

115TH CONGRESS  
1ST SESSION

# S. 2265

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

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## 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

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## 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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