117TH CONGRESS 1ST SESSION

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To suspend certain United States assistance for the Government of Honduras until corruption, impunity, and human rights violations are no longer systemic, and the perpetrators of these crimes are being brought to justice.

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IN THE SENATE OF THE UNITED STATES

Mr. Merkley (for himself, Mr. Leahy, Mr. Durbin, Mr. Markey, Mr. Sanders, Ms. Warren, Mr. Whitehouse, and Mr. Van Hollen) introduced the following bill; which was read twice and referred to the Committee on __________________

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A BILL

To suspend certain United States assistance for the Government of Honduras until corruption, impunity, and human rights violations are no longer systemic, and the perpetrators of these crimes are being brought to justice.

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

2 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

3 (a) Short Title.—This Act may be cited as the “Honduras Human Rights and Anti-Corruption Act of 2021”.


Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Police or military of the Republic of Honduras defined.
Sec. 3. Findings.
Sec. 4. Sense of Congress.
Sec. 6. Imposition of sanctions with respect to the President of Honduras.
Sec. 7. Prohibition on commercial export of covered defense articles and services and covered munitions items to the Honduran police or military.
Sec. 8. Suspension and restrictions of security assistance extended to the Republic of Honduras unless certain conditions are met.
Sec. 9. Sunset.

SEC. 2. POLICE OR MILITARY OF THE REPUBLIC OF HONDURAS DEFINED.

In this Act, the term “police or military of the Republic of Honduras” means—

(1) the Honduran National Police;
(2) the Honduran Armed Forces;
(3) the Military Police of Public Order of the Republic of Honduras; or
(4) para-police or paramilitary elements, acting under color of law or having received financing, training, orders, intelligence, weapons, or other forms of material assistance from the forces identified in paragraphs (1) through (3).

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) Since the 2009 military coup, the Republic of Honduras remains plagued by systemic corruption and human rights violations, exemplified by—
(A) widespread collusion among government officials, state and private security forces, organized crime, and members of the private sector, including in the knowledge and perpetration of physical and legal threats, assassinations, forced disappearances, and other abuses against human rights and environmental defenders, members of the political opposition, journalists, and others;

(B) the excessive use of force by members of the police or military of the Republic of Honduras, particularly in the context of civil society protests;

(C) the failure of the Government of Honduras to protect the rights, interests, and physical security of indigenous peoples in land and natural resources disputes, in contravention of its obligations under the Honduran constitution and under international treaties to which it is a state party; and

(D) the failure of the Government of Honduras to enforce the Honduran Labor Code in violation of its obligations under International Labor Organization Conventions, which the Government of Honduras has ratified, guaran-
teering freedom of association, the right to collective bargaining, and other fundamental labor protections.

(2) There is substantial evidence that President of Honduras Juan Orlando Hernández has engaged in a pattern of criminal activity and use of the state apparatus to protect and facilitate drug trafficking, as exemplified by three high-profile corruption and drug trafficking cases that were tried or are being prosecuted in the United States District Court for the Southern District of New York, in which the President of Honduras was named as a co-conspirator, including the following:

(A) The October 2019 conviction of the President of Honduras’s brother Juan Antonio Hernández, in which Federal prosecutors and multiple witnesses testified that the President of Honduras received $1,500,000 in drug proceeds that were funneled toward his successful 2013 presidential campaign, and that organized crime had infiltrated the Honduran National Police and National Party.

(B) The March 2020 indictment of Geovanny Daniel Fuentes, a drug trafficker, in which Federal prosecutors alleged that the
President of Honduras accepted $25,000 in bribes in exchange for protecting the defendant from law enforcement intervention against his cocaine trafficking activities and facilitated the use of Honduran military personnel as security for the defendant’s drug trafficking operations.

On February 5, 2021, Federal prosecutors filed a court document stating that the President of Honduras was under investigation in connection with the case.

(C) The April 2020 indictment of former National Director of Police Juan Carlos “El Tigre” Bonilla, in which Federal prosecutors alleged that the President of Honduras accepted bribes from drug traffickers, facilitated multi-ton shipments of cocaine bound for the United States, and entrusted the defendant with special assignments, including murder.

