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NOMINATIONS OF HON. ERNEST W. DUBESTER, JULIA AKINS CLARK, AND RAFAEL BORRAS

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

OF THE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

NOMINATIONS OF HON. ERNEST W. DUBESTER TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY; JULIA AKINS CLARK TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY; AND RAFAEL BORRAS TO BE UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

JULY 29, 2009

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NOMINATIONS OF HON. ERNEST W. DUBESTER, JULIA AKINS CLARK, AND RAFAEL BORRAS

WEDNESDAY, JULY 29, 2009

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3:07 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, presiding.

Present: Senators Akaka, Collins, and Voinovich.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. The hearing of the Senate Committee on Homeland Security and Governmental Affairs will come to order.

Good afternoon and welcome to all of you here today.

Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Ernest Dubester to be a Member of the Federal Labor Relations Authority (FLRA), Julia Clark to be General Counsel of the Federal Labor Relations Authority, and Rafael Borras to be Under Secretary for Management, U.S. Department of Homeland Security (DHS), whom we will introduce later in the hearing.

Mr. Dubester attended Boston College and received his law degree at Catholic University. Mr. Dubester has been involved in public service since 1975. After graduating from law school, he worked as legal counsel to the National Labor Relations Board.

In 1993, President Clinton nominated Mr. Dubester to serve on the National Mediation Board (NMB), and the Senate unanimously confirmed him. He became the chairman of the NMB in 1993. Mr. Dubester also has taught law at the George Mason University School of Law and the Catholic University School of Law.

Ms. Clark graduated from Oklahoma Baptist University and received her law degree from the Washington College of Law at American University. For the past 14 years, she has served as general counsel to the International Federation of Professional and Technical Engineers, a union that represents dedicated Federal employees throughout the country, including many in my home state of Hawaii.

The positions for which Mr. Dubester and Ms. Clark have been nominated are among the most important to Federal employees. If

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confirmed, I expect these nominees to be strong advocates for fair employment practices in the Federal Government.

I want to congratulate you both on your nominations to these important positions and welcome your families. I understand that you both have some family and friends in the audience, and I want to give you the opportunity to introduce them to the Committee.

Mr. Dubester, will you begin with your introduction?

Mr. DUBESTER. Thank you, Mr. Chairman. The most important member of my family is here, my wife, Karen Kremer. When I met her for the first time, about 22 years ago, she was working for Senator Howell Heflin on the Senate Judiciary Committee. Now she works for the Administrative Office of the U.S. Courts, and she recently reached the milestone of 25 years of Federal Government service.

Sitting directly behind her are two of our friends, George Honyara, who also happened to work for the Federal Government almost 25 years, and Jim Pope.

Senator AKAKA. Thank you. I want to welcome your wife, Karen, and your friends who are here. And I would also like to welcome all of your supporters who are here.

Mr. DUBESTER. Thank you.

Senator AKAKA. Will you please introduce your family and friends, Ms. Clark?

Ms. CLARK. Yes. Thank you, Chairman Akaka, for giving me that opportunity. My mother and father are here, Jack and Loreen Akins from Denton, Texas. My brother and sister-in-law, Tim and Debbie Akins, are here from Highland Village, Texas. My brother-in-law, Chris Clark, is here from St. Louis, Missouri. In addition, my step-daughter, Lisa Nichole Clark, is here, and my grandson, her son, Drake Clark, is here. And behind me is my husband, Nick Clark. Thank you.

Senator AKAKA. Welcome to all of you here today. I want to say aloha and welcome. We are happy to have all of you here today.

Mr. Dubester and Ms. Clark, your nominations come at a critical juncture for the FLRA. The FLRA is responsible for providing leadership in establishing policies and guidance relating to Federal sector labor relations. It also resolves complaints of unfair labor practices and decides issues involving Federal union representation.

These are very important responsibilities. For far too long, however, the FLRA has failed to carry out its mission. The FLRA has been without a general counsel since February 2008. Moreover, prior to October 2008, the FLRA had only one member. Last year, I am glad we were able to fill two of the seats; however, it is better to have a full complement. Personnel shortages have led to a serious backlog of cases at the FLRA, and I trust you will work to reinvigorate the FLRA.

I am also concerned about low employee morale at the FLRA. In the Partnership for Public Service's 2009 Best Places to Work rankings, the FLRA ranked last among small Federal agencies. The FLRA received the lowest score in several categories, including effective leadership, strategic management, and employee training and development. Clearly, big changes are needed to address these serious issues. I look forward to hearing the nominees' thoughts on these issues.

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During the past Administration, Federal employees and their representatives at times believed their views were not adequately considered when changes to Federal programs and workplace policies were made. In your roles, if confirmed, you can help rebuild strong partnerships between unions and management throughout the Federal Government, which I believe is necessary to help agencies best carry out their missions.

I am happy to have my good friend and partner, Senator Voinovich, here with me today, and he can speak from experience on some of these concerns. For many years, Senator Voinovich and I have sat on this Committee together and worked to address problems in the Federal workforce. Senator Voinovich has proven himself to be a champion of these issues

Senator Voinovich, would you please make your opening statement at this time?

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Senator Akaka. You have done a pretty good job of laying out the challenges here. I wonder if the same staff member who wrote your statement wrote mine. [Laughter.]

I am pleased to be here to review the qualifications of two individuals nominated by the President of the United States to fill important positions at the Federal Labor Relations Authority. From what I can see, the President has nominated two very qualified individuals for those positions.

I commend both of you for your willingness to serve your country at this important time in the FLRA's history. As you well know, the Authority faces significant challenges in its attempt to fulfill its statutory mandate to encourage "efficient operations of the Government" through positive labor-management relationships.

Senator Akaka and I have talked about this, but you are only as good as your team, and it is really too bad that the FLRA has fallen so far down that the Partnership for Public Service has said it is ranked last in overall employee satisfaction among small agencies. So you both are going to have a challenge to change that poor ranking, and I would be interested to get your insights into how you think you can get that done.

The FLRA's case backlog is intolerable. I ran into a couple of my good friends from the trade unions yesterday, and I said that I just wish, Senator Akaka, that somebody had called to tell us how far behind the FLRA had fallen in processing cases because maybe we could have done something earlier to get some needed folks over there. So that is another challenge that you have.

I understand that the FLRA has crafted some performance goals to try to eliminate the case backlog, and I think it is going to take that plan plus some innovative strategies for disposing of these pending complaints and appeals in a timely and conscientious manner while continuing to process the normal influx of complaints and appeals. It is not going to be an easy job.

So I commend you for your willingness to answer this newest call to service, and I thank you for your past sacrifices. And I want to thank your families for the sacrifices they have made over the years so that you can serve in the capacities that you have.

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Senator AKAKA. Thank you very much, Senator Voinovich.

The nominees have filed responses to biographical and financial questionnaires, answered prehearing questions submitted by the Committee, and had their financial statements reviewed by the Office of Government Ethics.

Without objection, this information will be made a part of the hearing record, with the exception of the financial data.

It is on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, I ask the nominees to please stand and raise your right hands.

Do you swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DUBESTER. I do.

Ms. CLARK. I do.

Senator AKAKA. Thank you.

Let it be noted for the record that the witnesses answered in the affirmative.

Mr. Dubester, please proceed with your statement.

TESTIMONY OF HON. ERNEST W. DUBESTER[1] TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY

Mr. DUBESTER. Thank you, Mr. Chairman, and thank you, Senator Voinovich.

I appreciate the opportunity to come before the Committee for its consideration of my nomination to be a Member of the Federal Labor Relations Authority. I also would like to thank all of the Committee's staff for their work and assistance in reviewing my nomination and for scheduling this hearing.

I think it is also important to recognize the presence here this afternoon of several people from the Federal Labor Relations Authority, including the current chair, Carol Waller Pope. And I know several key staff members from the FLRA are here as well, and I appreciate their attendance. I also want to add that it is my personal pleasure to appear this afternoon alongside of Julia Clark, the President's nominee to be the general counsel of the FLRA.

It is particularly an honor to appear before you as President Obama's nominee to be a member of the FLRA because I am strongly committed to the FLRA's mission and to the importance of stable, constructive labor-management relations in the Federal sector. In my 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, nearly 20 of those years were in the Federal sector.

When I was still in law school and considering my first professional opportunity, I decided to join the staff of a Member of the National Labor Relations Board, as you pointed out, Mr. Chairman. In fact, it was during my tenure at the NLRB that Congress enacted the Federal Service Labor-Management Relations Statute, a law that, as the Committee knows, is generally modeled after the

[1] The prepared statement of Mr. Dubester appears in the Appendix on page 36.

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National Labor Relations Act. And, indeed, this year marks the 30th anniversary of the FLRA.

As you also pointed out, Mr. Chairman, during President Clinton's Administration, I was privileged to serve as the Chairman and a Member of the National Mediation Board, the independent agency that oversees labor relations in the airline and railroad industries. There I was responsible for harmonizing the goals of another collective bargaining statute with the public demand for the highest standards of employee performance and the efficient accomplishment of the operations of government.

If confirmed, I will dedicate myself to working to ensure that the FLRA fulfills its mission by adjudicating disputes fairly, impartially, and expeditiously and by providing quality decisions that enhance the stability of Federal sector labor relations.

An important part of this effort will be to make sure that the Authority has the resources to fulfill its responsibilities. Indeed, if confirmed, I look forward to working with each and every person on the FLRA staff, including my colleagues on the Authority, as well as the Federal sector's labor and management representatives to help establish the FLRA as one of the stellar independent agencies within the Federal Government.

Again, I appreciate the opportunity to appear before you, and I will be pleased to answer any questions that you may have.

Senator AKAKA. Thank you very much, Mr. Dubester, for your statement.

Ms. Clark, will you please proceed with your statement?

TESTIMONY OF JULIA AKINS CLARK[1] TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY

Ms. CLARK. Thank you, Chairman Akaka, Senator Voinovich, and all of your gracious staff who have treated us with such courtesy and respect in this process. I truly appreciate everything you have done to bring this day about.

It is the greatest honor to be asked to serve one's country as a public official. If confirmed, I promise to do my utmost to fulfill my statutory responsibilities in the public interest. I understand the role of the General Counsel. The role is to investigate unfair labor practices and, where merited, to issue and prosecute complaints.

The General Counsel is also responsible for managing the employees of the Office of General Counsel, including all of the regional offices. In that capacity, that means also supervising the conduct of representation proceedings. The General Counsel is also part of the management team of the Authority and must work in a collaborative way with the chair and the other members. I feel that my background and experience has prepared me well for this role.

I was honored during the period of time between the election and the inauguration to be asked to serve as a part of the President's transition team that reviewed the FLRA. As I did that, I became very much aware and gained significant insights into the challenges that you described and the capacity of that agency to meet those challenges.

[1] The prepared statement of Ms. Clark appears in the Appendix on page 63.

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Since 1995, I have been the general counsel of a national labor organization, and I am a part of that management team. In that role, I have had to supervise and provide leadership to management regarding employee relations and relations with our staff unions. And before that, I was also a prosecutor at the U.S. Department of Justice, and I understand very well the important role that the government plays in enforcing and carrying out public responsibilities.

I understand that the FLRA is facing an enormous challenge right now, and I look forward to the opportunity of bringing what talents I have to this job to make sure that this agency is, once again, a model agency and provides the services that the statute requires. Thank you.

Senator AKAKA. Thank you very much, Ms. Clark, for your statement.

I will begin with the standard questions this Committee asks of all nominees and ask for your responses.

First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. DUBESTER. No, Mr. Chairman.

Ms. CLARK. No.

Senator AKAKA. Second. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. DUBESTER. No.

Ms. CLARK. No.

Senator AKAKA. Third. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. DUBESTER. Yes, I do.

Ms. CLARK. Yes.

Senator AKAKA. Thank you very much.

Mr. Dubester, one of the most significant challenges facing the FLRA is the need to process cases in a more timely manner and reduce the large backlog of cases that currently exists. If confirmed, what role do you believe you can play in reducing this backlog of cases and restoring public confidence in the FLRA?

Mr. DUBESTER. Well, Mr. Chairman, the first point I think I would make, which is good news at least, is that my understanding is that already this year a meaningful effort has been made in that regard and that within the Authority, more decisions have been issued already this fiscal year than were issued in the previous two fiscal years.

I think part of the explanation for that, as I understand it, is there was already a plan in place to reduce that backlog, which, if I am confirmed to be a member, I would certainly join in. And it starts with collaborative working relationships among the members of the Authority as well as the staff. It includes addressing some of the oldest cases, and most of the cases in the backlog, I believe three-quarters of them, are what I think would be fairly characterized as older cases, and perhaps directly interacting with

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the labor-management parties to see whether there was a way of dealing with those cases other than through actual decisions.

Consistent with the statute, the statute imposes a directive on the Authority to provide leadership and guidance to the labor-management participants. So I think another part of that effort would be to provide training to the labor-management parties about their statutory rights and responsibilities to give them better understanding. And I think one of the hopeful consequences of that would be perhaps it could lead to a reduced number of frivolous or less significant kinds of cases.

I think another program that needs to be mentioned is the FLRA's Alternative Dispute Resolution (ADR) program. And each component, as the Committee knows, has an ADR program. That program is voluntary for the labor-management participants to choose to participate in. I have a strong background in the use of ADR myself. I think that is a very effective way of helping to reduce constructively the number of future case filings, which will help the Authority to deal with the existing backlog.

