

114TH CONGRESS  
2D SESSION

# H. R. 5708

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2016

Received; read twice and referred to the Committee on Foreign Relations

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## AN ACT

To oppose loans at international financial institutions for the Government of Nicaragua, other than to address basic human needs or promote democracy, unless the Government of Nicaragua is taking effective steps to hold free, fair, and transparent elections, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Nicaraguan Invest-  
5       ment Conditionality Act (NICA) of 2016”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) In 2006, Nicaragua, under President  
9       Enrique Bolaños, entered into a \$175,000,000, 5-  
10      year compact with the Millennium Challenge Cor-  
11      poration (MCC).

12              (2) After the 2008 municipal elections, the  
13      MCC stated that there was a pattern of decline in  
14      political rights and civil liberties in Nicaragua.

15              (3) In 2009, the MCC terminated the compact  
16      and reduced the amount of MCC funds available to  
17      Nicaragua by \$61,500,000, which led to the compact  
18      ending in 2011.

19              (4) According to Nicaraguan law, the National  
20      Assembly is the only institution allowed to change  
21      the constitution but in 2009, Daniel Ortega cir-  
22      cumvented the legislature and went to the Supreme  
23      Court, which he controls, to rule in his favor that  
24      Presidential term limits were inapplicable.

1           (5) The House Committee on Foreign Affairs  
2       convened a congressional hearing on December 1,  
3       2011, entitled “Democracy Held Hostage in Nica-  
4       ragua: Part 1” where former United States Amba-  
5       sador to Nicaragua Robert Callahan testified,  
6       “First, that Daniel Ortega’s candidacy was illegal,  
7       illegitimate, and unconstitutional; second, that the  
8       period leading to the elections and the elections  
9       themselves were marred by serious fraud; third, that  
10      Daniel Ortega and his Sandinista party have system-  
11      atically undermined the country’s fragile govern-  
12      mental institutions”.

13           (6) From fiscal year 2012 until present, the  
14      Department of State found that Nicaragua did not  
15      meet international standards of fiscal transparency.

16           (7) On January 25, 2012, a press statement  
17      from Secretary of State Hillary Clinton said: “As  
18      noted by international observers and Nicaraguan  
19      civil society groups, Nicaragua’s recent elections  
20      were not conducted in a transparent and impartial  
21      manner, and the entire electoral process was marred  
22      by significant irregularities. The elections marked a  
23      setback to democracy in Nicaragua and undermined  
24      the ability of Nicaraguans to hold their government  
25      accountable.”.

1           (8) According to the Department of State's  
2           2015 Fiscal Transparency Report: "Nicaragua's fis-  
3           cal transparency would be improved by including all  
4           off-budget revenue and expenditure in the budget,  
5           auditing state-owned enterprises, and conducting a  
6           full audit of the government's annual financial state-  
7           ments and making audit reports publicly available  
8           within a reasonable period of time."

9           (9) According to the Department of State's  
10          Country Reports on Human Rights Practices for  
11          2015: "In 2011 the Supreme Electoral Council  
12          (CSE) announced the re-election of President Daniel  
13          Ortega Saavedra of the Sandinista National Libera-  
14          tion Front (FSLN) in elections that international  
15          and domestic observers characterized as seriously  
16          flawed. International and domestic organizations  
17          raised concerns regarding the constitutional legit-  
18          imacy of Ortega's re-election. The 2011 elections  
19          also provided the ruling party with a supermajority  
20          in the National Assembly, allowing for changes in  
21          the constitution, including extending the reach of ex-  
22          ecutive branch power and the elimination of restric-  
23          tions on re-election for executive branch officials and  
24          mayors. Observers noted serious flaws during the

1       2012 municipal elections and March 2014 regional  
2       elections.”.

3           (10) According to the Department of State’s  
4       Country Reports on Human Rights Practices for  
5       2015 in Nicaragua: “The principal human rights  
6       abuses were restrictions on citizens’ right to vote;  
7       obstacles to freedom of speech and press, including  
8       government intimidation and harassment of journal-  
9       ists and independent media, as well as increased re-  
10      striction of access to public information, including  
11      national statistics from public offices; and increased  
12      government harassment and intimidation of non-  
13      governmental organizations (NGOs) and civil society  
14      organizations.

15          (11) The same 2015 report stated: “Additional  
16      significant human rights abuses included consider-  
17      ably biased policies to promote single-party domi-  
18      nance; arbitrary police arrest and detention of sus-  
19      pects, including abuse during detention; harsh and  
20      life-threatening prison conditions with arbitrary and  
21      lengthy pretrial detention; discrimination against  
22      ethnic minorities and indigenous persons and com-  
23      munities.”.

1           (12) In February 2016, the Ortega regime de-  
2           tained and expelled Freedom House’s Latin America  
3           Director, Dr. Carlos Ponce, from Nicaragua.

4           (13) On May 10, 2016, the Supreme Electoral  
5           Council announced and published the electoral cal-  
6           endar which aims to govern the electoral process.

