February 18, 2014

The Honorable Dohsis Halbert
Speaker
Congress of the Federated States of Micronesia
Palikir, Pohnpei, FM 96941

Dear Speaker Halbert:

I am returning the following Congressional Act to become Public Law No. 18-43 pursuant to Article IX Section 22 of the FSM Constitution, without my signature:

Congressional Act No.18-44, entitled: “AN ACT TO FURTHER AMEND SECTION 104 OF TITLE 11 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAWS NOS. 11-72 AND 11-76, AND CREATE A NEW SUBCHAPTER III UNDER CHAPTER 6 TO REQUIRE THE REGISTRATION OF DEPORTEES CONVICTED OF CRIMES IN FOREIGN COUNTRIES, TO PROVIDE PENALTIES FOR FAILURE TO REGISTER, AND IN ORDER TO BRING WITHIN DEFINITION OF NATIONAL CRIME THE FAILURE TO REGISTER AS A DEPORTEE, AND FOR OTHER PURPOSES.”

There are a number of issues that I respectfully bring to the attention of Congress for your consideration.

First, section 633 establishes an obligation for convicted deportees, who were deported to the FSM prior to the entry of the Act, to have their information entered into the National Police registration system, failure of which constitutes a misdemeanor carrying a maximum of one year's imprisonment. This section imposes an impracticable obligation upon convicted deportees who have been in the FSM for several years and who are not aware of the passing of this Act. Such an obligation appears to be unfeasible.

Second, section 633 (3) also has the effect of making the law retrospective, as convicted deportees who were deported prior to the entry of the Act, and who fail to register, commit a misdemeanor punishable by a maximum of one year's imprisonment. Retrospective laws should not apply to criminal offenses as it violates the rule of law and subjects an individual to suffer punishment for an act or omission which was not unlawful at the time he or she committed it.

Third, section 633 (7) provides that the provisions of that section will take effect and become enforceable only once the National Police registration system is implemented by and at the cost of the National Government. However, I note that there is no appropriation providing financial assistance for the establishment of such registration system, which places a financial burden on the National Government's budget.
In addition, I note that section 634 provides that deportees are to have their information removed from the registration system after a certain period of time, depending on the offense committed pursuant to section 634 (2). This appears to be an onerous obligation on the National Government and its resources as managers of the registration system, as well as being counterproductive to the purpose of having a national register in the first place.

Lastly, I also bring to the attention of Congress, the following formatting errors which will require amendment: on paragraph 21 of page 2, the word 'hours' should be removed, on paragraph 5 of page 4, the word 'tis' should read 'this', on paragraph 10 of page 5, the word 'role' should read 'sole', and on paragraph 5 of page 9, the word 'employee' should read 'employed'.

I once again respectfully urge Congress to seriously consider the aforementioned concerns.

With warm regards, I remain,

Sincerely,

[Signature]
Mamny Mori
President

Enclosure:

Xc: Chief Justice, FSM Supreme Court
     Secretary, Department of Justice
     Director, SBOC
     Legislative Counsel, CFSM
     Library, CFSM
     FSM PIO

Office of the President, P.O. Box PS 53, Palikir Pohnpei, FM 96941
February 05, 2014

His Excellency Manny Mori  
President  
Federated States of Micronesia  
Palikir, Pohnpei FM 96941

Dear President Mori:

I have the honor to transmit herewith Congressional Act No. 18-44, "AN ACT TO FURTHER AMEND SECTION 104 OF TITLE 11 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAWS NOS. 11-72 AND 11-76, AND CREATE A NEW SUBCHAPTER III UNDER CHAPTER 6 TO REQUIRE THE REGISTRATION OF DEPORTEE CONVICTED OF CRIMES IN FOREIGN COUNTRIES, TO PROVIDE PENALTIES FOR FAILURE TO REGISTER, AND IN ORDER TO BRING WITHIN DEFINITION OF NATIONAL CRIME THE FAILURE TO REGISTER AS A DEPORTEE, AND FOR OTHER PURPOSES", which was passed by the Eighteenth Congress of the Federated States of Micronesia, Third Regular Session, 2014, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

Liwiana Ramon Ioanis  
Chief Clerk, Congress of the  
Federated States of Micronesia

Enclosures
An Act

TO FURTHER AMEND SECTION 104 OF TITLE 11 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAWS NOS. 11-72 AND 11-76, AND CREATE A NEW SUBCHAPTER III UNDER CHAPTER 6 TO REQUIRE THE REGISTRATION OF DEPORTEE CONVICTED OF CRIMES IN FOREIGN COUNTRIES, TO PROVIDE PENALTIES FOR FAILURE TO REGISTER, AND IN ORDER TO BRING WITHIN DEFINITION OF NATIONAL CRIME THE FAILURE TO REGISTER AS A DEPORTEE, AND FOR OTHER PURPOSES.

