

117TH CONGRESS
2D SESSION

S. 5109

To establish and implement a multi-year Legal Gold and Mining Partnership Strategy to reduce the negative environmental and social impacts of illicit gold mining in the Western Hemisphere, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2022

Mr. RUBIO (for himself and Mr. MENENDEZ) introduced the following bill;
which was read twice and referred to the Committee on Foreign Relations

A BILL

To establish and implement a multi-year Legal Gold and Mining Partnership Strategy to reduce the negative environmental and social impacts of illicit gold mining in the Western Hemisphere, 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 “United States Legal
5 Gold and Mining Partnership Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The illicit mining, trafficking, and commer-
2 cialization of gold in the Western Hemisphere—

3 (A) negatively affects the region’s economic
4 and social dynamics;

5 (B) strengthens transnational criminal or-
6 ganizations and other international illicit actors;
7 and

8 (C) has a deleterious impact on the envi-
9 ronment and food security.

10 (2) A lack of economic opportunities and the
11 weak rule of law promote illicit activities, such as il-
12 licit gold mining, which increases the vulnerability of
13 individuals in mining areas, including indigenous
14 communities, who have been subjected to trafficking
15 in persons, other human rights abuses, and popu-
16 lation displacement in relation to mining activity,
17 particularly in the artisanal and small-scale mining
18 sector.

19 (3) Illicit gold mining in Latin America often
20 involves and benefits transnational criminal organi-
21 zations, drug trafficking organizations, terrorist
22 groups, and other illegal armed groups that extort
23 miners and enter into illicit partnerships with them
24 in order to gain revenue from the illicit activity.

1 (4) Illicit gold supply chains are international in
2 nature and frequently involve—

3 (A) the smuggling of gold and supplies,
4 such as mercury;

5 (B) trade-based money laundering; and

6 (C) other cross-border flows of illicit as-
7 sets.

8 (5) In Latin America, mineral traders and ex-
9 porters, local processors, and shell companies linked
10 to transnational criminal networks and illegally
11 armed groups all play a key role in the trafficking,
12 laundering, and commercialization of illicit gold from
13 the region.

14 (6) According to a report on illegally mined
15 Gold in Latin America by the Global Initiative
16 Against Transnational Organized Crime—

17 (A) more than 70 percent of the gold
18 mined in several Latin American countries,
19 such as Colombia, Ecuador, and Peru, is mined
20 through illicit means; and

21 (B) about 80 percent of the gold mined in
22 Venezuela is mined through illicit means and a
23 large percentage of such gold is sold—

24 (i) to the state mining company,
25 Minerven, a gold processor that has been

designated by the Office of Foreign Assets Control of the Department of the Treasury, pursuant to Executive Order 13850, and is operated by the Maduro regime; or

(ii) through other trafficking and commercialization networks from which the Maduro regime benefits financially.

(7) Illegal armed groups and foreign terrorist organizations, such as the Ejército de Liberación Nacional (National Liberation Army—ELN), work with transnational criminal organizations in Venezuela that participate in the illicit mining, trafficking, and commercialization of gold.

(8) Transnational criminal organizations based in Venezuela, such as El Tren de Aragua, have expanded their role in the illicit mining, trafficking, and commercialization of gold to increase their criminal profits.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations of the Senate; and

1 (B) the Committee on Foreign Affairs of
2 the House of Representatives.

3 (2) ARTISANAL AND SMALL-SCALE MINING;
4 ASM.—The terms “artisanal and small-scale mining”
5 and “ASM” refer to a form of mining common in
6 the developing world that—

7 (A) typically employs rudimentary, simple,
8 and low-cost extractive technologies and manual
9 labor-intensive techniques;

10 (B) is frequently subject to limited regula-
11 tion; and

12 (C) often features harsh and dangerous
13 working conditions.

