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A BILL FOR AN ACT

To further amend title 50 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 3 entitled "Refugee Act of 2005", and for other purposes.

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

1           Section 1. Title 50 of the Code of the Federated States of  
2 Micronesia is hereby amended by enacting a new Chapter 3 entitled  
3 "Refugee Act of 2005."

4           Section 2. Title 50 of the Code of the Federated States of  
5 Micronesia is hereby amended by enacting a new section 301 to read  
6 as follows:

7                   "Section 301. Short Chapter. This chapter is known and  
8                   may be cited as the 'Refugee Act of 2005.'"

9           Section 3. Title 50 of the Code of the Federated State of  
10 Micronesia is hereby amended by enacting a new section 302 to read  
11 as follows:

12                   "Section 302. Definitions.

13                           (1) 'Asylum seeker' means a person who (i) is not a  
14                           citizen of the Federated States of Micronesia (ii) is  
15                           present in the territory of the FSM or at a port of  
16                           entry in the FSM and (iii) who seeks recognition and  
17                           protection as a refugee.

18                           (2) 'Chief' means the Chief, Division of  
19                           Immigration, Department of Justice of the Federated

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1           States of Micronesia, or designee.

2           (3) 'Country of origin' means the asylum seeker's  
3           country of nationality, and in the case of more than one  
4           country of nationality, each country of nationality; or  
5           if the asylum seeker has no nationality, the asylum  
6           seeker's country of former habitual residence.

7           (4) 'FSM' means the Federated States of Micronesia.

8           (5) 'Hearing Officer' means the Chief, during an  
9           initial determination of refugee status, or any member  
10           of the Refugee Committee, during any hearing before the  
11           Refugee Committee.

12           (6) 'Refugee' means a refugee defined in Section  
13           303 and includes spouses and minor children of persons  
14           determined to be refugees.

15           (7) 'Refugee Committee' means the appellate  
16           tribunal established under Section 318 of this Act.

17           (8) 'UNHCR' means the United Nations High  
18           Commissioner for Refugees."

19           Section 4. Title 50 of the Code of the Federated States of  
20           Micronesia is hereby amended by enacting a new section 303 to read  
21           as follows:

22           "Section 303. Definition of refugee. A refugee is any  
23           person who (i) is outside his country of origin, and  
24           (ii) who is unable or unwilling to return to, and is  
25           unable or unwilling to avail himself of the protection

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1           of, that country (iii) because of a well-founded fear of  
2           persecution on account of race, religion, nationality,  
3           or membership of a particular social group or political  
4           opinion. The term 'nationality' includes ethnic  
5           identity and the term 'membership of a particular social  
6           group' includes sex."

7           Section 5. Title 50 of the Code of the Federated States of  
8 Micronesia is hereby amended by enacting a new section 304 to read  
9 as follows:

10           "Section 304. Persons who shall be excluded from  
11           refugee status. A person shall be excluded from refugee  
12           status for the purpose of this Act if:

13                   (1) he has committed a crime against peace, a war  
14                   crime or a crime against humanity, as defined in the  
15                   international instruments drawn up to make provision in  
16                   respect of such crimes;

17                   (2) he has committed a serious non-political crime  
18                   outside the FSM prior to his entry as an asylum seeker."

19           Section 6. Title 50 of the Code of the Federated States of  
20 Micronesia is hereby amended by enacting a new section 305 to read  
21 as follows:

22           "Section 305. Principal of non-refoulement.

23                   (1) Non refugee or asylum seeker shall be deported  
24                   from the FSM or returned in any manner whatsoever to a  
25                   place where there are reasons to believe his life or

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1           freedom would be threatened on account of any of the  
2           reasons set out in Section 303.

3           (2) The benefit of this provision may not be  
4           claimed by a refugee or asylum seeker where there are  
5           reasonable grounds for regarding him as a danger to the  
6           security of the country or who has been convicted by a  
7           final judgement of a serious crime in the FSM and  
8           constitutes a danger to the community."

