



U.S. Department of
Homeland Security

DHS Statement on Recent Challenges to Acting Secretary Wolf's Authority

Acting Secretary Chad Wolf continues to exercise authority as the head of the Department of Homeland Security in line with the succession orders issued by former Secretary Kirstjen Nielsen and former Acting Secretary Kevin McAleenan. On the basis of those orders, since November 2019, Acting Secretary Wolf has exercised the lawful authority to take actions that are the subject of current litigation challenges. Acting Secretary McAleenan lawfully issued a number of actions on the basis of his authority via the Nielsen succession order that are also the subject of current litigation.

Given the issuance of the Nielsen and McAleenan succession orders, no ratifications of prior Acting Secretary Wolf and former Acting Secretary McAleenan actions are necessary. Nevertheless, out of an abundance of caution and to minimize any potential disruption to the Department and the Administration's Homeland Security mission, the Department has taken alternative action to re-confirm Acting Secretary Wolf's lawful exercise of authority, even if Executive Order 13753 issued in December 2016 were to have remained the governing succession order for the Department. On November 14, 2020, Peter Gaynor, the Administrator of the Federal Emergency Management Agency (FEMA), exercised any authority of the position of Acting Secretary that he had to designate an order of succession under 6 U.S.C. § 113(g)(2). This occurred after the President submitted Acting Secretary Wolf's nomination to the Senate on September 10, 2020, and provides an alternative basis for Acting Secretary Wolf's authority.

Mr. Gaynor's order re-issued the order of succession established by former Acting Secretary McAleenan on November 8, 2019, and placed the Under Secretary for Strategy, Policy, and Plans above the FEMA Administrator in the order of succession. Once Mr. Gaynor's order was executed, it superseded any authority Mr. Gaynor may have had under the Federal Vacancy Reform Act and confirmed Acting Secretary Wolf's authority to continue to serve as the Acting Secretary.




After Mr. Gaynor signed the November 14, 2020 order, out of an abundance of caution and to minimize any disruption to the Department and the Administration's Homeland Security mission, Acting Secretary Wolf ratified any and all of his own actions taken since November 13, 2019, as well as certain actions taken by former Acting Secretary McAleenan.

The Department continues to evaluate its legal options in these cases and is working to ensure the Administration's challenged policies and regulations remain in effect.

Topics:

[Homeland Security Enterprise](#) (/topics/homeland-security-enterprise), [Secretary of Homeland Security](#) (/topics/secretary-homeland-security).

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Attachment	Ext.	Size	Date
 Order Designating the Order of Succession for the Secretary of Homeland Security (.https://www.dhs.gov/sites/default/files/publications/20_1114_gaynor-order.pdf)	PDF	83.42 KB	11/14/2020
 Ratification of Actions Taken by the Acting Secretary of Homeland Security (.https://www.dhs.gov/sites/default/files/publications/20_1116_as1-global-ratification.pdf)	PDF	213.8 KB	11/16/2020
 Ratification of Certain Actions Taken by Former Acting Secretary Kevin McAleenan and One Action Taken by Joseph Edlow (.https://www.dhs.gov/sites/default/files/publications/20_1116_ratification-of-mcaleenan-edlow-actions.pdf)	PDF	521.04 KB	11/16/2020

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