14 (3) ILLICIT ACTORS.—The term “illicit actors”
15 includes—

16 (A) any person included on any list of—

17 (i) United States-designated foreign
18 terrorist organizations;

19 (ii) specially designated global terror-
20 ists (as defined in section 594.310 of title
21 31, Code of Federal Regulations);

22 (iii) significant foreign narcotics traf-
23 fickers (as defined in section 808 of the
24 Foreign Narcotics Kingpin Designation
25 Act (21 U.S.C. 1907)); or

- 1 (iv) blocked persons, as maintained by
- 2 the Office of Foreign Assets Control of the
- 3 Department of the Treasury; and
- 4 (B) drug trafficking organizations.

5 (4) KEY STAKEHOLDERS.—The term “key

6 stakeholders” means private sector organizations, in-

7 dustry representatives, and civil society representa-

8 tives that are committed to the implementation of

9 the Legal Gold and Mining Partnership Strategy.

10 (5) LEGAL GOLD AND MINING PARTNERSHIP

11 STRATEGY; STRATEGY.—The terms “Legal Gold and

12 Mining Partnership Strategy” and “Strategy” mean

13 the strategy developed pursuant to section 4.

14 (6) RELEVANT FEDERAL DEPARTMENTS AND

15 AGENCIES.—The term “relevant Federal depart-

16 ments and agencies” means—

17 (A) the Department of State;

18 (B) the Department of the Treasury;

19 (C) the Department of Homeland Security,

20 including U.S. Customs and Border Protection

21 and U.S. Immigration and Customs Enforce-

22 ment;

23 (D) the Department of Justice, including

24 the Federal Bureau of Investigation and the

25 Drug Enforcement Administration;

- 1 (E) the Department of the Interior;
2 (F) the United States Agency for Inter-
3 national Development; and
4 (G) other Federal agencies designated by
5 the President.

6 **SEC. 4. LEGAL GOLD AND MINING PARTNERSHIP STRAT-**
7 **EGY.**

8 (a) STRATEGY REQUIRED.—The Secretary of State,
9 in coordination with the heads of relevant Federal depart-
10 ments and agencies, shall develop a comprehensive, multi-
11 year strategy, which shall be known as the Legal Gold and
12 Mining Partnership Strategy (referred to in this section
13 as the “Strategy”), to combat illicit gold mining in the
14 Western Hemisphere.

15 (b) ELEMENTS.—The Strategy shall include policies,
16 programs, and initiatives—

17 (1) to interrupt the linkages between ASM and
18 illicit actors that profit from ASM in the Western
19 Hemisphere;

20 (2) to deter ASM in environmentally protected
21 areas, such as national parks and conservation
22 zones, to prevent mining-related contamination of
23 critical natural resources, such as water resources,
24 soil, tropical forests, and other flora and fauna, and

1 aerosol contamination linked to detrimental health
2 impacts;

3 (3) to counter the financing and enrichment of
4 actors involved in the illicit mining, trafficking, and
5 commercialization of gold, and the abetting of their
6 activities by—

7 (A) promoting the exercise of due diligence
8 and the use of responsible sourcing methods in
9 the purchase and trade of ASM;

10 (B) preventing and prohibiting foreign per-
11 sons who control commodity trading chains
12 linked to illicit actors from enjoying the benefits
13 of access to the territory, markets or financial
14 system of the United States, and halting any
15 such ongoing activity by such foreign persons;
16 and

17 (C) supporting the capacity of financial in-
18 telligence units, customs agencies, and other
19 government institutions focused on anti-money
20 laundering initiatives and combating the financ-
21 ing of criminal activities and terrorism to exer-
22 cise oversight consistent with the threats posed
23 by illicit gold mining;

1 (4) to build the capacity of foreign civilian law
2 enforcement institutions in the Western Hemisphere
3 to effectively counter—

4 (A) linkages between illicit gold mining, il-
5 licit actors, money laundering, and other finan-
6 cial crimes, including trade-based money laun-
7 dering;

8 (B) linkages between illicit gold mining, il-
9 licit actors, trafficking in persons, and forced or
10 coerced labor, including sex work and child
11 labor;

12 (C) the cross-border trafficking of illicit
13 gold, and the mercury, cyanide, explosives, and
14 other hazardous materials used in illicit gold
15 mining; and

16 (D) surveillance and investigation of illicit
17 and related activities that are related to or are
18 indicators of illicit gold mining activities;

