Government watchdog concludes acting heads of Homeland Security were illegally appointed by Trump

Jacob Crosse
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On Friday the Government Accountability Office (GAO), a congressional watchdog, issued a legally non-binding report which found the current head of the Department of Homeland Security (DHS), Chad Wolf, and his deputy secretary, Kenneth Cuccinelli, were not legally appointed to their roles pursuant to the Federal Vacancies Reform Act of 1998.

Throughout his presidency Donald Trump has sought to circumvent congressional approval for department heads through the technique of appointing "acting" secretaries after previous heads resigned. In this way Trump has cultivated, and is seeking to expand, his personalist fascist base of support within the leadership of DHS and throughout the state apparatus.

The DHS, with its 240,000 employees and nearly $50 billion budget for fiscal year 2021, currently has no Senate-approved leadership. The agency has been wielded by the Trump administration as a personal army directed at terrorizing the working class under conditions of mounting opposition to the homicidal policies pursued by the ruling class against workers and immigrants.

Under the leadership of Wolf and Cuccinelli in the last three months DHS thugs have been found kidnapping fathers on their way to work, disappearing and shooting protesters in Portland, raiding a humanitarian aid camp in southern Arizona and developing "intelligence products" on US journalists.

Both appointees have made frequent appearances on Fox News and delivered congressional testimony in which they have vilified protesters as "anarchist terrorists." At a congressional hearing last week Wolf defended DHS snatching protesters off the streets in unmarked vans as a "common de-escalation tactic."

The GAO investigation found that Wolf and Cuccinelli were part of an "invalid order of succession" after the previous head of the DHS, Kirstjen Nielsen, resigned from the agency on April 10, 2019. After Nielsen's resignation, she named Customs and Border Protection (CBP) Commissioner Kevin McAleenan as her designated successor, in violation of the then existing designation which required the director of the Cybersecurity and Infrastructure Security Agency (CISA), Christopher Krebs, to assume the title of acting secretary.

Since McAleenan was not the legal successor to Nielsen, the GAO ruled that the subsequent accessions of Wolf and Cuccinelli in November, after McAleenan submitted his resignation on October 11, were likewise not valid and therefore recommended that the DHS inspector general conduct a "review."

Friday's report will likely reverberate throughout the courts as judges could be persuaded to dismiss some DHS actions as illegal given the leadership didn't have proper authority to act. Speaking to NPR, Anne Joseph O'Connell, a law professor at Stanford University, remarked that the GAO findings "could be very persuasive in the courts."

Wolf, who previously served as chief of staff under Nielsen, assumed the position of acting secretary in November 2019 after he was approved by 54–41 vote in the Senate for the position of DHS undersecretary for strategy, plans and policy and then elevated into the vacant secretary role. Wolf, unlike his previous boss, has a positive working relationship with the de facto shadow secretary of the DHS, Trump's openly fascist advisor Stephen Miller.

The GAO report was careful to note that its purpose was not to render a verdict on the legality of any of the repressive policies or actions Wolf or Cuccinelli have overseen since illegally assuming their roles.

House Homeland Security Committee Chair Bennie

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Thompson (Democrat-Mississippi) and then-acting House Oversight and Government Reform Chair Carolyn Maloney (Democrat-New York), who originally ordered the GAO investigation, released a statement following its release Friday writing that, “Mr. Wolf should immediately step down and return to his Senate-confirmed position as undersecretary for strategy, policy and plans.”

“As for Mr. Cuccinelli, a political pundit plucked by the President to serve in multiple senior roles at DHS for which he is woefully unqualified, he should immediately resign from the federal government and retire his unprofessional official Twitter account.”

In a statement released Friday, Senate Minority Leader Chuck Schumer stated that the report’s determination invalidated “actions Mr. Cuccinelli and Mr. Wolf have taken and both should immediately step down from their illegal roles.”

As their statements made clear, Schumer, Thompson and Maloney, along with the rest of the Democratic Party, are not calling for Wolf’s resignation from government entirely, in fact, they wish him to return to his senior position within the DHS to continue the work of oppressing and terrorizing the working class.

This isn’t the first time Trump’s appointments have come under scrutiny. Under the same Vacancies Act, a federal judge in March ruled that Cuccinelli was serving illegally as head of US Citizenship and Immigration Services and that any policy directives Cuccinelli issued, including limiting the amount of time asylum seekers could seek legal counsel upon entering the country, were invalid. The Trump administration dropped a formal appeal to the judge’s ruling on Thursday prior to the release of the GAO report.

Upon the release of the report, DHS spokesman Nathaniel Madden issued a terse statement which read in part: “We wholeheartedly disagree with the GAO’s baseless report and plan to issue a formal response to this shortly.”

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