

Order Designating the Order of Succession
for the Secretary of Homeland Security

(a) By any authority vested in me as Acting Secretary of Homeland Security, including the Homeland Security Act of 2002, 6 U.S.C. § 113(g)(2), and notwithstanding any Department of Homeland Security (DHS) prior delegation, directive, instruction, policy, or other document of any kind, including without limitation DHS Delegation No. 00106, I hereby designate the order of succession for the Secretary of Homeland Security as follows:

Order of Succession for the Secretary of Homeland Security
Pursuant to Title 6, United States Code, Section 113(g)(2)

1. Deputy Secretary of Homeland Security;
2. Under Secretary for Management;
3. Commissioner of the U.S. Customs and Border Protection
4. Under Secretary for Strategy, Policy, and Plans;
5. Administrator and Assistant Secretary of the Transportation Security Administration; and
6. Administrator of the Federal Emergency Management Agency.

(b) No individual who is serving in an office listed in paragraph (a) in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.

(c) I am issuing this Order out of an abundance of caution and to minimize any disruption occasioned by a recent Government Accountability Office (GAO) opinion (B-331650 (Comp. Gen., Aug. 14, 2020)) and recent challenges filed in Federal court alleging that the November 8, 2019, order of succession issued by then-Acting Secretary Kevin McAleenan was not valid. I believe that the GAO's opinion and the plaintiff's arguments in those court cases are incorrect and present an unnecessary distraction to the mission of the Department of Homeland Security. Nevertheless, under GAO's view, no Secretary has ever properly invoked 6 U.S.C. § 113(g)(2) "[to] designate such other officers of the Department in further order of succession to serve as Acting Secretary." In that case, the Federal Vacancies Reform Act (FVRA) would provide an alternative basis for an official to exercise the functions and duties of the Secretary temporarily in an acting capacity. As the most senior successor listed in Executive Order 13753, 81 Fed. Reg. 90667 (Dec. 9, 2016), in accordance with the President's advance exercise of his authority to name an Acting Secretary under the FVRA, and without casting doubt on the continued validity of the Amendment to the Order of Succession for the Secretary of Homeland Security issued by Acting Secretary McAleenan on November 8, 2019, I am relying on any authority I may have been granted by the FVRA to designate the order of succession for the Secretary of Homeland Security pursuant to 6 U.S.C. § 113(g)(2), as specified and directed in paragraph (a) of this Order. Upon my signature, any authority that I may have been granted by the FVRA will terminate because 6 U.S.C. § 113(g)(2) applies "[n]otwithstanding chapter 33 of title 5."

(d) This Order Designating the Order of Succession for the Secretary of Homeland Security shall be effective immediately upon the affixing of the signature of the undersigned.

Dated: 10 SEPT 2020

A handwritten signature in blue ink, appearing to read "Peter T. Gaynor", is written over a blue horizontal line.

Peter T. Gaynor
Department of Homeland Security