

115TH CONGRESS
1ST SESSION

S. 2265

To promote democracy and the rule of law in Nicaragua, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2017

Mr. CRUZ (for himself, Mr. LEAHY, Mr. RUBIO, Mr. PERDUE, Mr. MENENDEZ, Mrs. CAPITO, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To promote democracy and the rule of law in Nicaragua,
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 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The Committee on Foreign Affairs of the
9 House of Representatives convened a congressional
10 hearing on December 1, 2011, entitled “Democracy

1 Held Hostage in Nicaragua: Part 1” where former
2 United States Ambassador to Nicaragua Robert Cal-
3 lahan testified “[f]irst, that Daniel Ortega’s can-
4 didacy was illegal, illegitimate, and unconstitutional;
5 second, that the period leading to the elections and
6 the elections themselves were marred by serious
7 fraud; third, that Daniel Ortega and his Sandinista
8 party have systematically undermined the country’s
9 fragile governmental institutions”.

10 (2) According to the Organization of American
11 States (OAS) report on the 2011 Presidential elec-
12 tions in Nicaragua, the OAS recommended that the
13 Government of Nicaragua take a number of steps to
14 improve its electoral system, including accrediting
15 poll watchers to ensure political parties and civil so-
16 ciety are represented to observe elections, and rede-
17 signing the structure of the Nicaraguan electoral
18 council to allow proper registration of the electorate.

19 (3) On January 25, 2012, a press statement
20 from Secretary of State Hillary Clinton stated, “As
21 noted by international observers and Nicaraguan
22 civil society groups, Nicaragua’s recent elections
23 were not conducted in a transparent and impartial
24 manner, and the entire electoral process was marred
25 by significant irregularities. The elections marked a

1 setback to democracy in Nicaragua and undermined
2 the ability of Nicaraguans to hold their government
3 accountable.”.

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

12 (5) According to the Department of State’s
13 Country Reports on Human Rights Practices for
14 2015 in Nicaragua: “In 2011 the Supreme Electoral
15 Council (CSE) announced the re-election of Presi-
16 dent Daniel Ortega Saavedra of the Sandinista Na-
17 tional Liberation Front (FSLN) in elections that
18 international and domestic observers characterized
19 as seriously flawed. International and domestic orga-
20 nizations raised concerns regarding the constitu-
21 tional legitimacy of Ortega’s re-election. The 2011
22 elections also provided the ruling party with a super-
23 majority in the National Assembly, allowing for
24 changes in the constitution, including extending the
25 reach of executive branch power and the elimination

1 of restrictions on re-election for executive branch of-
2 ficials and mayors. Observers noted serious flaws
3 during the 2012 municipal elections and March
4 2014 regional elections.”.

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

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

1 (8) On June 7, 2016, the Department of
2 State’s Bureau of Democracy, Human Rights and
3 Labor posted on social media: “Disappointed govern-
4 ment of Nicaragua said it will deny electoral observ-
5 ers requested by Nicaraguan citizens, church, and
6 private sector . . . We continue to encourage the
7 government of Nicaragua to allow electoral observers
8 as requested by Nicaraguans.”.

9 (9) On August 1, 2016, the Department of
10 State issued a press release expressing grave concern
11 with the Government of Nicaragua limiting demo-
12 cratic space leading up to the elections in November
13 and stated, “[O]n June 8, the Nicaraguan Supreme
14 Court stripped the opposition Independent Liberal
15 Party (PLI) from its long recognized leader. The
16 Supreme Court took similar action on June 17 when
17 it invalidated the leadership of the Citizen Action
18 Party, the only remaining opposition party with the
19 legal standing to present a presidential candidate.
20 Most recently, on July 29, the Supreme Electoral
21 Council removed 28 PLI national assembly members
22 (16 seated and 12 alternates) from their popularly-
23 elected positions.”.

24 (10) On November 7, 2016, the Department of
25 State issued a press release stating, “The United

1 States is deeply concerned by the flawed presidential
 2 and legislative electoral process in Nicaragua, which
 3 precluded the possibility of a free and fair election
 4 on November 6. In advance of the elections, the Nic-
 5 araguan government sidelined opposition candidates
 6 for president, limited domestic observation at the
 7 polls and access to voting credentials, and took other
 8 actions to deny democratic space in the process. The
 9 decision by the Nicaraguan government not to invite
 10 independent international electoral observers further
 11 degraded the legitimacy of the election.”.