19 (5) to ensure the successful implementation of
20 the existing Memoranda of Understanding signed
21 with the Governments of Peru and of Colombia in
22 2017 and 2018, respectively, to expand bilateral co-
23 operation to combat illicit gold mining;

24 (6) to work with governments in the Western
25 Hemisphere, bolster the effectiveness of anti-money

1 laundering efforts to combat the financing of illicit
2 actors in Latin America and the Caribbean and
3 counter the laundering of proceeds related to illicit
4 gold mining by—

5 (A) fostering international and regional co-
6 operation and facilitating intelligence sharing,
7 as appropriate, to identify and disrupt financial
8 flows related to the illicit gold mining, traf-
9 ficking, and commercialization of gold and
10 other minerals and illicit metals; and

11 (B) supporting the formulation of strate-
12 gies to ensure the compliance of reporting insti-
13 tutions involved in the mining sector and to
14 promote transparency in mining-sector trans-
15 actions;

16 (7) to support foreign government efforts—

17 (A) to increase regulations of the ASM sec-
18 tor;

19 (B) to facilitate licensing and formalization
20 processes for ASM miners;

21 (C) to create and implement environmental
22 safeguards to reduce the negative environmental
23 impact of mining on sensitive ecosystems; and

1 (D) to develop mechanisms to support reg-
2 ulated cultural artisanal mining and artisanal
3 mining as a job growth area;

4 (8) to engage the mining industry to encourage
5 the building of technical expertise in best practices,
6 environmental safeguards, and access to new tech-
7 nologies;

8 (9) to support the establishment of gold com-
9 modity supply chain due diligence, responsible
10 sourcing, tracing and tracking capacities, and stand-
11 ards-compliant commodity certification systems in
12 countries in Latin America and the Caribbean, in-
13 cluding efforts recommended in the OECD Due Dili-
14 gence Guidance for Responsible Supply Chains of
15 Minerals from Conflict-Affected and High Risk
16 Areas, Third Edition (2016);

17 (10) to reduce the negative environmental im-
18 pacts of ASM, particularly—

19 (A) the use of mercury in preliminary re-
20 fining;

21 (B) the destruction of tropical forests;

22 (C) the construction of illegal and unregu-
23 lated dams and the resulting valley floods;

24 (D) the pollution of water resources and
25 soil; and

1 (E) the release of dust, which can contain
2 toxic chemicals and heavy metals that can cause
3 severe health problems;

4 (11) to aid and encourage ASM miners—

5 (A) to formalize their business activities,
6 including through skills training, technical and
7 business assistance, and access to financing,
8 loans, and credit;

9 (B) to utilize environmentally safe and sus-
10 tainable mining practices, including by scaling
11 up the use of mercury-free gold refining tech-
12 nologies, and mining methods and technologies
13 that do not result in deforestation, forest de-
14 struction, air pollution, water and soil-contami-
15 nation, and other negative environmental im-
16 pacts associated with ASM;

17 (C) to reduce the costs associated with for-
18 malization and compliance with mining regula-
19 tions;

20 (D) to fully break away from the influence
21 of illicit actors who leverage the control of terri-
22 tory and use violence to extort miners and push
23 them into illicit arrangements;

1 (E) to adopt and utilize environmentally
2 safe and sustainable mining practices, includ-
3 ing—

4 (i) mercury-free gold refining tech-
5 nologies; and

6 (ii) extractive techniques that do not
7 result in—

8 (I) forest clearance and water
9 contamination; or

10 (II) the release of dust or uncon-
11 trolled tailings containing toxic chemi-
12 cals;

13 (F) to pursue alternative livelihoods out-
14 side the mining sector; and

15 (G) to fully access public social services in
16 ASM-dependent communities;

17 (12) to support and encourage socioeconomic
18 development programs, law enforcement capacity-
19 building programs, and support for relevant inter-
20 national initiatives, including by providing assistance
21 to achieve such ends by implementing the Strategy;
22 and

23 (13) to promote responsible sourcing and due
24 diligence at all levels of gold supply chains.

