

Manager's Substitute Amendment

AMENDMENT NO. _____

Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 797

To establish and implement a multi-year Legal Gold and Mining Partnership Strategy to reduce the negative environmental and social impacts of illicit gold mining in the Western Hemisphere, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. RUBIO

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States Legal
5 Gold and Mining Partnership Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The illicit mining, trafficking, and commercialization of gold in the Western Hemisphere—
9

10 (A) negatively affects the region’s economic
11 and social dynamics;

1 (B) strengthens transnational criminal or-
2 ganizations and other international illicit actors;
3 and

4 (C) has a deleterious impact on the envi-
5 ronment, indigenous peoples, and food security.

6 (2) A lack of economic opportunities and the
7 weak rule of law promote illicit activities, such as il-
8 licit gold mining, which increases the vulnerability of
9 individuals in mining areas, including indigenous
10 communities, who have been subjected to trafficking
11 in persons, other human rights abuses, and popu-
12 lation displacement in relation to mining activity,
13 particularly in the artisanal and small-scale mining
14 sector.

15 (3) Illicit gold mining in Latin America often
16 involves and benefits transnational criminal organi-
17 zations, drug trafficking organizations, terrorist
18 groups, and other illegal armed groups that extort
19 miners and enter into illicit partnerships with them
20 in order to gain revenue from the illicit activity.

21 (4) Illicit gold supply chains are international in
22 nature and frequently involve—

23 (A) the smuggling of gold and supplies,
24 such as mercury;

25 (B) trade-based money laundering; and

1 (C) other cross-border flows of illicit as-
2 sets.

3 (5) In Latin America, mineral traders and ex-
4 porters, local processors, and shell companies linked
5 to transnational criminal networks and illegally
6 armed groups all play a key role in the trafficking,
7 laundering, and commercialization of illicit gold from
8 the region.

9 (6) According to a report on illegally mined
10 Gold in Latin America by the Global Initiative
11 Against Transnational Organized Crime—

12 (A) more than 70 percent of the gold
13 mined in several Latin American countries,
14 such as Colombia, Ecuador, and Peru, is mined
15 through illicit means; and

16 (B) about 80 percent of the gold mined in
17 Venezuela is mined through illicit means and a
18 large percentage of such gold is sold—

19 (i) to Mibiturven, a joint venture op-
20 erated by the Maduro regime composed of
21 Minerven, a gold processor that has been
22 designated by the Office of Foreign Assets
23 Control of the Department of the Treas-
24 ury, pursuant to Executive Order 13850
25 (relating to blocking property of additional

1 persons contributing to the situation in
2 Venezuela), and Marilyns Proje Yatirim,
3 S.A., a Turkish company; or

4 (ii) through other trafficking and
5 commercialization networks from which the
6 Maduro regime benefits financially.

7 (7) Illegal armed groups and foreign terrorist
8 organizations, such as the Ejército de Liberación
9 Nacional (National Liberation Army—ELN), work
10 with transnational criminal organizations in Ven-
11 zuela that participate in the illicit mining, traf-
12 ficking, and commercialization of gold.

13 (8) Transnational criminal organizations based
14 in Venezuela, such as El Tren de Aragua, have ex-
15 panded their role in the illicit mining, trafficking,
16 and commercialization of gold to increase their
17 criminal profits.

18 (9) Nicaragua's gold exports during 2021 were
19 valued at an estimated \$989,000,000 in value, of
20 which

21 (A) gold valued at an estimated
22 \$898,000,000 was shipped to the United
23 States;

24 (B) gold valued at an estimated
25 \$48,700,000 was shipped to Switzerland;

1 (C) gold valued at an estimated
2 \$39,000,000 was shipped to the United Arab
3 Emirates; and

4 (D) gold valued at an estimated
5 \$3,620,000 was shipped to Austria.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

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

11 (A) the Committee on Foreign Relations of
12 the Senate;

13 (B) the Committee on Banking, Housing,
14 and Urban Affairs of the Senate;

15 (C) the Committee on Foreign Affairs of
16 the House of Representatives; and

17 (D) the Committee on Financial Services
18 of the House of Representatives .

19 (2) ARTISANAL AND SMALL-SCALE MINING;
20 ASM.—The terms “artisanal and small-scale mining”
21 and “ASM” refer to a form of mining common in
22 the developing world that—

23 (A) typically employs rudimentary, simple,
24 and low-cost extractive technologies and manual
25 labor-intensive techniques;

1 (B) is frequently subject to limited regula-
2 tion; and

3 (C) often features harsh and dangerous
4 working conditions.