Senator AKAKA. Thank you, Mr. Dubester.

As you probably know, there is a backlog of approximately 300 unfair labor practice complaint cases and approximately 700 unfair labor practice appeals at the FLRA. That is an issue that we look forward to addressing. After you are confirmed, I hope we can meet with you to determine how you are progressing on reducing this backlog.

Ms. Clark, I would like to hear from you on this issue as well. If confirmed as FLRA general counsel, what specific steps will you take to reduce the backlog of unfair labor practice complaint cases and appeals at FLRA?

Ms. CLARK. Yes, Mr. Chairman. The backlog of cases that you just described, the 300 pending unfair labor practice complaints, those are recommendations from the regional offices that have been fully investigated and recommended for prosecution, and they have been pending for some time. And it is the statutory responsibility of the general counsel to act on those complaints.

The 700 cases are all appeals from regional director decisions not to issue complaints. And, again, that case backlog of 700 cases has simply been pending with no action. And no action can be taken until a general counsel is confirmed.

I consider it one of the greatest challenges facing whoever takes this position, and if confirmed, my initial step will be to speak to senior staff about grouping those cases in ways that make sense and would allow us to triage, do the best we can to get those cases resolved and into litigation, perhaps settled, as quickly as possible.

Parties are not going to stop and have not stopped filing unfair labor practice charges, so that backlog is continuing to mount. But until we deal with it, we cannot possibly restore the confidence of management and union representatives and employees that an agency is there to impartially resolve their disputes. So I intend that backlog to be the very first focus of my attention, if I am confirmed.

Senator AKAKA. Thank you.

Mr. Dubester, as I stated in my opening statement, the FLRA finished last in the 2009 Best Places to Work rankings by the Part-

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nership for Public Service for all small Federal agencies that submitted data, and this, of course, is of great concern.

What steps do you plan to take to improve working conditions at the FLRA and make it a more attractive agency to young people seeking Federal employment?

Mr. DUBESTER. Well, the observation that you point out is very disturbing to me because I think in any workplace, including Federal sector workplaces, the employees are the workplace's greatest asset. And so, that certainly is among the highest priorities that I see for the agency.

I think one of the first points that I am making here at this hearing is to let each and every member of the agency staff know of my strong commitment to the agency's mission, which, of course, requires an appreciation of the work and dedicated service that they are going to provide.

I think another important necessity within the workplace is to provide meaningful and effective communication among all staff members and, in my case, if confirmed, people within the Authority. I know that for fiscal year 2010, it is my understanding that the FLRA has established a performance goal involving human capital management. And one of the goals of that is to establish collaborative internal work groups so that employees have an opportunity to provide meaningful input.

I think another point, if confirmed, for me as a member of the Authority would be to foster and support the professional development of each and every member of the agency, and that would include providing meaningful opportunities for training so they could do their jobs even better.

So those would be some of the goals that I would have if confirmed.

Senator AKAKA. Thank you very much. Senator Voinovich.

Senator VOINOVICH. Ms. Clark, you were on the presidential transition team and had a chance to observe the state of Federal labor relations. At this stage of the game, you are coming on board. When you went through this review as part of the transition process, did the problems seem to be the result of a lack of people? Is the FLRA's budget adequate?

What are your observations? You are going to have a big job here, and I would like you to share with us just what your observations are and how you intend to take advantage of the opportunity you have had to review Federal labor relations during the transition process.

Ms. CLARK. Thank you for the opportunity to respond to that question. I wanted to say first that I do intend, as a first step, if confirmed, to work closely with the chair, the other members, and senior staff to make sure I really do understand the problems and collaboratively develop a plan. But my observations initially are—some of them fairly obvious—that these are civil servants we are talking about who really are there to do an important mission. And the long-term vacancies in the key positions of the other FLRA member, the general counsel, and the deputy general counsel, I believe, have contributed tremendously to the slide in morale.

I do note that staff has been decreased 50 percent from 2001 to the present time and the budget has also dropped significantly

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from 2001 to the present time. I would note that the staffing does appear to be inadequate. The budget does appear to be inadequate. But as a first step, by filling these key positions, we are going to allow the hard work of all of the agents who have investigated these complaints and made recommendations to come to fruition. That should improve morale.

I think that communication is important and can be greatly improved and that as a leadership team, together with the chair and the other members, taking a hard look at how we can use our existing resources to provide training opportunities and staff resources should make a positive contribution.

But like Mr. Dubester, I truly do look forward and hope I have the opportunity to comment with greater facts and data about what we need to do in terms of staffing and budget. But my initial impression is that it is truly inadequate.

Senator VOINOVICH. Who compiles the FLRA's budget request?

Ms. CLARK. The chief executive of the agency is the chair.

Senator VOINOVICH. So in other words, you would have to work with the chair after making your observations to ascertain whether or not you have an appropriate budget to do the job that you have been asked to do and then try to make sure that the information gets to the Administration so that they can properly give you the resources to get the job done.

Ms. CLARK. That is correct. There is a high premium on working cooperatively, open communication, and I am committed to that.

Senator VOINOVICH. Did you have a chance to look at the salary schedule at the FLRA to find out whether or not you think it is adequate to attract the right people?

Ms. CLARK. There were some issues with respect to the salary schedule, a couple of key issues that had occurred in terms of people working side by side, in terms of the rank and file employees in the general counsel's office, doing the same jobs and being graded differently. A similar situation exists with respect to the top level management in the regions. The first step, really, is to make sure there is fairness in the existing pay scale, and I understand that great strides have been made in that direction already.

Having worked for the Federal Government and the Justice Department and being familiar with the salary schedules for GS employees, particularly litigation attorneys, I think that there probably is a need for some closer examination about whether the salary schedules for certain employees are at the appropriate level.

Senator VOINOVICH. One of the things that Senator Akaka and I have tried to do over the last 8 or 9 years is to give flexibilities to the departments in terms of hiring people. I would be interested, after you have had a chance to observe the FLRA's hiring operations, whether or not you think that you have the hiring flexibilities to get the job done and whether Mr. Berry at OPM is able to respond to your hiring needs.

It is interesting that the agencies that in terms of employee satisfaction are the top performers are the ones that were granted hiring flexibilities. Hopefully, this new hiring system that we are trying to establish by S. 736 will make a difference.

You both have advocated on behalf of labor unions. I ran into a couple of my union friends on the street, and they are really de-

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lighted to have some people with union backgrounds nominated for positions at the FLRA.

How do you intend to maintain your impartiality and not have your former relationships with union folks influence your decision-making because I am sure there are going to be cases where you are going to make your former colleagues very unhappy. So tell me about that.

Mr. Dubester, do you want to start?

Mr. DUBESTER. Yes, Senator Voinovich.

Well, first I want to say I am proud of my former associations with some of those folks from labor organizations and look forward to working with them as well as the management representatives and Federal agencies in my new job. I am certainly mindful that, if confirmed, as a member of the Authority, I will be sitting in a quasi-judicial role, and I will have the responsibility of adjudicating disputes in a fair and impartial manner.

I think in my particular background, I would also point out to you that for the last 16 years I have been working as a neutral or as an academic, including working as a mediator and an arbitrator and, of course, teaching. And during the time I was working as an arbitrator, I was selected by labor-management parties and sometimes put on permanent panels. And I was on two permanent panels as an arbitrator selected by parties that I previously worked with during my tenure as chairman and member of the National Mediation Board for 8 years.

So those people that worked closely with me, both the labor as well as the management parties, selected me to work in that neutral capacity. I would like to think that the reason for that selection was because they had confidence that I could fulfill my duties in a professional, fair, and impartial manner.

So, again, I am appreciative of my former associations with labor organizations. Of course, the Federal statute has one of its primary purposes to be collective bargaining, which Congress has found is in the public interest. But I am also completely confident that I can, if confirmed, fulfill my responsibilities in a fair and impartial manner.

Senator VOINOVICH. Ms. Clark.

Ms. CLARK. Thank you, Senator Voinovich. I was very fortunate that my first job out of law school was to work as a prosecutor at the U.S. Department of Justice, and through that experience, I learned about the importance of the public trust and the enormous authority and responsibility of the Federal Government, and I came to understand that what all citizens rely on is that we fulfill our responsibilities as public officials in ways that maintain the public trust. Whether they are pleased or disappointed with the result, the importance is that our work is transparent, is fair and consistent and impartial. That is my guide, and it always has been throughout my career no matter where I have been employed.

As a part of the transition team, I was required to execute an ethics agreement that since that time has limited my ability to appear before the Authority and also to maintain confidences with respect to the work that was performed there.

I feel comfortable that we have been through the ethics process, and we have a highly qualified and cautious and careful ethics offi-

cer at the Federal Labor Relations Authority. So I feel very comfortable that I have all the support I need, the background I need, and the experience I need to fulfill the public responsibility in the way that it should be. And I believe that all of my colleagues and co-workers—management and labor—understand that and are only asking that I fulfill my public responsibilities with fairness and impartiality.

Senator VOINOVICH. Thank you.

Senator AKAKA. Thank you very much, Senator Voinovich.

The FLRA plays a key role in Federal sector labor relations. Due to recent personnel shortages, it has been difficult for the FLRA to serve as a neutral party to resolve disputes between labor and management.

If confirmed, what will you do to address that personnel shortage and ensure that the FLRA is able to carry out that important function?

Ms. CLARK. I understand the question to be that given the shortness of staff at the FLRA and the backlog, what is expected to be an increasing workload, how are we going to manage. And I think that it will require great cooperation on the part of the political appointees and senior staff to fairly assess the situation, share resources, and come up with creative strategies.

It is going to require open dialogue and a partnership with the staff union at the FLRA and also, I think, application, wherever we can, of technology improvements to improve our case processing in ways that allow us to do more with less and then provide you with the kind of information you need to give us, in the medium and longer term, the kind of budget resources we need to staff up.

Senator AKAKA. Mr. Dubester, some have said that the current state of labor-management relations in the Federal sector is as poor as it has ever been. I believe that the new Administration is committed to addressing that problem.

What do you believe should be done to improve the relations between employees and the unions that represent them and the Federal agencies?

Mr. DUBESTER. Well, Mr. Chairman, I think that the lack of confidence by the stakeholders, the labor and management representatives, is in many ways related to what you have previously referenced as the low employee morale within the agency. And I think it comes from the lack of confidence in recent years as to whether or not the FLRA has the adequate resources, both in terms of budget authority as well as in terms of human manpower, if you will, to fulfill its mission.

So the previous question addresses that. And I think, as you know, the chair is the chief executive and administrative officer of the agency. So if confirmed as a member of the Authority, I will certainly assist her in any way possible to, again, ensure that we have adequate resources, both budgetarily as well as increased staffing. And I think by doing that, that would be a big first step, both in improving employee morale as well as in improving the confidence that labor-management representatives have in the FLRA's ability to fulfill its responsibilities.

Senator AKAKA. You mentioned the need for adequate resources in your opening statement.

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Mr. DUBESTER. Yes, I did, Mr. Chairman.

Senator AKAKA. And this is true. Without the personnel to do the work, there is a problem. And, hopefully, that problem can be eliminated.

Ms. Clark, the FLRA general counsel may prescribe regulations providing for informal methods to resolve alleged unfair labor practice charges prior to issuing a complaint.

What informal methods of resolution do you believe are most effective in resolving these disputes prior to the issuance of an unfair labor practice complaint?

Ms. CLARK. Yes, Mr. Chairman. I am aware that in the past such authority has been used. It was the decision of a subsequent general counsel to not use that authority and change those regulations through the appropriate mechanisms.

It is my professional opinion, though, that particularly in labor relations, where the parties work together everyday to attempt to achieve a common mission, which is in the public interest, that anything we can do to assist those parties in clearly understanding their legal responsibilities and resolving disputes through means other than litigation is in the public interest.

So I would welcome the opportunity, if I get the chance, to take a hard look at what was done in the past, how successful it was, what changes occurred when those pre-complaint resolution procedures were not available, and consider establishing the opportunity for parties to resolve disputes pre-complaint. I am very open to that and would like to look at it more closely.

Senator AKAKA. Thank you. This is my final question, and it is addressed to both of you.

We have discussed the many challenges facing the FLRA. If confirmed, what will be your long-term priorities while at the FLRA?

Mr. Dubester.

Mr. DUBESTER. Well, as I said in my opening statement, Mr. Chairman, I look forward to working with every member of the FLRA staff and my colleagues, as well as the labor-management representatives. And my long-term goal, after tackling the challenges that we have discussed in our questions and answers here today, is to help to make the FLRA one of the stellar independent agencies within the Federal Government.

I happen to be a big sports fan. And if you are a sports fan, a lot of times you watch situations where teams in various sports finish last one year, and then amazingly the next year they finish first, and they go on to win perhaps the world championship.

I am a big one in that last-to-first kind of a metaphor. You have made reference to the human capital survey where, for a variety of reasons, apparently the FLRA employees made the FLRA last in that survey. Well, I am going to make that conversion from last to first within the FLRA. And that would be my long-term goal, maybe even my short-term goal.

Senator AKAKA. Thank you. Ms. Clark.

Ms. CLARK. I share Mr. Dubester's goal. And from preliminary conversations with Chairman Carol Waller Pope and Member Thomas Beck, I think that this is a team that shares this goal, and that it really is incumbent upon us to make the Federal Labor Relations Authority a model for other labor relations systems, one

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that we can all be proud of and that fulfills the statutory purpose that has been enacted that finds collective bargaining in the Federal sector to be in the public interest. And the place to start is to restore confidence in this agency as an impartial, timely dispute resolution agency.

