

114TH CONGRESS
2D SESSION

S. _____

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 SENATE OF THE UNITED STATES

Mr. CRUZ introduced the following bill; which was read twice and referred to the Committee on _____

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 of 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) In 2006, Nicaragua, under President
2 Enrique Bolaños, entered into a \$175,000,000, 5-
3 year compact with the Millennium Challenge Cor-
4 poration (in this section referred to as the “MCC”).

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

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

12 (4) According to the law of Nicaragua, the Na-
13 tional Assembly is the only institution allowed to
14 change the constitution but in 2009, Daniel Ortega
15 circumvented the legislature and went to the Su-
16 preme Court, which he controls, to rule in his favor
17 that presidential term limits were inapplicable.

18 (5) The Committee on Foreign Affairs of the
19 House of Representatives convened a congressional
20 hearing on December 1, 2011, entitled “Democracy
21 Held Hostage in Nicaragua: Part 1” where former
22 United States Ambassador to Nicaragua Robert Cal-
23 lahan testified, “First, that Daniel Ortega’s can-
24 didacy was illegal, illegitimate, and unconstitutional;
25 second, that the period leading to the elections and

1 the elections themselves were marred by serious
2 fraud; third, that Daniel Ortega and his Sandinista
3 party have systematically undermined the country's
4 fragile governmental institutions.”.

5 (6) From fiscal year 2012 until the date of the
6 enactment of this Act, the Department of State
7 found that Nicaragua did not meet international
8 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 that 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 and failed to purge the electoral registration rolls in
15 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 [Or-
6 ganization of American States] . . .”.

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 Ortega, announced a
17 ruling, which changed the leadership structure of the
18 opposition party and in practice allegedly barred all
19 existing opposition candidates from running for of-
20 fice.

21 (20) On June 14, 2016, Daniel Ortega expelled
22 3 United States Government officials (2 officials
23 from U.S. Customs and Border Protection and one
24 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 especially be-
8 cause the research I am doing is completely aca-
9 demic, 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: “Daniel
5 Ortega has used all sorts of trickery to push for con-
6 stitutional reforms and illegal court rulings in order
7 to extend his time in power indefinitely. . . If the op-
8 position is not allowed to meaningfully compete, the
9 upcoming elections in Nicaragua cannot be consid-
10 ered free and fair and the Inter-American Demo-
11 cratic Charter should be applied to the Sandinista
12 regime.”. The release continued, stating, “The prin-
13 ciple of alternation of power is enshrined in the
14 Inter-American Democratic Charter (IADC) as an
15 essential element of democracy. Even though Ortega
16 pushed through a constitutional amendment allowing
17 for indefinite re-election, he did so by circumventing
18 the separation of powers illegally. An uncontested re-
19 election of Ortega would clearly violate the IADC,
20 which was signed by Nicaragua in 2001. If that is
21 the case, Secretary General Almagro should activate
22 the IADC and, if necessary, call for the suspension
23 of Nicaragua from the [Organization of American
24 States].”.

1 **SEC. 3. STATEMENT OF POLICY.**

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

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

5 (2) independent pro-democracy organizations in
6 Nicaragua; and

7 (3) free, fair, and transparent elections under
8 international and domestic observers in Nicaragua in
9 2016 and 2017.

10 **SEC. 4. INTERNATIONAL FINANCIAL INSTITUTIONS.**

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

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

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

26 (3) strengthen the rule of law; and

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

3 (b) 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 (c) DEFINITIONS.—In this section:

8 (1) APPROPRIATE CONGRESSIONAL COMMIT-
9 TEES.—The term “appropriate congressional com-
10 mittees” means—

11 (A) the Committee on Foreign Affairs, the
12 Committee on Appropriations, and the Com-
13 mittee on Financial Services of the House of
14 Representatives;

15 (B) the Committee on Foreign Relations,
16 the Committee on Appropriations, and the
17 Committee on Banking, Housing, and Urban
18 Affairs of the Senate.

19 (2) INTERNATIONAL FINANCIAL INSTITU-
20 TION.—The term “international financial institu-
21 tion” means the International Monetary Fund, the
22 International Bank for Reconstruction and Develop-
23 ment, the European Bank for Reconstruction and
24 Development, the International Development Asso-
25 ciation, the International Finance Corporation, the

1 Multilateral Investment Guarantee Agency, the Afri-
2 can Development Bank, the African Development
3 Fund, the Asian Development Bank, the Inter-
4 American Development Bank, the Bank for Eco-
5 nomic Cooperation and Development in the Middle
6 East and North Africa, and the Inter-American In-
7 vestment Corporation.

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

9 (a) FINDINGS.—Congress finds that, according to the
10 Organization of American States (in this section referred
11 to as the “OAS”) report on the 2011 presidential elections
12 in Nicaragua entitled, “Nicaragua: Final Report, General
13 Elections, OAS (2011)”, the OAS made the following rec-
14 ommendations to the Government of Nicaragua:

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

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

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

24 (4) “Institute regulations to ensure that party
25 poll watchers are involved in all areas of the elec-

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

6 (5) “Redesign the [Supreme Electoral Council]
7 administrative structure at the central and field lev-
8 els, while standardizing technical and operational
9 procedures, including the design of control mecha-
10 nisms from the time registration to the delivery of
11 the document to the citizens; the process of issuing
12 identity cards should be timed to the calendar and,
13 to avoid congestion within the process, be evenly
14 spaced.”.

15 (b) ELECTORAL OBSERVATION MISSION.—The Presi-
16 dent shall direct the United States Permanent Represent-
17 ative to the OAS to use the voice, vote, and influence of
18 the United States at the OAS to strongly advocate for an
19 Electoral Observation Mission to be sent to Nicaragua in
20 2016 and 2017.

21 **SEC. 6. STATEMENT OF POLICY.**

22 The Department of State and the United States
23 Agency for International Development should prioritize
24 foreign assistance to the people of Nicaragua to assist civil

- 1 society in democracy and governance programs, including
- 2 human rights documentation.