5 (3) ILLICIT ACTORS.—The term “illicit actors”
6 includes—

7 (A) any person included on any list of—

8 (i) United States-designated foreign
9 terrorist organizations;

10 (ii) specially designated global terror-
11 ists (as defined in section 594.310 of title
12 31, Code of Federal Regulations);

13 (iii) significant foreign narcotics traf-
14 fickers (as defined in section 808 of the
15 Foreign Narcotics Kingpin Designation
16 Act (21 U.S.C. 1907); or

17 (iv) blocked persons, as maintained by
18 the Office of Foreign Assets Control of the
19 Department of the Treasury; and

20 (B) drug trafficking organizations.

21 (4) KEY STAKEHOLDERS.—The term “key
22 stakeholders” means private sector organizations, in-
23 dustry representatives, and civil society groups that
24 represent communities in areas affected by illicit
25 mining and trafficking of gold, including indigenous

1 groups, that are committed to the implementation of
2 the Legal Gold and Mining Partnership Strategy.

3 (5) LEGAL GOLD AND MINING PARTNERSHIP
4 STRATEGY; STRATEGY.—The terms “Legal Gold and
5 Mining Partnership Strategy” and “Strategy” mean
6 the strategy developed pursuant to section 4.

7 (6) RELEVANT FEDERAL DEPARTMENTS AND
8 AGENCIES.—The term “relevant Federal depart-
9 ments and agencies” means—

10 (A) the Department of State;

11 (B) the Department of the Treasury;

12 (C) the Department of Homeland Security,
13 including U.S. Customs and Border Protection
14 and U.S. Immigration and Customs Enforce-
15 ment;

16 (D) the Department of Justice, including
17 the Federal Bureau of Investigation and the
18 Drug Enforcement Administration;

19 (E) the Department of the Interior;

20 (F) the United States Agency for Inter-
21 national Development; and

22 (G) other Federal agencies designated by
23 the President.

1 **SEC. 4. LEGAL GOLD AND MINING PARTNERSHIP STRAT-**
2 **EGY.**

3 (a) STRATEGY REQUIRED.—The Secretary of State,
4 in coordination with the heads of relevant Federal depart-
5 ments and agencies, shall develop a comprehensive, multi-
6 year strategy, which shall be known as the Legal Gold and
7 Mining Partnership Strategy (referred to in this section
8 as the “Strategy”), to combat illicit gold mining in the
9 Western Hemisphere.

10 (b) ELEMENTS.—The Strategy shall include policies,
11 programs, and initiatives—

12 (1) to interrupt the linkages between ASM and
13 illicit actors that profit from ASM in the Western
14 Hemisphere;

15 (2) to deter ASM in environmentally protected
16 areas, such as national parks and conservation
17 zones, to prevent mining-related contamination of
18 critical natural resources, such as water resources,
19 soil, tropical forests, and other flora and fauna, and
20 aerosol contamination linked to detrimental health
21 impacts;

22 (3) to counter the financing and enrichment of
23 actors involved in the illicit mining, trafficking, and
24 commercialization of gold, and the abetting of their
25 activities by—

1 (A) promoting the exercise of due diligence
2 and the use of responsible sourcing methods in
3 the purchase and trade of ASM;

4 (B) preventing and prohibiting foreign per-
5 sons who control commodity trading chains
6 linked to illicit actors from enjoying the benefits
7 of access to the territory, markets or financial
8 system of the United States, and halting any
9 such ongoing activity by such foreign persons;

10 (C) combating related impunity afforded to
11 illicit actors by addressing corruption in govern-
12 ment institutions; and

13 (D) supporting the capacity of financial in-
14 telligence units, customs agencies, and other
15 government institutions focused on anti-money
16 laundering initiatives and combating the financ-
17 ing of criminal activities and terrorism to exer-
18 cise oversight consistent with the threats posed
19 by illicit gold mining;

20 (4) to build the capacity of foreign civilian law
21 enforcement institutions in the Western Hemisphere
22 to effectively counter—

23 (A) linkages between illicit gold mining, il-
24 licit actors, money laundering, and other finan-

1 cial crimes, including trade-based money laun-
2 dering;

3 (B) linkages between illicit gold mining, il-
4 licit actors, trafficking in persons, and forced or
5 coerced labor, including sex work and child
6 labor;