So in the short-term and long-term, I look forward and hopefully get to participate in this team effort to make the FLRA a model again.

Senator AKAKA. Thank you very much. Senator Voinovich.

Senator VOINOVICH. Ms. Clark, I think you have talked about the importance of consultation and cooperation. And, of course, you have a chairman responsible for FLRA administrative matters. But I would suggest that it might be good for you and Chairman Carol Waller Pope to maybe walk around the agency for a while talking to people about how they feel about their work environment and get their thoughts and recommendations on how they could do a better job.

I found in my experience when I was mayor and governor that I had a team of individuals who were quite smart and knew management. They went in and talked to agency employees to get their thoughts on how the agency could be improved or their environment could be improved. And so, as a result of that, some of the recommendations that came through for agency reforms were actually recommendations from employees who had been at an agency for years but nobody had ever sat down to talk to them to find out how they felt about their agency. And I think that approach would be really helpful to you, particularly if you are going to start trying to reestablish some employee morale at the FLRA.

The other issue, Mr. Dubester, you talked about was alternative dispute resolution, and I think that is terrific. Where does ADR come in? Do you encourage the agencies when they have a problem to engage in ADR or does ADR occur when they come up to the board?

Mr. DUBESTER. Well, each component of the agency has an alternative dispute resolution program, including the Office of the General Counsel, the Authority, and the Federal Service Impasse Panel. So it could arise at various stages, before either charges or petitions are filed with the Office of General Counsel or even after cases have come to the Authority in efforts to resolve matters without having formal decisions issued.

Senator VOINOVICH. The question I have—and I should be more familiar with it, and I am not——

Mr. DUBESTER. Sure.

Senator VOINOVICH [continuing]. Is that you have various Federal agencies. Are you telling me that Federal agencies have alternative dispute resolution functions where the management would say to somebody, you are unhappy about your work environment and we have something available, namely ADR, that can resolve your concerns before you file your complaint?

Mr. DUBESTER. Well, they do. As a matter of fact, what you are referring to, Senator Voinovich, does not involve the FLRA directly. That involves particular agencies.

Senator VOINOVICH. It is the agency before they get——

Mr. DUBESTER. Under law, every agency has some kind of an ADR program to deal with their internal workings, at least, usually employment matters, so they can resolve them in a more informal manner where the disputing parties have the ability to make decisions themselves without resorting to a more formal adjudicative process.

In the case of matters that would come before the FLRA, we are dealing with situations where the parties involved have a collective bargaining relationship, so they have mechanisms in place there. The alternative would be whether informally—though, as you suggest, communication, just dialogue, informal dialogue, processes that do not require formal processing, in the case of the Authority, formal decision-making—they can voluntarily work together collaboratively to try to craft solutions without resorting to either formal decisions or formal processing.

Again, in the appropriate situations, I think that could be very useful. It is a very good mechanism for improving communication and a very good mechanism for improving the relationships between labor representatives and management representatives from various agencies.

Senator VOINOVICH. I would be interested to see a survey of where complaints originate in the Federal Government and any patterns that exist.

Is part of your responsibility to survey agencies to see whether or not the vehicles they have within the agency are doing the job that they are supposed to be doing or could be improved so that you could cut back on the number of cases that get filed with the FLRA?

Mr. DUBESTER. Sure. Well, if confirmed, as a member of the Authority, because of my strong interest in ADR, as we said, I would try to get a better understanding of what we currently are doing. Part of this goes to external outreach, if you will, to the parties. And I think that is, again, consistent with the statutory directive to provide leadership to the labor-management representatives, which I think can help to provide stable and constructive labor relations.

I know that the use of ADR, based on information that I reviewed, has gone up and the percentage of voluntary resolutions has been quite successful. But I think that goes to outreach. It is analogous to your suggestion, Senator, about going around to staff within the agency, from people within the FLRA, including members of the Authority, the general counsel.

I think it is also part of external outreach and showing that you are receptive and open-minded to hearing from the labor-management parties as to what is going on in their lives and business, sharing with them, to the extent they are unfamiliar with it, the availability of ADR as a tool to resolve their problems; providing them training in ADR to help them with more effective communication and interpersonal relations, which I think, even if they do not use the ADR processes, will reap great benefits just in terms of their day-to-day working labor-management relations.

So I think those are ways, I believe, that the FLRA is already working with the parties, but I hope would continue and maybe even increase in use.

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Senator VOINOVICH. Good.

Senator AKAKA. Thank you very much, Senator Voinovich.

I want to thank you all. At this time, there are no further questions for Mr. Dubester and Ms. Clark. There may be additional questions for the record, which we will submit to you in writing. The hearing record will remain open until the close of business Friday for Members of this Committee to submit additional statements or questions.

I want to thank you, Mr. Dubester and Ms. Clark, for being here and for bringing your families, friends, and supporters. I am pleased to be able to hold a hearing for such well-qualified nominees.

It is my hope that the Committee will take up your nominations very soon and your nominations will be considered by the full Senate very shortly. Thank you very much.

Mr. DUBESTER. Thank you very much.

Ms. CLARK. Thank you.

Senator AKAKA. I would like to call on our next witness, Mr. Borras. Will you please come forward?

Welcome to this part of today's hearing as the Committee on Homeland Security and Governmental Affairs meets to consider the nomination of Rafael Borras to be Under Secretary for Management at the Department of Homeland Security.

Mr. Borras has been nominated to this important position with over 20 years of Federal, local, and private sector management experience. It is my hope that this diverse experience will guide the nominee well, should he be confirmed.

As you know, I, along with my friend Senator Voinovich, feel that the Under Secretary for Management is an important position because he or she oversees the Department's budget, finances, procurement, human capital, information technology (IT), facilities, as well as performance measures. The role is so important that I cosponsored Senator Voinovich's bill, the Effective Homeland Security Management Act, which would elevate this position to a term-appointed deputy secretary with a fixed 5-year term.

This legislation, which was considered by this Committee this morning, would promote more focused and robust management at DHS, which is critical to improving the cohesiveness, efficiency, and effectiveness of the Department's action. Even if our bill is not enacted this year, I trust that Mr. Borras will use his position to implement sound management practices.

The Department of Homeland Security has been on the Government Accountability Office (GAO) high-risk list since 2003 because of the challenges it faces through its continued transition from over 20 distinct entities into the third largest department in the Federal Government. Since its creation, DHS has been one of the biggest management challenges in the Federal Government.

Mr. Borras, you will be coming to an agency that continues a long struggle to integrate and become one DHS. You will have been left several management reform projects to take over. I have no doubt from our discussions with you that you have your own enthusiastic ideas as well, and I look forward to hearing more about those ideas today.

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As you know, one of my primary concerns at DHS has been that of accountability. But today, there are far too many contractors at DHS and not enough Federal employees to oversee them. It is essential that we fix the contractor/federal employee mix to ensure that there are enough career professionals to carry out the critical missions of this department. It is also important that agencies look to innovative methods to leverage the diverse talent of the Federal workforce to fulfill critical mission gaps.

In particular, a problem throughout the Federal Government, but especially important at DHS, is the acquisition workforce. These are the professionals who are responsible for the development and execution of billions of dollars worth of contracts every year. Unfortunately, as this Committee has heard in several hearings, the government is losing acquisition professionals to retirement or other employers, and it is not recruiting and training new ones quickly enough. This is an issue that my Oversight of Government Management Subcommittee will continue to address in the near future.

More broadly, DHS, with the rest of the Federal Government, faces looming workforce challenges as baby boomers retire. DHS must attract the next generation of employees, proud of Federal service and committed to the Department's mission. This will require seeking out talent with unique skills from both outside and within the government. These efforts can best be achieved by ensuring the use of veterans' preference, a diverse workforce, and a commitment to working with employee unions and groups.

Again, Mr. Borras, I want to thank you for your willingness to take on the challenges that you will surely face in this position. It is my hope that you will work closely with this Committee as we move forward in addressing the strategic management challenges facing DHS.

At this time, I would like to call on Senator Voinovich for his opening statement.

Senator VOINOVICH. Thank you, Mr. Chairman. And I want to also welcome you, Mr. Borras, and thank you for being here today. We look forward to hearing about your qualifications and your desire to serve.

Senator Akaka, since DHS was established in 2002, management issues have existed and persisted, and we have been concerned about these issues ever since. In 2003, the Government Accountability Office included implementing and transforming DHS on its list of areas at high risk to fraud, waste, abuse, and mismanagement because when DHS was created, it became responsible for transforming 22 agencies into one department with over 200,000 workers. Failure to effectively address management challenges at DHS could have serious consequences for our national security.

The truth of the matter is that the creation of DHS is probably the most formidable management challenge ever undertaken by the Federal Government, even beyond the management changes that were made in the Department of Defense.

In December 2005, the DHS Inspector General issued a report warning of major management challenges facing DHS. The Homeland Security Department's own Performance and Accountability Report, released in November 2006, states that the Department did not meet its strategic goal of "providing comprehensive leadership

and management to improve the efficiency and effectiveness of the Department." In 2007, the Homeland Security Advisory Council Culture Task Force Report also detailed persisting organizational challenges within DHS.

This year, GAO retained implementing and transforming DHS on its high-risk list because the Department has not yet developed a comprehensive plan to address the transformation, integration, management, and mission challenges it faces. And I mentioned this to you during our earlier meeting, Mr. Borras. I have been trying to get GAO and the Department to agree on some metrics to determine whether DHS, in fact, is moving forward with this transformation.

Because of such issues, Senator Akaka and I have spent much of our time on the Oversight of Government Management Subcommittee examining DHS management issues, and last year we included a provision in the Implementing Recommendations of the 9/11 Commission Act of 2007 that requires the DHS Under Secretary for Management to have extensive executive level leadership and management experience, strong leadership skills, a demonstrated ability to manage large and complex organizations, and a proved record in achieving positive operational results.

As Senator Akaka mentioned, we did vote a bill out of Committee today that would provide for a 5-year tenure for this individual because we feel that kind of tenure will help us make the management transformation that needs to be made at DHS.

Mr. Borras, I look forward to hearing specific examples about how you think you meet each of these statutory requirements because, again, ensuring the effective management of DHS remains one of my top priorities and will stay at the top of my list until I tip my hat at the end of next year.

Senator AKAKA. Thank you, Senator Voinovich. Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

I am here because I, too, view this position as being absolutely critical to the success of the Department of Homeland Security. As both the Chairman and the Ranking Member have pointed out, this is an enormously complex department. It has more than 200,000 employees. It is comprised of approximately 23 agencies that were brought together from a host of other departments and agencies when we passed the legislation creating the Department of Homeland Security.

It has not been a smooth process to integrate all of these agencies and bring them together toward the common goal of protecting our Nation. So this position and having an individual with strong management experience is absolutely critical to the success of the Department.

I do have some concerns and questions that I want to ask, and I appreciate the opportunity to be here today.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Collins.

Mr. Borras has filed responses to a biographical and financial questionnaire, answered prehearing questions submitted by the

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Committee, and had his financial statements reviewed by the Office of Government Ethics.

Without objection, this information will be made a part of the hearing record with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, Mr. Borras, I ask you to please stand and raise your right hand.

Do you swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BORRAS. I do.

Senator AKAKA. Thank you.

Let the record note that the witness answered in the affirmative.

Mr. Borras, will you please proceed with your statement?

TESTIMONY OF RAFAEL BORRAS[1] TO BE UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BORRAS. Thank you, Mr. Chairman, Senator Voinovich, Senator Collins, and other distinguished Members in this room. I am humbled and honored to appear today before you as you consider my nomination by President Obama to serve as the next Under Secretary for Management at the U.S. Department of Homeland Security.

Thank you for your consideration of my nomination. I also thank the President for the opportunity to once again serve this great country and Secretary Napolitano for her confidence in me and her support throughout this confirmation process.

I also thank this Committee and its Members for being guardians of the Department of Homeland Security. While I have only been an observer of this Department, your efforts obviously have safeguarded the institution and its mission, provided intelligent and thoughtful oversight, and legislatively ensured that the Department's management functions are properly considered in the context of government-wide policies.

Not only were you responsible for the creation of the Department, you have led the fight in finding DHS a home at St. Elizabeths. You have ensured the Department grew more resilient as a result of your investigation into Hurricanes Katrina and Rita and your subsequent legislative and oversight work reforming the Department. And I have learned from listening to those in the Department that you have instilled an understanding of the need to set goals and measure progress so the Department can be accountable to you and the American taxpayer.

As an observer, I have also noticed that the Department's interactions with the Committee, both the Members and the staff, have fostered a climate of bipartisan collaboration devoid of partisan rancor. If confirmed, I look forward to working with you to ensure that this Department fulfills the vision of the Secretary and this Committee: One DHS that is integrated, efficient, and a Department that understands and executes its mission.

[1] The prepared statement of Mr. Borras appears in the Appendix on page 87.

There is no professional challenge or reward greater than ensuring that the Department of Homeland Security achieves its mission. If confirmed, I know that I will have the immense responsibility of providing management support to the mission of protecting America.

As you consider my nomination, I ask that you consider the totality of my 27 years in public, private, and nonprofit sectors as a leader and a manager. I also have an intimate understanding of the challenges that the Department's State and local partners face each and everyday due to my work for the cities of Hartford, Connecticut, and New Rochelle, New York. I have held a wide variety of management positions that have allowed me to lead such diverse organizations as administration and finance, human resources, information technology, acquisition, and security, each of which is represented by the lines of authority that report to the Under Secretary for Management.

