

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

CASA DE MARYLAND, INC., et al

Plaintiffs,

v.

WOLF, et al

Defendant.

Civil No. 20-2118-PX

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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August 3, 2020

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## INTRODUCTION

To be granted asylum in the United States, an individual must establish that she has experienced persecution or has a well-founded fear of future persecution on account of one of the five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. Only a small fraction of asylum applicants is eventually granted status. Once an individual is granted asylum, that person is automatically permitted to work incident to status as an asylee. 8 U.S.C. § 1158(c)(1). While an individual's application for asylum is pending, there is no right to work. 8 U.S.C. § 1158(d)(2) (“[a]n applicant for asylum is not entitled to employment authorization.”) Although Congress did not provide asylum applicants the right to work, it did grant the Department of Homeland Security (DHS) the discretionary authority to provide for such authorization. Congress limited DHS's authority in one important way, however: “An applicant who is not otherwise eligible for employment authorization shall not be granted work authorization prior to 180 days after the date of filing of the application for asylum.” 8 U.S.C. § 1158(d)(2).

This case challenges two rules recently promulgated by DHS, after periods of notice and comment, related to employment authorization to individuals who have applied for, but have not yet been granted, asylum. The first rule, referred to herein as the “Timeframe Rule” repeals a rule that was promulgated over 20 years ago that required DHS to grant or deny applications for employment authorization to asylum seekers within 30 days of submission to ensure U.S. Citizenship and Immigration Services (USCIS) has sufficient time to receive, screen, and process the EAD applications. The second rule, referred to herein as the “Broader EAD Rule,” modifies regulations governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application in order to address the national emergency and humanitarian crisis at the

border. Both rules were promulgated in accordance with the Administrative Procedure Act (APA) after a 60-day notice and comment period and careful consideration of the problem and facts at issue. DHS articulated a satisfactory explanation for the promulgation of both final rules. For the reasons addressed below, plaintiffs' motion for a preliminary injunction should be denied.

## **STATUTORY AND REGULATORY FRAMEWORK**

### **A. Statutory Framework for Employment Authorization for Asylum Seekers**

Section 103(a) of the Immigration and Nationality Act (INA) 8 U.S.C. 1103(a), authorizes the Secretary of Homeland Security to administer and enforce the immigration and nationality laws and to establish such regulations as deemed necessary for carrying out such authority. The current statutory framework was adopted in 1996 with the passage of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), which states that an applicant for asylum is “not entitled to employment authorization,” and may not be granted an employment authorization document (EAD) based on a pending asylum application prior to 180 days after filing of the asylum application. 8 U.S.C. 1158(d)(2). The statute leaves to the discretion of the Secretary to otherwise prescribe by regulation the terms and conditions of employment authorization for asylum applicants. The regulatory regime surrounding employment authorization for asylum applicants that was subsequently established is briefly outlined in the following section, as well as the regulatory changes made in the two challenged rulemakings.

### **B. Regulatory Framework Related to Employment Authorization Applications Filed by Asylum Applicants**

The Refugee Act of 1980 established the current asylum and refugee system. In the years following the Refugee Act's enactment, the number of asylum applications steadily increased and the United States saw a steady rise in illegal immigration. 85 Fed. Reg. 38532 at 38544. A contributing

factor to these increases was regulations that provided individuals with employment authorization based on pending asylum application, thereby incentivizing the filing of non-meritorious asylum claims or other forms of relief for the purpose of obtaining employment authorization. *Id.* at 38544. Specifically, the implementing regulations for IRCA provided that aliens could receive an interim EAD if INS did not adjudicate the application for employment authorization within 60 days (former 8 CFR 274a.12(c) and (d)).<sup>1</sup> In 1990, the INS promulgated a regulation providing interim EADs to any alien who had filed a non-frivolous asylum application, and allowed for renewal of employment authorization for the time needed to adjudicate the asylum application (former 8 CFR 208.7(a)). *Id.* at 38544.

In 1994, as part of a series of reforms to the overall asylum process, the Department of Justice (DOJ) made regulatory amendments to streamline the adjudication process for asylum applications submitted to the INS and to separate asylum adjudications from the employment authorization process. 59 Fed. Reg. 62284, 62290 (Dec. 5, 1994). The purpose of the rule was to “discourage applicants from filing meritless [asylum] claims solely as a means to obtain employment authorization,” so that asylum officers and IJs could “concentrate their efforts on approving meritorious claims.” *Id.* In order to disincentivize the filing of meritless claims, the 1994 rule provided that applicants must wait 150 days after the filing of a complete asylum application before becoming eligible to apply for employment authorization rather than being immediately authorized with the filing of an asylum application. *Id.* The 1994 rule also established a self-imposed 30-day timeframe for INS to adjudicate

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<sup>1</sup> The 60-day period was subsequently extended to 90-days with the publication of the final rule, *Powers and Duties of Service Officers; Availability of Service Records, Control of Employment of Aliens*, 56 Fed. Reg. 41767-01 (Aug. 23, 1991).

such EAD applications.<sup>2</sup> *Id.* at 62289-90 (Dec. 5, 1994), codified at 8 C.F.R. § 208.7 (1994). The 180-day time frame for EAD eligibility was codified by Congress in IIRIRA in 1996.

The current regulatory regime provides that asylum applicants filing after January 4, 1995, will be granted employment authorization if several criteria are met. 8 CFR 208.7. Over time, given the growing backlog and delays in asylum adjudication that can extend from months into years, it became clear that these asylum reform-era regulations were insufficient to disincentivize non-meritorious asylum applications for the purpose of seeking employment authorization, thereby necessitating (in part) the challenged rulemakings that update this regulatory scheme.

### **C. Development and Publication of the Final 30 Day-Time Frame Removal Rule (“Final Timeframe Rule”)**

In the Spring of 2018, DHS provided public notice of its intent to amend the 30-day regulatory timeframe to adjudicate EAD applications by asylum seekers.<sup>3</sup> On September 9, 2019, USCIS proposed to amend the 30-day regulatory timeframe. 84 Fed. Reg. 47148 (“Proposed Timeframe Rule”). During a 60-day comment period, DHS received over 3,200 comments. After review and analysis of public comments, it published the Final Timeframe Rule on June 22, 2020, keeping all material respects from the Proposed Timeframe Rule. 85 Fed. Reg. 37502.

DHS provided multiple reasons for promulgating the Proposed and Final Timeframe Rule. Specifically, the 30-day timeframe in 8 CFR 208.7(a)(1) was established more than 20 years ago when INS adjudicated EAD applications at local INS offices. *Id.* The 30-day timeframe does not account

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<sup>2</sup> The 180-day time frame was based on processing time frame goals that DOJ had set for asylum officers and immigration judges to adjudicate asylum cases that appeared reasonable at that time, when the volume of cases was substantially lower. Current adjudication time is often beyond two years. 85 Fed. Reg. at 38563.

<sup>3</sup> See Office of Information and Regulatory Affairs’ Spring 2018 Unified Agenda, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1615-AC19>.

for the current volume of applications and no longer reflects current operational realities. *Id.* at 37507-08. Increases in EAD applications have outpaced USCIS' resources over the last 20 years. *Id.* at 37508. The level of fraud sophistication and national security concerns posed today are more complex than they were 20 years ago. Lastly, changes in intake and document production to reduce fraud and address threats to national security, as well as the time necessary for appropriate vetting to address such concerns, are not reflected in the current regulatory timeframe. 85 Fed. Reg. 37518. Thus, DHS proposed and finalized its rule to remove this temporal limitation.

Additionally, on May 22, 2015, plaintiffs in *Rosario v. USCIS*, No. C15-0813JLR (W.D. Wash.), brought a class action in the U.S. District Court for the Western District of Washington to compel USCIS to comply with the 30-day provision of 8 CFR 208.7(a)(1). On July 26, 2018, the court enjoined USCIS from failing to adhere to the 30-day deadline for adjudicating EAD applications. Compliance with the court order places an extraordinary strain on already strained agency resources. *Id.* at 37510.<sup>4</sup>

DHS thoughtfully responded to the comments received. USCIS stated in the Final Timeframe Rule that it believed<sup>5</sup> that under the new rule, adjudications will align with DHS processing times achieved in FY 2017. *Id.* at 37503. Pre-*Rosario*, USCIS adjudicated approximately 78 percent of applications within 60 days. *Id.* The change was intended to ensure USCIS has sufficient time to receive, screen, and process requests for asylum application-based employment authorization and to reduce fraud. 85 Fed. Reg. at 37502.

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<sup>4</sup> USCIS has moved the Court to vacate the court's injunction "as of the effective date of the amendment to 8 C.F.R. § 208.7(a)(1), and has advised the court of this litigation.

<sup>5</sup> This assumption does not take into account any delays related to COVID-19. *See* 85 Fed. Reg. 37502 at 37503.

**D. Development and Publication of the Final Rule on Asylum Application, Interview, and Employment Authorization (“Broader EAD Final Rule”)**

In the Fall of 2018, DHS provided public notice of its intent to modify regulations governing employment authorization for asylum applicants.<sup>6</sup> The following spring, on April 29, 2019, the White House issued a “Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System,” which, among other things, directed the Secretary of Homeland Security to propose regulations to bar aliens who entered or attempted to enter the U.S. unlawfully from receiving employment authorization prior to adjudication of their asylum application and immediately revoke employment authorization of those aliens denied asylum or ordered removed. *See* 2019 Daily Comp. Pres. Doc. 251 (Apr. 29, 2019). The PM stated that the “strategic exploitation of our Nation’s humanitarian programs undermines our Nation’s security and sovereignty and noted that “[t]he purpose of [the] memorandum is to strengthen asylum procedures to safeguard our system against rampant abuse of our asylum process.” *Id.*

On November 14, 2019, DHS published a notice of proposed rulemaking, with a 60-day comment period. *See* 84 Fed. Reg. 62374 (“Broader EAD NPRM”). The NPRM proposed to modify regulations governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application in order to, *inter alia*, address the national emergency and humanitarian crisis at the border. On January 13, 2020, the Broader EAD NPRM comment period closed. DHS received 1,074 comment submissions. On June 26, 2020, after careful consideration of

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<sup>6</sup> *See* Office of Information and Regulatory Affairs’ Fall 2018 Unified Agenda, *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1615-AC27> (“The Department of Homeland Security (DHS) plans to propose regulatory amendments intended to promote greater accountability in the application process for requesting employment authorization and to deter the fraudulent filing of asylum applications for the purpose of obtaining Employment Authorization Documents (EADs).”).

the public comments, DHS published the Final Rule, addressing comments, making numerous revisions to the proposed rule based on public comments, and providing a reasoned, detailed analysis in support of its decisions. 85 Fed. Reg. 38532.

The Broader EAD NPRM and Final Rule's objectives to address the national emergency and humanitarian crisis at the border are multi-fold. The overarching impetus of the rule is to mitigate ongoing harms to asylum seekers caused by waves of economic migrants abusing and taxing the asylum system. *See e.g.*, 85 Fed. Reg. at 38544. DHS crafted the regulation to disincentivize illegal entry into the United States, as well as reduce incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications in order to obtain employment authorization. *Id.* at 38533. The rule seeks to address the asylum application backlog, which has grown at an unprecedented rate beginning in 2016, and has hindered efficient receipt, processing and timely adjudication of asylum applications in recent years. *Id.* at 38545. DHS also sought to increase efficiencies in the asylum EAD adjudication process generally. *Id.* at 38533. The rule strives to reduce incentives for applicants to delay asylum proceedings to extend their period of employment authorization. *Id.* Some of the major provisions contained in the NPRM that were altered, modified, and/or accepted in the Final Rule are discussed below.

First, in order to remove incentives for individuals to file asylum applications as a means to secure employment authorization, and to streamline the EAD adjudication process, the Broader EAD NPRM proposed to extend the time period applicants must wait to be eligible to be granted an EAD following the filing of an asylum application from 180 days, not including delays caused or requested by the applicant, to 365 calendar days. 84 Fed. Reg. 62374 at 62388-89. In other words, DHS proposed

to no longer use the 180-Day Asylum EAD Clock<sup>7</sup> and instead, deny EAD applications if there is an unresolved applicant-caused delay at the time the EAD application was adjudicated by the agency. After careful consideration of comments, DHS amended the Broader EAD Final Rule so that an EAD application would be denied if the asylum case was subject to an applicant-caused delay at the time the EAD application is filed, rather than date of adjudication. 85 Fed. Reg. 38532 at 38537-38.

Second, as part of the efforts to reform the asylum system, reduce the asylum backlog, incentivize bona fide asylum applicants to file sooner, and discourage aliens from filing skeletal, frivolous, and fraudulent asylum applications, the Broader EAD NPRM proposed to exclude from EAD eligibility aliens who failed to file for asylum within one year of the date of their last arrival in the U.S. as required by statute, unless and until an asylum officer or immigration judge determined a statutory exception or if the applicant was an unaccompanied alien child (UAC). 84 Fed. Reg. 62374 at 62390. In response to the concerns raised by commenters regarding retroactive application, DHS narrowed application of this provision to only aliens who filed their underlying asylum application on or after August 25, 2020 effective date. 85 Fed. Reg. 38532 at 38537.

Third, in the Broader EAD NPRM, DHS proposed to bar aliens from EAD eligibility if they entered or attempted to enter the U.S. at a place and time other than lawfully through a U.S. port of entry, with limited exceptions for good cause. The good cause exception was clarified in the Final Rule based upon comments received. 84 Fed. Reg. 62374 at 62392; 85 Fed. Reg. 38532 at 385537. Further, DHS modified the effective date for this provision such that EAD eligibility is only curtailed if an alien's illegal entry or attempted entry occurs after August 25, 2020. *Id.* at 38537.

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<sup>7</sup> See EOIR-USCIS joint notice, *The 180-day Asylum EAD Clock Notice*, [https://www.uscis.gov/sites/default/files/Asylum\\_Clock\\_Joint\\_Notice\\_-\\_revised\\_06-08-2018.pdf](https://www.uscis.gov/sites/default/files/Asylum_Clock_Joint_Notice_-_revised_06-08-2018.pdf) (last updated June 8, 2018).

Fourth, The Broader EAD NPRM proposed to extend EAD ineligibility to a wider range of criminal behavior. DHS received public comments that criticized the agency for creating an EAD criminal bar scheme that deviated from bars to asylum. In the Broader EAD Final Rule, DHS discarded its proposed criminal bars in their entirety and instead aligned the EAD criminal bars to those enumerated in the joint DOJ/DHS Asylum Bars Rule as well as existing statutory criminal bars to asylum. 85 Fed. Reg. 38532 at 38537. The Asylum Bars Final Rule has not been published and made effective.

Finally, DHS carefully analyzed commenters' concerns about the NPRM's retroactive application to employment authorization applications pending prior to the effective date and determined to only apply the final rule's provisions to those EAD applications filed after the final rule's August 25, 2020, effective date. As a result, all initial and renewal EAD applications filed by asylum applicants pending prior to the effective date of the final rule are exempt from the rule's provisions.

**E. Federal Vacancies Reform Act and the Appointment of Chad Wolf as Acting Secretary of Homeland Security**

In 1998, Congress enacted the Federal Vacancies Reform Act ("FVRA"), 5 U.S.C. §§ 3345-3349d, to govern the designation of acting officials to perform the duties of a Senate-confirmed executive office when the incumbent officer "dies, resigns, or is otherwise unable to perform the functions and duties of the office." *Id.* § 3345(a). "[T]he person serving as an acting officer" under the FVRA may serve "for no longer than 210 days beginning on the date the vacancy occurs," subject to extensions while a nomination is under consideration, rejected, withdrawn, or returned by the Senate. *Id.* § 3346(a). In the National Defense Authorization Act for Fiscal Year 2017, Congress added section

113(g)(2) to the Homeland Security Act (title 6 United States Code), which states, “Notwithstanding chapter 33 of Title 5, the Secretary may designate such other officers of the Department in further order of succession to serve as Acting Secretary.”

For an accurate statement of the authority supporting Chad Wolf’s appointment as Acting Secretary of Homeland Security, the Court is referred to the Declarations of Juliana Blackwell, Deputy Executive Secretary, within the Office of the Executive Secretary, DHS (Blackwell Decl.), and Neal J. Swartz, Associate General Counsel for DHS (Swartz Decl), annexed hereto.

### **LEGAL STANDARD**

Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, moving parties must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Id.* at 20. “[C]ourts considering whether to impose preliminary injunctions must separately consider each *Winter* factor.” *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013).

### **ARGUMENT**

#### **I. PLAINTIFFS CANNOT ESTABLISH A LIKELIHOOD OF SUCCESS ON THE MERITS**

##### **A. APA Review of Final Agency Rules**

An agency final rule may only be set aside if the rule is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). When an agency intends to establish a binding legislative rule, it must have statutory authority to do so and follow the

notice-and-comment procedures for “informal rulemaking” under the APA. *See* 5 U.S.C. § 553(b); *Chrysler Corp. v. Brown*, 441 U.S. 281, 301-20 (1979). Informal rulemaking requires an agency to place notice of proposed rulemakings in the Federal Register, solicit comments on a rulemaking docket, and respond to significant comments along with the final rule containing a concise statement of the rule’s basis and purpose in the Federal Register. 5 U.S.C. § 553(b)-(c); *Little Sisters of the Poor v. Pennsylvania*, 591 U.S. \_\_\_, 207 L.Ed.2d 819, 840 (2020). The Court may not impose procedural requirements beyond what the APA or the enabling act requires. *Id.* (“we have repeatedly rejected courts’ attempts to impose ‘judge-made procedur[es]’ in addition to the APA mandates.”). Courts routinely presume that government officials “‘have properly discharged their official duties.’” *Almy v. Sebelius*, 679 F.3d 297, 309 (4th Cir. 2012) (quoting *United States v. Chem. Found. Inc.*, 272 U.S. 1, 14-15 (1926)); *Shieldalloy Metallurgical Corp. v. NRC*, 707 F.3d 371, 388 (D.C. Cir. 2013) (agency action is entitled to a presumption of regularity).

