

Citing illegal appointment of acting Homeland Security secretary, judge invalidates Trump's restrictions on DACA program

Jacob Crosse
15 November 2020

On Saturday, a federal judge in New York, Nicholas Garaufis, ruled that acting Department of Homeland Security (DHS) Secretary Chad Wolf had not been legally appointed as head of the agency, and therefore his July 28 memorandum suspending applications and limiting protections for immigrants in the Deferred Action for Childhood Arrivals (DACA) program was illegal.

The ruling, which is subject to appeal, centered on the fact that Wolf was not legally appointed to his position as head of the DHS pursuant to the Federal Vacancies Reform Act of 1998. The appointment, according to the judge, also violated the Homeland Security Act of 2002.

In August, the Government Accountability Office, a congressional watchdog, ruled that Wolf and his deputy secretary, Kenneth Cuccinelli, were both illegally appointed.

After a 5–4 Supreme Court ruling in June blocked DHS's plan to "immediately end" DACA, the so-called "Wolf Memorandum" was issued on July 28, which barred DHS from accepting new applications and cut the protections for immigrants who already had them from two years to one. It also prevented so-called Dreamers, i.e., DACA recipients, from leaving the country and returning.

The DACA program was implemented by the Obama administration in 2012 in an attempt to placate anger among immigrants, in advance of that year's presidential election, over Obama's brutal deportation policy. During his first four years in office, Obama deported record numbers of undocumented immigrant workers and family members.

DACA provides limited protection from deportation

for undocumented immigrants who were brought into the US as children. It offers no pathway to citizenship for the roughly 700,000 youth who have registered for the program. As part of the application process, applicants are required to provide all of their identifying information, including personal and work addresses, putting them squarely in the sights of fascistic Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) agents.

Wolf has been serving as acting head of the DHS since November 2019, after being elevated to fill the position after the removal of Kevin McAleenan, former head of the CBP, who had been leading the department since Kirstjen Nielsen resigned in April 2019. Throughout Trump's presidency, he has sought to cultivate a personalist apparatus through the appointment of "acting" officials who are not subject to the traditional Senate confirmation process.

"DHS failed to follow the order of succession as it was lawfully designated," Judge Garaufis, a Bill Clinton appointee, wrote in his decision. "Therefore the actions taken by purported acting secretaries, who were not properly in their roles according to the lawful order of succession, were taken without legal authority."

As head of DHS, Wolf, along with Cuccinelli, have dutifully followed President Donald Trump's directives to attack protests against police violence and increase the persecution of working class immigrants and their families. In Portland, Oregon, Wolf personally oversaw the deployment of hundreds of federal police and paramilitary agents against the public opposition of the mayor and governor.

It is entirely possible that Wolf will be confirmed by the Senate and the restrictions he had imposed, which

all but eliminated the DACA program, will be allowed to proceed, paving the way for the deportation of thousands of young people. A September Senate confirmation hearing revealed bipartisan support for Wolf, who received glowing praise from Republican Senators Ron Johnson of Wisconsin and James Lankford of Oklahoma.

At the hearing, the ranking member of the Senate Homeland Security Committee, Michigan Democrat Gary Peters, did not see fit to question Wolf on numerous constitutional violations the DHS has committed under his leadership, from the kidnapping and disappearing of protesters to the raiding of humanitarian camps on the southern border and the forced sterilization of immigrant women. Nor did the Democrats on the panel make an issue of the deployment of federal agents against peaceful protesters outside the White House during Trump's June 1 coup attempt.

Instead, Peters spent the bulk of his testimony seeking to resuscitate the conspiracy theory that Trump is an unwitting agent of Russia, who has weakened US national security by withholding arms to US-backed forces in Ukraine. This has been at the center of the Democratic Party's opposition to Trump for the entirety of his administration, not Trump's fascistic attacks on immigrants, his incitement and promotion of far-right forces and his massive handouts to the corporate-financial elite.

CNN has reported that Trump is pushing to get Wolf confirmed as secretary and has been in close contact with Senate Majority Leader Mitch McConnell's office about bringing the nomination up for a vote "within a matter of weeks."



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact