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States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

Section 1. The entry into the United States, as immigrants or nonimmigrants, of the following aliens is hereby suspended:

(a) Senior government officials—defined as the heads of ministries or agencies and officials occupying positions within the two bureaucratic levels below those top positions—responsible for domestic law enforcement, justice, or labor affairs who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies, or who otherwise bear responsibility for their governments' failures to take steps recognized internationally as appropriate to combat trafficking in persons, and who are members of governments for which I have made a determination pursuant to section 110(d)(1)–(2) or (4) of the Act, in the current year and at least once in the preceding 3 years;

(b) The spouses of persons described in subsection (a) of this section.

Sec. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interest of the United States.

Sec. 3. Persons covered by sections 1 or 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

Sec. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 5. The Secretary of State shall implement this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of Homeland Security, may establish.

Sec. 6. This proclamation is effective immediately. It shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such determination by the Secretary of State shall be published in the *Federal Register*.

Sec. 7. This proclamation is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

In Witness Whereof, I have hereunto set my hand this sixteenth day of January, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

George W. Bush

[Filed with the Office of the Federal Register, 11:15 a.m., January 21, 2009]

NOTE: This proclamation will be published in the *Federal Register* on January 22.

Executive Order 13488—Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust

January 16, 2009

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, and in order to simplify and streamline the system of Federal Government personnel investigative and adjudicative processes to make them more efficient and effective, it is hereby ordered as follows:

Section 1. *Policy.* (a) When agencies determine the fitness of individuals to perform work as employees in the excepted service or as contractor employees, prior favorable fitness or suitability determinations should be granted reciprocal recognition, to the extent practicable.

(b) It is necessary to reinvestigate individuals in positions of public trust in order to

ensure that they remain suitable for continued employment.

Sec. 2. *Definitions.* For the purposes of this order:

(a) "Agency" means an executive agency as defined in section 105 of title 5, United States Code, but does not include the Government Accountability Office.

(b) "Contractor employee" means an individual who performs work for or on behalf of any agency under a contract and who, in order to perform the work specified under the contract, will require access to space, information, information technology systems, staff, or other assets of the Federal Government. Such contracts, include, but are not limited to:

(i) personal services contracts;

(ii) contracts between any non-Federal entity and any agency; and

(iii) sub-contracts between any non-Federal entity and another non-Federal entity to perform work related to the primary contract with the agency.

(c) "Excepted service" has the meaning provided in section 2103 of title 5, United States Code, but does not include those positions in any element of the intelligence community as defined in the National Security Act of 1947, as amended, to the extent they are not otherwise subject to Office of Personnel Management appointing authorities.

(d) "Fitness" is the level of character and conduct determined necessary for an individual to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability) or as a contractor employee.

(e) "Fitness determination" means a decision by an agency that an individual has or does not have the required level of character and conduct necessary to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability) or as a contractor employee. A favorable fitness determination is not a decision to appoint or contract with an individual.

(f) "Position of Public Trust" has the meaning provided in 5 *CFR* Part 731.

(g) "Suitability" has the meaning and coverage provided in *CFR* Part 731.

Sec. 3. *Agency Authority to Set Fitness Criteria and Determine Equivalency.* The authority to establish criteria for making fitness determinations remains within the discretion of the agency head. Agency heads also have the discretion to determine whether their criteria are equivalent to suitability standards established by the Office of Personnel Management. Agency heads shall take into account Office of Personnel Management guidance when exercising this discretion.

Sec. 4. *Reciprocal Recognition of Fitness and Suitability Determinations.* (a) Except as provided by subsection (b) of this section, agencies making fitness determinations shall grant reciprocal recognition to a prior favorable fitness or suitability determination when:

(i) the gaining agency uses criteria for making fitness determinations equivalent to suitability standards established by the Office of Personnel Management;

(ii) the prior favorable fitness or suitability determination was based on criteria equivalent to suitability standards established by the Office of Personnel Management; and

(iii) the individual has had no break in employment since the favorable determination was made.

(b) Exceptions to Reciprocal Recognition. A gaining agency is not required to grant reciprocal recognition to a prior favorable fitness or suitability determination when:

(i) the new position requires a higher level of investigation than previously conducted for that individual;

(ii) an agency obtains new information that calls into question the individual's fitness based on character or conduct; or

(iii) the individual's investigative record shows conduct that is incompatible with the core duties of the new position.

Sec. 5. *Reinvestigation of Individuals in Positions of Public Trust.* Individuals in positions of public trust shall be subject to reinvestigation under standards (including but not limited to the frequency of such reinvestigation) as determined by the Director of

the Office of Personnel Management, to ensure their suitability for continued employment.

Sec. 6. *Responsibilities.* (a) An agency shall report to the Office of Personnel Management the nature and results of the background investigation and fitness determination (or later changes to that determination) made on an individual, to the extent consistent with law.

(b) The Director of the Office of Personnel Management is delegated authority to implement this order, including the authority to issue regulations and guidance governing suitability, or guidance related to fitness, as the Director determines appropriate.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order shall not suspend, impede, or otherwise affect Executive Order 10450 of April 27, 1953, as amended, or Executive Order 13467 of June 30, 2008;

(d) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees or agents, or any other person.

Sec. 3. *Effective Date and Applicability.* This order is effective upon issuance and is applicable to individuals newly appointed to excepted service positions or hired as contractor employees beginning 90 days from the effective date of this order.

George W. Bush

The White House,
January 16, 2009.

[Filed with the Office of the Federal Register, 2:30 p.m., January 21, 2009]

NOTE: This Executive order will be published in the *Federal Register* on January 22.

Memorandum on Eligibility of the Southern African Development Community To Receive Defense Articles and Defense Services under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act, as Amended

January 16, 2009

Presidential Determination No. 2009–13

Memorandum for the Secretary of State

Subject: Eligibility of the Southern African Development Community to Receive Defense Articles and Defense Services under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act, as Amended

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, as amended, I hereby find that the furnishing of defense articles and defense services to the Southern African Development Community will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the *Federal Register*.

George W. Bush