12 (11) In November and December of 2016, the
 13 Board of Executive Directors of the Inter-American
 14 Development Bank postponed consideration of a pol-
 15 icy-based loan of \$65,000,000 to the Government of
 16 Nicaragua due to the serious concerns of the United
 17 States mission with the absence of transparency,
 18 systemic corruption, and the lack of free and fair
 19 elections in Nicaragua.

20 (12) According to the Department of State’s
 21 Country Reports on Human Rights Practices for
 22 2016 in Nicaragua: “actions by the ruling Sandi-
 23 nista National Liberation Front (FSLN) party re-
 24 sulted in de facto concentration of power in a single
 25 party, with an authoritarian executive branch exer-

1 cising significant control over the legislative, judicial,
2 and electoral functions.”.

3 (13) According to the Department of State’s
4 Country Reports on Human Rights Practices for
5 2016 in Nicaragua: “The November 6 elections for
6 president, vice president, national assembly mem-
7 bers, and representatives for the Central American
8 parliament did not meet the conditions of being free
9 and fair . . . The November 6 presidential and leg-
10 islative elections were marred by allegations of insti-
11 tutional fraud and the absence of independent oppo-
12 sition political parties. National observers and oppo-
13 sition leaders claimed rates of abstention from 60 to
14 70 percent.”.

15 (14) According to the Department of State’s
16 Country Reports on Human Rights Practices for
17 2016 in Nicaragua: “Companies reported that brib-
18 ery of public officials, unlawful seizures, and arbi-
19 trary assessments by customs and tax authorities
20 were common . . . The courts remained particularly
21 susceptible to bribes, manipulation, and other forms
22 of corruption, especially by the FSLN, giving the
23 sense that the FSLN heavily influenced CSJ and
24 lower-level court actions.”.

1 (15) On December 21, 2017, the Department of
2 the Treasury issued a press release announcing the
3 designation of, and sanctions against, human rights
4 abusers and corrupt actors, including Roberto Rivas,
5 the President of Nicaragua’s Supreme Electoral
6 Council, pursuant to the Global Magnitsky Human
7 Rights Accountability Act (subtitle F of title XII of
8 Public Law 114–328). The press release states, in
9 part: “As President of Nicaragua’s Supreme Elec-
10 toral Council, drawing a reported government salary
11 of \$60,000 per year, Roberto Jose Rivas Reyes
12 (Rivas) has been accused in the press of amassing
13 sizeable personal wealth, including multiple prop-
14 erties, private jets, luxury vehicles, and a yacht.
15 Rivas has been described by a Nicaraguan Comp-
16 troller General as ‘above the law’, with investigations
17 into his corruption having been blocked by Nica-
18 raguan government officials. He has also perpetrated
19 electoral fraud undermining Nicaragua’s electoral in-
20 stitutions.”.

21 **SEC. 3. STATEMENT OF POLICY.**

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

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

- 1 (2) independent pro-democracy organizations in
2 Nicaragua;
- 3 (3) free and fair elections overseen by credible
4 domestic and international observers in Nicaragua;
5 and
- 6 (4) anti-corruption and transparency efforts in
7 Nicaragua.

8 **SEC. 4. INTERNATIONAL FINANCIAL INSTITUTIONS.**

9 (a) IN GENERAL.—The President shall instruct the
10 United States Executive Director at each international fi-
11 nancial institution to use the voice and vote of the United
12 States to oppose any loan for budget support for the Gov-
13 ernment of Nicaragua, other than to address basic human
14 needs or to promote democracy, unless, in the preceding
15 12 months, the Secretary of State has certified and re-
16 ported to the appropriate congressional committees that
17 the Government of Nicaragua is taking effective steps—

- 18 (1) to hold free and fair elections overseen by
19 credible domestic and international electoral observ-
20 ers;
- 21 (2) to promote democracy, as well as an inde-
22 pendent judicial system and electoral council;
- 23 (3) to strengthen the rule of law;
- 24 (4) to respect the right to freedom of expression
25 and association;

1 (5) to combat corruption, including inves-
2 tigating and prosecuting government officials
3 credibly alleged to be corrupt;

4 (6) to protect the right of political opposition
5 parties, journalists, trade unionists, human rights
6 defenders, and other civil society activists to operate
7 without interference; and

8 (7) to protect the rights of indigenous people.