(3) The President of Honduras has also demonstrated a track record of contempt for the rule of law, exhibited by—

(A) his support for the 2009 military coup, repudiated as unlawful by the United Nations, the Organization of American States, the Euro-
pean Union, and numerous foreign governments, while a member of Congress;

(B) his support for a 2012 congressional measure, widely viewed as illegal, to replace four Supreme Court justices while the leader of Congress; and

(C) his 2017 candidacy for a second presidential term, in violation of the Honduran constitution’s longstanding prohibition on presidential reelection, which in 2015 was nullified in a ruling by the justices referred to in subparagraph (B).

(4) In recent months, the executive and legislative branches of the Government of Honduras have taken significant steps to entrench corruption, block oversight by national prosecutors and international investigators, and shield senior officials and parliamentarians from criminal liability, including the following actions:

(A) On January 19, 2020, the Government of Honduras announced the closing of the Mission of Support against Corruption and Impunity in Honduras (MACCIH), the anti-corruption mechanism established in 2015 by the Organization of American States and the Govern-
ment of Honduras. MACCIH brought 14 cor-
ruption-related cases against dozens of high-
profile criminal defendants and oversaw the cre-
ation of an anti-corruption judicial circuit and
special prosecutor’s unit that was disbanded fol-
lowing the mission’s closure.

(B) On June 25, 2020, the Government of
Honduras enacted a new penal code that re-
duced prison terms for corruption-related
crimes, including embezzlement, illicit enrich-
ment, obstruction of justice, and fraud. The
measure is retroactive, benefitting Honduran
officials already convicted or facing prosecution.

(C) On October 16, 2019, the National
Congress of Honduras passed a law that re-
stored immunity to all parliamentarians for
crimes related to legislative activities and a law
that blocked the Attorney General’s office from
investigating cases involving the improper use
of state funds for up to 7 years.

(5) These recent measures follow a longer pat-
tern of congressional decrees of amnesty or immu-
nity for crimes perpetrated by authorities in Hon-
duras, including for those committed during the
2009 coup and its aftermath, those perpetrated by
state security forces, and those involving the misuse of public funds by former and current legislators, contributing to a climate of impunity.

(6) Space for civil society to operate in the Republic of Honduras remains severely constrained, with rights activists and journalists subject to acute levels of violence, surveillance, harassment, and intimidation. The Republic of Honduras ranks as the deadliest country in the world for human rights and environmental defenders on a per capita basis and third in the number of assassinations, with 31 defenders killed in 2019 and 204 defenders killed since 2009.

(7) The 2019 United States Department of State Country Reports on Human Rights Practices, international human rights bodies, and numerous monitoring groups have reported that the Honduran police and military commit human rights violations with impunity, including unlawful killings, torture, and the use of unnecessary force and lethal weapons against protestors and civilian bystanders. Individuals with documented records of human rights violations and links to drug trafficking continue to serve in high-ranking positions within the Honduran police and military, and few of the alleged cases of human
rights abuses perpetrated by police and military personnel are prosecuted or tried in court.

(8) The Office of the United Nations High Commissioner for Human Rights and the Inter-American Commission on Human Rights have documented the use of arbitrary detentions, forced disappearances, and specious judicial proceedings to criminalize indigenous and human rights activists, environmental defenders, journalists, opposition politicians, and others, including—

(A) members of the Tocoa Municipal Committee for the Defense of Common and Public Assets, who since September 2019 have been detained pending trial following their protest of an illegal mining concession affecting the Guapinol and San Pedro rivers;

(B) four Afro-indigenous Garífuna land defenders, who on July 18, 2020, were abducted from their homes and reportedly forced into unmarked vehicles at gunpoint by armed men in police uniforms without a warrant and remain forcibly disappeared; and

(C) opposition lawmaker María Luisa Borjas, who on July 21, 2020, was convicted of defamation and sentenced to nearly three years
in prison for naming Ficohsa bank president
Camilo Atala as an intellectual author of the
2016 assassination of environmental and indigen-
ous rights activist Berta Cáceres.

