



COMMITTEE ON HOMELAND SECURITY

H.R. 8791, the “Department of Homeland Security Reform Act of 2020” As Introduced by Chairman Bennie G. Thompson (D-MS)

The Department of Homeland Security (Department or DHS) was established in the wake of the September 11 terrorist attacks with the goal of enhancing the nation’s preparedness and response to the threats we face. Over the past four years, President Trump has used DHS as a political tool to execute his cruel immigration and border agenda in ways that have caused DHS operational and reputational damage. At this critical juncture, DHS needs to be reformed to bolster accountability and transparency to the American people and ensure that the wide range of missions within its purview are addressed.

Following the 9/11 terrorist attacks, Congress enacted the Homeland Security Act of 2002 (Public Law 107-296) that consolidated 22 diverse agencies and bureaus into one Department – DHS. Nearly 18 years later, the Department has evolved to encompass new missions, including:

- preparing for and responding to pandemics and natural disasters;
- countering foreign disinformation and domestic terrorism;
- addressing threats against critical infrastructure; and
- bolstering protections against cyber attacks.

However, in recent years, DHS has mostly come to be known as the face of some of the Trump Administration’s most harmful policies—from the so-called Muslim ban to the Zero-Tolerance policy that tore apart thousands of asylum-seeking migrant families to changes that upended the immigration system to efforts to end DACA protections for young immigrants.

In addition to using DHS to execute his cruel immigration and border agenda, President Trump deployed DHS officers to cities where lawful protests arose this summer in a manner that escalated tensions and was unwelcome. At President Trump’s direction, Department law enforcement officers injected themselves into largely peaceful protests in riot gear with chemical agents and military-grade weapons at hand. Around the same time, it emerged that DHS had compiled intelligence reports on American journalists covering the protests and was directed by the White House to make sympathetic public comments about a young man who shot three

protestors in Kenosha, Wisconsin.¹ The Department's actions this past summer, in support of President Trump's effort to escalate tensions around the protests for his political ends, have further eroded the public's trust in the Department and damaged DHS's reputation.

Over the past four years, DHS has lacked stable leadership to fulfil its many missions and address management challenges. As of November 4, 2020, 19 senior DHS officials have "acting" or "performing the duties of" in their titles.² The Department has had five individuals fill the role of Secretary since President Trump took office in January 2017 and GAO determined that the most recent two officials designated to serve as Acting Secretary were invalid.³ The leadership vacuum has exacerbated longstanding management challenges that have significant internal operational implications for the Department.

While DHS has matured since its establishment in 2003, it still faces considerable management challenges in key areas, such as human capital and acquisitions, which is why it remains on the Government Accountability Office's (GAO) High Risk List.⁴ Additionally, the Department struggles with low morale and consistently rates among the bottom of the Partnership for Public Service's annual "Best Places to Work in the Federal Government" survey. As a result, many employees leave the agency shortly after being hired, resulting in significant wasted costs. For example, the DHS Office of Inspector General (OIG) found that the Transportation Security Administration (TSA) spent \$16 million in 2017 to hire and train nearly 2,000 Transportation Security Officers (TSO) who left TSA within six months. GAO has also highlighted workforce shortages as a persistent challenge for DHS's acquisition programs; a challenge that can negatively affect the Department's ability to deliver critical capabilities on time and on budget.⁵

¹ Shane Harris, *DHS compiled 'intelligence reports' on journalists who published leaked documents*, THE WASHINGTON POST, July 30, 2020, https://www.washingtonpost.com/national-security/dhs-compiled-intelligence-reports-on-journalists-who-published-leaked-documents/2020/07/30/5be5ec9e-d25b-11ea-9038-af089b63ac21_story.html and Julia Ainsley, *Internal document shows Trump officials were told to make comments sympathetic to Kyle Rittenhouse*, NBC NEWS, Oct. 1, 2020, <https://www.nbcnews.com/politics/national-security/internal-document-shows-trump-officials-were-told-make-comments-sympathetic-n1241581>.

² DHS Leadership webpage, accessed Nov. 12, 2020, <https://www.dhs.gov/leadership>.

³ *Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security*, GAO, Aug. 14, 2020, <https://www.gao.gov/products/D22077>.

⁴ *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, GAO, Mar. 6, 2019, <https://www.gao.gov/products/GAO-19-157sp>.