9 (b) REPORT.—Not later than 180 days after the date
10 of the enactment of this Act, the Secretary of the Treasury
11 shall submit, to the appropriate congressional committees,
12 a written report assessing—

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

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

19 (c) ANNUAL REPORTS BY THE SECRETARY OF
20 STATE.—The Secretary of State shall annually submit, to
21 the appropriate congressional committees, a report on
22 whether the Government of Nicaragua is taking effective
23 steps with respect to the matters set forth in subsection
24 (a), and if the Government of Nicaragua is taking effective

1 steps with respect to all such matters, shall certify such
2 to the appropriate congressional committees.

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

5 (1) the date on which the Secretary of State
6 certifies and reports to the appropriate congressional
7 committees that the requirements under subsection
8 (a) have been met; or

9 (2) 5 years after the date of the enactment of
10 this Act.

11 (e) WAIVER.—The President may waive the require-
12 ments under this section if the President determines that
13 such a waiver is in the national interest of the United
14 States.

15 **SEC. 5. REPORT ON CORRUPTION AND MONEY LAUN-**
16 **DERING IN NICARAGUA.**

17 (a) REPORT REQUIREMENT.—Not later than 90 days
18 after the date of the enactment of this Act, the Secretary
19 of State, in consultation with the intelligence community
20 (as defined in section 3(4) of the National Security Act
21 of 1947 (50 U.S.C. 3003(4))), shall submit, to the appro-
22 priate congressional committees, a report on the involve-
23 ment of senior Government of Nicaragua officials, includ-
24 ing members of the Supreme Electoral Council, the Na-
25 tional Assembly, and the judicial system, in acts of public

1 corruption, money laundering, or human rights violations
2 in Nicaragua.

3 (b) FORM.—The report required under subsection (a)
4 shall be submitted in unclassified form, but may contain
5 a classified annex. The unclassified portion of the report
6 shall be made available to the public.

7 **SEC. 6. REPORT ON ACTIVITIES OF CERTAIN REGIMES IN**
8 **NICARAGUA.**

9 (a) IN GENERAL.—Not later than 90 days after the
10 date of the enactment of this Act, the Secretary of State,
11 acting through the Bureau of Intelligence and Research
12 of the Department of State and in consultation with the
13 intelligence community (as defined in section 3(4) of the
14 National Security Act of 1947 (50 U.S.C. 3003(4))), shall
15 submit, to the appropriate congressional committees, a re-
16 port that describes the extent of cooperation by the Gov-
17 ernments of the Russian Federation and the Bolivarian
18 Republic of Venezuela (including Petroleos de Venezuela,
19 S.A. (PDVSA)) with the Government of Nicaragua and
20 the Nicaraguan armed forces and security personnel.

21 (b) FORM.—The report required under subsection (a)
22 shall be submitted in unclassified form, but may include
23 a classified annex. The unclassified portion of the report
24 shall be made available to the public.

1 **SEC. 7. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE CONGRESSIONAL COMMIT-
4 TEES.—The term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on Foreign Relations of
7 the Senate;

8 (B) the Committee on Appropriations of
9 the Senate;

10 (C) the Committee on Banking, Housing,
11 and Urban Affairs of the Senate;

12 (D) the Committee on Foreign Affairs of
13 the House of Representatives;

14 (E) the Committee on Appropriations of
15 the House of Representatives; and

16 (F) the Committee on Financial Services
17 of the House of Representatives.

18 (2) INTERNATIONAL FINANCIAL INSTITU-
19 TION.—The term “international financial institu-
20 tion” includes—

21 (A) the International Monetary Fund;

22 (B) the International Bank for Recon-
23 struction and Development;

24 (C) the International Development Asso-
25 ciation;

26 (D) the International Finance Corporation;

- 1 (E) the Multilateral Investment Guarantee
2 Agency;
3 (F) the Inter-American Development
4 Bank; and
5 (G) the Inter-American Investment Cor-
6 poration.

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