If confirmed, I have three principal areas of focus for the Department of Homeland Security: Financial management, acquisition management, and human capital management. My approach to these areas of focus would be to provide an integrated solution that would link an emphasis on financial management, acquisition review and transformation, and a holistic approach to human capital management that would help drive DHS toward improved management, accountability, and performance.

Thank you, Mr. Chairman and Members of the Committee, and I look forward to answering your questions.

Senator AKAKA. Thank you very much, Mr. Borras. I will begin with the standard questions this Committee asks of all nominees.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. BORRAS. No, sir.

Senator AKAKA. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. BORRAS. No, Mr. Chairman.

Senator AKAKA. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. BORRAS. I do.

Senator AKAKA. Thank you very much. And before I begin my questions, I would like to give you the opportunity to introduce your family and others who are here.

Mr. BORRAS. Thank you, Mr. Chairman.

First of all, I would like to make the Committee aware that I am joined this afternoon by my wonderful wife who is seated behind me, Ivelisse; my daughter, Nicole, who represents our five children, and that is a management feat in itself.

I am also joined by my new friend, Elaine Duke, who is the current Under Secretary for Management at the Department and who has ably provided stewardship during this time of transition and has been of great benefit to me as I have come to learn DHS. I also have here a colleague of mine who serves with me on the Mont-

gomery County Ethics Commission, Gilles Burger, and I am pleased that he is here today with me.

Also, I would like to say that I am definitely in the presence of my mother and father, who passed away in the last couple of years but are with me each and every day. And it was their hard work, their dedication, and their encouragement that led me to public service. And I could not let this moment go without recognizing them today.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much. Because she has worked for a while with us, and we have worked well with her, I just want to welcome Elaine Duke to the Committee.

Mr. Borras, as you may know, the Government Accountability Office has faulted the Department of Homeland Security for its overreliance on contract personnel. DHS has said that it plans to in-source more positions in the future.

What would you do to right size the mix of contract personnel and Federal employees?

Mr. BORRAS. Mr. Chairman, I would say that, if confirmed, I would apply the same techniques and the judgment I have used throughout my long career, beginning in the city of Hartford, where we undertook a very comprehensive right-sizing strategy to realign the government.

I do not think inherently there is anything wrong with having a blended workforce. What is problematic is having a workforce that is made up of contractors that may not have the proper management controls and oversight in place. The utilization of contractors, like any other form of acquisition, requires strong requirements, a strong indication of the expected outcome, and I also believe a sunset feature.

If we hire contract workers, we should have a clear understanding of what they are going to do to contribute to the mission, specifically how we will manage and oversee them, and what is the end date. I believe that it is very important to ensure that we do not have contract workers who are performing either inherently governmental or nearly governmental functions. I also believe that addressing this issue would be among one of my highest priorities, again, if confirmed.

Senator AKAKA. Thank you.

Let me follow up with one issue that has consistently come up in talking about contractors at DHS, and that is the lack of clear statistics regarding the numbers and types of contractors in use by the Department.

If confirmed, would you be willing to assess the current number of contractors and provide this Committee transparent accounting of how many and what kind of service contractors are at DHS?

Mr. BORRAS. If confirmed, Mr. Chairman, I believe that the identification of those contractor resources is essential to understand precisely our workforce needs. I do not believe at this time that the Department can adequately represent a number that identifies the exact number of contract workers that are performing work at the Department of Homeland Security.

All of these issues are related to our workforce, whether it be acquisition workforce, IT workforce, where we have so many contrac-

tors currently performing support functions. There is a great need to enhance and build the Department's acquisition workforce, IT workforce, and human capital management workforce.

Until we have a proper accounting of the number of contract employees we have, what role and functions they are performing, and begin to assess how we can migrate back to government employees, we would be unable to make that proper assessment. And I would be, if confirmed, unable to provide a clear direction to this Committee as to what the course of action would be without that information and that data.

Senator AKAKA. Mr. Borras, one issue that the Oversight of Government Management Subcommittee has focused on for many years is the issue of recruiting a new generation of Federal workers. As I am sure you are aware, the baby boomers are aging and the Federal Government faces a great retirement wave.

Just this morning, this Committee passed favorably a bill that I sponsored with Senator Voinovich to streamline and make more manageable the Federal hiring process. Some of the issues we have tried to address are the length and complexity of the process, workforce planning at agencies, and the use of technology in the process.

Can you share your assessment of the current hiring process and what steps DHS could take to improve it?

Mr. BORRAS. Mr. Chairman, I have spoken with the chief human capital officer and other individuals in the Department to understand what is the perception of impediments to the hiring process and what steps are currently being taken.

I understand that there is a system that was put in place, Talent Link, when complete, to be able to provide cradle-to-grave management of the hiring process. The hiring process certainly begins with the outreach and the networking to new and potential employees. It also extends into the on-boarding process, when we bring new employees on.

In my experience, I have found that one of the ways to build an effective workforce is through the introduction of that employee to the new agency. So how we manage bringing on employees, what I call the care and feeding of employees, during that hiring process, ensuring that it goes smoothly and efficiently, goes a long way toward establishing a good relationship with a brand new employee.

So I believe these systems have to be evaluated. And if confirmed, I would certainly take a very hard look at what programs are in place and assess what needs to be done to improve that hiring process.

Senator AKAKA. Thank you very much. I will now ask Senator Voinovich for his questions.

Senator VOINOVICH. Senator, if it is all right, it would be all right if Senator Collins could ask the questions before I do.

Senator AKAKA. Certainly. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman, and thank you, Senator Voinovich.

Mr. Borras, I have a number of concerns about your failure to pay taxes on time and in full, in light of the responsibilities of the position for which you have been nominated. So I want to ask you

a number of questions to get the facts out and also, I hope, to ease the concerns that I have.

Let me start by asking, do you personally take responsibility for filing the tax returns for you and your wife?

Mr. BORRAS. Yes, I do, Senator.

Senator COLLINS. Do you file a joint return?

Mr. BORRAS. A joint return; yes, ma'am.

Senator COLLINS. It is my understanding that on your 2005 income tax return, you failed to include $9,301 in income for your wife's part-time work.

Did you receive a W–2 form for this income?

Mr. BORRAS. Senator, I believe I did.

Senator COLLINS. Can you explain to the Committee why you did not report more than $9,300 of your wife's income?

Mr. BORRAS. Senator, the issue you have raised is one which I certainly regret having had occur. I have disclosed that information and made all the details available to the Committee. I am happy to continue to answer those questions.

The responsibility for the omission, including that document, in my tax return that year is solely mine and one which certainly I regret. And the oversight was clearly one that is certainly regrettable. Not only did it happen for my 2005 filing; in my 2006 filing, I committed the same error, both of which I provided details.

Senator COLLINS. Well, we will get to 2006 in a moment. I want to first establish the facts for the 2005 income tax return.

It is my understanding that on your return for 2005, you listed $270 for expenses associated with your wife's attempt to establish a beauty business.

Is that correct?

Mr. BORRAS. I did put that there; however, that expense was not allowable due to the amount of income, so it was not a part of my filing.

Senator COLLINS. What I am trying to better understand is why you would look to take a deduction and yet miss reporting more than $9,000 of income.

Mr. BORRAS. Senator, once again, I would say that my error was in an oversight of one W–2 that was in the total of $9,000 or so. And I simply cannot provide you a better response other than I failed to include that on my filing.

Senator COLLINS. And it is my understanding that you also failed to report $50, granted not a huge amount like the $9,000, in income from an annuity in 2005.

Is that correct?

Mr. BORRAS. There was one 1099–INT, an interest annuity of $50. That is correct.

Senator COLLINS. So that year, you did not report income from an annuity for which you had a 1099 form and more than $9,000 for which you had a W–2 form.

Is that an accurate summary of 2005?

Mr. BORRAS. That is an accurate summary.

Senator COLLINS. And then in March 2008, you paid $3,184 plus $405 in interest to settle the problems with your 2005 return.

Is that correct?

Mr. BORRAS. That is correct.

Senator COLLINS. Now let us turn to 2006.

In 2006, did you receive a form indicating a withdrawal of $5,884 in taxable income from your wife's IRA?

Mr. BORRAS. I have stated that I do not specifically recall receiving that 1099–R.

Senator COLLINS. But you did fail to report that income; is that correct?

Mr. BORRAS. That is correct.

Senator COLLINS. And in addition, in 2006, did you fail to include some interest income for which you had a 1099 form?

Mr. BORRAS. That is correct.

Senator COLLINS. And how much was that?

Mr. BORRAS. The total was about $980.

Senator COLLINS. Finally, on your 2006 taxes, you were late in paying about $14,000 in taxes owed. Could you explain how that delinquency came about?

Mr. BORRAS. It was my understanding that when I filed my taxes in 2007 for 2006, the full amount of tax owed, which was $14,286, would be deducted from my taxes. Shortly after filing, I noticed that there had not been a large deduction taken from my checking account, and I followed up with the Internal Revenue Service (IRS) to inquire why that had not been deducted.

So as a result of my following up with the IRS and my conversations with them, I made an electronic payment for that $14,000 online as I was speaking with the IRS agent on the phone.

Senator COLLINS. Well, the Turbo Tax form shows that you only paid $286 rather than $14,286. That is a huge difference.

When was this cleaned up? When were the taxes and penalties and interest paid on the 2006 return?

Mr. BORRAS. In the beginning of June. I do not have the exact date, Senator.

Senator COLLINS. What concerns me is a pattern of carelessness here. You have been nominated for a job that is enormously complex and that is going to require great managerial experience and great attention to detail. We could spend hours talking to you about the management challenges.

If there had been just one incident or one form overlooked, I would certainly understand that. Anyone can make a mistake. But I am concerned about a pattern of significant lapses with regard to your taxes.

I realize my time has expired, but if you have any explanation, if there are extenuating circumstances that the Committee should be aware of—for example, we have had a nominee who was deployed in Iraq at the time that he missed some tax payments. That is an extenuating circumstance.

If there are extenuating circumstances or some justification for this pattern, I need to know it.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Collins.

Senator COLLINS. Thank you.

Senator AKAKA. Senator Voinovich.

Senator VOINOVICH. Yes. I would like to follow up on that line of questioning by Senator Collins.

The job for which you have been nominated requires an individual with broad vision and attention to detail. In conversations with Committee staff, it became clear you did not review your tax return before filing it.

In written questions before the hearing, I asked "In what ways will your attention to detail at DHS be different and improved from your attention to detail regarding your personal matters." And since your response failed to address mistakes with your Federal tax returns, I will ask it again.

For the record, in what ways will your attention to detail at the Department be different and improved from your attention to detail regarding personal matters?

All of us have responsibilities. I just cannot understand this pattern, and it gives me pause. If you are not paying attention to details regarding your personal matters, are you going to pay attention to the duties of this position, read financial audits and surveys on employee morale and so forth?

Mr. BORRAS. Senator, my response to you would be that I certainly have acknowledged making mistakes 2 years in a row. Certainly, I have filed my taxes in both of those years, regrettably, with errors. But recognizing those mistakes, I did take corrective action; certainly have had no problem with 2007 and 2008 filings. And I filed taxes for over 30 years, and I have no pattern of making those kinds of mistakes.

In addition, I would certainly want to say that in my 27 years of professional work, progressive responsibility at local government, in the Federal Government, and in the private sector, there has never been any issue related to attention to detail, anything about my performance that has indicated any level of concern.

I have managed successfully very difficult financial situations, at the local, the Federal, and even the private sector level, I believe with distinction. I have been commended for that. I have never had an investigation that has challenged or questioned my financial management, and I stand behind my professional record and believe that it speaks for itself.

Again, I recognize and I regret the errors I made in 2006 and 2007.

Senator VOINOVICH. In my opening statement, I referenced our efforts to ensure that the DHS Under Secretary for Management is qualified to manage the complicated portfolio, including by setting statutory requirements for the DHS Under Secretary for Management.

You referenced your positions at the Department of Commerce and the General Services Administration as "significant management responsibilities."

What specific management responsibilities did you personally have in each of those jobs?

Mr. BORRAS. Well, Senator, my position at the Department of Commerce was as a Deputy Assistant Secretary for Administration, which is the one that I referenced in my response to these questions.

Deputy Assistant Secretary for Administration oversees the departments of finance, budget, at that time, we called it personnel, information technology, security, and acquisitions. That is depart-

ment-wide management responsibility for a budget of approximately $4.5 billion in a department of about 35,000 employees.

Clearly, I saw that position and I would view that position as being one of considerable responsibility for the charge of affairs for the Department of Commerce, and I believe I served in that role with great distinction.

When I was privileged to serve as regional administrator for the General Services Administration, the Mid-Atlantic region, my position had responsibility for the Public Building Service, the Federal Technology Service, and the Federal Supply Service for the Mid-Atlantic region, for Europe, Africa, and the Middle East.

I had approximately 1,500 employees and an annual budget for my region of about $1.1 billion. We served all of the Federal agencies in the Mid–Atlantic region, in Europe, Africa, and Middle East, providing services that you, Senator, would be very well aware of with the General Services Administration. And, once again, I would categorize those responsibilities as certainly being significant in carrying out the affairs and supporting the affairs of the Federal Government.

Senator VOINOVICH. Can you give me an example of how you have achieved positive operational results in a difficult climate, such as the climate you are going to face at DHS, in both human capital and procurement challenges?

