

## Nicaragua Investment Conditionality Act of 2018

[Public Law 115–335]

[As Amended Through P.L. 117–54, Enacted November 10, 2021]

【Currency: This publication is a compilation of the text of Public Law 115-335. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT 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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. [50 U.S.C. 1701 note] SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Nicaragua Investment Conditionality Act of 2018” or the “NICA Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Sense of Congress on advancing a negotiated solution to Nicaragua’s crisis.
- Sec. 3. Statement of policy.
- Sec. 4. Restrictions on international financial institutions relating to Nicaragua.
- Sec. 5. Imposition of targeted sanctions with respect to Nicaragua.
- Sec. 6. Annual certification and waiver.
- Sec. 7. Report on human rights violations and corruption in Nicaragua.
- Sec. 8. Civil society engagement strategy.
- Sec. 9. Reform of Western Hemisphere Drug Policy Commission.
- Sec. 10. Termination.
- Sec. 11. Definitions.

### **SEC. 2. SENSE OF CONGRESS ON ADVANCING A NEGOTIATED SOLUTION TO NICARAGUA’S CRISIS.**

It is the sense of Congress that—

(1) credible negotiations between the Government of Nicaragua and representatives of Nicaragua’s civil society, student movement, private sector, and political opposition, mediated by the Catholic Church in Nicaragua, represent the best opportunity to reach a peaceful solution to the current political crisis that includes—

(A) a commitment to hold early elections that meet democratic standards and permit credible international electoral observation;

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(B) the cessation of the violence perpetrated against civilians by the National Police of Nicaragua and by armed groups supported by the Government of Nicaragua; and

(C) independent investigations into the killings of protesters; and

(2) negotiations between the Government of Nicaragua and representatives of Nicaragua's civil society, student movement, private sector, and political opposition, mediated by the Catholic Church in Nicaragua, have not resulted in an agreement as of the date of the enactment of this Act because the Government of Nicaragua has failed to credibly participate in the process.

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

It is the policy of the United States to support—

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

(2) democratic governance in Nicaragua;

(3) free and fair elections overseen by credible domestic and international observers in Nicaragua; and

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

**SEC. 4. RESTRICTIONS ON INTERNATIONAL FINANCIAL INSTITUTIONS RELATING TO NICARAGUA.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury should take all possible steps, including through the full implementation of the exceptions set forth in subsection (c), to ensure that the restrictions required under subsection (b) do not negatively impact the basic human needs of the people of Nicaragua.

(b) RESTRICTIONS.—The Secretary of the Treasury shall—

(1) instruct the United States Executive Director at each international financial institution of the World Bank Group to use the voice, vote, and influence of the United States to oppose the extension by the International Finance Corporation of any loan or financial or technical assistance to the Government of Nicaragua for a project in Nicaragua;

(2) instruct the United States Executive Director of the Inter-American Development Bank to use the voice, vote, and influence of the United States to oppose the extension by the Bank of any loan or financial or technical assistance to the Government of Nicaragua for a project in Nicaragua; and

(3) instruct the United States Executive Director of each other international financial institution, including the International Monetary Fund, to work with other key donor countries to develop a coherent policy approach to future engagements with and lending to the Government of Nicaragua, in a manner that will advance human rights, including the full restoration of the rights guaranteed to the people of Nicaragua through the commitments made by the Government of Nicaragua as a signatory of the International Covenant on Civil and Political Rights.

(c) EXCEPTIONS FOR BASIC HUMAN NEEDS AND DEMOCRACY PROMOTION.—The restrictions under paragraphs (1) and (2) of subsection (b) shall not apply with respect to any loan or financial or

technical assistance provided to address basic human needs or to promote democracy in Nicaragua.

(d) INCREASED OVERSIGHT.—

(1) IN GENERAL.—The United States Executive Director at each international financial institution of the World Bank Group, the United States Executive Director at the Inter-American Development Bank, and the United States Executive Director at each other international financial institution, including the International Monetary Fund, shall take all practicable steps—

(A) to increase scrutiny of any loan or financial or technical assistance provided for a project in Nicaragua; and

(B) to ensure that the loan or assistance is administered through an entity with full technical, administrative, and financial independence from the Government of Nicaragua.

(2) MECHANISMS FOR INCREASED SCRUTINY.—The United States Executive Director at each international financial institution described in paragraph (1) shall use the voice, vote, and influence of the United States to encourage that institution to increase oversight mechanisms for new and existing loans or financial or technical assistance provided for a project in Nicaragua.

