

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW
YORK, *et al.*,

Plaintiffs,

v.

No. 19-07993 (GBD)

KENNETH CUCCINELLI, *et al.*,

Defendants.

STATE OF NEW YORK, *et al.*

Plaintiffs,

v.

No. 19-cv-07777 (GBD)

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*

Defendants.

NOTICE

Defendants respectfully notify the Court and Plaintiffs that on January 11, 2021, Acting Secretary of Homeland Security Chad Wolf designated a new order of succession for the position of Acting Secretary pursuant to 6 U.S.C. § 113(g)(2). *See* https://www.dhs.gov/sites/default/files/publications/20_0111_order-of-succession-secretary-of-homeland-security.pdf. Peter T. Gaynor, the Senate-confirmed Administrator of the Federal Emergency Management Agency, is the most senior official in that order of succession. Although Mr. Wolf is no longer Acting

Secretary, he retains his Senate-confirmed position as Under Secretary for Strategy, Policy, and Plans.

DHS's website states that “[o]n January 11, 2021, Peter T. Gaynor was designated as Acting Secretary of Homeland Security.” <https://www.dhs.gov/person/peter-t-gaynor>. On January 15, 2021, DHS submitted notice to Congress that Mr. Gaynor began serving as Acting Secretary on January 12, 2021. *See* Ex. 1.

On January 12, 2021, Mr. Gaynor exercised his authority as Acting Secretary to issue an order delegating certain of the Secretary's authorities to Mr. Wolf in his capacity as Under Secretary for Strategy, Policy, and Plans, expressly including the authority to “ratify any prior regulatory actions of the Department of Homeland Security.” *See* https://www.dhs.gov/sites/default/files/publications/20_0112_delegation-23028-final-rules-regulations-other-matters.pdf. Subsequently on January 14, 2021, Mr. Wolf issued an order “affirm[ing] and ratify[ing]” the Rule at issue in this case. *See*

https://www.dhs.gov/sites/default/files/publications/20_0113_undersecretary-wolf-ratification-delegable-prior-actions.pdf. The Rule was also covered by prior ratification orders issued by Mr. Wolf, as explained in Defendants' briefing. *New York v. DHS*, 19-cv-7777, ECF No. 249 at 15-16.

Dated: January 19, 2021

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

JOHN V. COGHLAN
Deputy Assistant Attorney General

ALEXANDER K. HAAS
Director, Federal Programs Branch

BRIGHAM BOWEN
Assistant Director, Federal Programs Branch

/s/ Keri L. Berman

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Counsel for Defendants

Office of the General Counsel
Department of Homeland Security
Washington, DC 20528



Homeland
Security

JAN 14 2021

The Honorable Michael R. Pence
President of the Senate
S-212, Capitol Building
Washington, DC 20510

Re: Federal Vacancies Reform Act Submissions

Dear Mr. Vice President:

On behalf of the Department, I submit forms for a *discontinuation of service in an acting role* and a *designation of an acting officer* for a position that is covered by the Federal Vacancies Reform Act of 1998, Pub. L. No. 105-277 as codified in 5 U.S.C. § 3345 *et seq.*

Should you have any questions or otherwise require agency contact in this matter, please contact Mr. Leo Boucher at [REDACTED] or via email at [REDACTED].

Sincerely,

A handwritten signature in blue ink, appearing to read "Neal J. Swartz".

Neal J. Swartz
Associate General Counsel for General Law

Attachments:

Discontinuation of service in an acting role DHS – Secretary
Designation of an acting officer, DHS – Secretary

Submission Under the Federal Vacancies Reform Act

Addressees

<input checked="" type="radio"/> President of the United States Senate	<input type="radio"/> Speaker of the U.S. House of Representatives	<input type="radio"/> Comptroller General of the United States
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This Report Provides Notification of:

<input type="radio"/> Vacancy	<input checked="" type="radio"/> Designation of acting officer	<input type="radio"/> Nomination	<input type="radio"/> Action on nomination
<input type="radio"/> Change in previously submitted reported information		<input type="radio"/> Discontinuation of service in acting role (date: _____)	

Name of Department or Agency and Any Suborganization

U.S. Department of Homeland Security, Office of the Secretary

Vacancy Title Secretary	Date Vacancy Began 04/10/19	
Name of Acting Officer Gaynor, Peter T.	Date Service Began 01/12/21	Authority for Acting Designation if Other Than Vacancies Act 6 USC § 113(g)(2); 5 USC 3345
Name of Nominee for Position	Date Nomination Submitted	
Action on Nomination: <input type="radio"/> Confirmed <input type="radio"/> Rejected, withdrawn, returned	Date of Action	

Agency Contact

Name and Title

Leo E. Boucher III, Asst. General Counsel, Administrative Law, General Law Division

Contact's Address

Department of Homeland Security

Contact's Phone Number [REDACTED]	Contact's E-Mail Address [REDACTED]
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Submitted By

Name and Title

Neal J. Swartz, Associate General Counsel for General Law

Signature



Telephone Number
[REDACTED]

Date

JAN 14 2021

For Congressional Use Only

Committee of Jurisdiction

Date Received

For GAO Use Only

GAO Control Number

Submission Under the Federal Vacancies Reform Act

Addressees

<input checked="" type="radio"/> President of the United States Senate	<input type="radio"/> Speaker of the U.S. House of Representatives	<input type="radio"/> Comptroller General of the United States
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<input type="radio"/> Vacancy	<input type="radio"/> Designation of acting officer	<input type="radio"/> Nomination	<input type="radio"/> Action on nomination
<input type="radio"/> Change in previously submitted reported information		<input checked="" type="radio"/> Discontinuation of service in acting role (date: <u>01/11/21</u>)	

Name of Department or Agency and Any Suborganization

U.S. Department of Homeland Security, Office of the Secretary

Vacancy Title Secretary	Date Vacancy Began 04/10/19	
Name of Acting Officer Wolf, Chad F.	Date Service Began 11/13/19	Authority for Acting Designation if Other Than Vacancies Act
Name of Nominee for Position	Date Nomination Submitted	
Action on Nomination: <input type="radio"/> Confirmed <input type="radio"/> Rejected, withdrawn, returned	Date of Action	

Agency Contact

Name and Title

Leo E. Boucher III, Asst. General Counsel, Administrative Law, General Law Division

Contact's Address

Department of Homeland Security

Contact's Phone Number	Contact's E-Mail Address
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Submitted By

Name and Title

Neal J. Swartz, Associate General Counsel for General Law

Telephone Number

Signature



Date

JAN 14 2021

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Committee of Jurisdiction

Date Received

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