7 (C) the cross-border trafficking of illicit
8 gold, and the mercury, cyanide, explosives, and
9 other hazardous materials used in illicit gold
10 mining; and

11 (D) surveillance and investigation of illicit
12 and related activities that are related to or are
13 indicators of illicit gold mining activities;

14 (5) to ensure the successful implementation of
15 the existing Memoranda of Understanding signed
16 with the Governments of Peru and of Colombia in
17 2017 and 2018, respectively, to expand bilateral co-
18 operation to combat illicit gold mining;

19 (6) to work with governments in the Western
20 Hemisphere, bolster the effectiveness of anti-money
21 laundering efforts to combat the financing of illicit
22 actors in Latin America and the Caribbean and
23 counter the laundering of proceeds related to illicit
24 gold mining by—

1 (A) fostering international and regional co-
2 operation and facilitating intelligence sharing,
3 as appropriate, to identify and disrupt financial
4 flows related to the illicit gold mining, traf-
5 ficking, and commercialization of gold and
6 other minerals and illicit metals; and

7 (B) supporting the formulation of strate-
8 gies to ensure the compliance of reporting insti-
9 tutions involved in the mining sector and to
10 promote transparency in mining-sector trans-
11 actions;

12 (7) to support foreign government efforts—

13 (A) to increase regulations of the ASM sec-
14 tor;

15 (B) to facilitate licensing and formalization
16 processes for ASM miners;

17 (C) to create and implement environmental
18 safeguards to reduce the negative environmental
19 impact of mining on sensitive ecosystems; and

20 (D) to develop mechanisms to support reg-
21 ulated cultural artisanal mining and artisanal
22 mining as a job growth area;

23 (8) to engage the mining industry to encourage
24 the building of technical expertise in best practices,

1 environmental safeguards, and access to new tech-
2 nologies;

3 (9) to support the establishment of gold com-
4 modity supply chain due diligence, responsible
5 sourcing, tracing and tracking capacities, and stand-
6 ards-compliant commodity certification systems in
7 countries in Latin America and the Caribbean, in-
8 cluding efforts recommended in the OECD Due Dili-
9 gence Guidance for Responsible Supply Chains of
10 Minerals from Conflict-Affected and High Risk
11 Areas, Third Edition (2016);

12 (10) to engage with civil society to reduce the
13 negative environmental impacts of ASM, particu-
14 larly—

15 (A) the use of mercury in preliminary re-
16 fining;

17 (B) the destruction of tropical forests;

18 (C) the construction of illegal and unregu-
19 lated dams and the resulting valley floods;

20 (D) the pollution of water resources and
21 soil; and

22 (E) the release of dust, which can contain
23 toxic chemicals and heavy metals that can cause
24 severe health problems;

25 (11) to aid and encourage ASM miners—

1 (A) to formalize their business activities,
2 including through skills training, technical and
3 business assistance, and access to financing,
4 loans, and credit;

5 (B) to utilize environmentally safe and sus-
6 tainable mining practices, including by scaling
7 up the use of mercury-free gold refining tech-
8 nologies, and mining methods and technologies
9 that do not result in deforestation, forest de-
10 struction, air pollution, water and soil-contami-
11 nation, and other negative environmental im-
12 pacts associated with ASM;

13 (C) to reduce the costs associated with for-
14 malization and compliance with mining regula-
15 tions;

16 (D) to fully break away from the influence
17 of illicit actors who leverage the control of terri-
18 tory and use violence to extort miners and push
19 them into illicit arrangements;

20 (E) to adopt and utilize environmentally
21 safe and sustainable mining practices, includ-
22 ing—

23 (i) mercury-free gold refining tech-
24 nologies; and

1 (ii) extractive techniques that do not
2 result in—

3 (I) forest clearance and water
4 contamination; or

5 (II) the release of dust or uncon-
6 trolled tailings containing toxic chemi-
7 cals;

8 (F) to pursue alternative livelihoods out-
9 side the mining sector; and

10 (G) to fully access public social services in
11 ASM-dependent communities;

12 (12) to support and encourage socioeconomic
13 development programs, law enforcement capacity-
14 building programs, and support for relevant inter-
15 national initiatives, including by providing assistance
16 to achieve such ends by implementing the Strategy;

17 (13) to interrupt the illicit gold trade in Nica-
18 ragua, including through the use of United States
19 punitive measures against the government led by
20 President Daniel Ortega and Vice-President Rosario
21 Murillo and their collaborators pursuant to Execu-
22 tive Order 14088 (relating to taking additional steps
23 to address the national emergency with respect to
24 the situation in Nicaragua), which was issued on Oc-
25 tober 24, 2022;

1 (14) to assist local journalists with investiga-
2 tions of illicit mining, trafficking, and commer-
3 cialization of gold and its supplies in the Western
4 Hemisphere; and

5 (15) to promote responsible sourcing and due
6 diligence at all levels of gold supply chains.