7           (14) After receiving the electoral calendar for  
8           the 2016 Presidential elections, the Nicaraguan po-  
9           litical opposition raised concerns and pointed to a  
10          number of anomalies such as: the electoral calendar  
11          failed to contemplate national and international ob-  
12          servations, failed to agree to publicly publish the  
13          precincts results of each Junta Receptora de Voto  
14          (JRV), and failed to purge the electoral registration  
15          rolls in a transparent and open manner.

16          (15) Nicaragua’s constitution mandates terms  
17          of 5 years for municipal authorities, which would in-  
18          dicate that the next municipal elections must occur  
19          in 2017.

20          (16) On June 3, 2016, the Nicaraguan Su-  
21          preme Court—which is controlled by Nicaragua’s  
22          leader, Daniel Ortega—instructed the Supreme Elec-  
23          toral Council not to swear in Nicaraguan opposition  
24          members to the departmental and regional electoral  
25          councils.

1           (17) On June 5, 2016, regarding international  
2           observers for the 2016 Presidential elections, Presi-  
3           dent Ortega stated: “Here, the observation ends. Go  
4           observe other countries . . . There will be no obser-  
5           vation, neither from the European Union, nor the  
6           OAS . . .”.

7           (18) On June 7, 2016, the Department of  
8           State’s Bureau of Democracy, Human Rights and  
9           Labor posted on social media: “Disappointed govern-  
10          ment of Nicaragua said it will deny electoral observ-  
11          ers requested by Nicaraguan citizens, church, and  
12          private sector . . . We continue to encourage the gov-  
13          ernment of Nicaragua to allow electoral observers as  
14          requested by Nicaraguans.”.

15          (19) On June 8, 2016, the Supreme Electoral  
16          Council—which is controlled by Nicaragua’s leader,  
17          Daniel Ortega—announced a ruling, which changed  
18          the leadership structure of the opposition party and  
19          in practice allegedly barred all existing opposition  
20          candidates from running for office.

21          (20) On June 14, 2016, President Ortega ex-  
22          pelled three United States Government officials (two  
23          officials from U.S. Customs and Border Protection  
24          and one professor from the National Defense Uni-  
25          versity) from Nicaragua.

1           (21) On June 29, 2016, the Department of  
2       State issued a Nicaragua Travel Alert which stated:  
3       “The Department of State alerts U.S. citizens about  
4       increased government scrutiny of foreigners’ activi-  
5       ties, new requirements for volunteer groups, and the  
6       potential for demonstrations during the upcoming  
7       election season in Nicaragua . . . Nicaraguan au-  
8       thorities have denied entry to, detained, questioned,  
9       or expelled foreigners, including United States Gov-  
10      ernment officials, academics, NGO workers, and  
11      journalists, for discussions, written reports or arti-  
12      cles, photographs, and/or videos related to these top-  
13      ics. Authorities may monitor and question private  
14      United States citizens concerning their activities, in-  
15      cluding contact with Nicaraguan citizens.”.

16          (22) On August 1, 2016, the Department of  
17      State issued a press release to express grave concern  
18      over the Nicaraguan government limiting democratic  
19      space leading up to the elections in November and  
20      stated that “[o]n June 8, the Nicaraguan Supreme  
21      Court stripped the opposition Independent Liberal  
22      Party (PLI) from its long recognized leader. The  
23      Supreme Court took similar action on June 17 when  
24      it invalidated the leadership of the Citizen Action  
25      Party, the only remaining opposition party with the

1 legal standing to present a presidential candidate.  
2 Most recently, on July 29, the Supreme Electoral  
3 Council removed 28 PLI national assembly members  
4 (16 seated and 12 alternates) from their popularly-  
5 elected positions.”.

6 **SEC. 3. STATEMENT OF POLICY.**

7 It is the policy of the United States to support—

8 (1) the rule of law and an independent judiciary  
9 and electoral council in Nicaragua;

10 (2) independent pro-democracy organizations in  
11 Nicaragua; and

12 (3) free, fair, and transparent elections under  
13 international and domestic observers in Nicaragua in  
14 2016 and 2017.

15 **SEC. 4. INTERNATIONAL FINANCIAL INSTITUTIONS.**

16 (a) IN GENERAL.—The President shall instruct the  
17 United States Executive Director at each international fi-  
18 nancial institution to use the voice, vote, and influence of  
19 the United States to oppose any loan for the benefit of  
20 the Government of Nicaragua, other than to address basic  
21 human needs or promote democracy, unless the Secretary  
22 of State certifies and reports to the appropriate congres-  
23 sional committees that the Government of Nicaragua is  
24 taking effective steps to—

1           (1) hold free, fair, and transparent elections  
2           overseen by credible domestic and international elec-  
3           toral observers;

4           (2) promote democracy, as well as an inde-  
5           pendent judicial system and electoral council;

6           (3) strengthen the rule of law; and

7           (4) respect the right to freedom of association  
8           and expression.