Mr. BORRAS. Senator, throughout my career in public service, much of my work has required the management of very difficult financial circumstances. When I joined the city of Hartford as a deputy city manager—and a deputy city manager is, in effect, a chief operating officer of the municipal government—we were facing extremely difficult financial situations where we were having budget deficits on an annual basis projected at about 15 to 20 percent of our total budget.

This was due in part to declining tax revenues. The city of Hartford was in a state of decline, both financially and——

Senator VOINOVICH. Excuse me. What time is that again? Refresh my memory. I forgot.

Mr. BORRAS. From the years of 1991 to 1993; those 3 years, 1991, 1992, and 1993.

Those challenges required a fundamental change in the way that we managed and functioned in local government. We undertook a very comprehensive, what we called, right-sizing approach where we had to evaluate each and every program that the city of Hartford managed, to evaluate its effectiveness, to be able to make some judgment as to whether or not we could continue to fund and fund at the same level or whether there were new ways to accomplish some of the things that we were doing.

Additionally, we had incredible public safety needs as crime was increasing, drug use and selling, and drug-related crime was increasing in the city of Hartford. So we also had to fund additional initiatives in public safety. So we had a very difficult time of balancing the typical guns and butter ratio, having to increase funding for public safety and find ways to reduce the size of government. And we were able to do that very effectively and balance our budgets and not raise taxes.

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So I am very proud of my work during that period of time of working very hard to evaluate the performance of the programs. We eliminated programs; we restructured others. And we were commended by the business community for developing the first responsible budget, which had not been done to that extent prior in Hartford's history.

Upon coming to the Federal Government and joining the Department of Commerce, my first assignment, Senator, was the Secretary specifically asked me to go serve at the Minority Business Development Agency to "clean up the agency," to review its operations, to make recommendations for changing the way the operation worked, and to evaluate what constituted performance. I am very proud to say that after my first year there, we got a clean financial statement from the Inspector General, and we made radical changes to the way the Minority Business Development Agency operated.

The Secretary also asked me to take the agency through the budget process because there was no director at that time. So he asked me to serve as the acting director. All of these were prior to my coming over and becoming the deputy assistant secretary.

So I had to effectively review the operations of the Minority Business Development Agency, work on a plan for new performance measurements; once again, right size. We eliminated some positions from the agency. And then I was re-asked to join the Secretary's staff as deputy assistant secretary.

There in particular, my focus was on standardization and processes, where I worked very hard to find holistic solutions to improving the efficiency and management of the department. And I am very proud that during that time, we developed a process called Concept of Operations, which integrated the work of the finance department, the budget department, and acquisition to work with each and every one of our 11 bureaus and agencies to better manage the acquisition process to improve efficiencies, improve the time that it takes to complete the acquisition and the overall program effectiveness.

Senator VOINOVICH. Thank you.

Senator AKAKA. Thank you very much, Senator Voinovich.

Mr. Borras, we have held several hearings on pandemic influenza preparedness, including one last month focused on the Federal workforce. During the early stage of H1N1 outbreak, Customs and Border Protection and Transportation Security Administration employees, who interact with hundreds of travelers daily, received conflicting guidance on whether they were permitted to use personal protective equipment such as face masks. I asked the Department to clarify their guidance for employees, and I have not yet received a response.

What steps will you take to ensure that the Department's employees receive clear and consistent guidance on their rights and responsibilities if H1N1 resurges this fall as expected?

Mr. BORRAS. Mr. Chairman, the issue of the Department's response to a potential pandemic outbreak and the use of protective gear certainly would be a very strong priority for the Under Secretary of Management. And if I am confirmed, I would work very

closely with the Office of Health Affairs (OHA) to ascertain the level of threat to our workforce employees.

We would work closely with the Occupational Safety and Health Administration (OSHA) to determine what level of protection is required. And, again, if confirmed, I would follow the advice of OHA and the folks at OSHA to implement a uniform and consistent policy that would provide clear guidance to the employees on how they should provide for their personal protection during a potential pandemic outbreak.

Senator AKAKA. Mr. Borras, the Oversight of Government Management Subcommittee has been very involved in the oversight of the acquisition management structure at DHS. When Mr. Schneider was Under Secretary, he was the Chief Acquisition Officer, which is separate from the Department's Chief Procurement Officer. However, there historically has been only a dotted line of authority between the Chief Procurement Officer, the Chief Acquisition Officer, and the component acquisition officers.

Can you tell me what you believe the relationship between the Under Secretary for Management, the Chief Procurement Officer, and the component acquisition officers should be?

Mr. BORRAS. Mr. Chairman, my understanding of the roles and responsibility of the Under Secretary for Management is that individual serves in the capacity as the chief acquisition officer for the Department. Furthermore, that position has a direct reporting relationship to the Chief Procurement Officer for the Department.

Currently, the way the Department is organized is that there is a dotted line relationship between the Chief Procurement Officer and the Chief Procurement Officers of each one of the individual component agencies. I believe that, if confirmed, I would certainly want to review the extent to which adequate controls and oversight are in place to effectively manage the Department's acquisition, to effectively identify risks, and that the proper controls are in place to ensure that the Department manages its acquisition process as efficiently as it can.

I do know that the Department has an acquisition review board, which is a very useful tool in managing and identifying risks in the acquisition process. I have stated prior that I believe the most important phase of the acquisition process is the requirements phase, so I believe it is very important that in the acquisition life cycle, management put considerable attention on working with the component agencies to understand and make sure that the requirements are clear and the outcomes are also equally clear so that we have an effective acquisition process.

So if confirmed, that would be among my highest priorities, to evaluate the existing working relationship and make recommendations, if required, to improve that process.

Senator AKAKA. I mentioned in my opening statement that DHS has been on the high-risk list ever since its establishment. Because of this, Senator Voinovich and I requested that GAO look deeper into management integration efforts at DHS. Work done to date has shown that the Department still faces significant challenges in integrating over 20 separate agencies into what Secretary Napolitano has referred to as one DHS.

What experience have you had in your career, in the public and private sectors, that you believe has prepared you to take on this particular integration challenge?

Mr. BORRAS. Thank you. I appreciate the question, Mr. Chairman, because it is fundamentally how I see my career and the evolution of my career, one of progressive responsibility, beginning with my work with integration activities at the city of Hartford, continuing through my work at the Department of Commerce and the General Services Administration. My priority as an executive and as a manager has always been to look for operational efficiencies and integration strategies that will bring the operation into closer alignment.

At the outset, you mentioned the concern of GAO. I take GAO's concern very seriously. In fact, I reached out and spoke with the Acting Comptroller General, Gene Dodaro, recently to better understand GAO's position and concerns relative to inadequacies in management at the Department of Homeland Security. And he reaffirmed for me what I believe to be the principal areas of concern in rectifying the management deficiencies at DHS.

First of all, we spoke at great length about the need for standardization and process. There needs to be a uniform process. As you have so aptly described, the Department was put together with the combination of 22 different agencies, Mr. Chairman, each of which brought its own legacy systems for management.

So right now there is a lack of standardization within the Department. That hampers the Department's ability to function effectively and also to draw statistical information, data, from the agency in a very efficient manner because there is a lack of standardization.

Not only do we have to have standardization, if confirmed, I would focus on repeatability, which is a term that Gene Dodaro used and I certainly agree with. Not only do we have to have standard practices, we have to be able to do them over and over again. So we have to make sure we have consistency in those practices. So I believe those are very important elements.

The GAO and Gene Dodaro in particular has mentioned his concern, the GAO's concern, about the workforce issues, specifically the acquisition workforce and the IT workforce. My initial assessment is that both of those indicate to me a severe challenge in meeting the objectives of the Department, of strengthening management due to perhaps a lack of inadequate resources.

So if confirmed, I would certainly want to evaluate the number of personnel that are available to support those very functions in the Office of the Chief Financial Officer, information technology, and acquisition management to ascertain whether we have the effective resources to be able to do that; review the current processes that are in place to determine whether they are adequate enough; and, quite frankly, also to establish a very good and open relationship with GAO.

Senator AKAKA. Mr. Borras, this will be my final question.

As you are aware, DHS has faced challenges with poor employee morale and has scored generally low on the best places to work in the Federal Government.

What do you believe are the reasons DHS faces such challenges, and if confirmed, what specific steps do you believe are necessary to improve DHS as a Federal workplace?

Mr. BORRAS. Mr. Chairman, I have looked at the Federal Human Capital Survey, and much like this Committee has expressed concern, it certainly is of concern to me that the employees of DHS, in their response to that survey, rate near the bottom of all of Federal Government. So that is of great concern, and I understand certainly the concern of this Committee.

I chose to look at it also, though, for where the positives are and where can we build for the future. One of the most powerful signals of the result of that survey of the extent to which the employees support the mission of the Department. So I believe they scored very high. Probably 90 percent or greater are in alignment with the mission. So it is very important, if confirmed, to be able to capitalize on that strong mission identification that employees have and begin to address some of their other critical issues.

I believe in my experience in looking at workforce morale issues, Mr. Chairman, they tend to fall in a couple of categories. One is a general sense of equity. Do employees feel they are adequately and equitably being compensated for the work they perform? That is something that has to be looked at very carefully.

Supervision is another very important component. Frontline supervision has a tremendous impact on the morale of employees. I think it is critically important that we look at how we train our supervisors, what levels of support are provided to the supervisors. They have such an important role in determining the job satisfaction of employees. Also, we have organized employee groups that we need to communicate with, we have to align with, and we have to have good relationships with.

So communication, relationship building, looking at issues of fairness and equity, and responding to the great mission identification of the employee base are all powerful tools, Mr. Chairman, that will enable us to work hand in hand to be able to improve the employee morale in the Department.

I am heartened by the enthusiasm and the commitment that Secretary Napolitano brings to that issue. She has conveyed to me on numerous occasions that is among her most important priorities for creating a unified one DHS.

Senator AKAKA. Thank you very much for your responses. I want to thank you for bringing your family, friends, and supporters here today. I want you to know that there may be additional questions for the record, which we will submit to you in writing. The hearing record will remain open until close of business Friday for Members of the Committee to submit additional statements or questions.

Again, I thank you for your responses to this Committee, and we will be considering your nomination as soon as we can here in the Senate.

Thank you very much. This hearing is adjourned.

Mr. BORRAS. Thank you, Mr. Chairman.

[Whereupon, at 5:01 p.m., the Committee was adjourned.]

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APPENDIX

Nomination Hearing for the Honorable Ernest W. DuBester to be Member, and Ms. Julia Akins Clark to be General Counsel, Federal Labor Relations Authority
&
Mr. Rafael Borras to be Under Secretary for Management, Department of Homeland Security
Statement of Senator Daniel K. Akaka
Committee on Homeland Security and Governmental Affairs
July 29, 2009

Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Ernest DuBester to be a member on the Federal Labor Relations Authority (FLRA) and Julia Clark to be General Counsel of the FLRA.

Mr. DuBester attended Boston College and received his law degree at Catholic University. Mr. DuBester has been involved in public service since 1975. After graduating from law school, he worked as legal counsel to the National Labor Relations Board.

In 1993, President Clinton nominated Mr. DuBester to serve on the National Mediation Board (NMB), and the Senate unanimously confirmed him. He became the Chairman of the NMB in 1993. Mr. DuBester also has taught law at the George Mason University School of Law and the Catholic University School of Law.

Ms. Clark graduated from Oklahoma Baptist University and received her law degree from the Washington College of Law at American University. For the past fourteen years, she has served as General Counsel to the International Federation of Professional and Technical Engineers, a union that represents dedicated Federal employees throughout the country, including many in my home state of Hawai'i.

The positions to which Mr. DuBester and Ms. Clark have been nominated are among the most important to Federal employees. If confirmed, I expect these nominees to be strong advocates for fair employment practices in the Federal government.

The nominations of Mr. DuBester and Ms. Clark come at a critical juncture for the FLRA. The FLRA is responsible for providing leadership in establishing policies and guidance relating to Federal sector labor relations. It also resolves complaints of unfair labor practices and decides issues involving federal union representation. These are very important responsibilities. For far too long, however, the FLRA has failed to carry out its mission. The FLRA has been without a general counsel since February of 2008. Moreover, prior to October 2008, the FLRA had only one member. Last year, I am glad we were able to fill two of the seats, however, it is better to have a full complement. Personnel shortages have led to a serious backlog of cases at the FLRA. I trust both nominees, if confirmed, will work to reinvigorate the FLRA.

I am also concerned about low employee morale at the FLRA. In the Partnership for Public Service's 2009 Best Places to Work Rankings, the FLRA ranked last among small Federal agencies. The FLRA received the lowest score in several categories, including effective

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leadership, strategic management, and employee training and development. Clearly, big changes are needed to address these serious issues. I look forward to hearing the nominees' thoughts on these issues.

During the past Administration, Federal employees and their representatives at times believed their views were not adequately considered when changes to federal programs and workplace policies were made. In your roles, if confirmed, you can help rebuild strong partnerships between unions and management throughout the Federal Government, which I believe is necessary to help agencies best carry out their missions.

Welcome to the second part of today's hearing, as the Committee on Homeland Security and Governmental Affairs meets to consider the nomination of Mr. Rafael Borras to be Under Secretary for Management at the Department of Homeland Security (DHS).

Mr. Borras has been nominated to this important position with over twenty years of federal, local, and private sector management experience. It is my hope that this diverse experience will guide the nominee well, should he be confirmed.