An agency rule is “arbitrary or capricious” if the agency: (1) relied on factors which Congress has not intended it to consider; (2) entirely failed to consider an important aspect of the problem; (3) offered an explanation for its decision that runs counter to the evidence before the agency; or, (4) offered an explanation so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983). Review under the “arbitrary and capricious” standard is “searching and careful,” but “narrow.” *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 377-78 (1989); *see also Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). The ultimate question under this narrow standard of review is whether the agency’s action was reasonable. *FCC v. Fox Television Stations*, 556 U.S. 502, 514-15 (2009). Courts should uphold a “decision [of] less than ideal clarity... if the agency’s

path may reasonably be discerned.” *Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461, 497 (2004). In cases like this one, which does not concern a statutory gap but rather the express grant of authority to prescribe rules and standards, the agency’s “judgment [is owed] more than mere deference of weight,” and courts give the agency interpretation controlling weight unless [it is] arbitrary, capricious, or manifestly contrary to the statute.” *Lindeen v. Securities and Exchange Commission*, 825 F.3d 646, 656 (D.C. Cir. 2016); see *City of Los Angeles v. Barr*, 929 F.3d 1163, 1177 (9th Cir. 2019) (in such circumstances “agency’s promulgations are entitled to more than mere deference or weight; rather, they are entitled to legislative effect”).

**B. The Final Timeframe Rule Was Promulgated Pursuant to Proper Procedure, Reflects Reasoned Decision-making, and is Not Arbitrary or Capricious**

Plaintiffs allege that the Timeframe Rule should be stayed, arguing that: (i) it was improperly considered separately from the Broader EAD Rules; (ii) DHS failed to consider the harms to bona fide asylum seekers; (iii) DHS failed to properly explain why a defined timeline was not included; and (iv) DHS failed to properly explain why it will no longer prioritize deciding initial EAD applications filed by asylum applicants. Plaintiffs are unable to establish the likelihood of success on the merits with respect to any of these grounds. The Timeframe Rule was promulgated after a 60-day notice of comment period, is consistent with Congressional delegated authority, and is rational in all respects.

**i. The Final Timeframe Rule Was Properly Considered With the Broader Eligibility Requirements**

Plaintiffs’ argue that DHS was required to consider the Timeframe Rule and the Broader EAD Rules together in one rulemaking process, and that the Agency’s refusal to do so violated the APA in three ways: by (1) depriving the public of a meaningful opportunity to comment on relevant and important issues; (2) failing to identify and respond to relevant, significant issues raised, to the

extent the public did comment on the interaction of the two rules; and (3) failing to consider important aspects of the problem. *See* Plaintiffs' Memorandum of Law (PI Motion) at 11-17.

It was wholly rational for the agency to initiate two separate notice and comment periods for two rules that were promulgated for different purposes, and doing so did not deprive the public with a meaningful opportunity to comment. The purpose of the Timeframe Rule is to ensure USCIS has sufficient time to receive, screen, and process the EAD applications. 85 Fed. Reg. 37502, 37502-37503. In contrast, the Broader EAD Rule is intended to modify regulations governing asylum applications, interviews, and eligibility for asylum application-based employment authorization in order to address the national emergency and humanitarian crisis at the border. 85 Fed. Reg. 38532, 38543.

Each NPRM informed the public about the existence of the other, and did not prohibit the public from providing comment on the impact one rule may have on another. *See* 84 Fed. Reg. 47148; Fed. Reg. 62374-75. In fact, the Timeframe NPRM itself addressed the possibility of some impacts of the Broader EAD Rules. 84 Fed. Reg. 47148 at 47150. ("USCIS recognizes that the impacts of this proposed rule could be overstated if the provisions in the broader asylum EAD NPRM are finalized as proposed."). Approximately 10 submission were received that provided comments on the Broader EAD propose rules. The Agency considered and responded to these comments and provided a rational explanation as to why the comments were deemed to be out of scope. Moreover, the Agency responded to the substance of the comments and rationally explained why the Broader EAD NPRM, if promulgated, was not material to whether or not the Timeframe Rule should be promulgated. *See* 85 Fed. Reg. 37502 at 37530-31 ("USCIS disagrees with the comment claim based on a reduction of EADs under the broad rule because of increased ineligibility. USCIS would still receive many EAD filings, although it is possible that more applications may not be approved due to the additional and/or

modified eligibility criteria proposed. In reality, because of the added criteria under the broader proposed rule, adjudication may become more complex.”). The Agency further considered and discussed the impact that the Broader EAD Rules, if promulgated, could have on its analysis. See 85 Fed. Reg. 37502 at 37504. (“USCIS recognizes that the impacts of this final rule could be overstated if the provisions of...the broader asylum EAD NPRM would limit or delay eligibility for employment authorization for certain asylum applicants. Accordingly, if the population of aliens is less than estimated as a result of the broader asylum EAD rule, the estimated impacts of this rule could be overstated because the population affected may be lower than estimated in this rule.”).

Thus, contrary to plaintiffs’ assertion, the public was not prevented from providing comment on the interaction between the two proposed rules, DHS considered these comments, recognized the impacts that the Broader EAD Rule may have if promulgated, and then rationally concluded that possibility of the Broader EAD being finalized did not alter the result with respect to the Timeframe Rule. This is all the APA requires.

The cases relied upon by plaintiffs are distinguishable in material ways. In *United Farm Workers*, for example, the Agency sought a 10-day notice and comment period seeking to revoke a 2008 regulation and reinstate the earlier 1987 regulation. 702 F.3d 755, 769 (4th Cir. 2012). Because the two regulations had already gone through the notice and comment process, and because the Agency expressed a need for expediency, the Agency solicited comments solely with respect to whether the 2008 regulation should be suspended, and explained that it would not consider comments concerning the substance or merits of the 2008 or 1987 regulation. It was in this context that the Court found that the Agency had violated the APA’s notice and comment requirements. The Court noted that the purpose of the suspension was due to difficulties in operating the program at issue under the 2008

regulations, “including a lack of resources, inability to implement operations, and processing delays.” *Id.* at 770. Based upon this purpose, the Court concluded that it was necessary for the agency to consider whether “the 2008 regulations was more or less efficient than the review process provided in the 1987 regulations,” since the 1987 regulations would replace the 2008 regulation is repealed. *Id.* Similarly, *California v. United States DOI*, 381 F. Supp. 3d 1153, 1174 (N.D. Cal. 2019) considered an Agency’s two separate rulemaking processes used to repeal an existing rule and to replace that same rule. In contrast to those facts, the two rules at issue in this case are not alternatives to one another, nor were they promulgated for the same purpose. This is an important distinction. Nor was the public directed to withhold any comments concerning any interaction between the two rules. And perhaps most importantly, DHS did consider, address, and explain the impact that the promulgation of the Broader EAD NPRM could have on the Timeframe Rule. None of these facts were present in *United Farm Workers* or *California*.

Plaintiffs also cite to *Bedford Cnty. Mem’l Hosp. v. Health & Human Servs.*, 769 F.2d 1017, 1020 (4<sup>th</sup> Cir. 1985) for the proposition that an agency must identify and respond to relevant, significant issues raised. As addressed above, DHS did just that here. Finally, plaintiffs’ citation to *Office of Comm’n of United Church of Christ v. FCC*, 707 F.2d 1413, 1440 (1983) is misplaced largely because that regulatory scheme was so different in kind from the regulatory scheme here. There, the Court was faced with the FCC’s decision to deregulate an industry in the face of a Congressional mandate requiring the FCC to regulate the industry “in the public interest.” *Id.* at 1420. Here, in contrast, Congress expressly provided that no right to employment authorization exists and left it to the discretion of DHS to determine if and how such authorization should be afforded. Moreover, when the Court in *United Church of Christ* referred to a concurrent rulemaking process, it did not hold, or even suggest, that the

FCC was required to proceed in one notice and comment period. Instead, it held that the FCC was required to “give sufficient consideration” to the proposed rules in the concurrent rulemaking proceeding. This is exactly what DHS did here.

**ii. The Final Timeframe Rules Properly Considered the Harms to Bona Fide Asylum Seekers**

Plaintiffs next argue that DHS failed to account for harms that the Timeframe Rule may inflict upon bona fide asylum seekers. *See* PI Motion at 17-20. Plaintiffs are incorrect. DHS expressly acknowledged the numerous comments stating, “asylum seekers would lose wages and benefits as a result of delayed entry into the U.S. labor force, which will cause an outsized, devastating amount of harm to this already-vulnerable community.” 85 Fed. Reg. 37502 at 37526. In response to these concerns, DHS acknowledged that the Rule may delay an applicant’s entry into the workforce if the application requires more than 30 days to process, and that during any period of delay, the applicant’s support network would be required to provide additional assistance. *Id.* In addressing these concerns, DHS explained its expectation that processing times would be similar to the FY 2017 pre-*Rosario* processing times, such that the Rule could potentially result in an average delay of 31 calendar days. *Id.*; *see also* 85 Fed Reg 37503 (“In FY 2017, prior to the *Rosario v. USCIS* court order...the adjudication processing times...exceeded the regulatory-set timeframe of 30 days more than half the time. However, USCIS adjudicated approximately 78 percent of applications within 60 days.”). Thus, it cannot be said that DHS failed to consider and balance this anticipated harm with the needs to provide for an increase in processing time for some applications when necessary. In addition to the harms to bona fide asylum seekers, DHS also addressed costs related to socioeconomic factors and impacts. 85 Fed. Reg. 37502 at 37527-28. This is all the APA requires.

**iii. DHS Properly Explained Why a Defined Timeframe Was Not Included**

Plaintiffs allege that DHS acted in an arbitrary and capricious manner by failing to explain why it did not impose any deadline on itself to adjudicate EAD applications. In doing so, plaintiffs argue that DHS “relied on a legally illegitimate explanation for this action: the desire to be free of any accountability.” *See* PI Motion at 23. Here, contrary to the fact found in *Action on Smoking & Health v. Civil Aeronautics Bd.*, 699 F.2d 1209, 1217 (1983), which plaintiffs rely upon, DHS carefully analyzed the data, considered alternatives, balanced the competing interests, and provided a detailed rational explanation for the final rule. First, USCIS acknowledged the importance of accountability:

USCIS acknowledges the importance of accountability and continuously seeks to improve and streamline work processes to improve efficiency and provide accurate and timely adjudicative decisions. As with any adjudication, USCIS posts processing times for these applications so that applicants can understand what to expect. Applicants have avenues to address excessive delays through case status inquiries, expedite requests when circumstances warrant, and even judicial redress through filing a mandamus action to compel a decision. Removing the 30-day timeframe does not absolve USCIS of its responsibility to adjudicate applications as quickly and efficiently as possible but does reconcile changes in processing requirements for vetting as well as increasing application volume.

85 Fed. Reg. 37502 at 37511.

Second, DHS explicitly considered alternative timeframes of 45, 60, or 90 days. 85 Fed. Reg. 37502, 37513, 37521. The Agency provided a detailed and reasoned explanation as to the why an alternative timeframe was not adopted:

USCIS determined not to incorporate a new regulatory timeframe because USCIS is unable to plan its workload and staffing needs with the level of certainty that a binding timeframe may require, and has no way of predicting what national security and fraud concerns may be or what procedures will be necessary in the future.... The processing of EAD applications is not simple, and increases in asylum-based filings in recent years, coupled with the changes to intake and vetting procedures, have placed a great strain on agency resources that lead to an increased processing time.

DHS recognizes that removing the timeframe may cause concern to applicants regarding potential delays in adjudication; however, USCIS expects to return to the adjudicatory timeframe before *Rosario*...

85 Fed. Reg. 37502 at 37521. It was further explained that:

DHS has seen a drastic increase in asylum applications in recent years, and this increase was not anticipated, and therefore could not have been considered when the former INS promulgated the 30-day timeframe more than 20 years ago. To promulgate another timeframe could lead to similar results and delays should volumes increase further in the future.

*Id.* at 37513.

Thus, contrary to plaintiffs' characterization that DHS simply pointed "to a need for flexibility," it did much more than that. In addition to the above discussion, DHS detailed how the asylum process has changed since the current self-imposed 30-day rule was promulgated more than 20 years ago. *Id.* at 37509. DHS explained, for example, how fraud has become more sophisticated over the last 20 years. *Id.* at 37516. This, combined with maintaining appropriate vetting while processing historically high numbers of applications, resulted in DHS concluding that the current 30-day timeframe untenable without diverting significant resources from other benefit request types. *Id.* at 37518. As such, there can be no dispute that DHS complied with the APA by articulating a satisfactory explanation.

#### **iv. DHS Properly Explained Why It is Removing the 30-day Processing Requirement**

Plaintiffs next argue that DHS failed to "reasonably explain its departure from its prior position that it should decide initial EAD applications from asylum applicants within 30 days," given that "it had previously decided that initial asylum-applicant EADs should be treated differently because they are situated differently." *See* PI Motion at 24. To be clear, there is nothing impermissible

with an agency changing its mind because of a change of administrations, change of facts, or other factors. *See Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs., Inc.*, 545 U.S. 967 (2005); *see also Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016); *Mayo Found. v. United States*, 562 U.S. 44, 53-55 (2011). Moreover, an agency is not required to justify its policy change by reasons more substantial than those required to adopt a policy in the first instance. *See Fox Television Stations*, 556 U.S. 502, 514-15, 19 (2009).

As addressed above, there can be no dispute that a thorough and detailed explanation was provided as to why the previously self-imposed 30-day timeframe needed to be altered. Instead, plaintiffs' assert more specifically that DHS did not sufficiently address the distinction between employment-based EADs and those for asylum applicants. Plaintiffs are mistaken and mischaracterize the issue as one of prioritization. DHS explained:

DHS recognizes that AC21<sup>8</sup> related to employment-based applications do not necessarily involve the same humanitarian considerations. However, DHS also notes that though AC21 was primarily focused on employment-based immigration, it did provide for automatic extension of EADs for those who have properly filed asylum applications. *See* 8 CFR 274a.13(d)(1). The purpose of the discussion referenced by the commenter is to make clear why DHS rejected the option of changing the 30-day asylum applicant EAD processing timeframe to 90 days. As DHS wrote in the proposed rule, maintaining any adjudication timeframe for this EAD would unnecessarily constrict adjudication workflows. Ultimately, USCIS is unable to plan its workload and staffing needs with the level of certainty that a binding timeframe may require, and has no way of predicting what national security and fraud concerns may be or what procedures would be necessary in the future.

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<sup>8</sup> AC21 refers to the regulation governing employment-based immigrant and nonimmigrant visa programs. *See* 81 Fed. Reg. 82398.

Fed. Reg. 37502 at 37513. Thus, while over 20-years ago, it was believed that EAD applications for asylum seekers could be adjudicated in 30-days, history has proven this assumption incorrect. Thus, DHS rationally removed the 30-day processing provision in accordance with the APA.

**C. The Final Broader EAD Rule Was Promulgated Pursuant to Proper Procedure, Reflects Reasoned Decision-making, and is Not Arbitrary or Capricious**

Plaintiffs allege that the Broader EAD Rule should be stayed, arguing that: (i) it was improperly considered separately from the Timeframe Rule; (ii) DHS failed to consider the harms to bona fide asylum seekers; and (iii) DHS failed to establish the problem it purported to address. Plaintiffs are unable to establish the likelihood of success on the merits with respect to any of these grounds. Instead, the Broader EAD Rule was promulgated after a notice of comment period, is consistent with Congressional delegated authority, and is rational in all respects.

**i. The Final Broader EAD Rule Was Properly Considered With the Timeframe Rule**

For all the same reasons as addressed above, it was rational and proper for the Agency to proceed through two separate notice and comment procedures given that the two Rules had different purposes. With respect to the Broader EAD Rule specifically, plaintiffs assert that whether USCIS “would take 30 days or an unregulated amount of time to adjudicate an application...was ‘relevant and important’ to the Broader EAD Rule. *See* PI Motion at 11-12. As was anticipated for the Timeframe Rule, the Broader Rule considered and addressed the anticipated adjudication times for EAD applications indicating that it would be similar, despite the regulatory changes. *See* 85 Fed. Reg. 38532 at 38566-89 (“From 2017 to 2020, over 80 percent of (c)(8) EADs were processed within 60 days. . . Although there is nothing in this rule that specifically will drive the EAD processing times significantly higher, on average, it is possible that some applications could take longer to process, as

some of the conditions in the rule could require more resources and add complexity to adjudicative review.”), and *id.* at 38612 (noting that USCIS estimates that in the future, after implementation of these rules, the processing time for EADs based on a pending asylum application will be approximately 69 days.). And as addressed more fully below, DHS acknowledged that work authorization for some bona fide asylum seekers would be delayed as a result of the Rule, but ultimately concluded that the benefits outweighed any such harm. Finally, as further evidence that DHS considered any overlap of between the two rules is DHS’s creation of a carve out for *Rosario* class members. *See* 85 Fed. Reg. 38532 at 38534 at n.5. As such, there was no APA violation.

