

EX AFF/SGO

A BILL FOR AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-22 and 5-23, by amending section 1401, as established by Public Law No. 5-22, by repealing sections 1402, 1403, 1404, 1405, and 1406 in their entirety and adding new sections 1402A, 1402B, 1402C, 1402D, 1402E, 1402F, 1402G, 1402H, 1402I, 1402J, 1402K, 1402L, 1402M, 1402N, and 1403 in lieu thereof, by adding a new section 1408, and by renumbering sections 1407, 1408, 1409, and 1410, for the purpose of establishing fair procedures for extradition proceedings, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Section 1401 of title 12 of the Code of the Federated
2 States of Micronesia, as established by Public Law No. 5-22, is hereby
3 amended to read as follows:

4 "Section 1401. Scope and limitation of chapter. The
5 provisions of this chapter relating to the surrender of
6 persons who are alleged to have committed crimes in foreign
7 countries shall continue in force only during the existence
8 of any extradition agreement with such foreign government
9 and shall be read in light of and consistent with the
10 extradition agreement pursuant to which a request for
11 extradition is made."

12 Section 2. Sections 1402, 1403, 1404, 1405, and 1406 of title
13 12 of the Code of the Federated States of Micronesia are hereby
14 repealed in their entirety.

15 Section 3. Title 12 of the Code of the Federated States of
16 Micronesia is hereby further amended by adding a new section 1402A
17 to read as follows:

18 "Section 1402A. Request from foreign country. The
19 following procedures shall be complied with before any
20 person found within the Federated States of Micronesia may
21 be subjected to extradition proceedings by the Federated
22 States of Micronesia.

23 (1) The authority of the requesting country designated
24 in the extradition agreement or, if not designated therein,
25 the highest person in charge of external affairs in the

1 requesting country, shall submit to the resident representa-
2 tive of the Federated States of Micronesia in the requesting
3 foreign country, or his designee:

4 (a) a certified written request for extradition;

5 (b) a complaint made under oath charging the
6 person found within the Federated States of Micronesia with
7 an offense in the requesting country;

8 (c) a copy of the statute of the requesting
9 country allegedly violated;

10 (d) proof that the offense alleged falls within
11 the extradition agreement with the requesting country; and

12 (e) all documentation necessary to support the
13 charge.

14 In the absence of a resident representative in the
15 requesting country, the request shall be submitted directly
16 to the Secretary of External Affairs of the Federated States
17 of Micronesia.

18 (2) The Federated States of Micronesia resident
19 representative shall refer requests for extradition and
20 all accompanying documentation to the Secretary of External
21 Affairs of the Federated States of Micronesia.

22 (3) The Secretary of External Affairs of the
23 Federated States of Micronesia, after a finding that the
24 requesting country has submitted all of the material
25 required in subsection (1) of this section, may forward

1 requests for extradition and all accompanying documentation
2 to the Attorney General of the Federated States of Micro-
3 nesia."

4 Section 4. Title 12 of the Code of the Federated States of
5 Micronesia is hereby further amended by adding a new section 1402B
6 to read as follows:

7 "Section 1402B. Filing of a complaint. After receiving
8 the written request for extradition and all accompanying
9 documentation from the Secretary of External Affairs, the
10 Attorney General of the Federated States of Micronesia may
11 file a verified complaint made under oath, with the written
12 request for extradition and all accompanying documentation
13 attached thereto, in the trial division of the National
14 court. The complaint and attachments thereto shall be
15 reduced to both the English language and the primary
16 language of the person requested for extradition."

17 Section 5. Title 12 of the Code of the Federated States of
18 Micronesia is hereby further amended by adding a new section 1402C
19 to read as follows:

20 "Section 1402C. Summons to appear; Arrest warrant.

