator Menendez steadfastly refuses to resign and vows to run for reelection

Respectfully submitted,



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⁸ S. Res. 338, § 2(a)(1), 88th Cong., 2d Sess. (1964), amended by S. Res. 110, 95th Cong., 1st Sess. (1977), § 2(a)(2); S. Rpt. 95–49.

⁹ Al Weaver, “*New Menendez indictment creates headache for Democrats*,” The Hill (Oct. 18, 2023). https://news.yahoo.com/menendez-indictment-creates-headache-democrats-100000091.html?fr=yhssrp_catchall&guccounter=1&guce_referrer=aHR0cHM6Ly9zZWFFyY2g ueWFob28uY29tLw&guce_referrer_sig=AQAAALBwNcNAewW9Q3oItWI_bvz1VSEWd3Ak GrLvO6P37tWsF6_SK-DS3K1FRRjfhvB9D8qIJI1kiZhtfTS0JqupuqWFIHsT1dgl1YBiBH98o_VGm1HQqsxD4UzldvOp dwzIEkc0aPguD0jwHGoK1f84OxEtx6aNGen2Ka9XHUxSPCOFN