(9) The vilification and criminalization of civil
society actors and human rights defenders by Hon-
duran authorities has continued unabated under the
cover of COVID–19 pandemic response. On March
16, 2020, the Government of Honduras first notified
the Organization of American States of its deroga-
tion from treaty obligations under the American
Convention on Human Rights and has since sus-
pended nine constitutional guarantees, including the
rights to freedom of assembly and expression, the
latter of which was restored after international out-
cry. At least 34,000 citizens have been detained for
violating curfew and lockdown restrictions, and jour-
nalists and human rights defenders have been imp-
peded in their efforts to report on and expose human
rights abuses during the pandemic.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) systemic corruption, impunity, and human
rights violations by national government officials,
private citizens, and members of the police and mili-
tary of the Republic of Honduras deplete public re-

sources and fuel widespread impoverishment, citizen

insecurity, and forced displacement;

(2) the President should impose sanctions on

President of Honduras Juan Orlando Hernández for
acts of significant corruption and human rights vio-

lations and determine under the Foreign Narcotics

Kingpin Sanctions Regulations under part 598 of

title 31, Code of Federal Regulations, whether the

President of Honduras is a specially designated nar-
cotics trafficker;

(3) the President and Secretary of State should

seek to ensure that security assistance from the

United States and exports of munitions by United

States entities are not complicit in human rights

abuses perpetrated by the police and military of the

Government of Honduras, or misused to impede

peaceful protestors, human rights and environmental

defenders, and others from exercising the right to

freedom of expression, association, or assembly;

(4) the Government of Honduras should imme-
diately initiate discussions with the United Nations
to negotiate the mandate for a new, independent
mechanism to combat corruption and impunity with
a mission comparable to that of MACCIH, equipped
with—

(A) the authority to initiate cases, in co-
ordination with the Specialized Prosecutor’s
Unit against Networks of Corruption
(UFERCO), against any citizen of the Republic
of Honduras, irrespective of their office, rank,
position, or title;

(B) the unimpeded authority to inves-
tigate, including the authority to subpoena doc-
uments, interview witnesses and suspects, and
conduct surveillance;

(C) the ability to propose laws, constitu-
tional amendments, and regulatory changes to
the Attorney General’s office and other institu-
tions within the justice sector that are assured
expeditious consideration and debate by the Na-
tional Congress; and

(D) the requirement to conduct regular
and transparent consultations with a broad
range of civil society members with the goal of
promoting the mandate’s successful implemen-
tation;

(5) the Government of Honduras should con-
tinue to pursue MACCIH’s ongoing anti-corruption
cases and adopt legal and institutional reforms to strengthen judicial independence and protect human rights recommended by MACCIH, the Office of the United Nations High Commissioner for Human Rights, and UFERCO;

(6) the United States should support credible national and international efforts to combat corruption and human rights violations in the Republic of Honduras, including UFERCO, the Office of the United Nations High Commissioner for Human Rights, and organizations working to defend human rights and expose and prevent corruption, with the necessary resources for holding private and government actors accountable under the law and supporting independent monitoring by a free press and civil society, provided that they demonstrate sufficient political autonomy and willingness to prosecute high-level cases, including against senior officials and legislators of the Republic of Honduras; and

(7) the Secretary of State should develop, in consultation with a broad range of representatives of civil society and human rights organizations in Honduras, as appropriate, comprehensive and specific guidelines to use United States diplomacy and assistance to protect human rights and environmental
defenders in the Republic of Honduras from physical, legal, or financial reprisals and threats, including by government, police, and military officials or their associates.

SEC. 5. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS.

In addition to amounts otherwise appropriated for such purposes, there is authorized to be appropriated $2,000,000 in voluntary contributions to support the work of the Office of the United Nations High Commissioner for Human Rights in Honduras to monitor and document human rights violations, issue public reports and recommendations, and promote international human rights standards.