21 (1) A summons may be issued by a justice of the
22 National court upon the filing of a verified complaint
23 made under oath, charging a person found within the
24 Federated States of Micronesia with having committed:

25 (a) an offense within the jurisdiction of the

1 requesting foreign country;

2 (b) an offense extraditable under the agreement
3 of extradition; and

4 (c) an offense violating the National law of
5 the Federated States of Micronesia. The summons shall be
6 signed by the justice, contain the name of the accused,
7 describe the offenses charged in the verified complaint and
8 command the accused to appear before the justice at a
9 specified time and place for an initial appearance.

10 (2) A warrant for the apprehension of a person who is
11 the subject of an extradition request may be issued by a
12 justice of the National court, in lieu of a summons, only
13 upon a showing of good cause. The warrant shall be signed
14 by the justice, contain the name of the accused, describe
15 the offense charged in the verified complaint, and command
16 that the accused be arrested and brought within 24 hours
17 before a justice of the National court for an initial
18 appearance. In the event the initial appearance is not
19 conducted within 24 hours of the arrest, the accused
20 shall be immediately released from custody."

21 Section 6. Title 12 of the Code of the Federated States of
22 Micronesia is hereby further amended by adding a new section
23 1402D to read as follows:

24 "Section 1402D. Initial appearance. A justice of the
25 National court shall conduct an initial hearing for the

1 primary purpose of notifying the accused of his rights. At
2 the initial appearance, the justice shall inform the
3 accused, in both the English language and the primary
4 language of the accused, unless waived by the accused:

5 (a) that he is not required to make a statement
6 and that any statement may be used against him;

7 (b) of the contents of the verified complaint;

8 (c) of the contents of the request for
9 extradition and the accompanying documentation;

10 (d) of his right to retain counsel, and of his
11 right to request assignment of counsel if he is unable to
12 obtain counsel;

13 (e) of the general circumstances under which
14 he may secure pre-extradition release;

15 (f) of his right to call witnesses and present
16 evidence at his extradition hearing; and

17 (g) of his right to receive, at least seven
18 days before the extradition hearing, in his own language,
19 all evidence to be offered against him at the extradition
20 hearing.

21 The justice shall allow the accused at least seven days
22 before the extradition hearing to consult with counsel,
23 and shall admit the accused to bail as provided in this
24 chapter."

25 Section 7. Title 12 of the Code of the Federated States of

1 Micronesia is hereby further amended by adding a new section 1402E
2 to read as follows:

3 "Section 1402E. Release from custody. Any person arrested
4 pursuant to a request for extradition shall be entitled, as
5 a matter of right, to be released on his personal
6 recognizance or upon the execution of an unsecured
7 appearance bond in an amount specified by the justice,
8 pending the extradition hearing. A determination on the
9 release of the accused shall be made at the initial
10 appearance in accordance with the principles provided in
11 Rule 46 of the Rules of Criminal Procedure promulgated by
12 the National court."

13 Section 8. Title 12 of the Code of the Federated States of
14 Micronesia is hereby further amended by adding a new section 1402F
15 to read as follows:

16 "Section 1402F. Extradition hearing. A justice of the
17 National court may set an extradition hearing to be held
18 not less than seven days after the initial appearance,
19 unless a sooner time is specified in writing by the accused
20 after consultation with counsel. Extradition hearings
21 shall be conducted in public and held in a National
22 courthouse. The following shall apply to the conduct of an
23 extradition hearing.

24 (1) The burden shall be upon the requesting foreign
25 country to prove, by a preponderance of the evidence, as

1 to each offense alleged, that:
2 (a) the person brought before the court is the
3 person accused of committing an offense in the requesting
4 country;
5 (b) the alleged conduct constitutes a crime in
6 the requesting country;
7 (c) at the time the extradition request was made,
8 the offense alleged would have violated the National law of
9 the Federated States of Micronesia had the alleged conduct
10 taken place in the Federated States of Micronesia;
11 (d) after due consideration of the entirety of
12 the pertinent extradition agreement, the offense alleged is
13 extraditable; and
14 (e) there is reasonable grounds to believe that
15 the person is guilty of the offense alleged.
16 (2) The hearing shall be conducted in the same manner
17 as a criminal proceeding, and the Rules of Criminal
18 Procedure promulgated by the National court shall apply,
19 unless otherwise provided in this chapter.
20 (3) Depositions, warrants, documentation or other
21 proposed evidence, or copies thereof, may be offered by
22 the requesting country at the extradition hearing, provided
23 the proposed evidence has been properly authenticated.
24 Proposed evidence is properly authenticated if it is
25 authenticated in the manner provided in the extradition

