

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1918
OFFERED BY MS. ROS-LEHTINEN OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Nicaraguan Invest-
3 ment Conditionality Act (NICA) of 2017”.

4 SEC. 2. FINDINGS.

5 Congress makes the following findings:

6 (1) The House Committee on Foreign Affairs
7 convened a congressional hearing on December 1,
8 2011, entitled “Democracy Held Hostage in Nica-
9 ragua: Part 1” where former United States Amba-
10 sador to Nicaragua Robert Callahan testified,
11 “First, that Daniel Ortega’s candidacy was illegal,
12 illegitimate, and unconstitutional; second, that the
13 period leading to the elections and the elections
14 themselves were marred by serious fraud; third, that
15 Daniel Ortega and his Sandinista party have system-
16 atically undermined the country’s fragile govern-
17 mental institutions.”.

1 (2) According to the Organization of American
2 States (OAS) report on the Nicaraguan 2011 Presi-
3 dential elections, the OAS recommended that the
4 Government of Nicaragua take a number of steps to
5 improve its electoral systems, including accrediting
6 poll watchers to ensure political parties and civil so-
7 ciety are represented to observe elections, and rede-
8 signing the structure of the Nicaraguan electoral
9 council to allow proper registration of the electorate.

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

20 (4) According to the Department of State’s
21 2015 Fiscal Transparency Report: “Nicaragua’s fis-
22 cal transparency would be improved by including all
23 off-budget revenue and expenditure in the budget,
24 auditing state-owned enterprises, and conducting a
25 full audit of the government’s annual financial state-

1 ments and making audit reports publicly available
2 within a reasonable period of time.”.

3 (5) According to the Department of State’s
4 Country Reports on Human Rights Practices for
5 2015: “In 2011 the Supreme Electoral Council
6 (CSE) announced the re-election of President Daniel
7 Ortega Saavedra of the Sandinista National Libera-
8 tion Front (FSLN) in elections that international
9 and domestic observers characterized as seriously
10 flawed. International and domestic organizations
11 raised concerns regarding the constitutional legit-
12 imacy of Ortega’s re-election. The 2011 elections
13 also provided the ruling party with a supermajority
14 in the National Assembly, allowing for changes in
15 the constitution, including extending the reach of ex-
16 ecutive branch power and the elimination of restric-
17 tions on re-election for executive branch officials and
18 mayors. Observers noted serious flaws during the
19 2012 municipal elections and March 2014 regional
20 elections.”.

21 (6) According to the Department of State’s
22 Country Reports on Human Rights Practices for
23 2015 in Nicaragua: “The principal human rights
24 abuses were restrictions on citizens’ right to vote;
25 obstacles to freedom of speech and press, including

1 government intimidation and harassment of journal-
2 ists and independent media, as well as increased re-
3 striction of access to public information, including
4 national statistics from public offices; and increased
5 government harassment and intimidation of non-
6 governmental organizations (NGOs) and civil society
7 organizations.”.

8 (7) The same 2015 report stated: “Additional
9 significant human rights abuses included consider-
10 ably biased policies to promote single-party domi-
11 nance; arbitrary police arrest and detention of sus-
12 pects, including abuse during detention; harsh and
13 life-threatening prison conditions with arbitrary and
14 lengthy pretrial detention; discrimination against
15 ethnic minorities and indigenous persons and com-
16 munities.”.

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

1 (9) On June 14, 2016, President Ortega ex-
2 pelled three United States Government officials (two
3 officials from U.S. Customs and Border Protection
4 and one professor from the National Defense Uni-
5 versity) from Nicaragua.

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

21 (11) On November 7, 2016, the Department of
22 State issued a press release stating: “The United
23 States is deeply concerned by the flawed presidential
24 and legislative electoral process in Nicaragua, which
25 precluded the possibility of a free and fair election

1 on November 6. In advance of the elections, the Nie-
2 araguan government sidelined opposition candidates
3 for president, limited domestic observation at the
4 polls and access to voting credentials, and took other
5 actions to deny democratic space in the process. The
6 decision by the Nicaraguan government not to invite
7 independent international electoral observers further
8 degraded the legitimacy of the election.”.

