

Congress of the United States
Washington, DC 20515

December 3, 2019

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G. Street, NW
Washington, DC 20548

Dear Comptroller General Dodaro:

The Congressional Hispanic Caucus (CHC) joins Chairman Bennie G. Thompson and Chairwoman Carolyn B. Maloney in requesting an expedited review to resolve whether Mr. Chad Wolf and Mr. Ken Cuccinelli are legally serving in their respective positions as Acting Secretary of Homeland Security and as Senior Official Performing the Duties of Deputy Secretary. We also join the Chairs' request in asking the U.S. Government Accountability Office (GAO) to resolve whether Mr. Kevin K. McAleenan legally served in the position of Acting Secretary of Homeland Security.

The Federal Vacancies Reform Act (FVRA) generally limits the period an acting official can perform the functions and duties of certain vacant positions that require presidential appointment and Senate confirmation to 210 days, beginning on the date the vacancy occurs.¹ Former Homeland Security Secretary Kirstjen M. Nielsen resigned on April 10th, 2019 triggering the 210 day statutory limit, which ended on November 6th, 2019. Since November 7th, 2019, two Acting Secretaries have served while the President has failed to formally nominate a candidate for Secretary.

On April 10th, prior to her departure, then-Secretary Kirstjen M. Nielsen updated the "DHS Orders of Succession and Delegations of Authorities for Named Positions," but did not change the order of succession,² leaving in place the line of succession under Executive Order 13753 (EO 13753).³ As the Chairs point out, per the EO 13753, Mr. McAleenan was not next in the order of succession possibly rendering his appointment unlawful from the start under the Homeland Security Act. Therefore, his "Amendment to the Order of Succession for the Secretary of Homeland Security," issued on November 8, 2019,⁴ which serves as the basis for Mr. Wolf's appointment, may be invalid—because Mr. McAleenan was never properly named Acting Secretary in the first place, or alternatively because the Amendment came after the 210-day statutory limit for Acting officials under the FVRA.

¹ 5 U.S.C. § 3346(a)(1)

² Department of Homeland Security, *DHS Orders of Succession and Delegations of Authorities for Named Positions* (Apr. 10, 2019).

³ Exec. Order No. 13753, 81 Fed. Reg. 90667 (Dec. 9, 2016).

⁴ Department of Homeland Security, *Amendment to the Order of Succession for the Secretary of Homeland Security* (Nov. 8, 2019).

The CHC is gravely concerned that DHS's top officials may be serving in violation of the law and will continue to do so until the GAO makes a determination. The Department, at the direction of agency leadership, continues to introduce consequential policy although their decisions may be in legal jeopardy. Therefore, the CHC joins Chairman Thompson and Chairwoman Maloney in urging an expedited review to resolve whether Mr. Wolf and Mr. Cuccinelli are legally serving in their respective positions and whether Mr. McAleenan legally served as Acting Secretary of Homeland Security.

Sincerely,



Joaquin Castro
Chair
Congressional Hispanic Caucus



Ruben Gallego
First Vice Chair
Congressional Hispanic Caucus



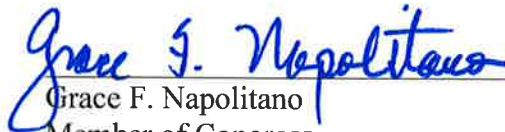
Nanette Diaz Barragan
Second Vice Chair
Congressional Hispanic Caucus



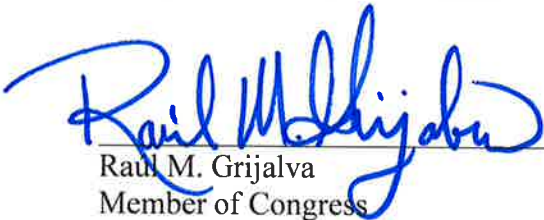
Adriano Espaillat
Whip
Congressional Hispanic Caucus



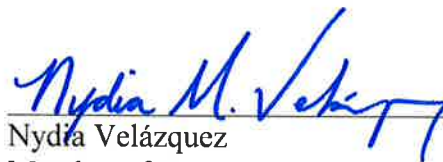
Veronica Escobar
Freshman Representative
Congressional Hispanic Caucus



Grace F. Napolitano
Member of Congress



Raul M. Grijalva
Member of Congress



Nydia Velázquez
Member of Congress



Sylvia R. García
Member of Congress



Juan Vargas
Member of Congress



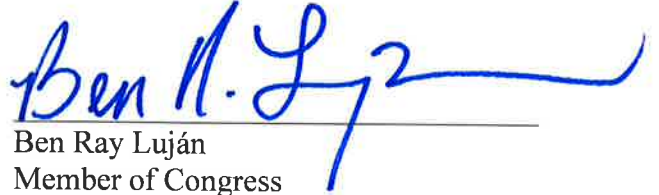
Jesus G. "Chuy" García
Member of Congress



Albio Sires
Member of Congress



J. Luis Correa
Member of Congress



Ben Ray Luján
Member of Congress



Norma Torres
Member of Congress



Tony Cárdenas
Member of Congress



Linda T. Sánchez
Member of Congress