

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<p>MAKE THE ROAD NEW YORK, <i>et al.</i>,</p> <p><i>Plaintiffs,</i></p> <p>v.</p> <p>KENNETH CUCCINELLI, <i>et al.</i>,</p> <p><i>Defendants.</i></p>	<p>No. 19-07993 (GBD)</p>
<p>STATE OF NEW YORK, <i>et al.</i></p> <p><i>Plaintiffs,</i></p> <p>v.</p> <p>U.S. DEPARTMENT OF HOMELAND SECURITY, <i>et al.</i></p> <p><i>Defendants.</i></p>	<p>No. 19-cv-07777 (GBD)</p>

**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](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](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](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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JOSHUA M. KOLSKY

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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**

- President of the United States Senate     
  Speaker of the U.S. House of Representatives     
  Comptroller General of the United States

**This Report Provides Notification of:**

- Vacancy     
  Designation of acting officer     
  Nomination     
  Action on nomination  
 Change in previously submitted reported information     
  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 <b>Secretary</b>		Date Vacancy Began <b>04/10/19</b>
Name of Acting Officer <b>Gaynor, Peter T.</b>	Date Service Began <b>01/12/21</b>	Authority for Acting Designation if Other Than Vacancies Act <small>6 USC § 113(g)(2); 5 USC 3345</small>
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



**Submitted By**

Name and Title

**Neal J. Swartz, Associate General Counsel for General Law**

Telephone Number



Signature

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

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- Vacancy     
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 Change in previously submitted reported information     
  Discontinuation of service in acting role  
 (date: 01/11/21 )

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:

- Confirmed     
  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]

**Submitted By**

Name and Title

Neal J. Swartz, Associate General Counsel for General Law

Telephone Number

[REDACTED]

Signature

*Neal J. Swartz*

Date

JAN 14 2021

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Committee of Jurisdiction

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