7 (c) CHALLENGES ASSESSED.—The Strategy shall in-
8 clude an assessment of the challenges posed by, and policy
9 recommendations to address—

10 (1) linkages between ASM sector production
11 and trade, particularly relating to gold, to the activi-
12 ties of illicit actors, including linkages that help to
13 finance or enrich such illicit actors or abet their ac-
14 tivities;

15 (2) linkages between illicit or grey market
16 trade, and markets in gold and other metals or min-
17 erals and legal trade and commerce in such commod-
18 ities, notably with respect to activities that abet the
19 entry of such commodities into legal commerce, in-
20 cluding—

21 (A) illicit cross-border trafficking, includ-
22 ing with respect to goods, persons and illegal
23 narcotics;

24 (B) money-laundering;

1 (C) the financing of illicit actors or their
2 activities; and

3 (D) the extralegal entry into the United
4 States of—

5 (i) metals or minerals, whether of
6 legal foreign origin or not; and

7 (ii) the proceeds of such metals or
8 minerals;

9 (3) linkages between the illicit mining, traf-
10 ficking, and commercialization of gold, diamonds,
11 and precious metals and stones, and the financial
12 and political activities of the regime of Nicolás
13 Maduro of Venezuela;

14 (4) factors that—

15 (A) produce linkages between ASM miners
16 and illicit actors, prompting some ASM miners
17 to utilize mining practices that are environ-
18 mentally damaging and unsustainable, notably
19 mining or related ore processing practices
20 that—

21 (i) involve the use of elemental mer-
22 cury; or

23 (ii) result in labor, health, environ-
24 mental, and safety code infractions and
25 workplace hazards; and

1 (B) lead some ASM miners to operate in
2 the extralegal or poorly regulated informal sec-
3 tor, and often prevent such miners from im-
4 proving the socioeconomic status of themselves
5 and their families and communities, or hinder
6 their ability to formalize their operations, en-
7 hance their technical and business capacities,
8 and access finance of fair market prices for
9 their output;

10 (5) mining-related trafficking in persons and
11 forced or coerced labor, including sex work and child
12 labor; and

13 (6) the use of elemental mercury and cyanide in
14 ASM operations, including the technical aims and
15 scope of such usage and its impact on human health
16 and the environment, including flora, fauna, water
17 resources, soil, and air quality.

18 (d) FOREIGN ASSISTANCE.—The Strategy shall de-
19 scribe—

20 (1) existing foreign assistance programs that
21 address elements of the Strategy; and

22 (2) additional foreign assistance resources need-
23 ed to fully implement the Strategy.

24 (e) SUBMISSION.—Not later than 180 days after the
25 date of the enactment of this Act, the President shall sub-

1 mit the Strategy to the appropriate congressional commit-
2 tees.

3 (f) BRIEFING.—Not later than 180 days after sub-
4 mission of the Strategy, and semiannually thereafter for
5 the following 3 years, the Secretary of State, or the Sec-
6 retary’s designee, shall provide a briefing to the appro-
7 priate congressional committees regarding the implemen-
8 tation of the strategy, including efforts to leverage inter-
9 national support and develop a public-private partnership
10 to build responsible gold value chains with other govern-
11 ments.

12 **SEC. 5. CLASSIFIED BRIEFING ON ILLICIT GOLD MINING IN**
13 **VENEZUELA.**

14 Not later than 90 days after the date of the enact-
15 ment of this Act, the Secretary of State, or the Secretary’s
16 designee, in coordination with the Director of National In-
17 telligence, shall provide a classified briefing to the appro-
18 priate congressional committees, the Select Committee on
19 Intelligence of the Senate, and the Permanent Select Com-
20 mittee on Intelligence of the House of Representatives
21 that describes—

22 (1) the activities related to illicit gold mining,
23 including the illicit mining, trafficking, and commer-
24 cialization of gold, inside Venezuelan territory car-
25 ried out by illicit actors, including defectors from the

1 Revolutionary Armed Forces of Colombia (FARC)
2 and members of the National Liberation Army
3 (ELN); and

4 (2) Venezuela's illicit gold trade with foreign
5 governments, including the Government of the Re-
6 public of Turkey and the Government of the Islamic
7 Republic of Iran.