1 agreement or, if not specified in the extradition agreement,
2 in the manner which would entitle the same evidence
3 to be legally received and admitted for similar purposes
4 in the tribunals of the requesting country. Evidence
5 may also be offered by the accused at the extradition
6 hearing."

7 Section 9. Title 12 of the Code of the Federated States of
8 Micronesia is hereby further amended by adding a new section 1402G
9 to read as follows:

10 "Section 1402G. Certification of alleged offenses. If the
11 justice of an extradition hearing deems the evidence
12 admitted as sufficient to sustain a charge alleged, he
13 shall make specific written findings of fact and conclusions
14 of law as to the alleged offense, and he may then certify
15 his findings, together with a copy of all testimony taken
16 before him, to the Secretary of External Affairs. The
17 justice may certify any, all or none of the offenses
18 alleged as extraditable."

19 Section 10. Title 12 of the Code of the Federated States of
20 Micronesia is hereby further amended by adding a new section 1402H
21 to read as follows:

22 "Section 1402H. Confinement of accused. Upon certifying
23 a charge alleged at an extradition hearing, the justice of
24 the National court may issue an order for the confinement
25 of the accused. However, if a Notice of Appeal or a Writ

1 of Habeas Corpus is filed, the accused shall be released
2 pending disposition pursuant to the criteria set forth in
3 Rule 46(c) of the Rules of Criminal Procedure promulgated
4 by the National court."

5 Section 11. Title 12 of the Code of the Federated States of
6 Micronesia is hereby further amended by adding a new section 1402I
7 to read as follows:

8 "Section 1402I. Appeal or review of final order; Writ of
9 Habeas Corpus. The certification of an offense alleged
10 at an extradition hearing by a justice of the National
11 court shall be deemed a final order of the court and, as
12 such, subject to appeal to the Appellate Division of the
13 National court in accordance with the Rules of Criminal
14 Procedure and Rules of Appellate Procedure promulgated by
15 the National court. Notwithstanding the preceding, the
16 accused may seek review of the final order of the court by
17 filing a petition for a Writ of Habeas Corpus in the trial
18 division of the National court. The Writ of Habeas Corpus
19 shall be reviewed by a single justice other than the one
20 who rendered the final order in the extradition hearing.
21 The accused shall not be transferred or removed from the
22 Federated States of Micronesia if a proceeding by way of
23 appeal or habeas corpus review of the court's certification
24 is pending."

25 Section 12. Title 12 of the Code of the Federated States of

1 Micronesia is hereby further amended by adding a new section 1402J
2 to read as follows:

3 "Section 1402J. Commitment of the accused. If upon
4 exhaustion of the accused's appellate and review remedies
5 the final order of the trial court is upheld, in whole or
6 in part, the trial court may issue an order committing the
7 accused to the proper jail pending the physical surrender
8 of the accused to an authorized agent of the requesting
9 foreign country."

10 Section 13. Title 12 of the Code of the Federated States of
11 Micronesia is hereby further amended by adding a new section 1402K
12 to read as follows:

13 "Section 1402K. Independent review by the Secretary of
14 External Affairs. The Secretary of External Affairs may
15 review the evidence submitted on the charges certified by
16 the justice at the extradition hearing and independently
17 decide on which of those charges the accused may be tried
18 in the requesting country. An accused may only be tried
19 in the requesting country on charges both certified by the
20 court and approved by the Secretary of External Affairs."