SEC. 6. IMPOSITION OF SANCTIONS WITH RESPECT TO THE PRESIDENT OF HONDURAS.

(a) IMPOSITION OF SANCTIONS.—Not later than 180 days after the date of the enactment of this Act, the President shall impose the sanctions described in subsection (b) with respect to the President of Honduras, Juan Orlando Hernández.

(b) SANCTIONS DESCRIBED.—The sanctions described in this subsection are the following:

(1) ASSET BLOCKING.—The President shall exercise all of the powers granted to the President
under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in property and interests in property of Juan Orlando Hernández 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.

(2) Ineligibility for visas, admission, or parole.—

(A) Visas, admission, or parole.—Juan Orlando Hernández is—

(i) inadmissible to the United States;

(ii) ineligible to receive a visa or other documentation to enter the United States;

and

(iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) Current visas revoked.—

(i) In general.—Juan Orlando Hernández is subject to revocation of any visa or other entry documentation regard-
less of when the visa or other entry documenta-
tion is or was issued.

(ii) **IMMEDIATE EFFECT.**—A revoca-
tion under clause (i) shall—

(I) take effect immediately; and

(II) cancel any other valid visa or
entry documentation that is in Juan
Orlando Hernández’s possession.

(e) **IMPLEMENTATION; PENALTIES.**—

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

(2) **PENALTIES.**—A person that violates, at-
ttempts to violate, conspires to violate, or causes a
violation of subsection (b)(1), or any regulation, li-
cense, or order issued to carry out that subsection,
shall be subject to the penalties set forth in sub-
sections (b) and (e) of section 206 of the Inter-
national 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.
(d) Waiver.—The President may waive the application of sanctions under this section if the President determines and certifies to the appropriate congressional committees that such a waiver is important to the national interest of the United States.

(e) Exceptions.—

(1) Exception to comply with international obligations and for law enforcement activities.—Sanctions under subsection (b)(2) shall not apply if admitting or paroling Juan Orlando Hernández into the United States is necessary—

(A) 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; or

(B) to carry out or assist law enforcement activity in the United States.

(2) Exception relating to the importation of goods.—

(A) In general.—The authorities and requirements to impose sanctions authorized
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under this section shall not include the authority or a requirement to impose sanctions on the importation of goods.

(B) GOOD DEFINED.—In this paragraph, the term “good” means any article, natural or manmade substance, material, supply, or manufactured product, including inspection and test equipment, and excluding technical data.

(f) TERMINATION OF SANCTIONS.—The President may terminate the application of sanctions under this section if the President determines and reports to the appropriate congressional committees not later than 15 days before the termination takes effect that—

(1) credible information exists that Juan Orlando Hernández did not engage in the activity for which sanctions were imposed;

(2) Juan Orlando Hernández has been prosecuted appropriately for the activity for which sanctions were imposed; or

(3) Juan Orlando Hernández has credibly demonstrated a significant change in behavior, has paid an appropriate consequence for the activity for which sanctions were imposed, and has credibly committed to not engage in an activity for which the sanctions were imposed in the future.
(g) DEFINITIONS.—In this section:

(1) ADMISSION; ADMITTED.—The terms “admission” and “admitted” have the meanings given those terms in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

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

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

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

(3) UNITED STATES PERSON.—The term “United States person” means—

(A) an individual who is a United States citizen or an alien lawfully admitted for permanent residence to the United States;

(B) an 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

(C) any person in the United States.
SEC. 7. PROHIBITION ON COMMERCIAL EXPORT OF COVERED DEFENSE ARTICLES AND SERVICES AND COVERED MUNITIONS ITEMS TO THE HONDURAN POLICE OR MILITARY.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the President shall prohibit the issuance of licenses to export covered defense articles and services and covered munitions items to the police or military of the Republic of Honduras.

(b) TERMINATION.—The prohibition under subsection (a) shall terminate on the date on which the President determines and reports to the appropriate congressional committees that the police or military of the Republic of Honduras have not engaged in gross violations during the one-year period ending on the date of such determination.