(e) INTERAGENCY CONSULTATION.—Before implementing the restrictions described in subsection (b), or before exercising an exception under subsection (c), the Secretary of the Treasury shall consult with the Secretary of State and with the Administrator of the United States Agency for International Development to ensure that all loans and financial or technical assistance to Nicaragua are consistent with United States foreign policy objectives as defined in section 3.

(f) REPORT.—Not later than 180 days after the date of the enactment of the RENACER Act, and annually thereafter until the termination date specified in section 10, the Secretary of the Treasury, in coordination with the Secretary of State and the Administrator of the United States Agency for International Development, shall submit to the appropriate congressional committees a report on the implementation of this section, which shall include—

(1) summary of any loans and financial and technical assistance provided by international financial institutions for projects in Nicaragua;

(2) a description of the implementation of the restrictions described in subsection (b);

(3) an identification of the occasions in which the exceptions under subsection (c) are exercised and an assessment of how the loan or assistance provided with each such exception may address basic human needs or promote democracy in Nicaragua;

(4) a description of the results of the increased oversight conducted under subsection (d); and

(5) a description of international efforts to address the humanitarian needs of the people of Nicaragua.

**Sec. 5**                      **Nicaragua Investment Conditionality Act of 2018****4****SEC. 5. IMPOSITION OF TARGETED SANCTIONS WITH RESPECT TO NICARAGUA.**

(a) **IN GENERAL.**—The President shall impose the sanctions described in subsection (c) with respect to any foreign person, including any current or former official of the Government of Nicaragua or any person acting on behalf of that Government, that the President determines—

(1) to be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have knowingly participated in, directly or indirectly, any activity described in subsection (b);

(2) to be a leader of—

(A) an entity that has, or whose members have, engaged in any activity described in subsection (b); or

(B) an entity whose property and interests in property are blocked under subsection (c)(1)(A) as a result of activities related to the tenure of the leader;

(3) to have knowingly materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of—

(A) an activity described in subsection (b); or

(B) a person whose property and interests in property are blocked under subsection (c)(1)(A); or

(4) to be owned or controlled by, or to have knowingly acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked under subsection (c)(1)(A).

(b) **ACTIVITIES DESCRIBED.**—An activity described in this subsection is any of the following in or in relation to Nicaragua on or after April 18, 2018:

(1) Significant acts of violence or conduct that constitutes a serious abuse or violation of human rights against persons associated with the protests in Nicaragua that began on April 18, 2018.

(2) Significant actions or policies that undermine democratic processes or institutions.

(3) Acts of significant corruption by or on behalf of the Government of Nicaragua or a current or former official of the Government of Nicaragua, including—

(A) the expropriation of private or public assets for personal gain or political purposes;

(B) corruption related to government contracts;

(C) bribery; or

(D) the facilitation or transfer of the proceeds of corruption.

(4) The arrest or prosecution of a person, including an individual or media outlet disseminating information to the public, primarily because of the legitimate exercise by such person of the freedom of speech, assembly, or the press.

(c) **SANCTIONS DESCRIBED.**—

(1) **IN GENERAL.**—The sanctions described in this subsection are the following:

(A) **ASSET BLOCKING.**—The exercise of all powers granted to the President by the International Emergency

Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in all property and interests in property of a person determined by the President to be subject to subsection (a) if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(B) EXCLUSION FROM THE UNITED STATES AND REVOCATION OF VISA OR OTHER DOCUMENTATION.—In the case of an alien determined by the President to be subject to subsection (a), denial of a visa to, and exclusion from the United States of, the alien, and revocation in accordance with section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)), of any visa or other documentation of the alien.

(2) PENALTIES.—A person that violates, attempts to violate, conspires to violate, or causes a violation of a measure imposed pursuant to paragraph (1)(A) or any regulation, license, or order issued to carry out paragraph (1)(A) shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.

(3) EXCEPTION RELATING TO IMPORTATION OF GOODS.—The requirement to block and prohibit all transactions in all property and interests in property under paragraph (1)(A) shall not include the authority to impose sanctions on the importation of goods.

(4) EXCEPTION TO COMPLY WITH UNITED NATIONS HEADQUARTERS AGREEMENT.—Sanctions under paragraph (1)(B) shall not apply to an alien if admitting the alien into the United States is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations.