21 Section 14. Title 12 of the Code of the Federated States of
22 Micronesia is hereby further amended by adding a new section 1402L
23 to read as follows:

24 "Section 1402L. Surrender of the accused; Commitment.

25 (1) The Secretary of External Affairs may order a

1 person who has charges certified against him at an extradition
2 hearing, whether or not he is committed to custody pursuant
3 to this chapter, to be physically surrendered to an
4 authorized agent of the requesting foreign government. The
5 authorized agent may hold such person in custody, and take
6 him to the territory of the requesting foreign government,
7 to be tried only for those charges certified by the court
8 and approved by the Secretary of External Affairs.

9 (2) Any person with certified charges against him who is
10 committed pending physical surrender but is not surrendered
11 to the authorized agent of the requesting country within 14
12 days of the commitment order, may apply for release to any
13 court, and the judge or justice shall order the release
14 from custody no later than 24 hours after the filing
15 of the application, unless sufficient evidence is
16 presented to show that the person presents:

17 (a) a risk of flight,

18 (b) a danger to the community at large, or

19 (c) a danger to himself."

20 Section 15. Title 12 of the Code of the Federated States of
21 Micronesia is hereby further amended by adding a new section 1402M
22 to read as follows:

23 "Section 1402M. Escape pending surrender. Any person who
24 escapes within the jurisdiction of the Federated States
25 of Micronesia pending surrender of his person to the

1 requesting foreign country may be retaken in accordance
2 with the applicable laws of the National Criminal Code."

3 Section 16. Title 12 of the Code of the Federated States of
4 Micronesia is hereby further amended by adding a new section 1402N
5 to read as follows:

6 "Section 1402N. Limitations on extradition orders. The
7 trial division of the National court shall issue an order
8 of dismissal, with prejudice, of the extradition
9 proceedings filed against the accused upon the expiration
10 of 30 days from the date of the court's final order, or 30
11 days from the date of final exhaustion of accused's
12 remedies if appellate review or habeas corpus review is
13 taken, if physical surrender is not made to the authorized
14 agent of the requesting foreign country. Such dismissal
15 order shall result in an unconditional discharge, shall
16 operate as a complete bar to the original extradition
17 proceeding, and shall operate as a complete bar to the
18 institution of any new extradition proceedings against
19 the accused arising out of the same facts."

20 Section 17. Title 12 of the Code of the Federated States of
21 Micronesia is hereby further amended by adding a new section 1403
22 to read as follows:

23 "Section 1403. Waiver of extradition proceedings. A person
24 whose extradition is sought by a requesting foreign country
25 may at any time waive extradition proceedings. The waiver

1 shall be in writing, endorsed by a judge, and shall have
2 the effect of a final decision of the Federated States of
3 Micronesia to surrender that person."

4 Section 18. Title 12 of the Code of the Federated States of
5 Micronesia is hereby further amended by adding a new section 1408
6 to read as follows:

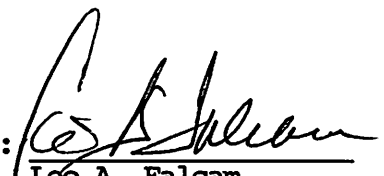
7 "Section 1408. Definitions. As used in this chapter, the
8 term 'discharge' shall mean any dismissal by the court,
9 regardless of whether the merits of the claim were reached,
10 and regardless of whether jeopardy attached."

11 Section 19. Sections 1407, 1408, 1409 and 1410 of title 12 of
12 the Code of the Federated States of Micronesia are hereby renumbered
13 as sections 1404, 1405, 1406, and 1407, respectively.

14 Section 20. This act shall apply retroactively to any
15 extradition matter pending in the National court.

16 Section 21. This act shall become law upon approval by the
17 President of the Federated States of Micronesia or upon its becoming
18 law without such approval.

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20 Date: 5-11-93

Introduced by: 
Leo A. Falcam

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