9           Section 7. Title 50 of the Code of the Federated States of  
10          Micronesia is hereby amended by enacting a new section 306 to read  
11          as follows:

12           "Section 306. Confidentiality of Information. Under no  
13           circumstances shall information about an asylum seeker  
14           be disclosed to government officials of the country of  
15           origin pending determination of refugee status."

16          Section 8. Title 50 of the Code of the Federated States of  
17          Micronesia is hereby amended by enacting a new section 307 to read  
18          as follows:

19           "Section 307. Interpretation. The government shall  
20           make all reasonable attempts to communicate with the  
21           asylum seekers in the language in which they are most  
22           fluent."

23          Section 9. Title 50 of the Code of the Federated States of  
24          Micronesia is hereby amended by enacting a new section 308 to read  
25          as follows:

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1           "Section 308. Regulations. The President may pass  
2           regulations to give effect to the provisions of this  
3           Act."

4           Section 10. Title 50 of the Code of the Federated States of  
5 Micronesia is hereby amended by enacting a new section 309 to read  
6 as follows:

7           "Section 309. UNHCR. The national government shall not  
8           prohibit or restrict contact between UNHCR and any  
9           asylum seeker or refugees in the FSM. UNHCR shall be  
10           permitted to submit comments for the consideration of  
11           the Refugee Committee on any matter before the Refugee  
12           Committee and UNHCR may be invited to participate as an  
13           observer on the Refugee Committee. The national  
14           government shall provide the UNHCR with information  
15           concerning the conditions of refugees, the  
16           implementation of the Convention, and the laws,  
17           regulations and policies of the FSM relating to refugees  
18           and asylum seekers."

19           Section 11. Title 50 of the Code of the Federated States of  
20 Micronesia is hereby amended by enacting a new section 310 to  
21 read as follows:

22           "Section 310. Asylum entry permit. A person who meets  
23           the definition of an asylum seeker and makes a claim for  
24           asylum shall be granted an asylum entry permit.

25                   (1) A claim for asylum is a clear indication from

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1           a person that they are fleeing persecution, that they  
2           seek asylum in the FSM and that they intend to apply to  
3           become a refugee.

4           (2) An asylum entry permit may be issued to a  
5           person without the travel documents required by other  
6           immigration laws and regulations, if it appears that  
7           such travel documents are missing due to circumstances  
8           related to the claim for asylum and not due to an intent  
9           to defraud or mislead authorities.

10           (3) An asylum entry permit shall not permit the  
11           asylum seeker to work in the FSM and may have terms and  
12           conditions as the Chief determines to be necessary.

13           (4) The spouse and minor children of the asylum  
14           seeker are eligible for dependent asylum entry permits,  
15           unless they have a separate claim for asylum, in which  
16           case they are eligible for an asylum entry permit.

17           (5) An asylum entry permit shall be issued for 6  
18           months and shall be renewable while the asylum seeker is  
19           in the process of having their application for refugee  
20           status considered. The asylum entry permit shall be  
21           revoked pursuant to Section 323.

22           (6) An asylum entry permit may be denied to a  
23           person who meets the criteria of Section 305(2)."

24           Section 12. Title 50 of the Code of the Federated States of  
25           Micronesia is hereby amended by enacting a new section 311 to

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1 read as follows:

2 "Section 311. Rights and duties of asylum seekers.

3 (1) Asylum seekers have the right to be informed of  
4 their rights and obligations as asylum seekers, the  
5 procedure for applying for refugee status, and their  
6 right be in contact with UNHCR and other human rights  
7 organizations.

8 (2) Asylum seekers will be treated without  
9 discrimination as to race, religion, country of origin,  
10 gender, political or other opinion, or status.

11 (3) Asylum seekers must conform to all the laws of  
12 the FSM.

13 (4) Asylum seekers must approach the authorities  
14 without delays, unless duly justified, to apply for  
15 asylum or somehow express a need for protection.

16 (5) Asylum seekers must co-operate with the  
17 relevant authorities throughout the assessment of their  
18 claims, including disclosing information and documentary  
19 evidence that may be relevant to their claims and  
20 providing a truthful account of their stories."