⁵ *Homeland Security Acquisitions: Major Program Assessments Reveal Actions Needed to Improve Accountability*, GAO, Apr. 22, 2015, <https://www.gao.gov/products/GAO-15-171SP> and *Homeland Security: DHS Requires More Disciplined Investment Management to Help Meet Mission Needs*, GAO, Sept. 18, 2012, <https://www.gao.gov/products/GAO-12-833>.

H.R. 8791, the DHS Reform Act of 2020, seeks to improve DHS operations and address lessons learned from the mismanagement, waste, and abuse in the last four years under President Trump by requiring a range of reforms that:

- **Promote continuity and confidence in Department leadership.** The Act places restrictions on officials who may serve in an “acting” capacity as Secretary or head of a Departmental component. Requires prior service in a senior leadership position 90 days prior to the designation. The Act also authorizes the Under Secretary for Management to serve a five year term to improve transitions between Administrations.
- **Create a new Associate Secretary responsible for DHS’s law enforcement missions.** This new official would be third in command at DHS and dedicated to coordinating and overseeing the Department’s law enforcement components, including U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Secret Service, and Federal Protective Service, and, in consultation with the Deputy Secretary, the law enforcement activities in other Department components.
- **Strengthen constitutional protections in DHS policies, programs, and activities.** The Act increases the integration of the DHS Privacy Office and Office for Civil Rights and Civil Liberties with Departmental components to prevent violations of privacy, civil rights or civil liberties. The Act also grants new authority to investigate policies and programs that may violate constitutional and other legal protections. Under the Act, these offices are also directed to review all DHS Intelligence and Analysis products and train DHS intelligence personnel on privacy and civil rights and civil liberties protections.
- **Require the Department’s use-of-force policy be updated to emphasize de-escalation tactics and training.** This policy update, which is to be issued no later than 180 days after enactment, must include (1) initial and recurrent training in de-escalation requirements and (2) require each DHS component to submit data regarding use-of-force for a report to Congress every six months. Compliance with the policy is to be reviewed by the Department’s Inspector General on an ongoing basis.
- **Require greater accountability and transparency when DHS officers or equipment are deployed to augment State, local, tribal or territorial operations.** The Act requires the Secretary of Homeland Security to inform Congress within 24 hours of accepting a request for assistance and that deployed officers be in uniform with insignia displayed.
- **Mature DHS’s acquisition process and policymaking.** The Act authorizes the Joint Requirements Council to review and prioritize capability needs across the Department, as well as technical support offices to ensure that products or services acquired by DHS meet those needs. Additionally, it directs critical reforms to the quadrennial homeland security review to ensure that this longterm strategy document reflects input from the homeland security stakeholder community and informs budgets.

- **Centralize oversight of DHS's several billion-dollar portfolio of acquisition programs.** The Act designates the Under Secretary for Management as the Department's Chief Acquisition Officer and authorizes oversight responsibilities for other key officials involved in DHS's acquisition process to guard against waste, fraud, and abuse in programs within any DHS component or office. The Act requires the Under Secretary for Management to assess the Department's acquisition workforce needs and regularly report to Congress on the performance of the Department's acquisition programs.
- **Ensure the public receives factual and non-biased information from the Department.** The Act requires DHS to develop and disseminate Department-wide guidelines for reviewing all public facing materials, using social media, and prohibiting the origination or circulation of propaganda to maximize the quality, objectivity, utility, and integrity of information presented.
- **Authorize a range of programs targeted at enhancing morale within the Department.** The Act authorizes an employee engagement steering committee comprised of representatives from across the Department and its components that is a forum for identifying and addressing factors that contribute to low morale. It also establishes an annual employee award program and career enhancing opportunities within the Department, including rotational and fellowship programs.
- **Grant rights to Transportation Security Officers under the Title 5 personnel system.** The Act terminates TSA's authority to establish or modify its own personnel management system and requires the Secretary of Homeland Security, in consultation with the TSOs' labor organization, to convert this frontline TSA workforce to the Title 5 personnel system in a manner that is mindful of tenure and status. Importantly, the Act includes protections against any reductions in pay for transitioned workers.

Since DHS was created in 2002, the complexity of the Department's mission has grown. Enactment of ***the DHS Reform Act of 2020***, is necessary to ensure to provide the Secretary of Homeland Security and the Department's Management Directorate expanded authority to guard against waste, fraud, and abuse, including violations of privacy, civil rights, and civil liberties, anywhere in the Department and to promote greater transparency and accountability to the American people. For DHS to effectively secure the nation from the diverse threats that it faces, Americans must have confidence that the Department is operating in accordance with the law and respects constitutional protections.