

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216

One Hundred Sixteenth Congress

June 18, 2019

The Honorable Kevin K. McAleenan
Acting Secretary
U.S. Department of Homeland Security
301 7th Street S.W.
Washington, D.C. 20528

Dear Acting Secretary McAleenan:

We write to express our deep concern over the June 10, 2019, appointment of Ken Cuccinelli to serve as Acting Director of U.S. Citizenship and Immigration Services (USCIS).¹ It appears that Mr. Cuccinelli was appointed in a manner that circumvents the Federal Vacancies Reform Act after Republican Senators told President Trump that the Senate would not confirm Mr. Cuccinelli as Director. We request a detailed explanation of the legal basis for his appointment, as well as the documents detailed below relating to his appointment.

The Federal Vacancies Reform Act sets forth three options to fill vacant positions temporarily at executive agencies that require presidential appointment with the advice and consent of the Senate.² In this case, the President could have appointed any of the following individuals to perform temporarily the functions and duties of the Director of USCIS: (1) the “first assistant” to the Director of USCIS (currently Deputy Director Mark Koumans); (2) anyone currently holding a Senate-confirmed position in the Executive Branch; or (3) any officer or employee of USCIS who has served in a position at USCIS for at least 90 days within the 365 days preceding the vacancy.³

As of June 10, 2019, Mr. Cuccinelli did not meet any of these criteria. In fact, Mr. Koumans was already serving as Acting USCIS Director, as the first assistant under the law, after the President forced former Director L. Francis Cissna to resign on May 24, 2019.

It appears the Administration was aware that Mr. Cuccinelli could not be appointed Acting Director of USCIS consistent with the Federal Vacancies Reform Act. After announcing his appointment as the Acting Director, the Administration claimed that it had first appointed Mr. Cuccinelli as “Principal Deputy Director,” a position that has never existed in USCIS’s 16-year history.⁴ The creation of this new position appears to have had no purpose other than to facilitate the appointment of Mr. Cuccinelli over any of the individuals who were eligible under the law. This is particularly troubling given that President Trump reportedly planned to nominate Mr.

¹ See generally U.S. Citizenship and Immigration Services, “Cuccinelli Named Acting Director of USCIS,” (June 10, 2019), <https://www.uscis.gov/news/news-releases/cuccinelli-named-acting-director-uscis>.

² 5 U.S.C. § 3345(a).

³ *Id.*

⁴ Ted Hesson, *Politico: Morning Shift*, Politico (June 11, 2019), <https://www.politico.com/tipsheets/morning-shift>.

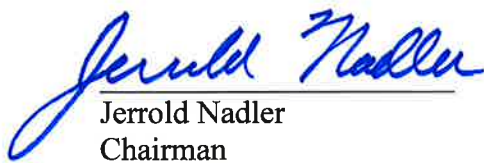
Cuccinelli as Director of USCIS—which would have required Senate confirmation—but apparently changed his mind after a number of Senate Republicans “made clear to the White House that Cuccinelli would face serious difficulty in being confirmed.”⁵

For these reasons, we request that the Department provide our staffs with a briefing on these matters by July 2, 2019. In addition, we request that the Department produce the following documents by the same date:

1. All documents, including emails and other communications, by or between White House officials and Department officials (including officials at USCIS or any other component of the Department) referring or relating to the appointment of Mr. Cuccinelli to the position of Acting Director of USCIS or Principal Deputy Director of USCIS, including communications regarding the Federal Vacancies Reform Act and documents indicating the time and date Mr. Cuccinelli began his employment with the Department;
2. All documents, including drafts, referring or relating to policy or legal considerations relating to the appointment of Mr. Cuccinelli, including compliance with the Federal Vacancies Reform Act; and
3. All documents, including drafts, referring or relating to the creation, scope, or duties of the position of Principal Deputy Director of USCIS, including any position descriptions, SF-50 forms, other relevant forms, and documents related to the policy or legal justifications for creating this position.

To schedule the briefing and arrange for the production of these documents, please contact Joshua Breisblatt at Joshua.breisblatt@mail.house.gov. Thank you for your prompt attention to this matter.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the
Judiciary



Elijah E. Cummings
Chairman
House Committee on
Oversight and Reform



Bennie G. Thompson
Chairman
House Committee on
Homeland Security

cc: Honorable Doug Collins, Ranking Member, House Committee on the Judiciary
Honorable Jim Jordan, Ranking Member, House Committee on Oversight and Reform
Honorable Mike Rogers, Ranking Member, House Committee on Homeland Security

⁵ Kaitlin Collins and Geneva Sands, *Republicans Signal to White House Not to Nominate Ken Cuccinelli for Immigration Post*, CNN (June 4, 2019), <https://www.cnn.com/2019/06/04/politics/cuccinelli-nomination-republicans/index.html>, Jordain Carney, *GOP Senator: Cuccinelli Couldn't Win Senate Confirmation*, The Hill (June 10, 2019), <https://thehill.com/homenews/senate/447779-gop-senator-cuccinelli-couldnt-win-senate-confirmation>.