21 Section 13. Title 50 of the Code of the Federated States of  
22 Micronesia is hereby amended by adding a new section 312 to read  
23 as follows:

24 "Section 312. Assistance for asylum seekers. The  
25 national government shall make reasonable attempts to

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1 provide assistance to asylum seekers and shall work with  
2 foreign nations, non-governmental organizations, and  
3 members of the community to meet the needs of asylum  
4 seekers. Assistance may include access to emergency and  
5 basic health care, access to primary education for  
6 children, and provision of food, accomodation and  
7 financial assistance. Failure to provide assistance  
8 shall not be grounds for anu action against the national  
9 government, nor shall any cause of action be valid  
10 against the national government for incidents related to  
11 the provision of assistance or lack thereof."

12 Section 14. Title 50 of the Code of the Federated States of  
13 Micronesia is hereby amended by enacting a new section 313 to  
14 read as follows:

15 "Section 313. Detention of asylum seekers.

16 (1) The Chief may decide to detain an asylum  
17 seeker, through a written decision with reasons, in the  
18 following cases only:

19 (a) to verify indentity, when in dispute and  
20 when the asylum seeker is not co-operating;

21 (b) for the preliminary interview, to determine  
22 the basis of the asylum claim;

23 (c) in cases where the asylum seeker has  
24 destroyed travel and/or identity documents or has used  
25 fraudulent documents in order to mislead government

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1           authorities;

2                   (d) to protect national security and public  
3           order, when there is evidence that the asylum seeker has  
4           a criminal record and/or affiliations which are likely  
5           to pose a risk to public order or national security.

6                   (2) When a need has been identified for detaining  
7           an asylum seeker, the Chief will first consider  
8           alternatives which may reach the same objective. These  
9           include, but are not limited to, bail, reporting  
10          requirements, obligation of residence at a specific  
11          address, provision of a guarantor or community sponsored  
12          accommodation.

13                  (3) The decision to detain an asylum seeker shall  
14          be initially reviewed by a judicial authority as soon as  
15          possible (and in any event not later than fourteen  
16          days), and if the need is confirmed, periodically  
17          reviewed by the same, at least every two months, in  
18          order to determine whether the necessity of the  
19          detention still exists.

20                  (4) Children under 18 years old shall not be  
21          detained, unless it is determined by the Chief as a  
22          measure of last resort or unless the parents of the  
23          children request that the children be kept in detention  
24          with the parents. In that case it shall be for the  
25          shortest period of time as possible. Pregnant women,

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1           nursing mothers, unaccompanied elderly persons, torture  
2           or trauma victims and persons with a mental or physical  
3           disability shall also be detained only as a last resort  
4           and for the shortest period of time as possible.

5           (5) In case of detention, asylum seekers shall be  
6           kept separated from convicted criminals or prisoners on  
7           remand, and shall be treated humanely. Women shall be  
8           separated from male detainees not part of their family.  
9           Asylum seekers in detention will be given high priority  
10          in assessing their claim for asylum."

11          Section 15. Title 50 of the Code of the Federated States of  
12          Micronesia is hereby amended by enacting a new section 314 to read  
13          as follows:

14          "Section 314. Unaccompanied minor children.

15          Unaccompanied minor children shall be appointed an  
16          independent legal guardian as soon as possible after it  
17          is determined that the child is seeking asylum. Such  
18          children shall be provided with care and services to  
19          meet their basic needs, including food, shelter, health  
20          care and safety. The national government shall work  
21          with international agencies to locate family members of  
22          unaccompanied minor children. Claims of unaccompanied  
23          minor children shall be given priority."

24          Section 16. Title 50 of the Code of the Federated States of  
25          Micronesia is hereby amended by enacting a new section 315 to read

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1 as follows:

2 "Section 315. Determination of refugee status.

3 (1) The asylum seeker must make an application to  
4 the Chief for recognition as a refugee, in a manner to  
5 be established in regulations.

6 (2) An asylum seeker claiming refugee status shall  
7 be entitled to a hearing before the Chief within thirty  
8 days of submitting the application for refugee status.  
9 However, the Chief may suspend determination of a claim  
10 for refugee status made by an asylum seeker who has been  
11 charged with a criminal offense under the laws of the  
12 FSM until those charges have been resolved. Notice of  
13 suspension shall be provided to the asylum seeker.