**ii. The Final Broader EAD Rules Properly Considered the Harms to Bona Fide Asylum Seekers**

Contrary to plaintiffs’ argument, the Final Broader EAD Rule properly considered harms to bona fide asylum seekers. In fact, consistent with the 1994 rulemaking, *see* 85 Fed. Reg. 38532 at 38561 n. 102, the primary impetus of the Broader EAD Rule is to mitigate ongoing harm to bona fide asylum seekers and provide more immediate protection to bona fide asylum seekers. *See e.g.* 85 Fed. Reg. 38532 at 38543, 44, 54, 56, 58, 61, 84. For example, it was explained:

DHS remains committed to finding options to curb abuse of the asylum system while prioritizing bona fide asylum seekers. DHS has considered alternatives, including taking no action, rescinding its regulation conferring employment authorization to all asylum seekers, hiring more staff, and accepting forms electronically. In addition to this rulemaking, DHS has undertaken a range of initiatives to address the asylum adjudication backlog and mitigate its consequences for bona fide asylum seekers, agency operations, and the integrity of the asylum system. These efforts include: (1) Revised scheduling priorities including changing from First in First out (“FIFO”) order processing to LIFO; (2) staffing increases and retention initiatives; (3) acquiring new asylum division facilities; (4) assigning refugee officers to the Asylum Division; (5) conducting remote screenings; and (6) launching a pilot program for applicants seeking a route to immigration court to request cancellation of removal. USCIS already accepts several forms electronically, and is considering steps to accept the Form I-765 electronically in the future. These efforts are a top priority for the agency.

*Id.* at 38584-38585.

DHS expressly noted the considerable impact on asylum applicants and provided a detailed and reasoned explanation as to why it nevertheless finalized the rule, including, *inter alia*:

DHS recognizes that this rule may have a substantial impact on asylum applicants, but does not agree that a 365-day waiting period for employment authorization is overly burdensome, cruel, or precludes aliens from becoming self-sufficient. For at least 24 years, the statutory and regulatory scheme set the expectation that asylum applicants must wait a minimum of 6 months, often much longer due to applicant-caused delays, before asylum applicants may apply for employment authorization. Therefore, it is not reasonable for asylum applicants to come to the United States with the expectation that they will be employment authorized immediately upon their arrival.

... DHS believes that employment authorization must be carefully regulated, not only to protect U.S. workers, but also to maintain the integrity of the U.S. immigration system. DHS has identified (c)(8) employment authorization, with its low eligibility threshold and nearly limitless renewals, coupled with the lengthy adjudication and judicial processes, as a driver for economic migrants who are ineligible for lawful status in the United States to file frivolous, fraudulent, and otherwise non-meritorious asylum applications.... DHS acknowledges that the extended period for which aliens will not be employment authorized may impact their access to other services, but this is a temporary period. In the interim, access to some services can be mitigated by organizations that provide these services without charge....

...Finally, DHS believes that the reforms made by this rule and recent procedural changes, like LIFO, will significantly reduce the number of filings solely for economic reasons, which in turn will ensure that bona fide asylum seekers have their claims decided in an expeditious manner...

*Id.* at 38565-38566.

In assessing the harm, DHS notes that “the average affirmatively filed asylum application completed by USCIS was decided in 166 days in 2018,” which leads to immediate employment authorization for those the Agency grants asylum. 85 Fed. Reg. 38532 at 38608. In promulgating the Broader EAD Rule, DHS “seeks to balance deterrence of those abusing the asylum process for economic purposes and providing more timely protection to those who merit such protection, which

includes immediate and automatic employment authorization when the asylum application is granted.” *Id.* at 38585. Accordingly, it cannot be said that DHS failed to consider the impact on bona fide asylum applicants, or failed to provide a reasoned explanation, for the final rule. While plaintiffs may disagree with the ultimate result, such a disagreement does not violate the APA.

**iii. The Final Broader EAD Rules Properly Established the Problem it Addresses**

Contrary to plaintiffs’ arguments, the final rule discussed previous efforts to reform the asylum system, explained why further reform is necessary, and cited Congressional testimony, agency statistics, secondary sources, and newspaper reporting to establish the problem the rule addresses. *See e.g., id.* at 38544-46. Further, DHS responded to similar criticism in the final rule:

DHS disagrees that this rule fails to state a sufficient rationale or lacks data to support the changes made by this rule. The data illustrate a clear picture of a longstanding, critical and growing crisis in the U.S. asylum system and the need for strengthened laws. Border enforcement resources, detention space, and adjudication capacity are far outpaced by the numbers of aliens illegally entering the United States and claiming asylum each year. Historical data indicate that only about twenty percent of these applicants are eligible for asylum. This rule, standing alone, is not intended to solve every aspect of the crisis in the asylum system. It is one of several measures that the Administration is combining to mitigate the crisis and ensure the integrity of the immigration system and security of our communities. According to CBP data from FY 2019, the level of aliens unlawfully attempting to cross the Southern border reached a twelve-year high and nearly doubled from the same period in the previous fiscal year. This increase demands that DHS respond to this crisis and strengthen and enforce our immigration laws. According to one DOJ–EOIR snapshot measuring eleven years of data, of the approximately 81% of USCIS credible fear referrals to IJs, only 17% of these aliens are granted asylum by an IJ. While approximately one third of adjudicated asylum applications stemming from a positive credible fear finding are granted, the commenter fails to acknowledge that about forty five percent of aliens with a positive credible fear finding fail to pursue their asylum claims and are therefore never adjudicated. According to another DOJ–EOIR snapshot, in FY 2019, DOJ–EOIR granted only 15.25 percent of asylum applications filed by aliens found to have a credible fear. Over the past five years, the average DOJ–EOIR asylum grant rate of cases originating with a credible fear claim is only 14.25 percent. This rule is designed to reduce the number of aliens who leave their home countries seeking economic opportunities in the United States by gaming the asylum system and its attendant

employment authorization. DHS does not dispute that some applicants may have filed for asylum in good faith, but will still have their application denied. Nonetheless, by implementing this rule along with other measures, the integrity of the asylum system will be bolstered. DHS remains committed to finding options to curb abuse of the asylum system while prioritizing bona fide asylum seekers. DHS has considered alternatives, including taking no action, rescinding its regulation conferring employment authorization to all asylum seekers, hiring more staff, and accepting forms electronically. In addition to this rulemaking, DHS has undertaken a range of initiatives to address the asylum adjudication backlog and mitigate its consequences for bona fide asylum seekers, agency operations, and the integrity of the asylum system.

85 Fed. Reg. 38532 at 38584. Plaintiffs do not appear to dispute that the ability to obtain work authorization through the asylum system can be an incentive for some individuals to file non-meritorious applications. Nor do plaintiffs’ appear to dispute the historical accuracy of the problem that has sought to be mitigated by the Agency and Congress. Instead, plaintiffs purport that additional, more detailed, data showing the extent of the problem of economic migrants who use the asylum system as a means to obtain work authorization is necessary. As set forth above, data collected by the Agency provides a strong inference that the asylum system is being utilized by economic migrants without a good-faith basis to apply for asylum. Plaintiffs’ demand for more exacting proof is simply more than the APA requires. Indeed, “[a]n agency’s predictive judgments about areas that are within the agency’s field of discretion and expertise are entitled to *particularly deferential* review” and “need not rest on ‘pure factual determinations.’” *EarthLink, Inc.*, 462 F.3d at 213 (quoting *In re Core Commc’ns, Inc.*, 455 F.3d 267, 282 (D.C. Cir. 2006) & *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 594 (1981)) (emphasis in original). “Judicial deference in the immigration context is of special importance, for executive officials ‘exercise especially sensitive political functions that implicate questions of foreign relations.’” *Negusie v. Holder*, 555 U.S. 511, 517 (2009) (quoting *INS v. Abudu*, 485 U.S. 94, 110 (1988)); accord *Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 56–57 (2014); see also *Jama v. Immigration & Customs Enf’t*,

543 U.S. 335, 348 (2005) (citing *Mathews v. Diaz*, 426 U.S. 67, 81 (1976)). And “a challenge to the agency’s assumptions must be more than an effort by [a party] to substitute its own analysis for the agency’s.” *New York*, 824 F.3d at 1022. Here, while DHS acknowledged that the rule was not intended to “solve every aspect of the crisis in the asylum system,” 85 Fed. Reg. 38532, 38584, an agency must be afforded discretion to make changes that it reasonably believes will have an impact on the identified problem.

**D. Acting Secretary Wolf is Properly Serving as the Acting Secretary for Homeland Security Pursuant to 6 U.S.C. 113(g)(2)**

**i. Secretary Kirstjen Nielsen’s April 10, 2019 Succession Order was Lawful**

Kirstjen Nielsen served as Secretary of Homeland Security between December 5, 2017 and April 10, 2019, as evidenced by the FVRA form notifying various congressional committees of the vacancy and designation of an Acting Secretary. Swartz Decl. at Ex. 5. Notwithstanding then-Secretary Nielsen’s resignation letter of April 7, 2019, she remained as Secretary until April 10, 2019. *Id. see also*, Blackwell Decl at ¶ 6. Before she vacated the position, then-Secretary Nielsen issued an order on April 9, 2019 under 6 U.S.C. § 113(g)(2), expressly designating the order of succession for the Department of Homeland Security in which she stated, “I hereby designate the order of succession for the Secretary of Homeland Security as follows.” Blackwell Decl. at Ex. 3. Then-Secretary Nielsen’s order was unqualified and without exceptions or limitations, as was the memorandum that she signed, which contained an action line noting that “I hereby designate the order of succession for the Secretary of Homeland Security as follows.” *Id.* By approving the accompanying order, she designated her desired order of succession for Acting Secretary. *Id.* at 2, and *see* Swartz Decl. ¶ 3.

**ii. Secretary Nielsen's April 10, 2019 Succession Order Applied to All Vacancies**

Plaintiffs argue that then-Secretary Neilson's succession designation "only changed the order of succession for unavailability due to a disaster or catastrophic emergency. PI Motion at 29. This is incorrect. The amendment that then-Secretary Nielsen signed explains no fewer than five times that she was designating a new "order of succession." *See* Blackwell Decl. at Ex. 3.<sup>9</sup> Plaintiffs' mistaken belief is based upon their reliance on a non-binding document. Specifically, DHS Delegation 00106, an administrative document that collects orders of succession, does not override or change official action taken by then-Secretary Nielsen. DHS Delegation 00106, "is an administrative document that is periodically updated to consolidate and maintain in a single document the orders of succession for many senior positions in DHS". Swartz Decl. ¶ 4. An administrative document that incompletely incorporates the Secretary's explicit order cannot supersede the Secretary's lawful order of succession.<sup>10</sup> *See id.* ¶ 6. The signed order amending the DHS order of succession for Acting Secretary

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<sup>9</sup> The subject of the memorandum then-Secretary Nielsen signed was "Designation of an Order of Succession for the Secretary." Decl. of Juliana Blackwell, Ex. 3, Designation of an Order of Succession for the Secretary (April 9, 2019) at 1. The summary of the memorandum explained "you have expressed your desire to designate certain officers of [DHS] in order of succession to serve as Acting Secretary." *Id.* The action line of the memorandum noted that "[b]y approving the attached document, you will designate your desired order of succession for the [DHS Secretary]." *Id.* at 2. The memorandum's attachment was titled "Amending the Order of Succession in the Department of Homeland Security." *Id.* The text of the memorandum's attachment said, "By the authority vested in me as Secretary of Homeland Security, including the Homeland Security Act of 2002, 6 U.S.C. § 113(g)(2), I hereby designate the order of succession for the Secretary of Homeland Security . . .").

<sup>10</sup> Section II.A of the original December 2016 DHS Delegation 00106 remained unchanged in the April 2019 update. As a result, section II.A said that "[i]n case of the Secretary's death, resignation, or inability to perform the functions of the Office, the orderly succession of officials is governed by Executive Order 13753, amended on December 9, 2016." DHS Delegation 00106. The lack of any conforming revision to section II.A. was an inadvertent, ministerial error. Then-Secretary Nielsen did not change the "order of succession for the Secretary of Homeland Security" only to have a prior Executive Order continue to govern the order of succession within DHS. Notably, Executive Order 13753—which was signed in December 2016—predated the legislative amendment to 6 U.S.C. § 113(g)(2) that delegated the authority to set the DHS order of succession to the Secretary. Because then-Secretary Nielsen clearly exercised her statutory authority under § 113(g)(2) to designate the order of succession, there is no logical way to construe the unchanged reference to

“was effective when she signed the order on April 9, 2019” and “would have controlled the order of succession even if DHS Delegation No. 00106 was never updated to reflect the April 9, 2019 change.”

*Id.* In sum, a Secretary’s unequivocal exercise of authority delegated to her by statute cannot be displaced by an administrative document. Then-Secretary Nielsen’s April 2019 memorandum was valid and clearly applied to any type of vacancy.

**iii. Acting Secretary Kevin McAleenan Lawfully Served as Acting Secretary, His Further Succession Delegation of November 8, 2019 is Lawful, and Acting Secretary Chad Wolf is Lawfully Serving as Acting Secretary**

Pursuant to the April 9, 2019 designation of the DHS order of succession, the Customs and Board Patrol Commissioner was third in the line to serve as Acting Secretary, behind the Deputy Secretary and Under Secretary for Management. Blackwell Decl. at Exs. 1, 3. When then-Secretary Nielsen resigned, then-CBP Commissioner Kevin McAleenan became the Acting Secretary by operation of this succession order. *See* Swartz Decl. ¶ 5, Exs. 3–4.

Plaintiffs’ argument that Acting Secretary Wolf is not lawfully the Acting Secretary must fail. Mr. McAleenan properly served as Acting Secretary not pursuant to the FVRA and its 210-day timeline, but instead pursuant to 6 U.S.C. § 113(g)(2). The FVRA is not the exclusive scheme for acting service if there is an express office-specific statutory provision for succession. 5 U.S.C. § 3347(a). Long after the FVRA’s enactment, Congress added 6 U.S.C §113(g)(2) through the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. No. 114- 328, § 1903, enacted on Dec. 23,

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Executive Order 13753 in an administrative implementing document as anything other than an inadvertent oversight. In fact, DHS later corrected that oversight, removing the reference to Executive Order 13753 from section II.A DHS Delegation 00106 entirely. *See* Blackwell Decl. at Ex. 4. Accordingly, any potential inconsistency between then-Secretary Nielsen’s April 9, 2020 order amending the order of succession and section II.A DHS Delegation 00106 is clearly the result of an inadvertent administrative oversight that has since been corrected.

2016). As noted above, section 113(g)(2) authorizes a Secretary of Homeland Security to designate officers of the Department in further order of succession. The Secretary's statutory authority under section 113(g)(2) to designate the order of succession exists "[n]otwithstanding chapter 33 of title 5, the Secretary may designate such other officers of the Department in further order of succession to serve as Acting Secretary." 6 U.S.C. § 113(g)(2). As the lawfully serving Acting Secretary, then-Acting Secretary McAleenan designated a new order of succession on November 8, 2019, pursuant to his authority under 6 U.S.C. § 113(g)(2). Blackwell Decl. at Ex. 4. This placed the Under Secretary for Strategy, Policy, and Plans next in the order of succession for Acting Secretary, after the positions of the Deputy Secretary, Under Secretary for Management, and CBP Commissioner. Blackwell Decl. at Ex. 2. Although then-Acting Secretary McAleenan designated this succession order 214 days after Secretary Nielsen's vacancy began, the 210-day time line does not pertain to designations pursuant to section 113(g)(2).

On November 13, 2019, then-Acting Secretary McAleenan resigned from the Department. Mr. Chad Wolf, the Senate-confirmed Under Secretary for Strategy, Policy, and Plans, became Acting Secretary, because the Deputy Secretary, Under Secretary for Management, and Commissioner of CBP positions were vacant. Blackwell Decl. at Ex. 2. As such, Acting Secretary Wolf is lawfully serving in that position.

#### **E. PLAINTIFFS HAVE NOT DEMONSTRATED IRREPARABLE HARM**

An injunction must be denied unless plaintiffs can demonstrate irreparable harm if the rules are not stayed. *Wisconsin Gas Co.*, 758 F.2d at 674 (explaining that because movants could not establish irreparable harm, the court need not address any of the other applicable factors). To establish irreparable harm, plaintiffs must show more than the "possibility" of irreparable harm, but instead

must show that irreparable harm is “likely” absent an injunction. *Winter v. NRDC, Inc.*, 555 U.S. 7, 22, (2008). “Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough.” *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017). Plaintiffs must demonstrate the “likelihood that immediate irreparable harm will occur” and not just a “fear of speculative or remote future injury.” *Hodges v. Abraham*, 253 F. Supp. 2d 846, 864 (D.S.C. 2002). “Bare allegations of what is likely to occur are of no value” because the district court must make the determination of “whether the harm will *in fact* occur.” *Wisconsin Gas*, 758 F.2d at 674 (emphasis original). Irreparable harm must be “both certain and great; it must be actual and not theoretical,” and “the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.” *Wisconsin Gas*, 758 F.2d at 674.

As an initial matter, all plaintiffs are organizations and not individuals seeking asylum. As such, because organizations do not submit EAD applications on their own behalf, plaintiffs cannot establish that they will suffer irreparable harm if the rules are not stayed. The plaintiffs instead speculate about the general loss of revenue and increased expenses they may have to incur based upon, *inter alia*, the need to increase expense for research and education and training. Such general and speculative allegations, without any showing or accounting, is insufficient to demonstrate irreparable harm to warrant a stay. Moreover, as addressed below, the plaintiffs’ fail to allege any irreparable harm that stems directly from the Timeframe Rule or Broader EAD Rule in particular.