(c) WAIVER.—The prohibition under subsection (a) shall not apply to the issuance of a license with respect to which the President submits to the appropriate congressional committees a written certification that the exports to be covered by such license are important to the national interests and foreign policy goals of the United States, including a description of the manner in which such exports will promote such interests and goals.

(d) DEFINITIONS.—In this section:
(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations and the Committee on Appropriations of the Senate; and

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

(2) COVERED DEFENSE ARTICLES AND SERVICES.—The term “covered defense articles and services” means defense articles and defense services designated by the President under section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)).

(3) COVERED MUNITIONS ITEMS.—The term “covered munitions items” means tear gas, pepper spray, rubber bullets, foam rounds, bean bag rounds, pepper balls, water cannons, handcuffs, shackles, stun guns, tasers, semi-automatic firearms, and their associated munitions not included in the definition under paragraph (2).
SEC. 8. SUSPENSION AND RESTRICTIONS OF SECURITY ASSISTANCE EXTENDED TO THE REPUBLIC OF HONDURAS UNLESS CERTAIN CONDITIONS ARE MET.

(a) SUSPENSION OF SECURITY ASSISTANCE.—No assistance may be made available for the police or military of the Republic of Honduras, including assistance for equipment and training.

(b) LOANS FROM MULTILATERAL DEVELOPMENT BANKS AND THE UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION.—The Secretary of the Treasury shall—

(1) instruct United States representatives at multilateral development banks to use their voice and vote to oppose any loans for the police or military of the Republic of Honduras; and

(2) instruct the United States Executive Director of each international financial institution and the Chief Executive Officer of the United States International Development Finance Corporation to promote human rights due diligence and risk management in connection with any loan, grant, policy, or strategy related to the Republic of Honduras, in accordance with the criteria specified in subsection 7029(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act,

(c) CONDITIONS FOR LIFTING SUSPENSIONS AND RESTRICTIONS.—The provisions of this section shall terminate on the date on which the Secretary of State determines and reports to the Committees on Foreign Relations and Appropriations of the Senate and the Committees on Foreign Affairs and Appropriations of the House of Representatives that the Government of Honduras has—

(1) pursued all legal avenues to bring to trial and obtain a verdict of all those who ordered, carried out, and covered up—

(A) the March 2, 2016, murder of Berta Cáceres;

(B) the killings of over 100 small-farmer activists in the Aguán Valley;

(C) the killings of 22 people and forced disappearance of 1 person by state security forces in the context of the 2017 post-electoral crisis;

(D) the killings of at least 6 people by state security forces in the context of anti-gov ernment demonstrations between March and July of 2019;
(E) the killings of at least 21 journalists and media workers between October 2016 and July 2020;

(F) the July 18, 2020, forced disappearances of 4 Garífuna community leaders from Triunfo de la Cruz; and

(G) the December 26, 2020, killing of indigenous Lenca leader and environmental activist Félix Vásquez at his home in La Paz, and the December 29, 2020, killing of indigenous Tolupan leader and environmental activist Adan Mejía in Yoro;

(2) investigated and successfully prosecuted members of military and police forces who are credibly found to have violated human rights and ensured that the military and police cooperated in such cases, and that such violations have ceased;

(3) withdrawn the military from domestic policing and ensured that all domestic police functions are separated from the command and control of the Armed Forces of Honduras and are instead directly responsible to civilian authority;

(4) established that it protects effectively the rights of trade unionists, journalists, small farmers, human rights and environmental defenders, indige-
nous and Afro-indigenous community members and
ing rights activists, women’s and LGBTQI rights activ-
ists, critics of the government, and other members of
civil society to operate without interference or re-

pression; and

(5) taken effective steps to establish the rule of
law and to guarantee a judicial system that is capa-
ble of investigating, prosecuting, and bringing to jus-
tice members of the police and military who have
committed human rights abuses.

SEC. 9. SUNSET.

This Act shall terminate on the date that is 5 years
after the date of the enactment of this Act.