14 (3) No later than 15 days after the hearing, the  
15 Chief shall issue a written decision to the asylum  
16 seeker, setting forth the findings relevant to the  
17 determination, specifying the evidence on which those  
18 findings were based and giving the reasons for the  
19 decision.

20 (4) An application for refugee status shall be  
21 granted if the asylum seeker satisfies the definition of  
22 a refugee as set forth in Section 303. An application  
23 for refugee status shall be denied on the following  
24 basis: (I) failure to satisfy the definition of refugee  
25 as set forth in Section 303; (ii) exclusion from the

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1           definition of refugee, pursuant to Section 304; or (iii)  
2           ineligibility for refugee status, pursuant to Section  
3           316.”

4           Section 17. Title 50 of the Code of the Federated States of  
5 Micronesia is hereby amended by enacting a new section 316 to read  
6 as follows:

7           “Section 316. Ineligibility. An application for  
8           refugee status may be denied on grounds of ineligibility  
9           if:

10           (1) a claim made by the asylum seeker for refugee  
11           status has been denied by a final decision of the  
12           Refugee Committee or of the UNHCR and there is no  
13           showing of new or changed circumstances justifying a  
14           reconsideration;

15           (2) a prior claim for refugee status to the FSM or  
16           any other nation or the UNHCR was withdrawn or abandoned  
17           and there is no sufficient explanation as to the reasons  
18           for the withdrawal or abandonment;

19           (3) the asylum seeker has been recognized as a  
20           refugee by another country and can be sent or returned  
21           to that country;

22           (4) the asylum seeker came directly or indirectly  
23           to FSM from a country other than a country of their  
24           nationality or their former habitual residence, that is  
25           (i) a party to the Convention or (ii) not being a party,

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1 complies with the principal of non-refoulement and has  
2 policies and practices with respect to claims under the  
3 Refugee Conventions and a human rights record which is  
4 acceptable to the FSM;

5 (5) there are reasonable grounds for regarding the  
6 asylum seeker as a danger to the security of the country  
7 or the asylum seeker has been convicted by a final  
8 judgment of a serious crime in the FSM and constitutes a  
9 danger to the community;

10 (6) the asylum seeker is subject to extradition if  
11 such extradition would not violate Section 305."

12 Section 18. Title 50 of the Code of the Federated States of  
13 Micronesia is hereby amended by enacting a new section 317 to read  
14 as follows:

15 "Section 317. Hearings. All hearings under this  
16 Chapter shall be conducted as inquisitorial rather than  
17 adversarial hearings. The hearing officer shall have  
18 all the powers necessary to decide the matter and shall  
19 have the aid and advice of any person. The rules of  
20 evidence shall not apply. The hearing shall be public  
21 unless the asylum seeker requests otherwise and a record  
22 shall be made of the proceedings. The asylum seeker  
23 shall receive notice of the hearing and shall be  
24 expected to present his claim. The asylum seeker may be  
25 assisted by counsel, the UNHCR or any other persons in

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1           the hearing. Other procedures for hearings shall be as  
2           set forth in regulations.”

3           “Section 19. Title 50 of the Code of the Federated States of  
4 Micronesia is hereby amended by enacting a new section 318 to read  
5 as follows:

6           “Section 318. Refugee Committee.

7                   (1) A Refugee Committee is hereby established as  
8                   the appellate authority and final decision maker on  
9                   applications for refugee status. The Refugee Committee  
10                   shall consist of the Secretary of Justice or designee,  
11                   but not the Chief; the Secretary of Foreign Affairs or  
12                   designee, and a designee of the President. The members  
13                   of the Committee shall not receive any financial  
14                   consideration for their participation on the Committee  
15                   apart from pay and benefits received in the ordinary  
16                   course of their government employment.

17                   (2) The Committees deliberations may be observed  
18                   and assisted by up to three observers conversant with  
19                   refugee matters or regarded as good decision makers,  
20                   such as a representative from UNHCR, local  
21                   organizations, the state governments, the national  
22                   Congress or traditional leaders. The observers shall  
23                   not be acting members of the Committee but may provide  
24                   comments on the Committees deliberations. The observers  
25                   shall be selected by consensus of the Refugee Committee

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1           based on application to the Committee. The observers  
2           shall not receive any financial consideration for their  
3           participation on the Committee apart from pay and  
4           benefits received in the ordinary course of their  
5           government employment. The Committees deliberations may  
6           not be delayed due to lack of observers.