**A. Plaintiffs Have Not Demonstrated They Will Suffer Irreparable Harm if the Timeframe Rule is not Stayed Pending Resolution of this Action**

Whether any asylum seeker who applies for EAD on or after August 21, 2020 will suffer irreparable harm if the final rule is implemented is purely speculative. First, it must be recognized that “the average affirmatively filed asylum application completed by USCIS was decided in 166 days in 2018. 85 Fed. Reg. 38532, 38608. This means, on average, for those affirmative asylum seekers granted asylum by the Agency, work authorization is available prior to the need to have an EAD application even adjudicated under the current law. Even for those asylum applicants who will rely upon EAD applications, USCIS anticipates that under the new Timeframe Rule, processing times will be similar to the FY 2017 pre-*Rosario* processing times, meaning the best estimate is that the Rule would result in an average delay of 31<sup>11</sup> calendar days. *Id.*, *see also* 85 Fed Reg at 37503. It cannot be said that a 31-day delay of work authorization would constitute irreparable harm to an individual, or to any of the plaintiff organizations. And of course, if any applicant believes that their application is pending for an unreasonable amount of time, avenues to address excessive delays exist. 85 Fed. Reg. 37502, 37511; *see also Sampson v. Murray*, 415 U.S. 61, 90 (1974) (reasoning that “[t]he possibility that adequate compensatory and other corrective relief will be available at a later date . . . weighs heavily against a claim of irreparable harm.”).

**B. Plaintiffs Have Not Demonstrated They Will Suffer Irreparable Harm if the Broader EAD Rule is not Stayed Pending Resolution of this Action**

Plaintiffs allege their clients may be harmed in obtaining employment authorization by the Broader EAD Rule’s amended waiting period (180 days minimum, to 365 calendar days for eligibility),

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<sup>11</sup> This assumption does not take into account any delays that may be the result of the current COVID situation.

and state generally that their clients may not qualify under the new eligibility criteria. Both contentions are speculation, do not amount to imminent harm, and do not meet the burden to warrant injunctive relief. As noted, “the average affirmatively filed asylum application completed by USCIS was decided in 166 days in 2018,” which leads to immediate employment authorization for those granted asylum by the Agency. 85 Fed. Reg. 38532 at 38608. Thus, the 365-day waiting period will not even be applicable to many asylum seekers. Additionally, it is entirely likely that certain applicants will receive an EAD *more* quickly under the new 365-calendar day rule than under the current 180-day waiting period because calculation of the latter includes delays in the asylum adjudication caused or requested by the applicant, whereas the former does not. 85 Fed. Reg. 38532, 38547-48 (“The 180-day Asylum EAD Clock excludes delays requested or caused by the applicant and does not run again until the applicant cures the delay or until the next scheduled event in a case, such as a postponed interview, or a continued hearing); see EOIR-USCIS joint notice, *The 180-day Asylum EAD Clock Notice*, [https://www.uscis.gov/sites/default/files/Asylum\\_Clock\\_Joint\\_Notice\\_-\\_revised\\_06-08-2018.pdf](https://www.uscis.gov/sites/default/files/Asylum_Clock_Joint_Notice_-_revised_06-08-2018.pdf) (last updated June 8, 2018). This means that the time an applicant utilizes to find an attorney or assemble evidence, for example, will not affect the 365-day waiting period; instead, only unresolved applicant-caused delays in the adjudication of the asylum application that exist on the date the initial EAD application is filed will affect eligibility for employment authorization. 85 Fed. Reg. 38532 at 38549.

Finally, many of the Broader EAD Rule’s provisions are prospective and only apply to behavior that will occur on or after August 25, 2020. For example, the illegal entry bar, one-year-filing-bar, and new criminal bars only apply to future behavior. Plaintiffs fail to establish how any of the eligibility criteria might apply to their clients, and therefore fails to amount to imminent harm.

**C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH IN FAVOR OF THE DEFENDANTS**

Before granting injunctive relief, “courts ‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief’ and ‘should pay particular regard for the public consequences in employment the extraordinary remedy of injunction.’” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 376-77 (2008) (citations omitted) (“the District Court and the Ninth Circuit significantly understated the burden the preliminary injunction would impose on the Navy's ability to conduct realistic training exercises, and the injunction’s consequent adverse impact on the public interest in national defense.”). When the Government is a party, the balance of equities and the public interest should be considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

As discussed in detail above, the purpose of the Timeframe Rule is to ensure that USCIS has sufficient time to receive, screen, and process applications for an initial grant of employment authorization, based on a pending asylum application. 85 Fed. Reg. at 37502. This change would also reduce opportunities for fraud and protect the security-related processes undertaken for each EAD application. 85 Fed. Reg. at 37502. Moreover, the Timeframe Rule is necessary to permit DHS to reallocate limited resources that have been diverted to comply with the *Rosario* order. Should this Court stay the Timeframe Rule, USCIS will necessarily be required to continue to divert significant resources from other immigration benefit request types, which will cause irreparable harm. As such, a stay of this goal would be against the public interest.

With respect to the Broader EAD Rule, the purpose the rule is, *inter alia*, to curb abuse of the asylum system while prioritizing bona fide asylum seekers. 85 Fed. Reg. 38532, 38584-38585. A stay

of the Broader EAD Rule would be against the public interest, because the interest in addressing the crisis at the Southern border and its strain on sovereignty, rule of law, and resources, coupled with the ongoing harm to bona fide applicants lost in a pool of non-meritorious applicants, outweighs the speculative harm alleged by Plaintiffs. It is always in the public interest to protect the country's borders and enforce its immigration laws, and the requested injunction would frustrate the federal government's "law enforcement and public safety interests," *Maryland v. King*, 567 U.S. 1301, 1303 (2012), and the "public interest in effective measures to prevent the entry of illegal aliens" at the Nation's borders, *United States v. Cortez*, 449 U.S. 411, 421 n.4 (1981). *See also Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Here, there can be no dispute that since 2016, the United States has experienced an unprecedented surge in the number of aliens who enter the country unlawfully across the southern boarder. *See* 85 Fed. Reg. 38532, 38545. In FY 2019, for example, CBP apprehended over 800,000 individuals attempting to enter the U.S. illegally, which is more than double the year prior. *Id.* There is consistent historical evidence that approximately 20 percent or less of such asylum claims will be successful. *Id.* The large influx has consumed an inordinate amount of DHS's resources, which includes surveilling, apprehending, screening, and processing the aliens who enter the country, detaining many aliens pending further proceedings, and representing the United States in immigration court proceedings. *Id.* The surge has also consumed substantial resources at DOJ–EOIR, whose IJs adjudicate asylum claims. *Id.* In order to maintain the very integrity of the asylum system, it is imperative that DHS take all necessary measures to create disincentives to come to the United States for aliens who do not fear persecution based on the five protected grounds of race, religion, nationality, political opinion, or membership in a particular social group, or fear torture. *Id.*

Finally, weighing against injunctive relief, the Government asks the Court to consider the fact that USCIS had notified the public and its employees that, absent congressional intervention, USCIS may need to furlough over 13,000 USCIS employees. *See* Deputy Director for Policy Statement on USCIS’ Fiscal Outlook, <https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook> (last visited July 30, 2020). While initially scheduled to go into effect on August 3, 2020, USCIS informed employees it was able to delay the furloughs until August 30, 2020.

**D. ANY RELIEF SHOULD BE NARROW AND LIMITED TO THE PLAINTIFFS**

Article III requires that a “remedy must be tailored to redress the plaintiff’s particular injury.” *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018). Injunctions that go beyond Plaintiffs’ own injuries exceed the power of a court sitting in equity, which must limit injunctions to “be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). “[T]he purpose of” preliminary equitable relief “is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward.” *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). Courts thus “need not grant the total relief sought by the applicant but may mold [their] decree to meet the exigencies of the particular case.” *Id.*; *U.S. Ass’n of Reptile Keepers, Inc. v. Jewell*, 106 F. Supp. 3d 126, 129 (D.D.C. 2015), *aff’d sub nom. U.S. Ass’n of Reptile Keepers, Inc. v. Zinke*, 852 F.3d 1131 (D.C. Cir. 2017) (“the Court has not finally determined that the [action] is unlawful,” so “the need for narrow tailoring ... is particularly important,” and any “injunction should be limited in scope to protect only” parties). Accordingly, the Fourth Circuit has held that nationwide injunctions may be broader than necessary

in APA case. *Virginia Soc’y for Human Life v. FEC*, 263 F.3d 379, 393 (4th Cir. 2001) (“Nothing in the language of the APA ... requires us to exercise such far-reaching power.”). Accordingly, should this Court find that an injunction is warranted, it must be narrowly tailored and need not be nation-wide.

Here, the Timeframe Rule and the Broader EAD Rule have different purposes and should be analyzed separately. Similarly, the Broader EAD Final Rule amends seven separate regulations and contains many provisions relating to the filing of the asylum application and asylum interviews that are not being challenged. Here, plaintiffs focus primarily on the purported imminent harm associated with the 365-day waiting period. Should the Court find immediate harm based upon one or some of the rules, but not all the rules, the Court should not enjoin the whole rulemaking. Indeed, DHS included a severability clause in 208.7(c) that would permit this Court to stay one provision without staying the entire rule, should the Court find that appropriate.

### CONCLUSION

Wherefore, the defendants request that plaintiff’s motion for a stay or preliminary injunction be denied.

Respectfully submitted,

ROBERT K. HUR  
United States Attorney

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

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CASA DE MARYLAND, INC., *et al.*,

Plaintiffs,

v.

CHAD F. WOLF, *et al.*,

Defendants.

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Civil Action No. 8:20-cv-2118

**DECLARATION OF JULIANA BLACKWELL**

I, Juliana Blackwell, make the following declaration.

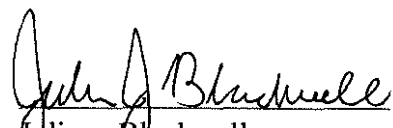
1. I am the Deputy Executive Secretary, within the Office of the Executive Secretary, U.S. Department of Homeland Security (DHS). I have worked in this office since February 2007. I am responsible for maintaining official documents approved or signed by the Secretary and Deputy Secretary of Homeland Security. I also know when a Secretary of Homeland Security vacates the office, and when a new Secretary of Homeland Security begins service as the Secretary. This declaration is based on my personal knowledge and on information that I reviewed in the course of my official duties as an employee of DHS.
2. The document, attached as Exhibit 1, is a true and correct copy of DHS Delegation Number 00106, Revision Number 08.5 titled “DHS ORDERS OF SUCCESSION AND DELEGATIONS OF AUTHORITIES FOR NAMED POSITIONS”, issued December 15, 2016, and updated April 10, 2019.
3. The document, attached as Exhibit 2, is a true and correct copy of DHS Delegation Number 00106, Revision Number 08.6 titled “DHS ORDERS OF SUCCESSION AND

DELEGATIONS OF AUTHORITIES FOR NAMED POSITIONS”, issued December 15, 2016, and updated November 14, 2019.

4. The document, attached as Exhibit 3, is a true and correct copy of a memorandum titled “Designation of an Order of Succession for the Secretary”, issued by then General Counsel John M. Mitnick and dated April 9, 2019, signed by then Secretary Kirstjen Nielsen on April 9, 2019.
5. The document, attached as Exhibit 4, is a true and correct copy of the “Amendment to the Order of Succession for the Secretary of Homeland Security” issued by then Acting Secretary Kevin K. McAleenan and dated November 8, 2019.
6. Kirstjen Nielsen was confirmed as the Secretary of Homeland Security on December 5, 2017 and remained as the Secretary until she vacated the position on April 10, 2019.
7. Kevin K. McAleenan resigned as Acting Secretary of Homeland Security on November 13, 2019.

In accordance with 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 3<sup>rd</sup> day of August, 2020 in Washington, D.C.



Juliana Blackwell  
Deputy Executive Secretary  
Office of the Executive Secretary  
Department of Homeland Security

Department of Homeland Security

DHS Delegation Number: 00106

Revision Number: 08.5

Issue Date: 12/15/2016

Updated Date: 04/10/2019

## **DHS ORDERS OF SUCCESSION AND DELEGATIONS OF AUTHORITIES FOR NAMED POSITIONS**

---

### **I. Purpose**

This is a succession order for named positions and a delegation of authority for the continuity of essential functions of officials at the Department of Homeland Security (DHS) in case of absence, the inability of the incumbent to act during disasters or catastrophic emergencies, or vacancies in offices.

### **II. Succession Order/Delegation**

A. In case of the Secretary's death, resignation, or inability to perform the functions of the Office, the orderly succession of officials is governed by Executive Order 13753, amended on December 9, 2016.

B. I hereby delegate to the officials occupying the identified positions in the order listed (Annex A), my authority to exercise the powers and perform the functions and duties of my office, to the extent not otherwise prohibited by law, in the event I am unavailable to act during a disaster or catastrophic emergency.

C. The order of succession for the named positions, other than the Office of the Secretary, are provided in Annexes B through AC.

D. I hereby delegate authority to the officials occupying the identified positions in the orders listed in Annexes B through AC to exercise the powers and perform the functions and duties of the named positions in case of death, resignation, inability to perform, absence, or inability to act during a disaster or catastrophic emergency until that condition ceases.

E. In terms of named positions in which appointment is required to be made by the President, by and with the advice and consent of the Senate (PAS), if positions are vacant as that term is used in the Federal Vacancies Reform Act of 1998, the First Assistant shall act as the incumbent until a successor is appointed, unless otherwise designated by the President. The individual serving in the position identified as the first to succeed is designated the “First Assistant” for the purposes of the Federal Vacancies Reform Act of 1998. If the First Assistant position is vacant, the next designated official in the order of succession may exercise all the powers, duties, authorities, rights, and functions authorized by law to be exercised by the incumbent, but may not perform any function or duty required by law to be performed exclusively by the office holder.

F. For all other positions that are not subject to the Federal Vacancies Reform Act of 1998, any official in the order provided for in the succession order may exercise all the powers, duties, authorities, rights, and functions authorized to be performed by the incumbent, to the extent not otherwise limited by law.

G. Only officials specifically designated in the order of succession for each of the named positions in Annexes B through AC are eligible, subject to modification in accordance with Section II.I. Unless formally appointed by the Secretary, persons appointed on an acting basis, or on some other temporary basis, are ineligible to serve as a successor; therefore, the order of succession would fall to the next designated official in the approved order of succession.

H. The prohibition on any re-delegation of powers, authorities, functions, and duties contained in Departmental Delegations, Directives, Management Directives, Instructions, Manuals, or similar internal documents is not applicable to restrict the authority of any individual who is exercising the authority of a vacant position under this Delegation. Such an individual shall, however, be bound by such Departmental Delegations, Directives, Management Directives, Instructions, Manuals, or similar internal documents, and shall not further re-delegate powers to any individual.

I. Each Annex may be updated separately. A Component Head seeks modification of his/her order of succession by forwarding a proposed updated Annex to the Office of Operations Coordination (OPS), Continuity Division and the Office of the Under Secretary for Management (MGMT), Program Manager, Delegations and Directives; Annexes are processed by MGMT, in consultation with the Office of the General Counsel (OGC), for approval of the Secretary. At a minimum, the Annex is coordinated with OGC and the White House Liaison. Where possible, Component orders of succession should be at least three positions deep and geographically dispersed.

J. The Office of the Executive Secretary, MGMT, and OPS are responsible for maintaining a current list of incumbents holding all positions identified in Annexes B through AC.


K. Nothing in this delegation is intended to limit my discretion as Secretary to depart from this delegation.

### III. Authorities

- A. Title 5, United States Code (U.S.C.) §§ 3345-49 (Federal Vacancies Reform Act of 1998, as amended)
- B. Title 6, U.S.C., § 112 (Secretary; functions)

### IV. Office of Primary Interest

OPS and MGMT is the office of primary interest for maintaining and updating the Annexes to this Delegation.