As you know, I, along with my friend Senator Voinovich, feel that the Under Secretary for Management is such an important position because he or she oversees the Department's budget, finances, procurement, human capital, information technology, facilities, as well as performance measurements.

The role is so important that I cosponsored Senator Voinovich's bill, the Effective Homeland Security Management Act, which would elevate this position to a term appointed Deputy Secretary with a fixed five year term. This legislation, which was approved by this Committee this morning, would promote more focused and robust management at DHS, which is critical to improving the cohesiveness, efficiency, and effectiveness of the Department's action. Even if our bill is not enacted this year, I trust that Mr. Borras will use his position to implement sound management practices.

The Department of Homeland Security has been on the Government Accountability Office's "high risk list" since 2003 because of the challenges it faces through its continued transition from over twenty distinct entities into the third-largest Department in the federal government. Since its creation, DHS has been one of the biggest management challenges in the federal government.

Mr. Borras, you will be coming to an agency that continues a long struggle to integrate and become one-DHS. You will have been left several management reform projects to take over. I have no doubt from our discussions that you have your own enthusiastic ideas as well, and I look forward to hearing more about those ideas today.

As you know, one of my primary concerns at DHS has been that of accountability. Today, there are far too many contractors at DHS, and not enough federal employees to oversee them. It is essential that we fix the contractor – federal employee mix to ensure that there are

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enough career professionals to carry out the critical missions of this Department. It is also important that agencies look to innovative methods to leverage the diverse talent of the federal workforce to fulfill critical mission gaps.

In particular, a problem throughout the federal government, but especially important at DHS, is the acquisition workforce. These are the professionals who are responsible for the development and execution of billions of dollars worth of contracts every year. Unfortunately, as this Committee has heard in several hearings, the government is losing acquisition professionals to retirement or other employers, and it is not recruiting and training new ones quickly enough. This is an issue that my Oversight of Government Management Subcommittee will continue to address in the near future.

More broadly, DHS, with the rest of the federal government, faces looming workforce challenges as baby boomers retire. DHS must attract the next generation of employees, proud of federal service, and committed to the Department's mission. This will require seeking out talent with unique skills from both outside and within the government. These efforts can best be achieved by ensuring the use of veterans' preference, a diverse workforce, and a commitment to working with employee unions and groups.

Again, Mr. Borras, I want to thank you for your willingness to take on the challenges that you will surely face in this position. It is my hope that you will work closely with this Committee as we move forward in addressing the strategic management challenges facing DHS.

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OPENING STATEMENT OF SENATOR GEORGE V. VOINOVICH
NOMINATIONS OF ERNEST DUBESTER TO BE MEMBER, FEDERAL LABOR RELATIONS AUTHORITY, JULIE ADKINS CLARK TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY, AND RAFAEL BORRAS TO BE UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

JULY 29, 2009

Good afternoon, and thank you, Chairman Akaka. I am pleased to be here today to review the qualifications of two individuals nominated by the President to fill important positions at the Federal Labor Relations Authority (FLRA): Ernest DuBester, who has been nominated to serve as a Member of the FLRA, and Julie Adkins Clark, who has been nominated to serve as the Authority's General Counsel.

Mr. DuBester and Ms. Clark, I commend you for your willingness to serve your country at this important time in the FLRA's history. As you well know, the Authority faces significant challenges in its attempt to fulfill its statutory mandate to encourage "efficient operations of the Government" through positive labor-management relationships.

In the 2009 *Best Places to Work* rankings compiled by the Partnership for Public Service (PPS), the FLRA ranked last in overall employee job satisfaction among small agencies by a significant margin. As a former Mayor and Governor, I know firsthand that a motivated workforce is an effective workforce, and I hope to hear from the nominees today about how they will address employee morale issues at the FLRA.

The FLRA also faces a significant case backlog. Approximately 300 Unfair Labor Practice Complaints and 700 Unfair Labor Practice Appeals await disposition. I understand that the FLRA has crafted performance goals that aim to eliminate this backlog by fiscal year 2012.

While I applaud the FLRA's initiative in this area, I encourage the nominees, if confirmed, to pursue innovative strategies for disposing of pending complaints in timely and conscientious manner while continuing to process the FLRA's normal influx of complaints and appeals. In light of this significant case backlog, I am also interested to hear whether the nominees feel the FLRA has the human capital and budgetary resources necessary to fulfill its statutory obligation. I commend you for willingness to answer this newest call to service, and I look forward to your testimony. Thank you, Mr. Chairman.

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Thank you, Mr. Chairman. I want to also welcome Mr. Borras and thank him for appearing before us today - we look forward to hearing about your qualifications and desire to serve.

Senator Akaka, you know that since DHS was established in 2002, management issues have existed and persisted. For example:

- In 2003, the Government Accountability Office included implementing and transforming DHS on its list of areas at high risk to fraud, waste, abuse and mismanagement because when DHS was created, it became responsible for transforming 22 agencies into one department and failure to effectively address management challenges could have serious consequences for our national security.
- In December 2005, the DHS Inspector General issued a report warning of major management challenges facing DHS.
- DHS' own Performance and Accountability Report, released in November 2006, states that it did not meet its strategic goal of "providing comprehensive leadership and management to improve the efficiency and effectiveness of the Department."
- In 2007, the Homeland Security Advisory Council Culture Task Force Report also detailed persisting organizational challenges within DHS.
- This year, GAO retained implementing and transforming DHS on its High Risk List because the Department has not yet developed a comprehensive plan to address the transformation, integration, management and mission challenges it faces.

Because of such issues, Senator Akaka and I have spent much of our time on the Oversight of Government Management subcommittee examining DHS management issues, and last year we included a provision in the *Implementing Recommendations of the 9/11 Commission Act of 2007* that requires DHS' Under Secretary for Management to have:

- Extensive executive level leadership and management experience;
- Strong leadership skills;
- A demonstrated ability to manage large and complex organizations; and
- A proved record in achieving positive operational results.

I look forward to hearing specific examples from Mr. Borras today about how he meets each of these statutory requirements because ensuring the effective management of DHS remains one of my top priorities. Thank you, Mr. Chairman.

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OPENING STATEMENT OF ERNIE DUBESTER OF VIRGINIA TO BE A MEMBER

OF THE FEDERAL LABOR RELATIONS AUTHORITY

BEFORE THE COMMITTEE ON HOMELAND SECURITY AND

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

JULY 29, 2009

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to come before the Committee for its consideration of my nomination to be a Member of the Federal Labor Relations Authority (FLRA). I also would like to thank the Committee's staff for their work and assistance in reviewing my nomination and scheduling this hearing.

Before making a brief opening statement, I would like to introduce my wife, Karen Kremer. When I first met Karen 22 years ago, she was working for Senator Howell Heflin on the Senate Judiciary Committee. She now works for the Administrative Office of U.S. Courts and recently observed a milestone of 25 years of federal government service. Sitting with Karen is our friend George Honyara, a retired federal government employee.

Mr. Chairman, it is an honor to appear before you as President Obama's nominee to be a Member of the FLRA. It is also a great pleasure to appear alongside Julie Clark, the President's nominee to be the FLRA's General Counsel.

I am strongly committed to the FLRA's mission and to the importance of stable, constructive labor-management relations in the federal sector. In my 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, nearly 20 of those years were in the federal sector.

When I was still in law school and considering my first professional opportunity, I decided to join the staff of a Member of the National Labor Relations Board (NLRB). In fact, it was during my tenure at the NLRB that Congress enacted the Federal Service Labor-Management Relations Statute, a law generally modeled after the National Labor Relations Act. Indeed, this year marks the 30th anniversary of the FLRA.

During President Clinton's Administration, I was also privileged to serve as the Chairman and Member of the National Mediation Board, the independent agency that oversees labor relations in the airline and railroad industries. There, I was responsible for harmonizing the goals of another collective bargaining statute with the public demand for the highest standard of employee performance and the efficient accomplishment of the operations of government.

If confirmed, I will dedicate myself to working to ensure that the FLRA fulfills its mission by adjudicating disputes fairly, impartially, and expeditiously and by providing quality decisions that enhance the stability of federal sector labor relations. An important part of this effort will be to make sure that the Authority has the resources to fulfill its responsibilities.

Indeed, if confirmed, I look forward to working with each and every person on the FLRA staff, including my colleagues on the Authority, as well as the federal sector's labor and management representatives, to help establish the FLRA as one of the stellar independent agencies within the Federal Government.

Again, I appreciate the opportunity to appear before you and I would be pleased to answer any questions that you may have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Ernest (Ernie) William DuBester

2. **Position to which nominated:**

   Member, Federal Labor Relations Authority

3. **Date of nomination:**

   June 4, 2009

4. **Address:** (List current place of residence and office addresses.)

   Residence: -REDACTED-

   Office: National Mediation Board, 1301 K St, NW, Ste 250E, Washington, DC 20005.

5. **Date and place of birth:**

   9/4/50; Passaic, NJ

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married to Karen Marie Kremer

7. **Names and ages of children:**

   No children.

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   Boston College, 1968-72, A.B. May 1972;

   Columbus School of Law, Catholic University of America, 1972-75, J.D. Received May 1975;

   Georgetown University Law Center, 1979-80, LL.M. (Labor Law) received May 1980.

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer,

location of work, and dates of employment. (Please use separate attachment, if necessary.)

July 2005-Present:	Mediator, National Mediation Board. Permanent duty station-Washington, DC. Primary responsibilities involve mediation of collective bargaining disputes in the airline & railroad industries. Work also includes grievance mediation, helping parties to resolve grievances without having to use the arbitral process. Also train parties in facilitated problem-solving and bargaining, grievance mediation, and specialized areas of negotiation requested by parties;
August 2001-July 2005:	Distinguished Professor of Law (and Chair of Dispute Resolution Program), George Mason University School of Law (GMUSL), Arlington, VA. Developed curriculum, taught courses, and supervised co-curricula activities in the dispute resolution area. Taught a variety of courses including Negotiation, Mediation, and Alternative Dispute Resolution (ADR);
August 2001-July 2005:	While at GMUSL, worked as an arbitrator & mediator of labor and employment matters;
November 1993-August 2001:	Chairman (and Member) of the National Mediation Board (NMB). First nominated to the NMB by President Clinton on Sept. 24, 1993 and unanimously confirmed by the U.S. Senate twice. Responsibilities included participation in issuance of representation decisions that determine and certify the employees' choice of representative, that determine the appropriate craft or class (bargaining unit), and that ensure that the process occurs without interference, influence, or coercion. This responsibility is similar to that performed by Members of the Federal Labor Relations Authority. Responsibilities also included mediation of many national collective bargaining disputes in the airline & railroad industries. Also, worked individually and jointly with fellow Board Members to introduce and promote innovative approaches to collective bargaining, including the creation of an ADR program that

includes bargaining training, facilitation, grievance mediation, and interest-based bargaining;

1997-2001: Adjunct Faculty Member, Catholic University School of Law, Washington, DC. Taught Graduate courses in Collective Bargaining & Arbitration;

1984-1993: Legislative Counsel, AFL-CIO, Washington, DC. Primary responsibilities included core labor law & transportation issues. This encompassed most matters arising under federal employment laws such as the National Labor Relations Act, Railway Labor Act, OSHA, Federal Service Labor-Management Statute, and Civil Rights Laws;

1981-1984: Associate, Washington, DC law firm of Highsaw & Mahoney. Represented labor unions in labor relations, legislative, administrative, and civil rights matters. Handled many arbitrations and argued cases before numerous federal appellate and district courts;

1975-1981: Counsel, National Labor Relations Board. Served most of period as counsel to Chairman John Fanning. Analyzed and recommended disposition of cases, usually in the most difficult categories; performed special projects which served as a basis for the Chairman's or the Board's decisions in cases of significant precedent or procedures. Analysis of cases and preparation of opinions typically involved study of the trial record, assessment of statutes, prior opinions and legislative history, and making preliminary oral briefings to the Chairman and the full Board.

Also worked as a field attorney in the NLRB's Regional Office, Los Angeles. Duties included trial work, brief writing, and case investigations (1978);

Summer, 1974 & part-time fall of 1974-spring of 1975: Legal Assistant, NLRB.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

1994: Representing the U.S. Government, Chaired the International Labor Organization's Tripartite Conference on the "Consequences

for Management & Personnel of the Restructuring of Railways" held in Geneva, Switzerland. Labor, management and the governments of fifteen countries were represented.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

2005-2008: Board of Directors, Virginia Mediation Network (non-profit), Richmond, VA. No compensation;

2003-2008: Board of Directors, Northern Virginia Mediation Services (non-profit), Fairfax, VA. No compensation.

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Since 1976: New Jersey State Bar Association;

Since 1976: Florida State Bar Association;

Since 1980: District of Columbia Bar Association;

Off & on Since 1976: American Bar Association (currently a Member);

Since 1976: Boston College Alumni Club of Metropolitan Washington, DC. President- 1984-1992;

2002-2009: Association of Conflict Resolution;

1994-2001: University Club, Washington, DC;

Since 2003: Society of Federal Labor & Employee Relations Professionals (SFLERP);

Off & on Since 1994: Labor & Employment Relations Association

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

2008- Worked as a volunteer in Virginia for the Presidential campaign of Barack Obama. Services rendered include phone banks, canvassing, and literature distribution.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more during the past 5 years.

2008 - $500 to Presidential campaign of Barack Obama.