9 (12) In November and December of 2016, the
10 Board of Executive Directors of the Inter-American
11 Development Bank postponed consideration of a pol-
12 icy based loan of \$65 million to the Government of
13 Nicaragua due to the efforts of the United States
14 mission that expressed serious concerns of the ab-
15 sence of transparency, systemic corruption, and the
16 lack of free and fair elections in Nicaragua.

17 (13) According to the Department of State’s
18 Country Reports on Human Rights Practices for
19 2016: “[A]ctions by the ruling Sandinista National
20 Liberation Front (FSLN) party resulted in de facto
21 concentration of power in a single party, with an au-
22 thoritarian executive branch exercising significant
23 control over the legislative, judicial, and electoral
24 functions.”.

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

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

23 **SEC. 3. STATEMENT OF POLICY.**

24 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;

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

8 (4) anti-corruption and transparency efforts in
9 Nicaragua.

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 for the benefit of
15 the Government of Nicaragua, other than to address basic
16 human needs or promote democracy, unless the Secretary
17 of State certifies and reports to the appropriate congres-
18 sional committees that the Government of Nicaragua is
19 taking effective steps to—

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

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

25 (3) strengthen the rule of law;

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

3 (5) combat corruption, including investigating
4 and prosecuting government officials that are
5 credibly alleged to be corrupt; and

6 (6) protect the right of political opposition par-
7 ties, journalists, trade unionists, human rights de-
8 fenders, and other civil society activists to operate
9 without interference.

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

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

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

20 (c) DEFINITIONS.—In this section:

21 (1) APPROPRIATE CONGRESSIONAL COMMIT-
22 TEES.—The term “appropriate congressional com-
23 mittees” means—

24 (A) the Committee on Foreign Affairs, the
25 Committee on Appropriations, and the Com-

1 mittee on Financial Services of the House of
2 Representatives; and

3 (B) the Committee on Foreign Relations,
4 the Committee on Appropriations, and the
5 Committee on Banking, Housing, and Urban
6 Affairs of the Senate.

7 (2) INTERNATIONAL FINANCIAL INSTITU-
8 TION.—The term “international financial institu-
9 tion” means the International Monetary Fund,
10 International Bank for Reconstruction and Develop-
11 ment, European Bank for Reconstruction and Develop-
12 ment, International Development Association,
13 International Finance Corporation, Multilateral In-
14 vestment Guarantee Agency, African Development
15 Bank, African Development Fund, Asian Develop-
16 ment Bank, Inter-American Development Bank,
17 Bank for Economic Cooperation and Development in
18 the Middle East and North Africa, and Inter-Amer-
19 ican Investment Corporation.

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

22 (1) the date on which the Secretary of State
23 certifies and reports to the appropriate congressional
24 committees that the requirements of subsection (a)
25 are met; or

1 (2) 5 years after the date of the enactment of
2 this Act.

3 (e) WAIVER.—The President may waive this section
4 if the President determines that such a waiver is in the
5 national interest of the United States.

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

7 The President shall direct the United States Perma-
8 nent Representative to the OAS to use the voice, vote, and
9 influence of the United States at the OAS to strongly ad-
10 vocate for an Electoral Observation Mission to be sent to
11 Nicaragua in 2017 to observe the possibility of credible
12 elections.

13 **SEC. 6. SENSE OF CONGRESS.**

14 The Department of State and the United States
15 Agency for International Development should prioritize
16 foreign assistance to the people of Nicaragua to assist civil
17 society in democracy and governance programs, including
18 human rights documentation.

19 **SEC. 7. REPORT ON CORRUPTION IN NICARAGUA.**

20 (a) REPORT REQUIREMENT.—Not later than 90 days
21 after the date of the enactment of this Act, the Secretary
22 of State, in consultation with the intelligence community
23 (as defined in section 3(4) of the National Security Act
24 of 1947 (50 U.S.C. 3003(4)), shall submit to Congress
25 a report on the involvement of senior Nicaraguan govern-

1 ment officials, including members of the Supreme Elec-
2 toral Council, the National Assembly, and the judicial sys-
3 tem, in acts of public corruption or human rights viola-
4 tions in Nicaragua.

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