1 (c) CHALLENGES ASSESSED.—The Strategy shall in-
2 clude an assessment of the challenges posed by, and policy
3 recommendations to address—

4 (1) linkages between ASM sector production
5 and trade, particularly relating to gold, to the activi-
6 ties of illicit actors, including linkages that help to
7 finance or enrich such illicit actors or abet their ac-
8 tivities;

9 (2) linkages between illicit or grey market
10 trade, and markets in gold and other metals or min-
11 erals and legal trade and commerce in such commod-
12 ities, notably with respect to activities that abet the
13 entry of such commodities into legal commerce, in-
14 cluding—

15 (A) illicit cross-border trafficking, includ-
16 ing with respect to goods, persons and illegal
17 narcotics;

18 (B) money-laundering;

19 (C) the financing of illicit actors or their
20 activities; and

21 (D) the extralegal entry into the United
22 States of—

23 (i) metals or minerals, whether of
24 legal foreign origin or not; and

1 (ii) the proceeds of such metals or
 2 minerals;

3 (3) linkages between the illicit mining, traf-
 4 ficking, and commercialization of gold, diamonds,
 5 and precious metals and stones, and the financial
 6 and political activities of the regime of Nicolás
 7 Maduro of Venezuela;

8 (4) factors that—

9 (A) produce linkages between ASM miners
 10 and illicit actors, prompting some ASM miners
 11 to utilize mining practices that are environ-
 12 mentally damaging and unsustainable, notably
 13 mining or related ore processing practices
 14 that—

15 (i) involve the use of elemental mer-
 16 cury; or

17 (ii) result in labor, health, environ-
 18 mental, and safety code infractions and
 19 workplace hazards; and

20 (B) lead some ASM miners to operate in
 21 the extralegal or poorly regulated informal sec-
 22 tor, and often prevent such miners from im-
 23 proving the socioeconomic status of themselves
 24 and their families and communities, or hinder
 25 their ability to formalize their operations, en-

1 hance their technical and business capacities,
2 and access finance of fair market prices for
3 their output;

4 (5) mining-related trafficking in persons and
5 forced or coerced labor, including sex work and child
6 labor; and

7 (6) the use of elemental mercury and cyanide in
8 ASM operations, including the technical aims and
9 scope of such usage and its impact on human health
10 and the environment, including flora, fauna, water
11 resources, soil, and air quality.

12 (d) FOREIGN ASSISTANCE.—The Strategy shall de-
13 scribe—

14 (1) existing foreign assistance programs that
15 address elements of the Strategy; and

16 (2) additional foreign assistance resources need-
17 ed to fully implement the Strategy.

18 (e) SUBMISSION.—Not later than 180 days after the
19 date of the enactment of this Act, the President shall sub-
20 mit the Strategy to the appropriate congressional commit-
21 tees.

22 (f) BRIEFING.—Not later than 180 days after sub-
23 mission of the Strategy, and semiannually thereafter for
24 the following 3 years, the Secretary of State, or the Sec-
25 retary's designee, shall provide a briefing to the appro-

1 priate congressional committees regarding the implemen-
2 tation of the strategy, including efforts to leverage inter-
3 national support and develop a public-private partnership
4 to build responsible gold value chains with other govern-
5 ments.

6 **SEC. 5. CLASSIFIED BRIEFING ON ILLICIT GOLD MINING IN**
7 **VENEZUELA.**

8 Not later than 90 days after the date of the enact-
9 ment of this Act, the Secretary of State, or the Secretary's
10 designee, in coordination with the Director of National In-
11 telligence, shall provide a classified briefing to the appro-
12 priate congressional committees, the Select Committee on
13 Intelligence of the Senate, and the Permanent Select Com-
14 mittee on Intelligence of the House of Representatives
15 that describes—

16 (1) the activities related to illicit gold mining,
17 including the illicit mining, trafficking, and commer-
18 cialization of gold, inside Venezuelan territory car-
19 ried out by illicit actors, including defectors from the
20 Revolutionary Armed Forces of Colombia (FARC)
21 and members of the National Liberation Army
22 (ELN); and

23 (2) Venezuela's illicit gold trade with foreign
24 governments, including the Government of the Re-

1 public of Turkey and the Government of the Islamic
2 Republic of Iran.