INTRODUCED BY SENATOR: FLORENCIO S. HARPER (BY REQUEST)
DATE: SEPTEMBER 25, 2013

REFERRED TO: COMMITTEE ON JUDICIARY AND GOVERNMENTAL OPERATIONS
FIRST READING: JANUARY 28, 2014
SECOND READING: JANUARY 29, 2014

Liwiana Ramon Ioannis
Chief Clerk, FSM Congress
ACT NO. 18-44

(CONGRESSIONAL BILL NO. 18-78, C.D.1, C.D.2, C.D.3)

We hereby certify that on January 30 the foregoing act passed Second and Final Reading of the Eighteenth Congress of the Federated States of Micronesia, Third Regular Session, 2014, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

Dohvis Halbert
Speaker
Congress of the
Federated States of Micronesia

Liwiana Ramon Ioanis
Chief Clerk
Congress of the
Federated States of Micronesia
AN ACT

To further amend section 104 of title 11 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 11-72 and 11-76, and create a new subchapter III under chapter 6 to require the registration of deportees convicted of crimes in foreign countries, to provide penalties for failure to register, and in order to bring within definition of national crime the failure to register as a deportee, and for other purposes.

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

1. Section 1. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new subchapter III under chapter 6 entitled "Registration of Deportees".

2. Section 2. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 631 under subchapter III of chapter 6 to read as follows:

"Section 631. Purpose of the subchapter. In view of the increasing number of deportees who are being returned to the Federated States of Micronesia for criminal convictions for crimes against persons, property, or against the public interest, and in view of the number of deportees being returned before their full sentence is completed in the United States or elsewhere, it is the purpose of this Act to register all returning deportees for the safety of the People of the Federated
States of Micronesia."

Section 3. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 631 under subchapter III of chapter 6 to read as follows:

"Section 632. Definition. As used in this section, the term "convicted" means, with respect to a person's felony or misdemeanor offense, a determination or guilt, which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld."

Section 4. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 633 under subchapter III of chapter 6 to read as follows:

"Section 633. Registration of deportees; exemptions; penalties.

(1) Any FSM citizen who has been convicted of a felony or misdemeanor in any foreign territory, commonwealth, or country shall, within 5 working days hours after entering the Federated States of Micronesia, register with the National Police or State Police acting under the JLEA allow them to be fingerprinted and photographed, and list the crime_for which convicted, place of conviction, sentence imposed, if any, name,
aliases, if any, address, and occupation.

(2) This section does not apply to an offender:

(a) Who has received a full pardon for the
offense for which convicted; or

(b) Who has been lawfully released from
incarceration or other sentence or supervision for a
felony or misdemeanor conviction, whichever is later in
time, for more than 5 years prior to such time for
registration, unless the offender is a fugitive from
justice on a felony charge or has been convicted of any
offense since release from such incarceration or other
sentence or supervision.

(3) Deportees who were deported to the Federated
States of Micronesia prior to the entry of this Act
shall have their information entered into the National
Police registration system by the National Police
together with a scanned copy of the deporting documents.

(4) The failure of any such convicted person to
comply with this section with regard to any offender not
listed in subsection 3 of this section constitutes a
misdemeanor punishable under chapter 1 and chapter 12 of
this title.

(5) A person convicted under this section shall be
imprisoned for not more than one year.

(6) Nothing in this section shall be construed to
affect any law of the Federated States of Micronesia relating to registration of criminals where the penalties for registration, notification, or reporting obligations are in addition to, or in excess of, those imposed by this section.

(7) This section shall not take effect and may not be enforced until the data system for the registered database is in place and operative for all four States and the National Government with all costs of implementation and enforcement to be borne solely by the National Government."

Section 5. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 634 under subchapter III of Chapter 6 to read as follows:

"Section 634. Removal of registrees from the database.

(1) Registrees who have not been convicted of a subsequent crime, in the FSM or any other jurisdiction, from the date of their registration may be removed from the database under the timeframes set forth in this section.