Jeh Charles Johnson  
Secretary of Homeland Security

Dec 15 2016  
Date

#### Legend

Career	C
Limited Term Appointment	L
Military Officer	M
Non-Career in the Senior Executive Service or Schedule C	N
Presidential Appointee	P
Presidential Appointee with Senate Confirmation	S
Scientific Professional	T
First Assistant pursuant to the Federal Vacancies Reform Act	*

## ATTACHMENT 1

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

<b>Annex</b>	<b>Title</b>	<b>Issue Date</b>
Annex A	Order For Delegation of Authority by the Secretary of the Department of Homeland Security	Revision 08.5, 04/10/2019
Annex B	Deputy Secretary, Office of the	Revision 08.5, 04/10/2019
Annex C	Citizenship and Immigration Service Ombudsman	Revision 06, 09/14/2016
Annex D	Citizenship and Immigration Services, United States	Revision 06, 09/14/2016
Annex E	Civil Rights and Civil Liberties, Office for	Revision 06, 09/14/2016
Annex F	Coast Guard, United States	Revision 06, 09/14/2016
Annex G	Countering Weapons of Mass Destruction Office	Revision 08.2, 05/21/2018
Annex H	Customs and Border Protection, United States	Revision 06, 09/14/2016
Annex I	Executive Secretariat	Revision 06, 09/14/2016
Annex J	Federal Emergency Management Agency	Revision 06, 09/14/2016
Annex K	Federal Law Enforcement Training Center	Revision 06, 09/14/2016
Annex L	General Counsel, Office of the	Revision 06, 09/14/2016
Annex M	Immigration and Customs Enforcement, United States	Revision 06, 09/14/2016
Annex N	Inspector General, Office of	Revision 06, 09/14/2016
Annex O	Intelligence and Analysis, Office of	Revision 06, 09/14/2016
Annex P	Legislative Affairs, Office of	Revision 06, 09/14/2016
Annex Q	Management Directorate	Revision 06, 09/14/2016
Annex R	National Protection and Programs Directorate	Revision 08, 07/11/2017
Annex S	Operations Coordination, Office of	Revision 06, 09/14/2016
Annex T	Partnership and Engagement, Office of	Revision 06, 09/14/2016
Annex U	Strategy, Policy, and Plans, Office of	Revision 08.4, 02/15/2019
Annex V	Privacy Office, Chief	Revision 06, 09/14/2016
Annex W	Public Affairs, Office of	Revision 06, 09/14/2016
Annex X	Science and Technology	Revision 07, 01/19/2017
Annex Y	Secret Service, United States	Revision 06, 09/14/2016
Annex Z	Transportation Security Administration	Revision 08.3, 10/23/2018
Annex AA	Chief Financial Officer (DHS)	Revision 06, 09/14/2016
Annex AB	Deputy Administrator, Federal Emergency Management Agency (FEMA)	Revision 06, 09/14/2016
Annex AC	Protection and National Preparedness (FEMA)	Revision 06, 09/14/2016

ANNEX A

# **ORDER FOR DELEGATION OF AUTHORITY BY THE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY**

*Pursuant to Title 6, United States Code, Section 113(g)(2)*

1. Deputy Secretary of Homeland Security
2. Under Secretary for Management
3. Commissioner of U.S. Customs and Border Protection
4. Administrator of the Federal Emergency Management Agency
5. Director of the Cybersecurity and Infrastructure Security Agency
6. Under Secretary for Science and Technology
7. Under Secretary for Intelligence and Analysis
8. Administrator of the Transportation Security Administration
9. Director of U.S. Immigration and Customs Enforcement
10. Director of U.S. Citizenship and Immigration Services
11. Under Secretary for Strategy, Policy, and Plans
12. General Counsel
13. Deputy Under Secretary for Management
14. Deputy Commissioner of U.S. Customs and Border Protection
15. Deputy Administrator of the Transportation Security Administration
16. Deputy Director of U.S. Immigration and Customs Enforcement
17. Deputy Director of U.S. Citizenship and Immigration Services
18. Director of the Federal Law Enforcement Training Centers

ANNEX B

ISSUE DATE: 04/10/2019

APPROVAL: 04/10/2019

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position	Career Status
<b>Deputy Secretary, Office of the</b>	
1 Deputy Secretary	S
2 Under Secretary for Management*	S
3 Administrator, Transportation Security Administration	S
4 Administrator, Federal Emergency Management Agency	S
5 Under Secretary, National Programs and Protection Directorate	S
6 Under Secretary, Science and Technology	S
7 Under Secretary, Intelligence and Analysis	S
8 Commissioner, U.S. Customs and Border Protection	S
9 Director, U.S. Immigration and Customs Enforcement	S
10 Director, U.S. Citizenship and Immigration Services	S
11 Under Secretary, Office of Strategy, Policy, and Plans	S
12 General Counsel	S
13 Deputy Under Secretary for Management	C
14 Deputy Commissioner, U.S. Customs and Border Protection	C
15 Deputy Administrator, Transportation Security Administration	C
16 Deputy Director, U.S. Immigration and Customs Enforcement	C
17 Deputy Director, U.S. Citizenship and Immigration Services	C
18 Director, Federal Law Enforcement Training Centers	C

ANNEX C

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Citizenship and Immigration Services Ombudsman</b>		
1	Ombudsman	N
2	Deputy Director	C
3	Senior Advisor	L
4	Chief of Staff	C
5	Director of Operations	C
6	Chief of Casework	C

ANNEX D

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Citizenship and Immigration Services, United States		
1	Director	S
2	Deputy Director*	C
3	Associate Director, Management Directorate	C
4	Associate Director, Refugee Asylum and International Operations Directorate	C
5	Associate Director, Service Center Operations Directorate	C
6	Associate Director, Field Operations Directorate	C
7	Director, National Benefits Center	C

ANNEX E

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position Career Status

Civil Rights and Civil Liberties, Office for		
1	Civil Rights and Civil Liberties Officer	P
2	Deputy Officer, Programs and Compliance	C
3	Deputy Officer, Equal Employment Opportunity Programs	C
4	Executive Officer	C

1	Civil Rights and Civil Liberties Officer	P
2	Deputy Officer, Programs and Compliance	C
3	Deputy Officer, Equal Employment Opportunity Programs	C
4	Executive Officer	C

ANNEX F

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Coast Guard, United States		
1	Commandant	M
2	Vice Commandant	M
	Deputy Commandant for Mission Support or Deputy Commandant for Operations	
3-4	in precedence of their grade	M
5-6	Other Vice Admirals in precedence of their grade	M

ANNEX G

ISSUE DATE: 05/21/2018

APPROVAL: 05/21/2018

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Countering Weapons of Mass Destruction Office

1	Assistant Secretary	P
2	Deputy Assistant Secretary	C
3	Chief of Staff	C
4	Deputy Director, Domestic Nuclear Detection Office	C
5	Deputy Director, Office of Health Affairs	C

ANNEX H

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

<b>Customs and Border Protection, United States</b>		
1	Commissioner	S
2	Deputy Commissioner*	C
3	Executive Assistant Commissioner, Office of Field Operations	C
4	Chief, U.S. Border Patrol	C
5	Executive Assistant Commissioner, Air and Marine Operations	C
6	Executive Assistant Commissioner, Trade	C
7	Executive Assistant Commissioner, Operations Support	C
8	Executive Assistant Commissioner, Enterprise Services	C

ANNEX I

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Executive Secretariat

1	Executive Secretary	N
2	Deputy Executive Secretary	C
3	Assistant Executive Secretary, Briefing Books/Interagency Coordination	C

ANNEX J

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Federal Emergency Management Agency		
1	Administrator	S
2	Deputy Administrator*	S
3	Deputy Administrator, Protection and National Preparedness	S
4	Associate Administrator, Response and Recovery	N
5	FEMA Region IX Administrator	C
6	FEMA Region VI Administrator	C

ANNEX K

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Federal Law Enforcement Training Centers

1	Director	C
2	Deputy Director for Training	C
3	Deputy Director for Management	C
4	Assistant Director, Mission and Readiness Support	C
5	Assistant Director, Regional and International Training	C
6	Assistant Director, Chief Financial Officer	C
7	Assistant Director, Glynco Training	C
8	Assistant Director, Centralized Training Management	C
8	Assistant Director, Washington Operations	C
9	Assistant Director, Chief Information Officer	C
10	Chief of Staff	C

ANNEX L

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

General Counsel, Office of the		
1	General Counsel	S
2	Principal Deputy General Counsel*	C
3	Deputy General Counsel [Senior ranking by time in position and in DHS] <sup>1</sup>	N
4	Deputy General Counsel [Senior ranking by time in position and in DHS]	N
5	Deputy General Counsel [Senior ranking by time in position and in DHS]	N
6	Chief of Staff	C
7	Associate General Counsel, Operations and Enforcement	C
8	Associate General Counsel, General Law	C
9	Chief Counsel, Transportation Security Administration	C
10	Chief Counsel, Federal Law Enforcement Training Center	C

<sup>1</sup> For the Deputy General Counsel positions identified in lines 3-5, seniority is determined by length of time in the position. In the event more than one Deputy General Counsel has the same appointment date, time in service in the Department is the second determining factor for seniority.

ANNEX M

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Immigration and Customs Enforcement, United States		
1	Assistant Secretary	S
2	Deputy Director*	C
3	Executive Associate Director, Homeland Security Investigations	C
4	Executive Associate Director, Enforcement and Removal Operations	C
5	Executive Associate Director, Management and Administration	C
6	Principal Legal Advisor	N
7	Special Agent in Charge – Denver	C
8	Field Officer Director – San Antonio	C

ANNEX N

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Inspector General, Office of		
1	Inspector General	S
2	Deputy Inspector General*	C
3	Counsel to the Inspector General	C
4	Assistant Inspector General, Audits	C
5	Assistant Inspector General, Inspections	C
6	Assistant Inspector General, Emergency Management Oversight	C

ANNEX O

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

<b>Intelligence and Analysis, Office of</b>		
1	Under Secretary for Intelligence and Analysis/DHS Chief Intelligence Officer	S
2	Principal Deputy Under Secretary for Intelligence and Analysis*	C
3	Deputy Under Secretary for Intelligence Operations	C
4	Deputy Under Secretary for Mission Support	C
5	Associate Deputy Director, El Paso Intelligence Center/ Strategic Analysis Section	C

1	Under Secretary for Intelligence and Analysis/DHS Chief Intelligence Officer	S
2	Principal Deputy Under Secretary for Intelligence and Analysis*	C
3	Deputy Under Secretary for Intelligence Operations	C
4	Deputy Under Secretary for Mission Support	C
5	Associate Deputy Director, El Paso Intelligence Center/ Strategic Analysis Section	C

ANNEX P

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Legislative Affairs, Office of		
1	Assistant Secretary for Legislative Affairs	P
2	Deputy Assistant Secretary (Senate)	N
3	Deputy Assistant Secretary (House)	N
4	Chief of Staff	C
5	Director, Management Team	C
6	Director, FEMA Team	C
7	Director, Borders and Immigration	C

ANNEX Q

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Management Directorate

1	Under Secretary for Management	S
2	Deputy Under Secretary for Management*	C
3	Chief Financial Officer	S
4	Chief Information Officer	P
5	Chief Human Capital Officer	C
6	Chief Procurement Officer	C
7	Chief Readiness Support Officer	C
8	Chief Security Officer	C
9	Chief of Staff	C
10	Deputy Director, Federal Law Enforcement Training Center	C

ANNEX R

ISSUE DATE: 07/11/2017

APPROVAL: 07/11/2017

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>National Protection and Programs Directorate</b>		
1	Under Secretary	S
2	Deputy Under Secretary for NPPD*	N
3	Assistant Secretary, Office of Infrastructure Protection	P
4	Assistant Secretary, Office of Cybersecurity and Communications	N
5	Deputy Assistant Secretary, Office of Infrastructure Protection	C
6	Deputy Assistant Secretary, Office of Cybersecurity and Communications	C
7	Director, Management	C
8	Office of Infrastructure Protection, Regional Director for Region 8	C

ANNEX S

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Operations Coordination, Office of</b>		
1	Director	C
2	Deputy Director	C
3	Director, Current Operations Division	C
4	Director, National Operations Center	C
5	Chief of Staff	C

ANNEX T

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Partnership and Engagement, Office of		
1	Assistant Secretary	N
2	Assistant Secretary for State and Local Law Enforcement	N
3	Deputy Assistant Secretary, Intergovernmental Affairs	C
4	Deputy Assistant Secretary, Private Sector Office	N
5	Director of Local Affairs	C

ANNEX U

ISSUE DATE: 2/15/2019

APPROVAL: 2/15/2019

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Strategy, Policy, &amp; Plans, Office of</b>		
1	Under Secretary	S
2	Assistant Secretary for Strategy, Plans, Analysis, and Risk*	N
3	Deputy Under Secretary	C
4	Assistant Secretary for International Affairs	N
5	Assistant Secretary for Threat Prevention and Security Policy	N
6	Assistant Secretary for Border, Immigration, and Trade	N
7	Assistant Secretary for Cyber, Infrastructure, and Resilience	N
8	Deputy Assistant Secretary for Screening Coordination Office	C
9	Deputy Assistant Secretary for International Affairs	C

ANNEX V

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Privacy Officer, Chief

1	Chief Privacy Officer	N
2	Deputy Chief Privacy Officer	C
3	Deputy Chief FOIA Officer	C
4	Senior Director, Privacy Compliance	C
5	Chief of Staff	C

ANNEX W

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Public Affairs, Office of		
1	Assistant Secretary	P
2	Principal Deputy Assistant Secretary	C
3	Deputy Assistant Secretary for Media Operations/Press Secretary	N
4	Deputy Assistant Secretary for Strategic Communications	N
5	Director of Communications	N
6	Chief of Staff	C
7	Director, Incident Communications	C

ANNEX X

ISSUE DATE: 1/19/2017

APPROVAL: 1/19/2017

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Science and Technology

1	Under Secretary	S
2	Deputy Under Secretary*	C
3	Chief of Staff	C
4	Director, Homeland Security Advanced Research Projects Agency	C
5	Director, Office of Support to the Homeland Security Enterprise and First Responders Division	C
6	Director, Capability Development Support Division	C
7	Director, Research and Development Partnerships	C
8	Director, Finance and Budget Division	C
9	Director, Administrative Support Division	C

ANNEX Y

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Secret Service, United States		
1	Director	P
2	Deputy Director	C
3	Chief Operating Officer	C
4	Assistant Director - Protective Operations	C
5	Assistant Director - Investigations	C
6	Assistant Director - Government and Public Affairs	C
7	Assistant Director - Human Resources	C
8	Assistant Director - Professional Responsibility	C
9	Assistant Director - Strategic Intelligence and Information	C
10	Assistant Director - Training	C
11	Chief - Uniformed Division	C
12	Chief Counsel	C
13	Chief Technology Officer	C
14	Chief Financial Officer	C
15	Chief - Strategic Planning and Policy	C
16	Deputy Assistant Director(s) - Protective Operations	C
17	Deputy Assistant Director(s) - Investigations	C
18	Deputy Assistant Director(s) - Government and Public Affairs	C
19	Deputy Assistant Director(s) - Human Resources	C
20	Deputy Assistant Director(s) - Professional Responsibility	C
21	Deputy Assistant Director(s) - Strategic Intelligence and Information	C
22	Deputy Assistant Director(s) - Training	C
23	Deputy Assistant Director(s) - Technical Development and Mission Support	C
24	Deputy Assistant Director(s) - Strategic Planning and Policy	C
25	Special Agent in Charge - Washington	C
26	Special Agent in Charge - New York	C
27	Special Agent in Charge - Miami	C
28	Special Agent in Charge - Los Angeles	C

ANNEX Z

ISSUE DATE: 10/23/2018

APPROVAL: 10/23/2018

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Transportation Security Administration</b>		
1	Administrator	S
2	Deputy Administrator	P
3	Chief of Staff	N
4	Executive Assistant Administrator, Security Operations	C
5	Executive Assistant Administrator, Operations Support	C
6	Executive Assistant Administrator, Law Enforcement/Federal Air Marshal Service	C
7	Executive Assistant Administrator, Enterprise Support	C
8	Regional Director, Atlanta, Security Operations	C
9	Regional Director, Dallas, Security Operations	C

ANNEX AA

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position		Career Status
<b>Chief Financial Officer (DHS)</b>		
1	Chief Financial Officer	S
2	Deputy Chief Financial Officer*	C

ANNEX AB

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position Career Status

**Deputy Administrator, Federal Emergency Management Agency  
(FEMA)**

1	Deputy Administrator, FEMA	S
2	Deputy Administrator, Protection and National Preparedness*	S
3	Associate Administrator, Mission Support	C
4	Deputy Associate Administrator, Office of Policy and Program Analysis	C
5	Region IX Administrator	C
6	Region VI Administrator	C

ANNEX AC

ISSUE DATE: 09/14/2016

APPROVAL: 09/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position	Career Status
<b>Protection and National Preparedness (FEMA)</b>	
1 Deputy Administrator, Protection and National Preparedness	S
2 Assistant Administrator, National Preparedness Directorate*	C
3 Assistant Administrator, Grant Programs	P
4 Assistant Administrator, National Continuity Programs	N

Department of Homeland Security  
DHS Delegation Number: 00106  
Revision Number: 08.6  
Issue Date: 12/15/2016  
Updated Date: 11/14/2019

## **DHS ORDERS OF SUCCESSION AND DELEGATIONS OF AUTHORITIES FOR NAMED POSITIONS**

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### **I. Purpose**

This is a succession order for named positions and a delegation of authority for the continuity of essential functions of officials at the Department of Homeland Security (DHS) in case of absence, the inability of the incumbent to act during disasters or catastrophic emergencies, or vacancies in offices.

### **II. Succession Order/Delegation**

- A. In case of the Secretary's death, resignation, or inability to perform the functions of the Office, the order of succession of officials is governed by Annex A.
- B. I hereby delegate to the officials occupying the identified positions in the order listed (Annex A), my authority to exercise the powers and perform the functions and duties of my office, to the extent not otherwise prohibited by law, in the event I am unavailable to act during a disaster or catastrophic emergency.
- C. The order of succession for the named positions, other than the Office of the Secretary, are provided in Annexes B through AC.
- D. I hereby delegate authority to the officials occupying the identified positions in the orders listed in Annexes B through AC to exercise the powers and perform the functions and duties of the named positions in case of death, resignation, inability to perform, absence, or inability to act during a disaster or catastrophic emergency until that condition ceases.

E. In terms of named positions in which appointment is required to be made by the President, by and with the advice and consent of the Senate (PAS), if positions are vacant as that term is used in the Federal Vacancies Reform Act of 1998, the First Assistant shall act as the incumbent until a successor is appointed, unless otherwise designated by the President. The individual serving in the position identified as the first to succeed is designated the “First Assistant” for the purposes of the Federal Vacancies Reform Act of 1998. If the First Assistant position is vacant, the next designated official in the order of succession may exercise all the powers, duties, authorities, rights, and functions authorized by law to be exercised by the incumbent, but may not perform any function or duty required by law to be performed exclusively by the office holder.

F. For all other positions that are not subject to the Federal Vacancies Reform Act of 1998, any official in the order provided for in the succession order may exercise all the powers, duties, authorities, rights, and functions authorized to be performed by the incumbent, to the extent not otherwise limited by law.

G. Only officials specifically designated in the order of succession for each of the named positions in Annexes B through AC are eligible, subject to modification in accordance with Section II.I. Unless formally appointed by the Secretary, persons appointed on an acting basis, or on some other temporary basis, are ineligible to serve as a successor; therefore, the order of succession would fall to the next designated official in the approved order of succession.

H. The prohibition on any re-delegation of powers, authorities, functions, and duties contained in Departmental Delegations, Directives, Management Directives, Instructions, Manuals, or similar internal documents is not applicable to restrict the authority of any individual who is exercising the authority of a vacant position under this Delegation. Such an individual shall, however, be bound by such Departmental Delegations, Directives, Management Directives, Instructions, Manuals, or similar internal documents, and shall not further re-delegate powers to any individual.