9           (b) REPORT.—The Secretary of the Treasury shall  
10          submit to the appropriate congressional committees a  
11          written report assessing—

12           (1) the effectiveness of the international finan-  
13           cial institutions in enforcing applicable program  
14           safeguards in Nicaragua; and

15           (2) the effects of the matters described in sec-  
16           tion 2 on long-term prospects for positive develop-  
17           ment outcomes in Nicaragua.

18          (c) DEFINITIONS.—In this section:

19           (1) APPROPRIATE CONGRESSIONAL COMMIT-  
20           TEES.—The term “appropriate congressional com-  
21           mittees” means—

22           (A) the Committee on Foreign Affairs, the  
23           Committee on Appropriations, and the Com-  
24           mittee on Financial Services of the House of  
25           Representatives; and

1 (B) the Committee on Foreign Relations,  
2 the Committee on Appropriations, and the  
3 Committee on Banking, Housing, and Urban  
4 Affairs of the Senate.

5 (2) INTERNATIONAL FINANCIAL INSTITU-  
6 TION.—The term “international financial institu-  
7 tion” means the International Monetary Fund,  
8 International Bank for Reconstruction and Develop-  
9 ment, European Bank for Reconstruction and Develop-  
10 ment, International Development Association,  
11 International Finance Corporation, Multilateral In-  
12 vestment Guarantee Agency, African Development  
13 Bank, African Development Fund, Asian Develop-  
14 ment Bank, Inter-American Development Bank,  
15 Bank for Economic Cooperation and Development in  
16 the Middle East and North Africa, and Inter-Amer-  
17 ican Investment Corporation.

18 (d) TERMINATION.—This section shall terminate on  
19 the day after the earlier of—

20 (1) the date on which the Secretary of State  
21 certifies and reports to the appropriate congressional  
22 committees that the requirements of subsection (a)  
23 are met; or

24 (2) 5 years after the date of the enactment of  
25 this Act.

1 (e) WAIVER.—The President may waive this section  
2 if the President determines that such a waiver is in the  
3 national interest of the United States.

4 **SEC. 5. ORGANIZATION OF AMERICAN STATES.**

5 (a) FINDINGS.—Congress finds that, according to the  
6 Organization of American States (OAS) report on the Nic-  
7 araguan 2011 Presidential elections, Nicaragua: Final Re-  
8 port, General Elections, OAS (2011), the OAS made the  
9 following recommendations to the Government of Nica-  
10 ragua:

11 (1) “Prepare alternative procedures for updat-  
12 ing the electoral roll when a registered voter dies.”.

13 (2) “Publish the electoral roll so that new addi-  
14 tions, changes of address and exclusions can be  
15 checked.”.

16 (3) “Reform the mechanism for accreditation of  
17 poll watchers using a formula that ensures that the  
18 political parties will have greater autonomy to ac-  
19 credit their respective poll watchers.”.

20 (4) “Institute regulations to ensure that party  
21 poll watchers are involved in all areas of the elec-  
22 toral structure, including the departmental, regional  
23 and municipal electoral councils and polling stations.  
24 Rules should be crafted to spell out their authorities

1 and functions and the means by which they can ex-  
2 ercise their authority and perform their functions.”.

3 (5) “Redesign the CSE administrative structure  
4 at the central and field levels, while standardizing  
5 technical and operational procedures, including the  
6 design of control mechanisms from the time registra-  
7 tion to the delivery of the document to the citizens;  
8 the process of issuing identity cards should be timed  
9 to the calendar and, to avoid congestion within the  
10 process, be evenly spaced.”.

11 (b) ELECTORAL OBSERVATION MISSION.—The Presi-  
12 dent shall direct the United States Permanent Represent-  
13 ative to the Organization of American States (OAS) to  
14 use the voice, vote, and influence of the United States at  
15 the OAS to strongly advocate for an Electoral Observation  
16 Mission to be sent to Nicaragua in 2016 and 2017.

17 **SEC. 6. STATEMENT OF POLICY.**

18 The Department of State and the United States  
19 Agency for International Development should prioritize  
20 foreign assistance to the people of Nicaragua to assist civil  
21 society in democracy and governance programs, including  
22 human rights documentation.

23 **SEC. 7. REPORT ON CORRUPTION IN NICARAGUA.**

24 (a) REPORT REQUIREMENT.—Not later than 120  
25 days after the date of the enactment of this Act, the Sec-

1   retary of State, in consultation with the intelligence com-  
2   munity (as defined in section 3(4) of the National Security  
3   Act of 1947 (50 U.S.C. 3003(4)), shall submit to Con-  
4   gress a report on the involvement of senior Nicaraguan  
5   government officials, including members of the Supreme  
6   Electoral Council, the National Assembly, and the judicial  
7   system, in acts of public corruption or human rights viola-  
8   tions in Nicaragua.

9       (b) FORM.—The report required in subsection (a)  
10 shall be submitted in unclassified form, but may contain  
11 a classified annex. The unclassified portion of the report  
12 shall be made available to the public.

Passed the House of Representatives September 21,  
2016.

Attest:

KAREN L. HAAS,  
*Clerk.*