

114TH CONGRESS
2D SESSION

H. R. 5708

To oppose loans at international financial institutions for the Government of Nicaragua unless the Government of Nicaragua is taking effective steps to hold free, fair, and transparent elections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2016

Ms. ROS-LEHTINEN (for herself, Mr. SIRES, Mr. DIAZ-BALART, Mr. CÁRDENAS, Mr. DUNCAN of South Carolina, Mr. NORCROSS, Mr. CURBELO of Florida, Mr. CUELLAR, Mr. YOHO, and Mr. BRENDAN F. BOYLE of Pennsylvania) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To oppose loans at international financial institutions for the Government of Nicaragua 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”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

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

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

10 (3) In 2009, the MCC terminated the compact
11 and reduced the amount of MCC funds available to
12 Nicaragua by \$61,500,000, which led to the compact
13 ending in 2011.

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

20 (5) The House Committee on Foreign Affairs
21 convened a congressional hearing on December 1,
22 2011, entitled “Democracy Held Hostage in Nica-
23 ragua: Part 1” where former United States Amba-
24 sador to Nicaragua Robert Callahan testified,
25 “First, that Daniel Ortega’s candidacy was illegal,
26 illegitimate, and unconstitutional; second, that the

1 period leading to the elections and the elections
2 themselves were marred by serious fraud; third, that
3 Daniel Ortega and his Sandinista party have system-
4 atically undermined the country's fragile govern-
5 mental institutions”.

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

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

19 (8) According to the Department of State’s
20 2015 Fiscal Transparency Report: “The government
21 does not publicly account for the expenditure of sig-
22 nificant off-budget assistance from Venezuela and
23 this assistance is not subject to audit or legislative
24 oversight. Allocations to and earnings from state-
25 owned enterprises are included in the budget, but

1 most state-owned enterprises are not audited. The
2 supreme audit institution also does not audit the
3 government's full financial statements. Nicaragua's
4 fiscal transparency would be improved by including
5 all off-budget revenue and expenditure in the bud-
6 get, auditing state-owned enterprises, and conducting
7 a full audit of the government's annual financial
8 statements and making audit reports publicly avail-
9 able within a reasonable period of time.”.

10 (9) According to the Department of State's
11 Country Reports on Human Rights Practices for
12 2015: “In 2011 the Supreme Electoral Council
13 (CSE) announced the re-election of President Daniel
14 Ortega Saavedra of the Sandinista National Libera-
15 tion Front (FSLN) in elections that international
16 and domestic observers characterized as seriously
17 flawed. International and domestic organizations
18 raised concerns regarding the constitutional legit-
19 imacy of Ortega's re-election. The 2011 elections
20 also provided the ruling party with a supermajority
21 in the National Assembly, allowing for changes in
22 the constitution, including extending the reach of ex-
23 ecutive branch power and the elimination of restric-
24 tions on re-election for executive branch officials and
25 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 Ortega—in-
22 structed the Supreme Electoral Council not to swear
23 in Nicaraguan opposition members to the depart-
24 mental and regional electoral councils.

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

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
13 government of Nicaragua to allow electoral observers
14 as requested by Nicaraguans.”.

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

21 (20) On June 14, 2016, Daniel Ortega expelled
22 three United States Government officials (two offi-
23 cials from U.S. Customs and Border Protection and
24 one professor from the National Defense University)
25 from Nicaragua.

1 (21) On June 22, 2016, a Global Fellow from
2 the Woodrow Wilson Center chose to leave Nica-
3 ragua because of fear. According to a media report,
4 the fellow stated “Police were following me. I did
5 not understand the reason why they were following
6 me, but it was clear to me what they were doing
7 . . . Of course (I felt fear), I was surprised espe-
8 cially because the research I am doing is completely
9 academic, not journalistic, and that made me wonder
10 why they would be so interested in something like
11 that.”.