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

While at the National Labor Relations Board, received Sustained Superior Performance Awards in 1979 and 1980 and a Commendation for Distinguished Service to the Chairman in 1980.

15. Published writings: Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

None.

16. **Speeches:**

(a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

None.

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

None.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

In announcing his intent to nominate me for this position, the President expressed appreciation for my willingness to "join [the] administration in fighting for working families and putting America on a path to prosperity." As set forth more fully in my response to question 17(b), I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, with nearly 20 years of experience in the federal sector.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

As reflected by my response to question nine, I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and as an academic. Moreover, I have experience with all of the basic federal labor laws, including several years with the National Labor Relations Board (NLRB), several years working with the Railway Labor Act, including almost eight years as Chairman (and Member) of the National Mediation Board (NMB), and experience with the Federal Labor-Management Statute (Federal Statute) as a mediator and arbitrator. It is also noteworthy that my practical experience is complemented by my Masters of Law in Labor Law from Georgetown University Law Center.

For nearly 20 years, I have worked for the federal government. During the Clinton Administration, I managed another independent federal agency when I served as Chairman (and Member) of the NMB. At that time, I was responsible for implementing the spirit of one of the federal statute's primary purposes, namely, to promote the "efficient accomplishment of the operations of government."

The Federal Labor Relations Authority (FLRA), as the Committee knows, adjudicates disputes arising under the federal statute, deciding cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. I have considerable experience in each of these areas.

I began my career at the NLRB. There, one of my responsibilities was to draft unfair labor practice decisions that applied and interpreted the National Labor Relations Act- the law on which the federal statute is modeled. During both my time at the NLRB, as well as during my tenure at the NMB, I drafted and issued (at the NMB) representation decisions, similar to the responsibilities of the FLRA.

Regarding negotiability and impasse, I have 20 years of direct collective bargaining experience working as a mediator and advocate. In addition, I have taught collective bargaining and negotiation for many years at two area law schools.

With respect to arbitration awards, I worked several years as an arbitrator. Moreover, I taught arbitration for several years in law school.

Finally, the high-level nature of my prior experience with the federal government would be of assistance if I were to assume the responsibilities of a Member of the FLRA. I have worked with the Leadership, Committee Chairs, and Members -- on a bipartisan basis – of both bodies of Congress. While Chair (and Member) of the NMB, moreover, I worked closely with the White House at the highest levels, as well as working collegially with certain Cabinet-level Agencies.

B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

   No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No, though I became an additional focus of an ongoing ethics inquiry from November 2001to April 2002. In May of 2001, I left the National Mediation Board (NMB) and was hired by George Mason University School of Law (GMUSL). An interdisciplinary academic Center for Dispute Resolution had recently been established between the GMUSL and another GMU school, the Institute for Conflict Analysis and Resolution. Apparently, questions were raised about the solicitation of funding for the Center which led to an Ethics inquiry by the NMB. As to me, apparently, the question was whether I had solicited funding for the Center while I was still a Member of the NMB. I did not solicit funds for the Center and, as to me, the matter was dropped (not referred for further investigation or prosecution). In fact, I continued to teach at GMUSL the next four years. In 2005, I was rehired by the NMB, the investigative entity, where I currently work.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes. I was a plaintiff in a civil suit after I was injured in a car accident in 2002. I sued the person responsible for causing the accident. The case settled prior to trial in 2005.

In addition, in 1999, while I was a board member on the National Mediation Board (NMB), two female mediators brought a suit in U.S. District Court for the District of Columbia alleging that they had been discriminated against by certain senior level employees at the NMB. As a member of the Board, I was named as a defendant. However, the case involved no personal allegations related to me. The NMB eventually settled with the plaintiffs in 2001.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. N/A.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

No additional information.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

-REDACTED-

AFFIDAVIT

ERNEST W. DUBESTER being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Ernest W. DuBester

Subscribed and sworn before me this 29 day of June, 2009

Notary Public

My commission Expires. 9-31-09

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

June 26, 2009

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ernest W. DuBester who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Don W. Fox
General Counsel

Enclosures - REDACTED

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire for the Nomination of
Ernest W. DuBester to be a Member of the Federal Labor Relations Authority

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as a member of the Federal Labor Relations Authority (FLRA)?

I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, with nearly 20 years of experience in the federal sector. In announcing his intent to nominate me for this position, the President expressed appreciation for my willingness to "join [the] administration in fighting for working families and putting America on a path to prosperity."

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualify you to be a member of the FLRA?

As noted above, I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and as an academic. Moreover, I have experience with all of the basic federal labor laws, including several years with the National Labor Relations Board (NLRB), several years working with the Railway Labor Act, including almost eight years as Chairman (and Member) of the National Mediation Board (NMB), and experience with the Federal Labor-Management Statute (Federal Statute) as a mediator and arbitrator. I have also earned a Masters of Law in Labor Law from Georgetown University Law Center.

For nearly 20 years, I have worked for the federal government. During the Clinton Administration, I managed another independent federal agency when I served as Chairman (and Member) of the NMB. At that time, I was responsible for implementing a goal shared by the Federal Statute, namely, to promote the "efficient accomplishment of the operations of government."

The Federal Labor Relations Authority (FLRA), as the Committee knows, adjudicates disputes arising under the Federal Statute, deciding cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. I have experience in each of these areas.

I began my career at the NLRB. There, one of my responsibilities was to draft unfair labor practice decisions that applied and interpreted the National Labor Relations Act – the law on which the federal statute is modeled. During both my time at the NLRB, as well as during my tenure at the NMB, I drafted and issued representation decisions, similar to the responsibilities of the FLRA.

Regarding negotiability and impasse, I have 20 years of direct collective bargaining experience working as a mediator and advocate. In addition, I have taught collective bargaining and negotiation for many years at two area law schools.

With respect to arbitration awards, I worked for several years as an arbitrator. Moreover, I taught arbitration for several years at a law school.

Finally, I have worked with the Leadership, Committee Chairs, and Members – on a bipartisan basis – of both bodies of Congress. While Chair (and Member) of the NMB, moreover, I worked closely with the White House as well as working collegially with certain Cabinet-level agencies.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member of the FLRA? If so, what are they and to whom have commitments been made?

No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

No.

II. Role of a Member of the FLRA

6. What in your opinion is the role of the FLRA, of the three-member Authority within the FLRA, and of a member of the Authority?

When Congress enacted Title VII of the Civil Service Reform Act of 1978, it established a permanent, full-time, independent and neutral agency to resolve disputes involving rights of Federal employees, labor organizations, and agencies so as to reflect the public demand for the highest standards of employee performance and the efficient accomplishment of the operations of Government. The FLRA's role is to execute five primary statutory responsibilities that include: resolving representation questions and, where appropriate, certifying unions as exclusive representatives based on the results of

secret ballot elections; resolving unfair labor practice complaints; resolving negotiability disputes; resolving exceptions to arbitration awards; and resolving impasses during negotiations.

The three-member Authority is a quasi-judicial body that adjudicates cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. Each Member of the Authority has this adjudicative responsibility.

Moreover, consistent with its statutory directive to provide leadership in establishing policies and guidance to participants in the Federal labor-management program (5 U.S.C. Sec. 7105(a)(1)), each Member of the Authority also assists Federal agencies and unions in understanding their rights and responsibilities under the Statute through statutory training of parties.

In addition, each Member of the Authority is responsible for appointment of an Executive Director, regional directors, and administrative law judges as deemed necessary (5 U.S.C. Sec. 7105 (d)).

As noted below, however, only the Chairman serves as "the chief executive and administrative officer of the Authority" (5 U.S.C. Sec. 7104 (b)).

7. The Federal Sector Labor Management Relations statute provides that the Chairman of the Authority is the "chief executive and administrative officer of the Authority." What, in your opinion, should be the respective roles and prerogative of the Chairman and the members in management of the FLRA and in the administration of the Authority and of its decision-making processes?

As set forth above, all three Members of the Authority share equally in certain responsibilities. In other management or administrative matters, I envision the Member providing the Chairman with support and assistance in whatever way requested or deemed appropriate.

8. What do you believe are the biggest challenges facing the FLRA and the Authority? What steps do you plan to take, if confirmed, to address these challenges?

In my view, the biggest current challenges are meeting performance goals, especially to address the existing case backlog; ensuring that there are adequate resources to meet those goals; ensuring that employee morale within the Agency is high; and ensuring that there is confidence among all Agency stakeholders that the FLRA is performing its mission effectively.

I understand that the Authority already has an initiative to reduce, and eliminate, the backlog. If confirmed, I plan to work hard and to work collaboratively with my colleagues to ensure that performance goals are met.

If confirmed, I will support the Chair in any effort to ensure that there are adequate resources to meet performance goals. This includes working to ensure that the most modern and effective tools, including in the IT arena, are available to all Agency employees.

Regarding employee morale and stakeholder confidence, if confirmed, I will convey quickly my strong commitment to the mission of the FLRA. With employees, I will also convey my appreciation for their work and my support for the utilization of their talents to the greatest extent possible. This includes support for their professional development through appropriate training opportunities.

If confirmed, I will convey to stakeholders my receptivity to their ideas and suggestions regarding how the Agency can better serve their needs. I recognize that stakeholders have an enduring interest in the Agency's effective operations while those holding leadership positions at the Agency may change.

9. What will be your long-term priorities as member of the Authority?

If confirmed, I hope to address the challenges discussed in my response to question eight. In addition, my priority will be to ensure that accomplishments are enduring. In addition, hopefully, I will make a contribution in some small way to improving the quality of labor-management relations in the federal sector. Overall, my long-term priority is to work with my colleagues to establish the FLRA as one of the stellar independent agencies within the Federal government.

10. The federal labor-management and employment programs are administered by a number of different agencies and offices. Please describe what you believe the relative roles and relationships should be between the FLRA and (a) the Office of Personnel Management, (b) the Merit Systems Protection Board, (c) the Equal Employment Opportunity Commission, and (d) the Office of Special Counsel. Also, what do you believe the relative roles and relationships should be between the Authority and *(i)* the Federal Service Impasses Panel and *(ii)* the FLRA General Counsel?

Each of these other agencies and offices has a unique statutory mandate or charge. To the extent that the FLRA has related interests to these agencies and offices, I think that a collegial relationship with key leadership personnel from those agencies and offices, that includes the sharing of pertinent information of interest, can help us all to do our jobs more effectively.

The Federal Service Impasses Panel (FSIP), the FLRA General Counsel (GC), and the three-Member Authority, are distinct components within the FRLA. The FSIP resolves impasses between Federal agencies and unions representing Federal employees arising from negotiations over conditions of employment. The GC is responsible for the general management of the Office of General Counsel (OGC), including the management of the FLRA's seven Regional Offices. The OGC is the FLRA's independent investigator and prosecutor of unfair labor practice allegations and representation matters filed with the FLRA. The Authority's primary role is adjudicative. I believe that a collegial relationship among the people comprising the Authority, the FSIP, and the OGC, can contribute to the effectiveness of the Agency's operations. Such collegiality can also have a positive effect on employee morale and stakeholder confidence as discussed in my response to question eight.

11. You have extensive experience working with the National Mediation Board, both as a Member and Chairman. How will your experience with the Board assist you in serving as a Member of the Federal Labor Relations Authority and addressing federal sector labor relations issues?

As Chairman and Member of the NMB, I gained an appreciation of the importance of employee morale and stakeholder confidence and their relationship to the effectiveness of an agency's operations. When I began my tenure as Chairman of the NMB, both employee morale and stakeholder confidence were at a low point. During my first few weeks, I reached out to every Agency employee in order to get to know them and invite their input. Throughout my tenure, I tried to maintain an emphasis on the importance of individual professional development.

Similarly, with respect to the NMB's stakeholders, all the labor and management parties of interest, early in my NMB tenure we convened a series of focus groups facilitated by professionals to seek the parties' input as to how the NMB could better serve their needs. Throughout my tenure, I tried to maintain this receptivity to appropriate stakeholder input.

In addition, as Chairman and Member of the NMB, I had responsibilities for the management and administration of the Agency that included such matters as budget authority, staffing levels, and performance goals. I will support and assist the FLRA Chairman in any way requested or deemed appropriate.

I also worked collegially with other Agencies that had an interest in matters coming before the NMB. Finally, one of my NMB responsibilities was adjudicative, similar to that of an Authority Member.

III. Policy Questions

Federal Service Labor-Management Relations

12. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

It is my sense that the relationships among various agencies and federal sector unions varies. I hope that a unified message from the three-Member Authority of its commitment to the Agency's mission and to addressing the challenges discussed in question eight will have a positive effect on Federal labor-management relations. It is also my hope that the Agency's statutory training of parties is beneficial.

The key word in this question is relations. I am a strong advocate for any mechanisms that place an emphasis on the importance of the relationship, particularly through more effective communication and dialogue. This would include use of the FLRA's ADR program, as discussed in question 23. It might also include a mechanism such as partnerships, as discussed in question 15.

13. Do you believe that improvements can be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

I intend to work to the best of my ability given the existing statutory framework. If confirmed, I would study this issue and, if desired, consult with Members of Congress about any potential changes contemplated by Congress.

14. In many situations, federal employees work side-by-side with contract workers. Do you believe a blended workforce of federal employee and federal contract personnel is having an effect on federal labor-management relations, and, if so, what? Do you believe that changes are needed in labor-management policy, and, if so, what do you believe would be appropriate?