I. Each Annex may be updated separately. A Component Head seeks modification of his/her order of succession by forwarding a proposed updated Annex to the Office of Operations Coordination (OPS), Continuity Division and the Office of the Under Secretary for Management (MGMT), Program Manager, Delegations and Directives; Annexes are processed by MGMT, in consultation with the Office of the General Counsel (OGC), for approval of the Secretary. At a minimum, the Annex is coordinated with OGC and the White House Liaison. Where possible, Component orders of succession should be at least three positions deep and geographically dispersed.

J. The Office of the Executive Secretary, MGMT, and OPS are responsible for maintaining a current list of incumbents holding all positions identified in Annexes B through AC.


K. Nothing in this delegation is intended to limit my discretion as Secretary to depart from this delegation.

### III. Authorities

- A. Title 5, United States Code (U.S.C.) §§ 3345-49 (Federal Vacancies Reform Act of 1998, as amended)
- B. Title 6, U.S.C., § 112 (Secretary; functions)
- C. Title 6, U.S.C., § 113(g) (Other Officers)

### IV. Office of Primary Interest

OPS and MGMT is the office of primary interest for maintaining and updating the Annexes to this Delegation.

  
\_\_\_\_\_  
Jeh Charles Johnson  
Secretary of Homeland Security  
\_\_\_\_\_  
Date

#### Legend

Career	C
Limited Term Appointment	L
Military Officer	M
Non-Career in the Senior Executive Service or Schedule C	N
Presidential Appointee	P
Presidential Appointee with Senate Confirmation	S
Scientific Professional	T
First Assistant pursuant to the Federal Vacancies Reform Act	*

## ATTACHMENT 1

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

<b>Annex</b>	<b>Title</b>	<b>Issue Date</b>
Annex A	Order For Delegation of Authority by the Secretary of the Department of Homeland Security	Revision 08.6, 11/08/2019
Annex B	Deputy Secretary, Office of the	Revision 08.6, 11/13/2019
Annex C	Citizenship and Immigration Service Ombudsman	Revision 06, 09/14/2016
Annex D	Citizenship and Immigration Services, United States	Revision 08.6, 06/10/2019
Annex E	Civil Rights and Civil Liberties, Office for	Revision 06, 09/14/2016
Annex F	Coast Guard, United States	Revision 06, 09/14/2016
Annex G	Countering Weapons of Mass Destruction Office	Revision 08.2, 05/21/2018
Annex H	Customs and Border Protection, United States	Revision 08.6, 11/14/2019
Annex I	Executive Secretariat	Revision 06, 09/14/2016
Annex J	Federal Emergency Management Agency	Revision 06, 09/14/2016
Annex K	Federal Law Enforcement Training Center	Revision 06, 09/14/2016
Annex L	General Counsel, Office of the	Revision 06, 09/14/2016
Annex M	Immigration and Customs Enforcement, United States	Revision 06, 09/14/2016
Annex N	Inspector General, Office of	Revision 06, 09/14/2016
Annex O	Intelligence and Analysis, Office of	Revision 06, 09/14/2016
Annex P	Legislative Affairs, Office of	Revision 06, 09/14/2016
Annex Q	Management Directorate	Revision 06, 09/14/2016
Annex R	National Protection and Programs Directorate	Revision 08, 07/11/2017
Annex S	Operations Coordination, Office of	Revision 06, 09/14/2016
Annex T	Partnership and Engagement, Office of	Revision 06, 09/14/2016
Annex U	Strategy, Policy, and Plans, Office of	Revision 08.4, 02/15/2019
Annex V	Privacy Office, Chief	Revision 06, 09/14/2016
Annex W	Public Affairs, Office of	Revision 06, 09/14/2016
Annex X	Science and Technology	Revision 07, 01/19/2017
Annex Y	Secret Service, United States	Revision 06, 09/14/2016
Annex Z	Transportation Security Administration	Revision 08.3, 10/23/2018
Annex AA	Chief Financial Officer (DHS)	Revision 06, 09/14/2016
Annex AB	Deputy Administrator, Federal Emergency Management Agency (FEMA)	Revision 06, 09/14/2016
Annex AC	Protection and National Preparedness (FEMA)	Revision 06, 09/14/2016

ANNEX A

**ORDER FOR DELEGATION OF AUTHORITY BY THE  
SECRETARY OF THE DEPARTMENT OF HOMELAND  
SECURITY**

*Pursuant to Title 6, United States Code, Section 113(g)(2)*

1. Deputy Secretary of Homeland Security
2. Under Secretary for Management
3. Commissioner of U.S. Customs and Border Protection
4. Under Secretary for Strategy, Policy, and Plans
5. Administrator and Assistant Secretary of the Transportation Security  
Administration
6. Administrator of the Federal Emergency Management Agency

## ANNEX B

ISSUE DATE: 11/13/2019

APPROVAL: 11/13/2019

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Deputy Secretary, Office of the</b>		
1	Deputy Secretary	S
2	Under Secretary for Management*	S
3	Principal Deputy Director, U.S. Citizenship and Immigration Services	N
4	Administrator, Transportation Security Administration	S
5	Administrator, Federal Emergency Management Agency	S
6	Director, Cybersecurity and Infrastructure Agency	S
7	Under Secretary, Science and Technology	S
8	Under Secretary, Intelligence and Analysis	S
9	Commissioner, U.S. Customs and Border Protection	S
10	Director, U.S. Immigration and Customs Enforcement	S
11	Director, U.S. Citizenship and Immigration Services	S
12	Under Secretary, Office of Strategy, Policy, and Plans	S
13	General Counsel	S
14	Deputy Under Secretary for Management	C
15	Deputy Commissioner, U.S. Customs and Border Protection	C
16	Deputy Administrator, Transportation Security Administration	C
17	Deputy Director, U.S. Immigration and Customs Enforcement	C
18	Deputy Director, U.S. Citizenship and Immigration Services	C
19	Director, Federal Law Enforcement Training Centers	C

ANNEX C

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Citizenship and Immigration Services Ombudsman</b>		
1	Ombudsman	N
2	Deputy Director	C
3	Senior Advisor	L
4	Chief of Staff	C
5	Director of Operations	C
6	Chief of Casework	C

ANNEX D

ISSUE DATE: 06/10/2019

APPROVAL: 06/10/2019

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Citizenship and Immigration Services, United States		
1	Director	S
2	Principal Deputy Director*	N
3	Deputy Director	C
4	Associate Director, Management Directorate	C
5	Associate Director, Refugee Asylum and International Operations Directorate	C
6	Associate Director, Service Center Operations Directorate	C
7	Associate Director, Field Operations Directorate	C
8	Director, National Benefits Center	C

ANNEX E

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position Career Status

Civil Rights and Civil Liberties, Office for		
1	Civil Rights and Civil Liberties Officer	P
2	Deputy Officer, Programs and Compliance	C
3	Deputy Officer, Equal Employment Opportunity Programs	C
4	Executive Officer	C

ANNEX F

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Coast Guard, United States		
1	Commandant	M
2	Vice Commandant	M
	Deputy Commandant for Mission Support or Deputy Commandant for Operations	
3-4	in precedence of their grade	M
5-6	Other Vice Admirals in precedence of their grade	M

ANNEX G

ISSUE DATE: 05/21/2018

APPROVAL: 05/21/2018

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Countering Weapons of Mass Destruction Office

1	Assistant Secretary	P
2	Deputy Assistant Secretary	C
3	Chief of Staff	C
4	Deputy Director, Domestic Nuclear Detection Office	C
5	Deputy Director, Office of Health Affairs	C

ANNEX H

ISSUE DATE: 11/14/2019

APPROVAL: 11/14/2019

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Customs and Border Protection, United States		
1	Commissioner	S
2	Chief Operations Officer*	N
3	Deputy Commissioner	C
4	Executive Assistant Commissioner, Office of Field Operations	C
5	Chief, U.S. Border Patrol	C
6	Executive Assistant Commissioner, Air and Marine Operations	C
7	Executive Assistant Commissioner, Trade	C
8	Executive Assistant Commissioner, Operations Support	C
9	Executive Assistant Commissioner, Enterprise Services	C

ANNEX I

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Executive Secretariat

1	Executive Secretary	N
2	Deputy Executive Secretary	C
3	Assistant Executive Secretary, Briefing Books/Interagency Coordination	C

ANNEX J

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Federal Emergency Management Agency		
1	Administrator	S
2	Deputy Administrator*	S
3	Deputy Administrator, Protection and National Preparedness	S
4	Associate Administrator, Response and Recovery	N
5	FEMA Region IX Administrator	C
6	FEMA Region VI Administrator	C

ANNEX K

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Federal Law Enforcement Training Centers

1	Director	C
2	Deputy Director for Training	C
3	Deputy Director for Management	C
4	Assistant Director, Mission and Readiness Support	C
5	Assistant Director, Regional and International Training	C
6	Assistant Director, Chief Financial Officer	C
7	Assistant Director, Glynco Training	C
8	Assistant Director, Centralized Training Management	C
8	Assistant Director, Washington Operations	C
9	Assistant Director, Chief Information Officer	C
10	Chief of Staff	C

ANNEX L

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

General Counsel, Office of the		
1	General Counsel	S
2	Principal Deputy General Counsel*	C
3	Deputy General Counsel [Senior ranking by time in position and in DHS] <sup>1</sup>	N
4	Deputy General Counsel [Senior ranking by time in position and in DHS]	N
5	Deputy General Counsel [Senior ranking by time in position and in DHS]	N
6	Chief of Staff	C
7	Associate General Counsel, Operations and Enforcement	C
8	Associate General Counsel, General Law	C
9	Chief Counsel, Transportation Security Administration	C
10	Chief Counsel, Federal Law Enforcement Training Center	C

<sup>1</sup> For the Deputy General Counsel positions identified in lines 3-5, seniority is determined by length of time in the position. In the event more than one Deputy General Counsel has the same appointment date, time in service in the Department is the second determining factor for seniority.

ANNEX M

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Immigration and Customs Enforcement, United States		
1	Assistant Secretary	S
2	Deputy Director*	C
3	Executive Associate Director, Homeland Security Investigations	C
4	Executive Associate Director, Enforcement and Removal Operations	C
5	Executive Associate Director, Management and Administration	C
6	Principal Legal Advisor	N
7	Special Agent in Charge – Denver	C
8	Field Officer Director – San Antonio	C

ANNEX N

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Inspector General, Office of		
1	Inspector General	S
2	Deputy Inspector General*	C
3	Counsel to the Inspector General	C
4	Assistant Inspector General, Audits	C
5	Assistant Inspector General, Inspections	C
6	Assistant Inspector General, Emergency Management Oversight	C

ANNEX O

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Intelligence and Analysis, Office of		
1	Under Secretary for Intelligence and Analysis/DHS Chief Intelligence Officer	S
2	Principal Deputy Under Secretary for Intelligence and Analysis*	C
3	Deputy Under Secretary for Intelligence Operations	C
4	Deputy Under Secretary for Mission Support	C
5	Associate Deputy Director, El Paso Intelligence Center/ Strategic Analysis Section	C

ANNEX P

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Legislative Affairs, Office of		
1	Assistant Secretary for Legislative Affairs	P
2	Deputy Assistant Secretary (Senate)	N
3	Deputy Assistant Secretary (House)	N
4	Chief of Staff	C
5	Director, Management Team	C
6	Director, FEMA Team	C
7	Director, Borders and Immigration	C

ANNEX Q

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Management Directorate

1	Under Secretary for Management	S
2	Deputy Under Secretary for Management*	C
3	Chief Financial Officer	S
4	Chief Information Officer	P
5	Chief Human Capital Officer	C
6	Chief Procurement Officer	C
7	Chief Readiness Support Officer	C
8	Chief Security Officer	C
9	Chief of Staff	C
10	Deputy Director, Federal Law Enforcement Training Center	C

ANNEX R

ISSUE DATE: 07/11/2017

APPROVAL: 07/11/2017

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>National Protection and Programs Directorate</b>		
1	Under Secretary	S
2	Deputy Under Secretary for NPPD*	N
3	Assistant Secretary, Office of Infrastructure Protection	P
4	Assistant Secretary, Office of Cybersecurity and Communications	N
5	Deputy Assistant Secretary, Office of Infrastructure Protection	C
6	Deputy Assistant Secretary, Office of Cybersecurity and Communications	C
7	Director, Management	C
8	Office of Infrastructure Protection, Regional Director for Region 8	C

ANNEX S

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Operations Coordination, Office of</b>		
1	Director	C
2	Deputy Director	C
3	Director, Current Operations Division	C
4	Director, National Operations Center	C
5	Chief of Staff	C

ANNEX T

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Partnership and Engagement, Office of		
1	Assistant Secretary	N
2	Assistant Secretary for State and Local Law Enforcement	N
3	Deputy Assistant Secretary, Intergovernmental Affairs	C
4	Deputy Assistant Secretary, Private Sector Office	N
5	Director of Local Affairs	C

ANNEX U

ISSUE DATE: 2/15/2019

APPROVAL: 2/15/2019

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Strategy, Policy, &amp; Plans, Office of</b>		
1	Under Secretary	S
2	Assistant Secretary for Strategy, Plans, Analysis, and Risk*	N
3	Deputy Under Secretary	C
4	Assistant Secretary for International Affairs	N
5	Assistant Secretary for Threat Prevention and Security Policy	N
6	Assistant Secretary for Border, Immigration, and Trade	N
7	Assistant Secretary for Cyber, Infrastructure, and Resilience	N
8	Deputy Assistant Secretary for Screening Coordination Office	C
9	Deputy Assistant Secretary for International Affairs	C

ANNEX V

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Privacy Officer, Chief

1	Chief Privacy Officer	N
2	Deputy Chief Privacy Officer	C
3	Deputy Chief FOIA Officer	C
4	Senior Director, Privacy Compliance	C
5	Chief of Staff	C

ANNEX W

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Public Affairs, Office of		
1	Assistant Secretary	P
2	Principal Deputy Assistant Secretary	C
3	Deputy Assistant Secretary for Media Operations/Press Secretary	N
4	Deputy Assistant Secretary for Strategic Communications	N
5	Director of Communications	N
6	Chief of Staff	C
7	Director, Incident Communications	C

ANNEX X

ISSUE DATE: 1/19/2017

APPROVAL: 1/19/2017

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Science and Technology		
1	Under Secretary	S
2	Deputy Under Secretary*	C
3	Chief of Staff	C
4	Director, Homeland Security Advanced Research Projects Agency	C
5	Director, Office of Support to the Homeland Security Enterprise and First Responders Division	C
6	Director, Capability Development Support Division	C
7	Director, Research and Development Partnerships	C
8	Director, Finance and Budget Division	C
9	Director, Administrative Support Division	C

ANNEX Y

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Secret Service, United States		
1	Director	P
2	Deputy Director	C
3	Chief Operating Officer	C
4	Assistant Director - Protective Operations	C
5	Assistant Director - Investigations	C
6	Assistant Director - Government and Public Affairs	C
7	Assistant Director - Human Resources	C
8	Assistant Director - Professional Responsibility	C
9	Assistant Director - Strategic Intelligence and Information	C
10	Assistant Director - Training	C
11	Chief - Uniformed Division	C
12	Chief Counsel	C
13	Chief Technology Officer	C
14	Chief Financial Officer	C
15	Chief - Strategic Planning and Policy	C
16	Deputy Assistant Director(s) - Protective Operations	C
17	Deputy Assistant Director(s) - Investigations	C
18	Deputy Assistant Director(s) - Government and Public Affairs	C
19	Deputy Assistant Director(s) - Human Resources	C
20	Deputy Assistant Director(s) - Professional Responsibility	C
21	Deputy Assistant Director(s) - Strategic Intelligence and Information	C
22	Deputy Assistant Director(s) - Training	C
23	Deputy Assistant Director(s) - Technical Development and Mission Support	C
24	Deputy Assistant Director(s) - Strategic Planning and Policy	C
25	Special Agent in Charge - Washington	C
26	Special Agent in Charge - New York	C
27	Special Agent in Charge - Miami	C
28	Special Agent in Charge - Los Angeles	C

ANNEX Z

ISSUE DATE: 10/23/2018

APPROVAL: 10/23/2018

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Transportation Security Administration</b>		
1	Administrator	S
2	Deputy Administrator	P
3	Chief of Staff	N
4	Executive Assistant Administrator, Security Operations	C
5	Executive Assistant Administrator, Operations Support	C
6	Executive Assistant Administrator, Law Enforcement/Federal Air Marshal Service	C
7	Executive Assistant Administrator, Enterprise Support	C
8	Regional Director, Atlanta, Security Operations	C
9	Regional Director, Dallas, Security Operations	C

ANNEX AA

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position		Career Status
<b>Chief Financial Officer (DHS)</b>		
1	Chief Financial Officer	S
2	Deputy Chief Financial Officer*	C

ANNEX AB

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position Career Status

**Deputy Administrator, Federal Emergency Management Agency  
(FEMA)**

1	Deputy Administrator, FEMA	S
2	Deputy Administrator, Protection and National Preparedness*	S
3	Associate Administrator, Mission Support	C
4	Deputy Associate Administrator, Office of Policy and Program Analysis	C
5	Region IX Administrator	C
6	Region VI Administrator	C

ANNEX AC

ISSUE DATE: 09/14/2016

APPROVAL: 09/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position Career Status

**Protection and National Preparedness (FEMA)**

1	Deputy Administrator, Protection and National Preparedness	S
2	Assistant Administrator, National Preparedness Directorate*	C
3	Assistant Administrator, Grant Programs	P
4	Assistant Administrator, National Continuity Programs	N

**Homeland  
Security**

April 9, 2019

**MEMORANDUM FOR THE SECRETARY****FROM:**John M. Mitnick  
General Counsel**SUBJECT:**

Designation of an Order of Succession for the Secretary

**Summary:** Pursuant to your authority set forth in section 113 of title 6, United States Code, you have expressed your desire to designate certain officers of the Department of Homeland Security (DHS) in order of succession to serve as Acting Secretary. Your approval of the attached document will accomplish such designation.