12 (22) On June 29, 2016, the Department of
13 State issued a Nicaragua Travel Alert which stated:
14 “The Department of State alerts U.S. citizens about
15 increased government scrutiny of foreigners’ activi-
16 ties, new requirements for volunteer groups, and the
17 potential for demonstrations during the upcoming
18 election season in Nicaragua . . . Nicaraguan au-
19 thorities have denied entry to, detained, questioned,
20 or expelled foreigners, including U.S. government of-
21 ficials, academics, NGO workers, and journalists, for
22 discussions, written reports or articles, photographs,
23 and/or videos related to these topics. Authorities
24 may monitor and question private U.S. citizens con-

1 cerning their activities, including contact with Nica-
2 raguean citizens.”.

3 (23) On June 30, 2016, the Human Rights
4 Foundation issued a press release stating: “. . .
5 Daniel Ortega has used all sorts of trickery to push
6 for constitutional reforms and illegal court rulings in
7 order to extend his time in power indefinitely . . .
8 If the opposition is not allowed to meaningfully com-
9 pete, the upcoming elections in Nicaragua cannot be
10 considered free and fair and the Inter-American
11 Democratic Charter should be applied to the Sandi-
12 nista regime.”. The release continued, stating that
13 “The principle of alternation of power is enshrined
14 in the Inter-American Democratic Charter (IADC)
15 as an essential element of democracy. Even though
16 Ortega pushed through a constitutional amendment
17 allowing for indefinite re-election, he did so by cir-
18 cumventing the separation of powers illegally. An
19 uncontested re-election of Ortega would clearly vio-
20 late the IADC, which was signed by Nicaragua in
21 2001. If that is the case, Secretary General Almagro
22 should activate the IADC and, if necessary, call for
23 the suspension of Nicaragua from the OAS.”.

24 **SEC. 3. STATEMENT OF POLICY.**

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

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

3 (2) independent pro-democracy organizations in
4 Nicaragua; and

5 (3) free, fair, and transparent elections under
6 international and domestic observers in Nicaragua in
7 2016 and 2017.

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, vote, and influence of
12 the United States to oppose any loan or other utilization
13 of the funds of the respective institution for the benefit
14 of the Government of Nicaragua, other than to address
15 basic human needs or to promote democracy, unless the
16 Secretary of State certifies and reports to the appropriate
17 congressional committees that the Government of Nica-
18 ragua is taking effective steps to—

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

22 (2) promote democracy, as well as an inde-
23 pendent judiciary system and electoral council;

24 (3) strengthen the rule of law; and

1 (4) respect the right to freedom of association
2 and expression.

3 (b) DEFINITIONS.—In this section:

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

7 (A) the Committee on Foreign Affairs, the
8 Committee on Appropriations, and the Com-
9 mittee on Financial Services of the House of
10 Representatives;

11 (B) the Committee on Foreign Relations,
12 the Committee on Appropriations, and the
13 Committee on Banking, Housing, and Urban
14 Affairs of the Senate.

15 (2) INTERNATIONAL FINANCIAL INSTITU-
16 TION.—The term “international financial institu-
17 tion” means the International Monetary Fund,
18 International Bank for Reconstruction and Develop-
19 ment, European Bank for Reconstruction and Develop-
20 ment, International Development Association,
21 International Finance Corporation, Multilateral In-
22 vestment Guarantee Agency, African Development
23 Bank, African Development Fund, Asian Develop-
24 ment Bank, Inter-American Development Bank,
25 Bank for Economic Cooperation and Development in

1 the Middle East and North Africa, and Inter-Amer-
2 ican Investment Corporation.

3 (c) TERMINATION.—This section shall terminate on
4 the day after the date on which the Secretary of State
5 certifies and reports to the appropriate congressional com-
6 mittees that the requirements of subsection (a) are met.

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

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

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

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

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

23 (4) “Institute regulations to ensure that party
24 poll watchers are involved in all areas of the elec-
25 toral structure, including the departmental, regional

1 and municipal electoral councils and polling stations.
2 Rules should be crafted to spell out their authorities
3 and functions and the means by which they can ex-
4 ercise their authority and perform their functions.”.

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

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

19 **SEC. 6. STATEMENT OF POLICY.**

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

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