(d) IMPLEMENTATION; REGULATORY AUTHORITY.—

(1) IMPLEMENTATION.—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out this section.

(2) REGULATORY AUTHORITY.—The President shall issue such regulations, licenses, and orders as are necessary to carry out this section.

#### **SEC. 6. ANNUAL CERTIFICATION AND WAIVER.**

(a) CERTIFICATION.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall submit to the appropriate congressional committees a report certifying whether the Government of Nicaragua is taking effective steps—

(1) to strengthen the rule of law and democratic governance, including the independence of the judicial system and electoral council;

(2) to combat corruption, including by investigating and prosecuting cases of public corruption;

(3) to protect civil and political rights, including the rights of freedom of the press, speech, and association, for all people of Nicaragua, including political opposition parties, journalists, trade unionists, human rights defenders, indigenous peoples, and other civil society activists;

(4) to investigate and hold accountable officials of the Government of Nicaragua and other persons responsible for the killings of individuals associated with the protests in Nicaragua that began on April 18, 2018; and

(5) to hold free and fair elections overseen by credible domestic and international observers

(b) WAIVER.—

(1) TEMPORARY GENERAL WAIVER.—If the Secretary certifies to the appropriate congressional committees under subsection (a) that the Government of Nicaragua is taking effective steps as described in that subsection, the President may waive the application of the restrictions under section 4 and sanctions under section 5 for a period of not more than one year beginning on the date of the certification.

(2) NATIONAL INTEREST WAIVER.—The President may waive the application of the restrictions under section 4 and sanctions under section 5 if the President—

(A) determines that such a waiver is in the national interest of the United States; and

(B) submits to the appropriate congressional committees a notice of and justification for the waiver.

(3) SENSE OF CONGRESS.—It is the sense of Congress that the President should exercise the waiver authority provided under paragraph (1) if the Secretary of State certifies under subsection (a) that the Government of Nicaragua is taking effective steps as described in that subsection.

(c) CONSULTATION.—In preparing a certification required by subsection (a), the Secretary shall consult with the appropriate congressional committees.

(d) ANNUAL BRIEFING.—The Secretary shall annually brief the appropriate congressional committees on whether the Government of Nicaragua is taking effective steps as described in subsection (a).

**SEC. 7. REPORT ON HUMAN RIGHTS VIOLATIONS AND CORRUPTION IN NICARAGUA.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, acting through the Assistant Secretary of State for Intelligence and Research, and in coordination with the Secretary of the Treasury and the Director of National Intelligence, shall submit to the appropriate congressional committees a report on—

(1) the involvement of senior officials of the Government of Nicaragua, including members of the Supreme Electoral Council, the National Assembly, and the judicial system, in human

rights violations, acts of significant corruption, and money laundering; and

(2) persons that transfer, or facilitate the transfer of, goods or technologies for use in or with respect to Nicaragua, that are used by the Government of Nicaragua to commit serious human rights violations against the people of Nicaragua.

(b) FORM.—The report required by subsection (a) may be classified.

#### **SEC. 8. CIVIL SOCIETY ENGAGEMENT STRATEGY.**

Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall brief the appropriate congressional committees on a strategy—

(1) for engaging relevant elements of civil society in Nicaragua, including independent media, human rights, and anti-corruption organizations, to strengthen rule of law and increase accountability for human rights abuses and corruption in Nicaragua; and

(2) setting forth measures to support the protection of human rights and anti-corruption advocates in Nicaragua.

#### **SEC. 9. REFORM OF WESTERN HEMISPHERE DRUG POLICY COMMISSION.**

Section 603(f)(1) of the Department of State Authorities Act, Fiscal Year 2017 (Public Law 114-323; 130 Stat. 1938) is amended by striking “Not later than 60 days after the date of the enactment of this Act, the Commission shall hold an initial meeting to develop and implement” and inserting “At the initial meeting of the Commission, the Commission shall develop and implement”.

#### **SEC. 10. TERMINATION.**

The provisions of this Act (other than section 9) shall terminate on December 31, 2023.

#### **SEC. 11. DEFINITIONS.**

In this Act:

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

(A) the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Foreign Affairs, the Committee on Financial Services, and the Committee on Appropriations of the House of Representatives.

(2) **GOOD.**—The term “good” means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data.

(3) **PERSON.**—The term “person” means an individual or entity.

(4) **UNITED STATES PERSON.**—The term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including a foreign branch of such an entity), or any person in the United States.