



One Hundred Seventeenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

January 15, 2021

The Honorable Peter T. Gaynor
U.S. Department of Homeland Security
Washington, DC 20528

Dear Mr. Gaynor:

I write to you to express my continued confoundment regarding the Department of Homeland Security's (DHS) seemingly endless attempts to unlawfully amend the order of succession for the position of Secretary of Homeland Security. Moreover, I am profoundly dismayed at your involvement in a last-ditch effort to further the Department's failed efforts to ratify immoral Trump Administration policies that would harm those seeking a better life in the United States.

As you are aware, in August 2020, the Government Accountability Office (GAO) concluded that Mr. Chad Wolf was not lawfully serving in the position of Acting Secretary of Homeland Security. GAO reached this conclusion after identifying a series of invalid amendments to DHS's order of succession.¹ On January 11, 2021, Mr. Wolf abruptly resigned his unlawful position citing "recent events, including the ongoing and meritless court rulings regarding the validity of my authority as Acting Secretary."² Perhaps his resignation was a result of the Department realizing that as of January 6, Mr. Wolf could no longer be paid for performing the duties of the Acting Secretary.³

Upon his resignation, Mr. Wolf named you as his successor and returned to his Senate-confirmed position as the Under Secretary for the Office of Strategy, Policy, and Plans.⁴ For a few days, it appeared that DHS finally had a lawfully serving Acting Secretary according to the last valid order of succession. However, on January 13, it came to light that you were appointed by yet another invalid (and incorrectly dated) amendment to DHS's order of succession through a purported amendment attempted by Mr. Wolf who, as previously established, was acting unlawfully.⁵ It was

¹ *Matter of: Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security*, GOVERNMENT ACCOUNTABILITY OFFICE, Aug. 14, 2020, <https://www.gao.gov/products/B-331650>.

² Chad F. Wolf, A Message from Acting Secretary Chad F. Wolf, Aug. 11, 2021.

³ When the President withdrew Mr. Wolf's nomination on January 6 to be Secretary of Homeland Security it triggered Sec. 749 of the Omnibus Appropriations Act, 2009.

⁵ Chad F. Wolf, A Message from Acting Secretary Chad F. Wolf.

⁶ Order Designating the Order of Succession for the Secretary of Homeland Security https://www.dhs.gov/sites/default/files/publications/20_0111_order-of-succession-secretary-of-homeland-security.pdf, Jan. 11, 2021. The order was originally signed with the date 2020 and then later changed to 2021.

further revealed that after improperly assuming the position of Acting Secretary, you delegated to Mr. Wolf the authority to ratify actions that he could not legally enact during the 14 months he unlawfully led the department.⁶ On Wednesday, Mr. Wolf issued a memorandum in which he sought to ratify several immigration measures that have faced court challenges—including a U. S. Citizenship and Immigration Services visa fee schedule rule, a July 28 memo altering the Deferred Action for Childhood Arrivals program, several rules governing asylum processes, and the “public charge” rule.⁷

I am extremely disappointed that you willingly participated in the Department’s bungling attempts to legitimize its immoral actions. Your appointment under an invalid order of succession signed by Mr. Wolf calls into question your legitimacy as Acting Secretary and therefore your ability to delegate any authority to Mr. Wolf in his Senate-confirmed position of Under Secretary. I hope the courts continue to recognize that DHS’s attempts to legitimize its immigration policies are unlawful. I urge that in the few days that remain in the Trump Administration, you refrain from any other attempts to subvert the order of succession.

Sincerely,



BENNIE G. THOMPSON
Chairman

⁶ *DELEGATION TO THE UNDER SECRETARY FOR STRATEGY, POLICY, AND PLANS TO ACT ON FINAL RULES, REGULATIONS, AND OTHER MATTERS*, DEPT. OF HOMELAND SECURITY, Jan. 12, 2021, https://www.dhs.gov/sites/default/files/publications/20_0112_delegation-23028-final-rules-regulations-other-matters.pdf.

⁷ Shaun Courtney and Genevieve Douglas, *Former DHS Head Seizes New Powers to Cement Controversial Rules*, BLOOMBERG GOVERNMENT, Jan. 13, 2021