3 **SEC. 6. INVESTIGATION OF THE ILLICIT GOLD TRADE IN**
4 **VENEZUELA.**

5 The Secretary of State, in coordination with the Sec-
6 retary of the Treasury, the Attorney General, and allied
7 and partner governments in the Western Hemisphere,
8 shall—

9 (1) lead a coordinated international effort to
10 carry out financial investigations to identify and
11 track assets taken from the people and institutions
12 in Venezuela that are linked to money laundering
13 and illicit activities, including mining-related activi-
14 ties, by sharing financial investigations intelligence,
15 as appropriate and as permitted by law; and

16 (2) provide technical assistance to help eligible
17 governments in Latin America establish legislative
18 and regulatory frameworks capable of imposing and
19 effectively implementing targeted sanctions on—

20 (A) officials of the Maduro regime who are
21 directly engaged in the illicit mining, traf-
22 ficking, and commercialization of gold; and

23 (B) foreign persons engaged in the laun-
24 dering of illicit gold assets linked to designated
25 terrorist and drug trafficking organizations.

1 **SEC. 7. LEVERAGING INTERNATIONAL SUPPORT.**

2 In implementing the Legal Gold and Mining Partner-
 3 ship Strategy pursuant to section 4, the President should
 4 direct United States representatives accredited to relevant
 5 multilateral institutions and development banks and
 6 United States ambassadors in the Western Hemisphere to
 7 use the influence of the United States to foster inter-
 8 national cooperation to achieve the objectives of this Act,
 9 including—

10 (1) marshaling resources and political support;

11 and

12 (2) encouraging the development of policies and
 13 consultation with key stakeholders to accomplish
 14 such objectives and provisions.

15 **SEC. 8. PUBLIC-PRIVATE PARTNERSHIP TO BUILD RESPON-**
 16 **SIBLE GOLD VALUE CHAINS.**

17 (a) BEST PRACTICES.—The Administrator of the
 18 United States Agency for International Development (re-
 19 ferred to in this section as the “Administrator”), in co-
 20 ordination with the Governments of Colombia, of Ecuador,
 21 and of Peru, and with other democratically elected govern-
 22 ments in the region, shall consult with the Government
 23 of Switzerland regarding best practices developed through
 24 the Swiss Better Gold Initiative, a public-private partner-
 25 ship that aims to improve transparency and traceability
 26 in the international gold trade.

1 (b) IN GENERAL.—The Administrator shall coordi-
2 nate with the Governments of Colombia, Ecuador, Peru,
3 and other democratically elected governments in the re-
4 gion determined by the Administrator to establish a pub-
5 lic-private partnership to advance the best practices identi-
6 fied in subsection (a), including supporting programming
7 in participating countries that will—

8 (1) support formalization and compliance with
9 appropriate environmental and labor standards in
10 ASM gold mining;

11 (2) increase access to financing for ASM gold
12 miners who are taking significant steps to formalize
13 their operations and comply with labor and environ-
14 mental standards;

15 (3) enhance the traceability and support the es-
16 tablishment of a certification process for ASM gold;

17 (4) support a public relations campaign to pro-
18 mote responsibly sourced gold;

19 (5) facilitate contact between vendors of respon-
20 sibly sourced gold and United States companies; and

21 (6) promote policies and practices in partici-
22 pating countries that are conducive to the formaliza-
23 tion of ASM gold mining and promoting adherence
24 of ASM to internationally recognized best practices
25 and standards.

1 (c) MEETING.—The Secretary of State or the Admin-
2 istrator, without delegation and in coordination with the
3 governments of participating countries, should—

4 (1) host a meeting with senior representatives
5 of the private sector and international governmental
6 and nongovernmental partners; and

7 (2) make commitments to improve due diligence
8 and increase the responsible sourcing of gold.

9 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated to the Sec-
11 retary of State \$10,000,000 to implement the Legal Gold
12 and Mining Partnership Strategy developed pursuant to
13 section 4.

○