**Discussion:**

[REDACTED]

[REDACTED]

The redacted information contains attorney-client communications and attorney work product which is privileged and not subject to disclosure.

**Action:** By approving the attached document, you will designate your desired order of succession for the Secretary of Homeland Security in accordance with your authority pursuant to Section 113(g)(2) of title 6, United States Code.

Approve/date

Disapprove/date

Modify/date

Needs discussion/date

Attachment: Annex A

**Amending the Order of Succession in the Department of Homeland Security**

By the authority vested in me as Secretary of Homeland Security, including the Homeland Security Act of 2002, 6 U.S.C. § 113(g)(2), I hereby designate the order of succession for the Secretary of Homeland Security as follows:

Annex A of DHS Orders of Succession and Delegations of Authorities for Named Positions, Delegation No. 00106, is hereby amended by striking the text of such Annex in its entirety and inserting the following in lieu thereof:

Annex A. Order for Delegation of Authority by the Secretary of the Department of Homeland Security.

1. Deputy Secretary of Homeland Security;
2. Under Secretary for Management;
3. Commissioner of U.S. Customs and Border Protection;
4. Administrator of the Federal Emergency Management Agency;
5. Director of the Cybersecurity and Infrastructure Security Agency;
6. Under Secretary for Science and Technology;
7. Under Secretary for Intelligence and Analysis
8. Administrator of the Transportation Security Administration;
9. Director of U.S. Immigration and Customs Enforcement;
10. Director of U.S. Citizenship and Immigration Services;
11. Under Secretary for Strategy, Policy, and Plans;
12. General Counsel;
13. Deputy Under Secretary for Management;
14. Deputy Commissioner of U.S. Customs and Border Protection;
15. Deputy Administrator of the Transportation Security Administration;
16. Deputy Director of U.S. Immigration and Customs Enforcement;
17. Deputy Director of U.S. Citizenship and Immigration Services;
18. Director of the Federal Law Enforcement Training Center.

No individual who is serving in an office herein listed in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this designation.

**Amendment to the Order of Succession for the Secretary of Homeland Security**

Section II.A of DHS Delegation No. 00106, *DHS Orders of Succession and Delegations of Authorities for Named Positions*, is amended hereby to state as follows: "In case of the Secretary's death, resignation, or inability to perform the functions of the Office, the order of succession of officials is governed by Annex A."

By the authority vested in me as Secretary of Homeland Security, including the Homeland Security Act of 2002, 6 U.S.C. § 113(g)(2), I hereby designate the order of succession for the Secretary of Homeland Security by amending Annex A of *DHS Orders of Succession and Delegations of Authorities for Named Positions*, Delegation No. 00106. Annex A is hereby amended by striking the text of such Annex in its entirety and inserting the following in lieu thereof:

Annex A, Order for Delegation of Authority by the Secretary of the Department of Homeland Security

*Pursuant to Title 6, United States Code, Section 113(g)(2)*

1. Deputy Secretary of Homeland Security;
2. Under Secretary for Management;
3. Commissioner of the U.S. Customs and Border Protection;
4. Under Secretary for Strategy, Policy, and Plans;
5. Administrator and Assistant Secretary of the Transportation Security Administration;
6. Administrator of the Federal Emergency Management Agency;

No individual who is serving in an office herein listed in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this designation.

Dated: 11/08/19



Kevin K. McAleenan

Acting Secretary of Homeland Security

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

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CASA DE MARYLAND, INC., *et al.*,

Plaintiffs,

v.

CHAD F. WOLF, *et al.*,

Defendants.

---

Civil Action No. 8:20-cv-2118

**DECLARATION OF NEAL J. SWARTZ**

I, Neal J. Swartz, make the following declaration.

1. I am the Associate General Counsel for General Law, Office of the General Counsel for the U.S. Department of Homeland Security (DHS). I have held this position since June 2013. One of my responsibilities is to advise and assist in matters involving the Department's orders of succession. This includes reviewing and signing Federal Vacancy Reform Act notifications that are sent to both Houses of Congress, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, and the Comptroller General of the Government Accountability Office, in accordance with provisions of section 113(g)(3) of title 6, United States Code, and section 3349 of title 5, United States Code. This declaration is based on my personal knowledge and on information that I have obtained in the course of my official duties as the Associate General Counsel for General Law, DHS.
2. Pursuant to 6 U.S.C. § 113(g)(2) the Secretary of Homeland Security may designate officers of the Department in further order of succession to serve as Acting Secretary.

3. Then-Secretary Nielsen was presented with a memorandum titled “Designation of an Order of Succession for the Secretary,” dated April 9, 2019, that included a proposed new Annex A. (*See* exhibit 1, Designation of an Order of Succession for the Secretary (Apr. 9, 2019)). The memorandum and its attachment proposed amending the DHS order of succession to designate officials to serve as Acting Secretary, pursuant to the Secretary’s authority under 6 U.S.C. § 113(g)(2). Then-Secretary Nielsen approved the proposed modification by affixing her signature at the bottom of the memorandum. As explained in that memorandum, her signature below the action line represented that she approved the attached document that modified the order of succession for the Secretary of Homeland Security. The memorandum’s attachment established an order of succession for the position of Secretary of Homeland Security, without exceptions or limitations. Specifically, the memorandum’s attachment, titled “Amending the Order of Succession in the Department of Homeland Security,” stated that then-Secretary Nielsen had “designat[ed] the order of succession for the Secretary of Homeland Security as follows:”. The list the then-Secretary approved set out the order of succession for the officials who may serve as Acting Secretary. The list controlled the succession order for every vacancy in the office of the Secretary, no matter the reason for the vacancy.
4. The following day, DHS Delegation No. 00106 was amended to reflect and implement then-Secretary Nielsen’s change to the order of succession for the Secretary of Homeland Security. The amendment was executed by placing a new Annex A in DHS Delegation No. 00106. The amended DHS Delegation No. 00106 was then reissued as DHS Delegation No. 00106, Revision No. 8.5 titled “DHS ORDERS OF SUCCESSION AND DELEGATIONS OF AUTHORITIES FOR NAMED POSITIONS,” issued December 15, 2016, and updated April 10, 2019. (Exhibit 2, DHS Delegation No. 00106 Rev. 08.5).

DHS Delegation No. 00106 is an administrative document that is periodically updated to consolidate and maintain in a single document the orders of succession for many senior positions in DHS. Modifications to an order of succession are effective immediately upon the Secretary's approval and signature, and not when those decisions are transposed into DHS Delegation No. 00106 at a later time. As an internal administrative document that is meant to collect the orders of succession, DHS Delegation No. 00106 itself cannot override or change official action taken by the Secretary.

5. When then-Secretary Nielsen resigned, both the Department of Homeland Security Deputy Secretary and the Under Secretary for Management positions were vacant (Exhibits 3 and 4).
6. Therefore, then-Secretary Nielsen's signed order designating the DHS order of succession for Acting Secretary, pursuant to her authority under 6 U.S.C. § 113(g)(2), was effective when she signed the order on April 9, 2019, and controls the order of succession should a discrepancy or conflict exist between her signed order and DHS Delegation No. 00106, Revision No. 8.5. In fact, the April 9, 2019 signed order would have controlled the order of succession even if DHS Delegation No. 00106 was never updated to reflect the April 9, 2019 change.
7. The document, attached as Exhibit 3, is a true and correct copy of a memorandum titled "Federal Vacancies Reform Act Submission," issued by the Associate General Counsel for General Law, dated November 19, 2018 with an attachment "Discontinuation of service in an acting role, DHS – Deputy Secretary."
8. The document, attached as Exhibit 4, is a true and correct copy of a memorandum titled "Federal Vacancies Reform Act Submission," issued by the Associate General Counsel

for General Law, dated April 11, 2019 with an attachment “Vacancy and Designation of an acting officer, DHS – Under Secretary for Management.”

9. The document, attached as Exhibit 5, is a true and correct copy of a memorandum titled “Federal Vacancies Reform Act Submission,” issued by the Associate General Counsel for General Law, dated April 11, 2019 with an attachment “Vacancy and Designation of an acting officer, DHS – Secretary.”

In accordance with 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 1st day of August, 2020 in Bethesda, MD.

**NEAL J SWARTZ**

Digitally signed by NEAL J  
SWARTZ  
Date: 2020.08.01 16:11:10  
-04'00'

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Neal J. Swartz  
Associate General Counsel for General Law  
Office of the General Counsel  
Department of Homeland Security

**Homeland  
Security**

April 9, 2019

**MEMORANDUM FOR THE SECRETARY****FROM:**John M. Mitnick  
General Counsel**SUBJECT:**

Designation of an Order of Succession for the Secretary

**Summary:** Pursuant to your authority set forth in section 113 of title 6, United States Code, you have expressed your desire to designate certain officers of the Department of Homeland Security (DHS) in order of succession to serve as Acting Secretary. Your approval of the attached document will accomplish such designation.

**Discussion:**

[REDACTED]

[REDACTED]

The redacted information contains attorney-client communications and attorney work product which is privileged and not subject to disclosure.

**Action:** By approving the attached document, you will designate your desired order of succession for the Secretary of Homeland Security in accordance with your authority pursuant to Section 113(g)(2) of title 6, United States Code.

Approve/date

Disapprove/date

Modify/date

Needs discussion/date

Attachment: Annex A

**Amending the Order of Succession in the Department of Homeland Security**

By the authority vested in me as Secretary of Homeland Security, including the Homeland Security Act of 2002, 6 U.S.C. § 113(g)(2), I hereby designate the order of succession for the Secretary of Homeland Security as follows:

Annex A of DHS Orders of Succession and Delegations of Authorities for Named Positions, Delegation No. 00106, is hereby amended by striking the text of such Annex in its entirety and inserting the following in lieu thereof:

Annex A. Order for Delegation of Authority by the Secretary of the Department of Homeland Security.

1. Deputy Secretary of Homeland Security;
2. Under Secretary for Management;
3. Commissioner of U.S. Customs and Border Protection;
4. Administrator of the Federal Emergency Management Agency;
5. Director of the Cybersecurity and Infrastructure Security Agency;
6. Under Secretary for Science and Technology;
7. Under Secretary for Intelligence and Analysis
8. Administrator of the Transportation Security Administration;
9. Director of U.S. Immigration and Customs Enforcement;
10. Director of U.S. Citizenship and Immigration Services;
11. Under Secretary for Strategy, Policy, and Plans;
12. General Counsel;
13. Deputy Under Secretary for Management;
14. Deputy Commissioner of U.S. Customs and Border Protection;
15. Deputy Administrator of the Transportation Security Administration;
16. Deputy Director of U.S. Immigration and Customs Enforcement;
17. Deputy Director of U.S. Citizenship and Immigration Services;
18. Director of the Federal Law Enforcement Training Center.

No individual who is serving in an office herein listed in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this designation.

Department of Homeland Security

DHS Delegation Number: 00106

Revision Number: 08.5

Issue Date: 12/15/2016

Updated Date: 04/10/2019

## **DHS ORDERS OF SUCCESSION AND DELEGATIONS OF AUTHORITIES FOR NAMED POSITIONS**

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### **I. Purpose**

This is a succession order for named positions and a delegation of authority for the continuity of essential functions of officials at the Department of Homeland Security (DHS) in case of absence, the inability of the incumbent to act during disasters or catastrophic emergencies, or vacancies in offices.

### **II. Succession Order/Delegation**

A. In case of the Secretary's death, resignation, or inability to perform the functions of the Office, the orderly succession of officials is governed by Executive Order 13753, amended on December 9, 2016.

B. I hereby delegate to the officials occupying the identified positions in the order listed (Annex A), my authority to exercise the powers and perform the functions and duties of my office, to the extent not otherwise prohibited by law, in the event I am unavailable to act during a disaster or catastrophic emergency.

C. The order of succession for the named positions, other than the Office of the Secretary, are provided in Annexes B through AC.

D. I hereby delegate authority to the officials occupying the identified positions in the orders listed in Annexes B through AC to exercise the powers and perform the functions and duties of the named positions in case of death, resignation, inability to perform, absence, or inability to act during a disaster or catastrophic emergency until that condition ceases.

E. In terms of named positions in which appointment is required to be made by the President, by and with the advice and consent of the Senate (PAS), if positions are vacant as that term is used in the Federal Vacancies Reform Act of 1998, the First Assistant shall act as the incumbent until a successor is appointed, unless otherwise designated by the President. The individual serving in the position identified as the first to succeed is designated the “First Assistant” for the purposes of the Federal Vacancies Reform Act of 1998. If the First Assistant position is vacant, the next designated official in the order of succession may exercise all the powers, duties, authorities, rights, and functions authorized by law to be exercised by the incumbent, but may not perform any function or duty required by law to be performed exclusively by the office holder.

F. For all other positions that are not subject to the Federal Vacancies Reform Act of 1998, any official in the order provided for in the succession order may exercise all the powers, duties, authorities, rights, and functions authorized to be performed by the incumbent, to the extent not otherwise limited by law.

G. Only officials specifically designated in the order of succession for each of the named positions in Annexes B through AC are eligible, subject to modification in accordance with Section II.I. Unless formally appointed by the Secretary, persons appointed on an acting basis, or on some other temporary basis, are ineligible to serve as a successor; therefore, the order of succession would fall to the next designated official in the approved order of succession.

H. The prohibition on any re-delegation of powers, authorities, functions, and duties contained in Departmental Delegations, Directives, Management Directives, Instructions, Manuals, or similar internal documents is not applicable to restrict the authority of any individual who is exercising the authority of a vacant position under this Delegation. Such an individual shall, however, be bound by such Departmental Delegations, Directives, Management Directives, Instructions, Manuals, or similar internal documents, and shall not further re-delegate powers to any individual.

I. Each Annex may be updated separately. A Component Head seeks modification of his/her order of succession by forwarding a proposed updated Annex to the Office of Operations Coordination (OPS), Continuity Division and the Office of the Under Secretary for Management (MGMT), Program Manager, Delegations and Directives; Annexes are processed by MGMT, in consultation with the Office of the General Counsel (OGC), for approval of the Secretary. At a minimum, the Annex is coordinated with OGC and the White House Liaison. Where possible, Component orders of succession should be at least three positions deep and geographically dispersed.

J. The Office of the Executive Secretary, MGMT, and OPS are responsible for maintaining a current list of incumbents holding all positions identified in Annexes B through AC.


K. Nothing in this delegation is intended to limit my discretion as Secretary to depart from this delegation.

### III. Authorities

- A. Title 5, United States Code (U.S.C.) §§ 3345-49 (Federal Vacancies Reform Act of 1998, as amended)
- B. Title 6, U.S.C., § 112 (Secretary; functions)

### IV. Office of Primary Interest

OPS and MGMT is the office of primary interest for maintaining and updating the Annexes to this Delegation.

  
\_\_\_\_\_  
Jeh Charles Johnson  
Secretary of Homeland Security  
\_\_\_\_\_  
Date

#### Legend

Career	C
Limited Term Appointment	L
Military Officer	M
Non-Career in the Senior Executive Service or Schedule C	N
Presidential Appointee	P
Presidential Appointee with Senate Confirmation	S
Scientific Professional	T
First Assistant pursuant to the Federal Vacancies Reform Act	*

## ATTACHMENT 1

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

<b>Annex</b>	<b>Title</b>	<b>Issue Date</b>
Annex A	Order For Delegation of Authority by the Secretary of the Department of Homeland Security	Revision 08.5, 04/10/2019
Annex B	Deputy Secretary, Office of the	Revision 08.5, 04/10/2019
Annex C	Citizenship and Immigration Service Ombudsman	Revision 06, 09/14/2016
Annex D	Citizenship and Immigration Services, United States	Revision 06, 09/14/2016
Annex E	Civil Rights and Civil Liberties, Office for	Revision 06, 09/14/2016
Annex F	Coast Guard, United States	Revision 06, 09/14/2016
Annex G	Countering Weapons of Mass Destruction Office	Revision 08.2, 05/21/2018
Annex H	Customs and Border Protection, United States	Revision 06, 09/14/2016
Annex I	Executive Secretariat	Revision 06, 09/14/2016
Annex J	Federal Emergency Management Agency	Revision 06, 09/14/2016
Annex K	Federal Law Enforcement Training Center	Revision 06, 09/14/2016
Annex L	General Counsel, Office of the	Revision 06, 09/14/2016
Annex M	Immigration and Customs Enforcement, United States	Revision 06, 09/14/2016
Annex N	Inspector General, Office of	Revision 06, 09/14/2016
Annex O	Intelligence and Analysis, Office of	Revision 06, 09/14/2016
Annex P	Legislative Affairs, Office of	Revision 06, 09/14/2016
Annex Q	Management Directorate	Revision 06, 09/14/2016
Annex R	National Protection and Programs Directorate	Revision 08, 07/11/2017
Annex S	Operations Coordination, Office of	Revision 06, 09/14/2016
Annex T	Partnership and Engagement, Office of	Revision 06, 09/14/2016
Annex U	Strategy, Policy, and Plans, Office of	Revision 08.4, 02/15/2019
Annex V	Privacy Office, Chief	Revision 06, 09/14/2016
Annex W	Public Affairs, Office of	Revision 06, 09/14/2016
Annex X	Science and Technology	Revision 07, 01/19/2017
Annex Y	Secret Service, United States	Revision 06, 09/14/2016
Annex Z	Transportation Security Administration	Revision 08.3, 10/23/2018
Annex AA	Chief Financial Officer (DHS)	Revision 06, 09/14/2016
Annex AB	Deputy Administrator, Federal Emergency Management Agency (FEMA)	Revision 06, 09/14/2016
Annex AC	Protection and National Preparedness (FEMA)	Revision 06, 09/14/2016