7           (3) The Refugee Committee shall hear the following  
8           matters: (a) an appeal of a determination on refugee  
9           status by the Chief; (b) a petition to cancel refugee  
10          status on the grounds of material fraud; (c) a petition  
11          for cessation of refugee status due to change in  
12          circumstances.

13          (4) The Refugee Committee may review all matters  
14          denovo and shall have all powers necessary to determine  
15          a matter, including holding hearings.

16          (5) If the asylum seeker is not granted refugee  
17          status by the Chief, the asylum seeker may appeal the  
18          decision to the Refugee Committee. The appeal must be  
19          made within 15 days of the asylum seekers receipt of the  
20          decision of the Chief; however, this time limit may be  
21          waived by the Refugee Committee upon a showing of good  
22          cause.

23          (6) Within sixty days of receiving an appeal or  
24          petition, the Refugee Committee shall issue a written  
25          decision setting forth the findings relevant to the

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1           determination, specifying the evidence on which those  
2           findings were based and giving the reasons for the  
3           decision.

4           (7) Actions taken under this chapter are not  
5           subject to judicial review until all proceedings in this  
6           chapter are exhausted. Judicial review of actions take  
7           under this chapter are limited to review for action  
8           which is in violation of law or regulation.”

9           Section 20. Title 50 of the Code of the Federated States of  
10          Micronesia is hereby amended by enacting a new section 319 to read  
11          as follows:

12           “Section 319. Refugee entry permit. Every person who  
13           is determined to be a refugee shall be issued a refugee  
14           entry permit, granting them the right to live and work  
15           in the FSM, to be valid as long as the refugee  
16           determination remains valid; however, the entry permit  
17           shall expire upon resettlement of the permit holder in  
18           another in another country, subject to issuance of a new  
19           entry permit as long as the refugee determination  
20           remains valid.”

21          Section 21. Title 50 of the Code of the Federated States of  
22          Micronesia is hereby amended by enacting a new section 320 to read  
23          as follows:

24           “Section 320. Rights and duties of refugees. Every  
25           refugee, so long as he remains within the FSM, shall

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1           have the right to receive the treatment as is accorded  
2           to refugees under the Convention on the Status of  
3           Refugees (1951)."

4           Section 22. Title 50 of the Code of the Federated States of  
5 Micronesia is hereby amended by enacting a new section 321 to read  
6 as follows:

7           "Section 321. Persons who shall cease to be refugees.

8                   (1) The determination of refugee status shall cease  
9                   if

10                           (a) the refugee has voluntarily reavailed  
11                           himself of the protection of his or her country of  
12                           nationality;

13                           (b) the refugee had lost his or her nationality  
14                           and has voluntarily reacquired his or her nationality;

15                           (c) the refugee has acquired a new nationality  
16                           and enjoys the protection of the country of that new  
17                           nationality;

18                           (d) the refugee has voluntarily become re-  
19                           established in the country that the person left or  
20                           remained outside of owing to fear of persecution; or

21                           (e) the reasons for which the refugee sought  
22                           refugee protection have ceased to exist, unless the  
23                           refugee is able to invoke compelling reasons arising out  
24                           or previous persecution for refusing to return to the  
25                           refugee's country of nationality or former habitual

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1           residence.

2           (2) A determination of refugee status may be found  
3           to be ceased by the Refugee Committee upon a petition  
4           for cessation and a hearing on the petition. A petition  
5           for cessation of refugee status may only be brought by  
6           the Chief."

7           Section 23. Title 50 of the Code of the Federated States of  
8           Micronesia is hereby amended by enacting a new section 322 to read  
9           as follows:

10           "Section 322. Cancellation of refugee determination.  
11           A determination of refugee status may be cancelled by  
12           the Refugee Committee upon a petition for cancellation  
13           and a hearing on the petition. The only grounds for  
14           canceling a determination shall be a finding that the  
15           decision was obtained without certain withheld  
16           information or as a result of information that was  
17           fraudulent, forged, false, or misleading, where the  
18           information is sufficiently material to have affected  
19           the outcome of the decision on the refugee status, had  
20           it been known earlier. A petition for cancellation may  
21           only be brought by the Chief."

22           Section 24. Title 50 of the Code of the Federated States of  
23           Micronesia is hereby amended by enacting a new section 323 to read  
24           as follows:

25           "Section 323. Removal of asylum seekers not determined

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1 to be refugees and refugees whose status ceases or  
2 status is cancelled.

3 (1) Fifteen days after a decision of the Chief  
4 denying refugees status which has not been appealed; or  
5 immediately after a decision of the Refugee Committee  
6 denying an appeal by the asylum seeker, the asylum  
7 seeker's entry permit shall be revocable and the asylum  
8 seeker shall be obliged to immediately leave the FSM.

9 (2) Immediately after a decision of the Refugee  
10 Committee determining that a refugee's status has ceased  
11 or is canceled, the refugee's entry permit shall be  
12 revocable and the refugee shall be obliged to  
13 immediately leave the FSM.

14 (3) The government may assist the asylum seeker or  
15 former refugee to obtain travel documents and arrange  
16 travel out of the country. If the asylum seeker or  
17 former refugee refuses to depart voluntarily, the Chief  
18 shall take whatever measures necessary to remove the  
19 asylum seeker or former refugee from the FSM.  
20 Deportation proceedings shall not be required prior to  
21 removing the asylum seeker or former refugee. Should a  
22 forcible removal be necessary, it shall be carried out  
23 in a humane and dignified manner.

24 (4) If an asylum seeker or former refugee cannot be  
25 removed due to reasons beyond their control, the Chief

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1           may issue an extension of the asylum or refugee entry  
2           permit until removal is effectuated.

3           (5) Asylum seekers and former refugees may seek  
4           legal status in the FSM by applying for an entry permit,  
5           other than an asylum or refugee entry permit, in  
6           accordance with the laws and regulations of the FSM.  
7           However, if the asylum seeker or former refugee is  
8           unable to conform with the requirements of the laws and  
9           regulations of the FSM, such as lack of proper  
10           documentation, the asylum seeker or former refugee will  
11           not be exempted from such requirements in order to  
12           qualify for other types of entry permits."

13           Section 25. Title 50 of the Code of the Federated States of  
14           Micronesia is hereby amended by enacting a new section 324 to read  
15           as follows:

16           "Section 324. Illegal entry and presence of asylum  
17           seekers. The national government shall not impose  
18           penalties, on account of their illegal entry, or  
19           presence, on asylum seekers who, coming directly from a  
20           place where their life or freedom was threatened in the  
21           sense of Section 303, enter or are present in the FSM  
22           without authorization, provided they present themselves  
23           without delay to the authorities and show good cause for  
24           their illegal entry or presence."

25           Section 26. Title 50 of the Code of the Federated States of

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1 Micronesia is hereby amended by enacting a new section 325 to read  
2 as follows:

3 "Section 325. Durable solutions for refugees. The  
4 government shall work with refugees to find the  
5 following solutions or alternative solutions for long  
6 term placement:

7 (1) Voluntary repatriation. The repatriation of  
8 refugees shall take place at their free volition  
9 expressed in writing or other appropriate means which  
10 must be clearly expressed. The voluntary and individual  
11 character of repatriation of refugees and the need for  
12 it to be carried out under condition of safety to the  
13 country of origin shall be organized in co-operation  
14 with UNHCR and other members of the international  
15 community.

16 (2) Resettlement. The government shall submit  
17 information about the refugee to the UNHCR and/or  
18 Convention countries and request UNHCR to resettle the  
19 refugees and/or the Convention countries to accept the  
20 refugees for settlement.

21 (3) Local integration. If voluntary repatriation  
22 or resettlement are not available, the national  
23 government shall work with the state governments to  
24 settle the refugees in a local community. Upon request,  
25 a refugee who settles in the FSM shall be issued travel



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