



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

August 27, 2020

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
245 Murray Lane, S.W.
Washington, D.C. 20528-0305

Dear Inspector General Cuffari:

We write today to urge the Department of Homeland Security Office of Inspector General (DHS OIG) to expeditiously review the matters referred to it by the Government Accountability Office (GAO) in its August 14 legal opinion regarding the legality of the appointments of Mr. Chad Wolf as the Acting Secretary of Homeland Security and Mr. Kenneth Cuccinelli as the Senior Official Performing the Duties of Deputy Secretary.¹

As you are aware, GAO determined that,

“Upon Secretary Kirstjen Nielsen’s resignation on April 10, 2019, the official who assumed the title of Acting Secretary had not been designated in the order of succession to serve upon the Secretary’s resignation. Because the incorrect official assumed the title of Acting Secretary at that time, subsequent amendments to the order of succession made by that official were invalid and officials who assumed their positions under such amendments, including Chad Wolf and Kenneth Cuccinelli, were named by reference to an invalid order of succession.”²

GAO did not review the legality of actions taken by these officials following their invalid appointments but referred that matter to your office for review. GAO also referred to you the question of who should be serving as the Acting Secretary and the Senior Official Performing the Duties of Deputy Secretary.³

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 *Id.*

³ *Id.*

While improperly serving as Acting Secretary and the Senior Official Performing the Duties of Deputy Secretary, Mr. Wolf and Mr. Cuccinelli directed DHS to take a number of actions of significant consequence. Uncertainty in the legality of these policies undermines public trust. These actions, among many others, include:

- Deploying DHS law enforcement officers to subdue peaceful protestors in Washington, DC and Portland. Federal officers repeatedly used aggressive and violent tactics including arresting protestors without probable cause.⁴
- Suspending New Yorkers' ability to enroll or re-enroll into Global Entry and other Trusted Traveler programs in February 2020.⁵
- Approving a move to limit oversight of the Department's Office of Intelligence and Analysis by constraining the role of the Office of Civil Rights and Civil Liberties in approving intelligence products.⁶

To restore the faith of the American public in DHS, it is imperative that the DHS OIG swiftly investigate the matters referred to it by GAO. We request that you brief our Committees no later than September 4, 2020 on your office's investigative plan. Thank you for your urgent attention to this matter.



BENNIE G. THOMPSON
Chairman
Committee on Homeland Security



CAROLYN B. MALONEY
Chairwoman
Committee on Oversight and Reform

⁴ Katie Shepherd and Mark Berman, *'It was like being preyed upon': Portland protestors say federal officers in unmarked vans are detaining them*, THE WASHINGTON POST, July 17, 2020, <https://www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/>.

⁵ Scott Neuman, *DHS Restores New York To Trusted Traveler Program, Admits False Statements In Lawsuit*, NPR, July 24, 2020, <https://www.npr.org/2020/07/24/894965662/dhs-restores-new-york-to-trusted-traveler-program-admits-false-statements-in-law>.

⁶ Shane Harris, *DHS Compiled 'Intelligence Reports' on Journalists Who Published Leaked Documents*, THE WASHINGTON POST, July 30, 2020, https://www.washingtonpost.com/national-security/dhs-compiled-intelligence-reports-on-journalists-whopublished-leaked-documents/2020/07/30/5be5ec9e-d25b-11ea-9038-af089b63ac21_story.html.