8 **SEC. 6. INVESTIGATION OF THE ILLICIT GOLD TRADE IN**
9 **VENEZUELA.**

10 The Secretary of State, in coordination with the Sec-
11 retary of the Treasury, the Attorney General, and allied
12 and partner governments in the Western Hemisphere,
13 shall—

14 (1) lead a coordinated international effort to
15 carry out financial investigations to identify and
16 track assets taken from the people and institutions
17 in Venezuela that are linked to money laundering
18 and illicit activities, including mining-related activi-
19 ties, by sharing financial investigations intelligence,
20 as appropriate and as permitted by law; and

21 (2) provide technical assistance to help eligible
22 governments in Latin America establish legislative
23 and regulatory frameworks capable of imposing and
24 effectively implementing targeted sanctions on—

1 (A) officials of the Maduro regime who are
2 directly engaged in the illicit mining, traf-
3 ficking, and commercialization of gold; and

4 (B) foreign persons engaged in the laun-
5 dering of illicit gold assets linked to designated
6 terrorist and drug trafficking organizations.

7 **SEC. 7. LEVERAGING INTERNATIONAL SUPPORT.**

8 In implementing the Legal Gold and Mining Partner-
9 ship Strategy pursuant to section 4, the President should
10 direct United States representatives accredited to relevant
11 multilateral institutions and development banks and
12 United States ambassadors in the Western Hemisphere to
13 use the influence of the United States to foster inter-
14 national cooperation to achieve the objectives of this Act,
15 including—

16 (1) marshaling resources and political support;
17 and

18 (2) encouraging the development of policies and
19 consultation with key stakeholders to accomplish
20 such objectives and provisions.

21 **SEC. 8. PUBLIC-PRIVATE PARTNERSHIP TO BUILD RESPON-**
22 **SIBLE GOLD VALUE CHAINS.**

23 (a) BEST PRACTICES.—The Administrator of the
24 United States Agency for International Development (re-
25 ferred to in this section as the “Administrator”), in co-

1 ordination with the Governments of Colombia, of Ecuador,
2 and of Peru, and with other democratically-elected govern-
3 ments in the region, shall consult with the Government
4 of Switzerland regarding best practices developed through
5 the Swiss Better Gold Initiative, a public-private partner-
6 ship that aims to improve transparency and traceability
7 in the international gold trade.

8 (b) IN GENERAL.—The Administrator shall coordi-
9 nate with the Governments of Colombia, Ecuador, Peru,
10 and other democratically-elected governments in the re-
11 gion determined by the Administrator to establish a pub-
12 lic-private partnership to advance the best practices identi-
13 fied in subsection (a), including supporting programming
14 in participating countries that will—

15 (1) support formalization and compliance with
16 appropriate environmental and labor standards in
17 ASM gold mining;

18 (2) increase access to financing for ASM gold
19 miners who are taking significant steps to formalize
20 their operations and comply with labor and environ-
21 mental standards;

22 (3) enhance the traceability and support the es-
23 tablishment of a certification process for ASM gold;

24 (4) support a public relations campaign to pro-
25 mote responsibly-sourced gold;

1 (5) include representatives of local civil society
2 to work towards soliciting the free and informed
3 consent of those living on lands with mining poten-
4 tial;

5 (6) facilitate contact between vendors of respon-
6 sibly-sourced gold and United States companies; and

7 (7) promote policies and practices in partici-
8 pating countries that are conducive to the formaliza-
9 tion of ASM gold mining and promoting adherence
10 of ASM to internationally-recognized best practices
11 and standards.

12 (c) MEETING.—The Secretary of State or the Admin-
13 istrator, without delegation and in coordination with the
14 governments of participating countries, should—

15 (1) host a meeting with senior representatives
16 of the private sector and international governmental
17 and nongovernmental partners; and

18 (2) make commitments to improve due diligence
19 and increase the responsible sourcing of gold.

20 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

21 There is authorized to be appropriated to the Depart-
22 ment of State \$10,000,000 to implement the Legal Gold
23 and Mining Partnership Strategy developed pursuant to
24 section 4.