(2) The timeframe for removal from the database is as follow:

(a) For misdemeanors other than violent or sexual crimes, a registree shall be removed from the database after 5 years.
(b) For felonies other than violent or sexual crimes, a registree shall be removed from the database after 7 years.

(c) For all other crimes not including homicide, mayhem, or sexual crimes, a registree shall be removed after 10 years.

(d) For all other crimes, after 10 years a registree may file a special petition to the Department of Justice to be removed from the database. Such petition shall be granted or denied under the role discretion of the Attorney General of the FSM. A registree shall not file such a special petition more than once every 3 years.

Section 6. Section 104 title 11 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 11-72 and 11-76, is hereby further amended to read as follows:

(1) 'Crime' means an act committed or omitted in violation of any law forbidding or commanding it, and which, upon conviction, is punishable by either or both of the following:

   (a) imprisonment; or
   (b) fine.

(2) 'Criminal negligence' means to engage in conduct which creates a substantial and unjustifiable risk of bodily injury to another, or to engage in conduct which
constitutes gross deviation from the standard of care that a reasonable person would exercise, which conduct causes the criminal result.

(3) 'Felony' means any crime, which is punishable by imprisonment for more than one year.

(4) 'Intent' means acting with the conscious purpose to engage in the conduct specified, refrain from the omission specified or cause the specific result.

(5) 'Knowledge' means being aware of the nature of the conduct or omission or of the existing circumstances, or believing that a fact exists which brings the conduct or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such conduct or omission.

(6) 'Misdemeanor' means any crime, which is not a felony.

(7) 'National crime' means:

(a) any crime, which is

   (i) inherently national in character and defined anywhere in this title;

   (ii) otherwise a crime against the Federated States of Micronesia;

(b) A crime is 'inherently national in character' when any of the following is true:

   (i) the crime is committed in the exclusive
economic zone of the Federated States of Micronesia as defined in title 18 of this Code;

(ii) the crime is committed in the airspace above the territory comprising the Federated States of Micronesia as defined in article I, section 1 of the FSM Constitution;

(iii) the crime is committed on any airborne vehicle of the National Government, regardless of that vehicle's location;

(iv) the crime is committed on any watergoing vessel flagged and registered by the Federated States of Micronesia regardless of that watergoing vessel's location;

(v) the crime is committed on any watergoing vessel of the National Government regardless of that vessel's location;

(vi) the crime is committed against a national public servant in the course of, in connection with, or as a result of that person's employment or services;

(vii) the crime is committed against a former national public servant in retaliation for an act undertaken while that person was engaged in public service and within the scope of his or her official duties;

(viii) the crime is committed by a national
public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty;

(ix) the crime involves property belonging to the National Government;

(x) the crime is committed against any person participating in or attempting to participate in a national election; or

(xi) a person has been convicted of a felony or misdemeanor in any foreign territory, commonwealth, or country and fails to register as a deportee whenever required by a law of the Federated States of Micronesia to register.

(8) 'Official proceeding' means any procedure conducted by or under the supervision of a judge, magistrate, judicial officer or other public official in relation to any alleged offense or proven offense, and includes an inquiry, investigation, or preliminary or final determination of facts.

(9) Person. The terms 'person', 'he', 'she', 'accused' and 'defendant' include any natural or legal person, including but not limited to, a government, corporation or unincorporated association, or other organization.

(10) 'Principal' means a person who commits or
participates in the commission of a crime and shall include a co-conspirator, accomplice or an aid or abettor.

(11) 'Public official' and 'public servant' means any person elected, appointed or employee to perform a governmental function on behalf of the Federated States of Micronesia, or any department, agency or branch thereof, or any allottee as defined in the Financial Management Act of 1979, in any official function under or by authority of any such agency or branch of government. The terms include, but are not limited to, legislators, judges, law enforcement officers, advisors and consultants, but do not include witnesses.

(12) 'Reckless' means to engage in conduct with a willful disregard for the safety of others or to engage in conduct in a manner that constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

(13) 'Serious bodily injury' means bodily injury which creates a high probability of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other bodily injury of like severity.

(14) 'Willfully' means to act with a purpose or
willingness to commit an act, or to make an omission. It does not require any intent to violate the law, or to injure another, or to acquire any advantage.

(15) 'Property' shall mean both real and personal property."

Section 7. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

______________________________, 2014

Manny Mori
President
Federated States of Micronesia