ANNEX A

# **ORDER FOR DELEGATION OF AUTHORITY BY THE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY**

*Pursuant to Title 6, United States Code, Section 113(g)(2)*

1. Deputy Secretary of Homeland Security
2. Under Secretary for Management
3. Commissioner of U.S. Customs and Border Protection
4. Administrator of the Federal Emergency Management Agency
5. Director of the Cybersecurity and Infrastructure Security Agency
6. Under Secretary for Science and Technology
7. Under Secretary for Intelligence and Analysis
8. Administrator of the Transportation Security Administration
9. Director of U.S. Immigration and Customs Enforcement
10. Director of U.S. Citizenship and Immigration Services
11. Under Secretary for Strategy, Policy, and Plans
12. General Counsel
13. Deputy Under Secretary for Management
14. Deputy Commissioner of U.S. Customs and Border Protection
15. Deputy Administrator of the Transportation Security Administration
16. Deputy Director of U.S. Immigration and Customs Enforcement
17. Deputy Director of U.S. Citizenship and Immigration Services
18. Director of the Federal Law Enforcement Training Centers

ANNEX B

ISSUE DATE: 04/10/2019

APPROVAL: 04/10/2019

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Deputy Secretary, Office of the</b>		
1	Deputy Secretary	S
2	Under Secretary for Management*	S
3	Administrator, Transportation Security Administration	S
4	Administrator, Federal Emergency Management Agency	S
5	Under Secretary, National Programs and Protection Directorate	S
6	Under Secretary, Science and Technology	S
7	Under Secretary, Intelligence and Analysis	S
8	Commissioner, U.S. Customs and Border Protection	S
9	Director, U.S. Immigration and Customs Enforcement	S
10	Director, U.S. Citizenship and Immigration Services	S
11	Under Secretary, Office of Strategy, Policy, and Plans	S
12	General Counsel	S
13	Deputy Under Secretary for Management	C
14	Deputy Commissioner, U.S. Customs and Border Protection	C
15	Deputy Administrator, Transportation Security Administration	C
16	Deputy Director, U.S. Immigration and Customs Enforcement	C
17	Deputy Director, U.S. Citizenship and Immigration Services	C
18	Director, Federal Law Enforcement Training Centers	C

ANNEX C

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Citizenship and Immigration Services Ombudsman</b>		
1	Ombudsman	N
2	Deputy Director	C
3	Senior Advisor	L
4	Chief of Staff	C
5	Director of Operations	C
6	Chief of Casework	C

ANNEX D

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Citizenship and Immigration Services, United States		
1	Director	S
2	Deputy Director*	C
3	Associate Director, Management Directorate	C
4	Associate Director, Refugee Asylum and International Operations Directorate	C
5	Associate Director, Service Center Operations Directorate	C
6	Associate Director, Field Operations Directorate	C
7	Director, National Benefits Center	C

ANNEX E

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position Career Status

Civil Rights and Civil Liberties, Office for		
1	Civil Rights and Civil Liberties Officer	P
2	Deputy Officer, Programs and Compliance	C
3	Deputy Officer, Equal Employment Opportunity Programs	C
4	Executive Officer	C

ANNEX F

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Coast Guard, United States		
1	Commandant	M
2	Vice Commandant	M
	Deputy Commandant for Mission Support or Deputy Commandant for Operations	
3-4	in precedence of their grade	M
5-6	Other Vice Admirals in precedence of their grade	M

ANNEX G

ISSUE DATE: 05/21/2018

APPROVAL: 05/21/2018

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Countering Weapons of Mass Destruction Office		
1	Assistant Secretary	P
2	Deputy Assistant Secretary	C
3	Chief of Staff	C
4	Deputy Director, Domestic Nuclear Detection Office	C
5	Deputy Director, Office of Health Affairs	C

ANNEX H

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Customs and Border Protection, United States

1	Commissioner	S
2	Deputy Commissioner*	C
3	Executive Assistant Commissioner, Office of Field Operations	C
4	Chief, U.S. Border Patrol	C
5	Executive Assistant Commissioner, Air and Marine Operations	C
6	Executive Assistant Commissioner, Trade	C
7	Executive Assistant Commissioner, Operations Support	C
8	Executive Assistant Commissioner, Enterprise Services	C

H-1

Delegation # 00106  
Revision # 06

ANNEX I

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Executive Secretariat

1	Executive Secretary	N
2	Deputy Executive Secretary	C
3	Assistant Executive Secretary, Briefing Books/Interagency Coordination	C

ANNEX J

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Federal Emergency Management Agency		
1	Administrator	S
2	Deputy Administrator*	S
3	Deputy Administrator, Protection and National Preparedness	S
4	Associate Administrator, Response and Recovery	N
5	FEMA Region IX Administrator	C
6	FEMA Region VI Administrator	C

ANNEX K

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Federal Law Enforcement Training Centers

1	Director	C
2	Deputy Director for Training	C
3	Deputy Director for Management	C
4	Assistant Director, Mission and Readiness Support	C
5	Assistant Director, Regional and International Training	C
6	Assistant Director, Chief Financial Officer	C
7	Assistant Director, Glynco Training	C
8	Assistant Director, Centralized Training Management	C
8	Assistant Director, Washington Operations	C
9	Assistant Director, Chief Information Officer	C
10	Chief of Staff	C

ANNEX L

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

General Counsel, Office of the		
1	General Counsel	S
2	Principal Deputy General Counsel*	C
3	Deputy General Counsel [Senior ranking by time in position and in DHS] <sup>1</sup>	N
4	Deputy General Counsel [Senior ranking by time in position and in DHS]	N
5	Deputy General Counsel [Senior ranking by time in position and in DHS]	N
6	Chief of Staff	C
7	Associate General Counsel, Operations and Enforcement	C
8	Associate General Counsel, General Law	C
9	Chief Counsel, Transportation Security Administration	C
10	Chief Counsel, Federal Law Enforcement Training Center	C

<sup>1</sup> For the Deputy General Counsel positions identified in lines 3-5, seniority is determined by length of time in the position. In the event more than one Deputy General Counsel has the same appointment date, time in service in the Department is the second determining factor for seniority.

ANNEX M

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Immigration and Customs Enforcement, United States		
1	Assistant Secretary	S
2	Deputy Director*	C
3	Executive Associate Director, Homeland Security Investigations	C
4	Executive Associate Director, Enforcement and Removal Operations	C
5	Executive Associate Director, Management and Administration	C
6	Principal Legal Advisor	N
7	Special Agent in Charge – Denver	C
8	Field Officer Director – San Antonio	C

M-1

Delegation # 00106  
Revision # 06

ANNEX N

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Inspector General, Office of		
1	Inspector General	S
2	Deputy Inspector General*	C
3	Counsel to the Inspector General	C
4	Assistant Inspector General, Audits	C
5	Assistant Inspector General, Inspections	C
6	Assistant Inspector General, Emergency Management Oversight	C

ANNEX O

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Intelligence and Analysis, Office of		
1	Under Secretary for Intelligence and Analysis/DHS Chief Intelligence Officer	S
2	Principal Deputy Under Secretary for Intelligence and Analysis*	C
3	Deputy Under Secretary for Intelligence Operations	C
4	Deputy Under Secretary for Mission Support	C
5	Associate Deputy Director, El Paso Intelligence Center/ Strategic Analysis Section	C

ANNEX P

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Legislative Affairs, Office of		
1	Assistant Secretary for Legislative Affairs	P
2	Deputy Assistant Secretary (Senate)	N
3	Deputy Assistant Secretary (House)	N
4	Chief of Staff	C
5	Director, Management Team	C
6	Director, FEMA Team	C
7	Director, Borders and Immigration	C

ANNEX Q

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Management Directorate

1	Under Secretary for Management	S
2	Deputy Under Secretary for Management*	C
3	Chief Financial Officer	S
4	Chief Information Officer	P
5	Chief Human Capital Officer	C
6	Chief Procurement Officer	C
7	Chief Readiness Support Officer	C
8	Chief Security Officer	C
9	Chief of Staff	C
10	Deputy Director, Federal Law Enforcement Training Center	C

ANNEX R

ISSUE DATE: 07/11/2017

APPROVAL: 07/11/2017

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>National Protection and Programs Directorate</b>		
1	Under Secretary	S
2	Deputy Under Secretary for NPPD*	N
3	Assistant Secretary, Office of Infrastructure Protection	P
4	Assistant Secretary, Office of Cybersecurity and Communications	N
5	Deputy Assistant Secretary, Office of Infrastructure Protection	C
6	Deputy Assistant Secretary, Office of Cybersecurity and Communications	C
7	Director, Management	C
8	Office of Infrastructure Protection, Regional Director for Region 8	C

ANNEX S

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Operations Coordination, Office of</b>		
1	Director	C
2	Deputy Director	C
3	Director, Current Operations Division	C
4	Director, National Operations Center	C
5	Chief of Staff	C

ANNEX T

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Partnership and Engagement, Office of		
1	Assistant Secretary	N
2	Assistant Secretary for State and Local Law Enforcement	N
3	Deputy Assistant Secretary, Intergovernmental Affairs	C
4	Deputy Assistant Secretary, Private Sector Office	N
5	Director of Local Affairs	C

ANNEX U

ISSUE DATE: 2/15/2019

APPROVAL: 2/15/2019

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Strategy, Policy, &amp; Plans, Office of</b>		
1	Under Secretary	S
2	Assistant Secretary for Strategy, Plans, Analysis, and Risk*	N
3	Deputy Under Secretary	C
4	Assistant Secretary for International Affairs	N
5	Assistant Secretary for Threat Prevention and Security Policy	N
6	Assistant Secretary for Border, Immigration, and Trade	N
7	Assistant Secretary for Cyber, Infrastructure, and Resilience	N
8	Deputy Assistant Secretary for Screening Coordination Office	C
9	Deputy Assistant Secretary for International Affairs	C

ANNEX V

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Privacy Officer, Chief

1	Chief Privacy Officer	N
2	Deputy Chief Privacy Officer	C
3	Deputy Chief FOIA Officer	C
4	Senior Director, Privacy Compliance	C
5	Chief of Staff	C

ANNEX W

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Public Affairs, Office of		
1	Assistant Secretary	P
2	Principal Deputy Assistant Secretary	C
3	Deputy Assistant Secretary for Media Operations/Press Secretary	N
4	Deputy Assistant Secretary for Strategic Communications	N
5	Director of Communications	N
6	Chief of Staff	C
7	Director, Incident Communications	C

ANNEX X

ISSUE DATE: 1/19/2017

APPROVAL: 1/19/2017

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

### Science and Technology

1	Under Secretary	S
2	Deputy Under Secretary*	C
3	Chief of Staff	C
4	Director, Homeland Security Advanced Research Projects Agency	C
5	Director, Office of Support to the Homeland Security Enterprise and First Responders Division	C
6	Director, Capability Development Support Division	C
7	Director, Research and Development Partnerships	C
8	Director, Finance and Budget Division	C
9	Director, Administrative Support Division	C

ANNEX Y

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position

Career Status

Secret Service, United States		
1	Director	P
2	Deputy Director	C
3	Chief Operating Officer	C
4	Assistant Director - Protective Operations	C
5	Assistant Director - Investigations	C
6	Assistant Director - Government and Public Affairs	C
7	Assistant Director - Human Resources	C
8	Assistant Director - Professional Responsibility	C
9	Assistant Director - Strategic Intelligence and Information	C
10	Assistant Director - Training	C
11	Chief - Uniformed Division	C
12	Chief Counsel	C
13	Chief Technology Officer	C
14	Chief Financial Officer	C
15	Chief - Strategic Planning and Policy	C
16	Deputy Assistant Director(s) - Protective Operations	C
17	Deputy Assistant Director(s) - Investigations	C
18	Deputy Assistant Director(s) - Government and Public Affairs	C
19	Deputy Assistant Director(s) - Human Resources	C
20	Deputy Assistant Director(s) - Professional Responsibility	C
21	Deputy Assistant Director(s) - Strategic Intelligence and Information	C
22	Deputy Assistant Director(s) - Training	C
23	Deputy Assistant Director(s) - Technical Development and Mission Support	C
24	Deputy Assistant Director(s) - Strategic Planning and Policy	C
25	Special Agent in Charge - Washington	C
26	Special Agent in Charge - New York	C
27	Special Agent in Charge - Miami	C
28	Special Agent in Charge - Los Angeles	C

ANNEX Z

ISSUE DATE: 10/23/2018

APPROVAL: 10/23/2018

## DHS ORDERS OF SUCCESSION AND ORDERS FOR DELEGATIONS OF AUTHORITIES

Position		Career Status
<b>Transportation Security Administration</b>		
1	Administrator	S
2	Deputy Administrator	P
3	Chief of Staff	N
4	Executive Assistant Administrator, Security Operations	C
5	Executive Assistant Administrator, Operations Support	C
6	Executive Assistant Administrator, Law Enforcement/Federal Air Marshal Service	C
7	Executive Assistant Administrator, Enterprise Support	C
8	Regional Director, Atlanta, Security Operations	C
9	Regional Director, Dallas, Security Operations	C

ANNEX AA

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position		Career Status
<b>Chief Financial Officer (DHS)</b>		
1	Chief Financial Officer	S
2	Deputy Chief Financial Officer*	C

ANNEX AB

ISSUE DATE: 9/14/2016

APPROVAL: 9/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position Career Status

**Deputy Administrator, Federal Emergency Management Agency  
(FEMA)**

1	Deputy Administrator, FEMA	S
2	Deputy Administrator, Protection and National Preparedness*	S
3	Associate Administrator, Mission Support	C
4	Deputy Associate Administrator, Office of Policy and Program Analysis	C
5	Region IX Administrator	C
6	Region VI Administrator	C

ANNEX AC

ISSUE DATE: 09/14/2016

APPROVAL: 09/14/2016

**DESIGNATION OF FIRST ASSISTANTS FOR NON-COMPONENT HEAD PRESIDENTIAL  
APPOINTEES WITH SENATE CONFIRMATION POSITIONS**

Position	Career Status
<b>Protection and National Preparedness (FEMA)</b>	
1 Deputy Administrator, Protection and National Preparedness	S
2 Assistant Administrator, National Preparedness Directorate*	C
3 Assistant Administrator, Grant Programs	P
4 Assistant Administrator, National Continuity Programs	N

Office of the General Counsel  
Department of Homeland Security  
Washington, DC 20528

NOV 19 2018



**Homeland  
Security**

The Honorable Michael R. Pence  
President of the Senate  
S-212, Capitol Building  
Washington, DC 20510

Re: Federal Vacancies Reform Act Submission

Dear Mr. Vice President:

On behalf of the Department, I submit the attached form for a *discontinuation of service in an acting role* for a position 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 (202) 447-3623 or via email at [leo.boucher@hq.dhs.gov](mailto:leo.boucher@hq.dhs.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Neal J. Swartz".

Neal J. Swartz  
Associate General Counsel for General Law

Attachment:

Discontinuation of service in an acting role, DHS - Deputy 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: 11/14/18)

Name of Department or Agency and Any Suborganization

U.S. Department of Homeland Security

Vacancy Title

Deputy Secretary

Date Vacancy Began

04/14/18

Name of Acting Officer

Grady, Claire M.

Date Service Began

04/15/18

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

(202) 447-3623

Contact's E-Mail Address

leo.boucher@hq.dhs.gov

### Submitted By

Name and Title

Neal J. Swartz, Associate General Counsel for General Law

Telephone Number

(202) 282-8377

Signature



Date

**NOV 19 2018**

### For Congressional Use Only

Committee of Jurisdiction

Date Received

### For GAO Use Only

GAO Control Number

Office of the General Counsel  
Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

APR 11 2019

The Honorable Michael R. Pence  
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S-212, Capitol Building  
Washington, DC 20510

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Neal J. Swartz  
Associate General Counsel for General Law

Attachments:

Vacancy & Designation of an acting officer, DHS –Under Secretary for Management

## Submission Under the Federal Vacancies Reform Act

### Addressees

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 ☐ Speaker of the U.S. House of Representatives
 ☐ Comptroller General of the United States

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- ☒ 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, Management Directorate

Vacancy Title Under Secretary for Management		Date Vacancy Began 04/10/19
Name of Acting Officer Charles H. Fulghum	Date Service Began 04/11/19	Authority for Acting Designation if Other Than Vacancies Act _____
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 U.S. Department of Homeland Security	
Contact's Phone Number (202) 447-3623	Contact's E-Mail Address leo.boucher@hq.dhs.gov

### Submitted By

Name and Title Neal J. Swartz, Associate General Counsel for General Law	Telephone Number (202) 282-8377
Signature 	Date APR 11 2019

### For Congressional Use Only

Committee of Jurisdiction
Date Received

### For GAO Use Only

GAO Control Number
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Office of the General Counsel  
Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

APR 11 2019

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 *vacancy and designation of an acting officer* for positions that are covered by the Federal Vacancies Reform Act of 1998, Pub. L. No. 105-277 as codified in 5 U.S.C. § 3345 *et seq.*

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Sincerely,

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Neal J. Swartz  
Associate General Counsel for General Law

Attachments:

Vacancy and 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>Kevin K. McAleenan</b>	Date Service Began <b>04/11/19</b>	Authority for Acting Designation if Other Than Vacancies Act <b>6 U.S.C. § 113(g)(2)</b>
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 <b>Leo E. Boucher III, Asst. General Counsel, Administrative Law, General Law Division</b>	
Contact's Address <b>Department of Homeland Security</b>	
Contact's Phone Number <b>(202) 447-3623</b>	Contact's E-Mail Address <b>leo.boucher@hq.dhs.gov</b>

### Submitted By

Name and Title <b>Neal J. Swartz, Associate General Counsel for General Law</b>	Telephone Number <b>(202) 282-8377</b>
Signature 	Date <b>APR 11 2019</b>

### For Congressional Use Only

Committee of Jurisdiction
Date Received

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