In general, the highest standards of employee performance are often achieved when employees who work side-by-side have the same status. A key consideration is the effect on employee morale.

15. President Bush revoked President Clinton's Executive Order on federal labor-management partnerships.[a] What are your views on labor-management partnerships based on your experience with the National Mediation Board and the National Labor Relations Board?

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[a] Executive Order 13203 of February 17, 2001 (reprinted at 66 Fed. Reg. 11227, Feb. 22, 2001), revoking Executive Order 12871 of October 1, 1993, as amended by Executive orders 12983 and 13156, and revoking the Presidential Memorandum of October 28, 1999, entitled "Reaffirmation of Executive Order 12871 – Labor-Management Partnerships."

My only experience with labor-management partnerships occurred during my tenure as Chairman and Member of the NMB. Based on that experience, I believe that, as a companion to the collective bargaining process, such partnerships can help to improve the working relationships between labor unions and federal agencies.

The key, in my view, is the mindset that federal agency officials and employee representatives bring to the process. If those participants are willing to work collaboratively to learn new skills and techniques in interpersonal relations and more effective communication, then partnerships can assist in avoiding problems or resolving existing problems. Such an approach could also lead to a decline in some of the cases filed with the FLRA.

Management of the FLRA and case processing

16. FLRA revised its strategic plan for FY2004-2009 and in doing so reduced the number of strategic goals from four to one. The single goal is to resolve disputes impartially and promptly. Please explain your understanding of this goal, in particular that part of the goal relating to prompt resolution.

It is my understanding that simplification of its strategic goals was designed to reflect the FLRA's purpose or mission namely, to process cases efficiently. Striving to establish meaningful measures for the various FLRA components in case processing (Authority, OGC, FSIP and certain executives within each component), the FLRA structured objectives based upon type of case (representation, unfair labor practice, arbitration, negotiability, and bargaining impasse). It is my understanding that structuring its case processing goals in this manner will enable the FLRA to track and align costs to specific categories of cases, and thereby better plan for future staffing and training needs.

a. What role do you see for yourself as an Authority member in helping achieve this goal?

I would have a direct role in each of the Authority case processing performance goals for cases involving unfair labor practices, representation matters, negotiability issues, or exceptions to arbitrator awards.

b. Do you believe additional goals should be articulated within the strategic plan? If so, please briefly state what those goals would be and what FLRA should do to achieve them.

The FLRA's Performance Plan for fiscal year 2010 includes a new goal of developing, managing, and utilizing the Agency's human resources to meet program needs. It is my understanding that this goal will seek to establish collaborative internal workgroups to address agency human capital needs, to improve employee

morale, to issue updated internal policy instructions, and to increase staffing levels. If confirmed, I will work collaboratively with my colleagues in support of this goal.

17. According to the FY2010 Performance Budget Submission to Congress, there has been a growing backlog of cases that are decided by the Authority. What is necessary to ensure that cases are investigated and resolved in a timely and fair fashion?

It is my understanding that the Authority has a backlog reduction strategy that includes a collaborative approach among Authority Members to manage the backlog, an initiative to contact the parties in the oldest cases, innovative decisional formats to streamline the process by which Members review decisions, training stakeholders in their statutory rights and responsibilities to reduce frivolous filings and to improve the quality of the parties' presentations, use of ADR to resolve disputes without formal decision-making thereby reducing litigation resources and costs, and staff training and development.

It is my further understanding that the Authority has a corrective action plan to address the backlog. Related to performance goals, this plan seeks to eliminate the backlog by fiscal year 2012.

18. The strategic and performance plans give much attention to the timely processing of cases. However, these plans are silent with regard to the quality of case processing and decisions.

a. In your view, what is the relationship between the timeliness of case resolution and the quality of decisions?

In my view, timeliness is one objective measure of quality that is directly responsive to the Congressional finding within the Federal Statute that the public interest demands "the efficient accomplishment of the operations of Government."

b. Do you believe that the quality of case processing and decisions should be measured? If so, how?

As an Authority Member, I would be interested in any appropriate measure of the quality of case processing and decisions. Based on my experiences at the NLRB and NMB, I believe that one assessment of quality is achieved through the performance appraisals of employees involved in decision writing and case processing.

c. Should there be performance goals related to case processing and decision quality? If so, what goals would you recommend? If not, please explain why.

Noteworthy in this regard is that the FLRA's Performance Plan for fiscal year 2009 identifies for the first time the responsible Senior Executives for each goal, thereby providing a direct link between SES performance and achievement of the Agency's strategic goals. This is one illustration of efforts to include checks on quality within performance goals.

19. One measure of quality not included in the strategic and performance plans is the outcome of court reviews of Authority decisions. Do you believe that such a quality measure might be of value? Why or why not?

If confirmed, I will be open to consideration of any appropriate measure of quality, including the outcome of court reviews. However, there may be reasons why courts may affirm or overturn Authority decisions that may have nothing to do with quality.

20. What is your understanding of, and opinion about, the FLRA's track record with regard to timeliness of decision making? What actions, if any, do you believe the FLRA should take to help process cases more expeditiously?

My understanding and opinion is that the FLRA's recent record needs improvement. To help process cases more expeditiously, two keys are ensuring an adequate budget authority, including for IT investments such as a case management and tracking system with performance accountability and analysis as well as increasing staffing levels so more FTE's could be assigned to decision writing and case processing.

While directed primarily to the backlog, many of the elements that are part of what I understand to be the Authority's Backlog Reduction Strategy and the Corrective Action Plan, discussed in my response to question 17, should also assist in more expeditious decision-making. Also, the Authority's new goal of Managing Human Capital should be of assistance.

21. Do you believe that reducing the number of adjudicated cases would help the FLRA to reduce case processing time? Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities?

Yes, reducing the number of adjudicated cases should help the FLRA to reduce case processing time somewhat. It is my understanding that the Authority, consistent with its statutory charge to provide leadership in establishing policies and guidance to participants in the FLRA's labor-management relations program, has a plan to train customers aggressively on their statutory rights and responsibilities with one consequence hopefully being the reduction of frivolous or unnecessary filings.

In addition, continued use of the FLRA's Collaboration and Alternative Dispute Resolution Program, as discussed below, will also resolve disputes without formal decision-making.

22. There has been increasing use of alternative dispute resolution (ADR) techniques to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations law. In this labor-management context, what do you believe are the advantages and disadvantages of ADR, from the point of view of the employee, of the employing agency, and of the public interest? What are your views on the use of ADR to resolve federal workplace disputes, and what changes, if any, do you believe should be made in ADR policies and practices in the federal workplace?

I have trained hundreds of labor-management representatives on the use of ADR techniques as well as teaching ADR and related processes in law school. Accordingly, I am a strong advocate for the use of ADR in appropriate situations.

In my view, there are mainly two situations in which ADR may not be advisable. First, to be effective, all parties of interest should be willing (voluntarily) to use ADR and to take training in problem-solving approaches that will include training on more effective communication and more effective interpersonal relations. If employees, employee representatives or agency officials are not open to changes in behavior and new approaches to resolving differences, then they may become disillusioned by ADR. In addition, there are some issues in disagreement that require a decision by a third party if the disputing parties are going to move forward in their relationship.

As the Committee knows, the FLRA's Collaboration and Alternative Dispute Resolution Program (CADR) is voluntary and is provided by all FLRA components. If confirmed, I will be a strong supporter of CADR within the Agency and I will be a strong advocate for its use whenever I speak to the labor-management representatives in the federal sector.

23. In the 2009 Best Places to Work rankings by the Partnership for Public Service, based on the data collected in the Federal Human Capital Survey, the FLRA ranked last for all small federal agencies that submitted data. In your view, what can be done to help improve the situation at FLRA, and, if you are confirmed, what steps would you recommend to address these human capital challenges and improve employee morale?

If confirmed, I will express both within the Agency and in my contacts with stakeholders my strong commitment to the FLRA's mission and my appreciation for the work performed by all FLRA employees. I will also support the new performance goal for Human Capital Management and its emphasis on employee morale, employee training and development, and improved communication throughout the Agency.

IV. Relations with Congress

24. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

25. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

If confirmed, I will communicate and work with Congress by responding to Congressional requests.

V. Assistance

26. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

Yes. I have consulted with the FLRA.

AFFIDAVIT

I, Ernest W. DuBester, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Ernest W. DuBester

Subscribed and sworn before me this 22nd day of July, 2009.

Notary Public

MARK ELSON
My Commission Expires
March 11, 2011

U.S. Senate Committee on Homeland Security and Governmental Affairs
Opening Statement of Julia Akins Clark
Nominee for General Counsel of the Federal Labor Relations Authority

I would like to express my appreciation for the opportunity to appear before the Committee for the purpose of being considered for confirmation as the General Counsel of the Federal Labor Relations Authority (FLRA). It is a great honor to be asked to serve one's country as a public official. If confirmed, I will do my utmost to fulfill my statutory responsibilities in a manner that will serve the public interest, by providing federal employees, unions and agencies with high quality labor relations services.

The FLRA General Counsel is primarily responsible for the protection and enforcement of employee, union and agency rights under the Federal Service Labor-Management Relations Statute (Statute) through the investigation of alleged unfair labor practices (ULP) and prosecution of ULP complaints. Further, the General Counsel has "direct authority over, and responsibility for" all employees in the office of General Counsel including the FLRA regional offices, which handle representation matters. In furtherance of these responsibilities the General Counsel may also provide training, guidance and leadership in the area of federal sector labor relations. The General Counsel is part of the FLRA management team, together with the FLRA Chair, Members and senior staff.

My professional experience has prepared me well for this role. I served on the Presidential Transition Project, Agency Review Team responsible for reviewing the FLRA during the time between the Presidential election and inauguration. This experience provided me with significant insights into short and long term challenges facing the FLRA and the capacity of the FLRA to meet those challenges. During my over

twenty years as a labor relations attorney, I gained significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including representation elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act, which may provide models for solutions to challenges facing the FLRA. As the General Counsel of the International Federation of Professional and Technical Engineers (IFPTE), I have been part of the organization's management team. I am accustomed not only to providing leadership, but working collaboratively with a leadership team to accomplish difficult goals. In addition, I advise elected and senior union officials at both the national and local level on management and employment matters, including management's responsibilities with regard to the organization's employment relationship with staff and labor relationship with staff unions. I have lead collective bargaining teams in complex negotiations in both private and public sector contexts. As a result of this experience, I have gained relevant experience with alternative dispute resolution methods. Finally, I have significant federal prosecutorial experience. From 1980-1985, I served as a Trial Attorney at the United States Department of Justice.

I have the deepest respect and admiration for federal government employees. It is my opinion that civil servants, be they rank-in-file employees, supervisors, mid-level managers, or high ranking career employees and political appointees, seek to serve the public interest, which includes compliance with the federal labor relations statute. I believe that it is incumbent upon the FLRA General Counsel to provide them with clear, up-to-date and accessible information about their labor relations rights and

responsibilities and assist them in resolving disputes regarding those rights and responsibilities in a fair, consistent and timely manner. If confirmed, I look forward to the opportunity to contribute to the overall mission of the federal civil service, by serving as the FLRA General Counsel.

I wish to express my appreciation to the Committee and staff for making this hearing possible and look forward to answering any questions.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Julia Akins Clark. My maiden name is Julia LoRene Akins. I am known to my family, friends and coworkers as Julie.

2. **Position to which nominated:**

   General Counsel, Federal Labor Relations Authority

3. **Date of nomination:**

   June 4, 2009

4. **Address:** (List current place of residence and office addresses.)

   Home: -REDACTED-
   Office: 501 3rd Street, NW, Suite 701, Washington, D.C. 20001

5. **Date and place of birth:**

   August 29, 1956
   Shawnee, Oklahoma

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married to Nicholas W. Clark

7. **Names and ages of children:**

   Lisa Nichole Clark (stepdaughter) 37
   -REDACTED-

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   McLoud High School, McLoud, Oklahoma
   Attended 1970-1974, High School Diploma May 1974

   Oklahoma Baptist University, Shawnee, Oklahoma
   Attended summer 1973, and 1974-1977
   BA Political Science, *summa cum laude*, August 1977

American University, Washington College of Law, Washington, D.C.
Attended 1977-1980, J.D. May 1980

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Spring-Summer 1978, Investigator, D.C. Superior Court Pilot Program (provided pre-indictment investigative services to indigent defendants charged with felony crimes), Washington, D.C.

Fall 1978 – Spring 1980 (except summer 1979), Law Clerk, Arnold and Porter, Washington, D.C.

Summer 1979, Law Clerk, Federal Trade Commission, Washington, D.C.

1980-85, Honors Program Trial Attorney, Antitrust Division, Department of Justice, Washington, D.C.

1985-87, Associate, Blumenfeld and Cohen, Washington, D.C.

1987-88, Counsel, National Coalition for the Homeless, Washington, D.C.

1988-1995, Counsel, Federal and Legislative Affairs, International Federation of Professional and Technical Engineers, Silver Spring, MD

1995-Present, General Counsel, International Federation of Professional and Technical Engineers, Washington, D.C.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

1985-87, Associate, Blumenfeld and Cohen, Washington, D.C.

1987-88, Counsel, National Coalition for the Homeless, Washington, D.C.

1988- 1995, Counsel, Federal and Legislative Affairs, International Federation of Professional and Technical Engineers, Silver Spring, MD

1995-Present, General Counsel, International Federation of Professional and Technical Engineers, Washington, D.C.

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Current Memberships:
Edgemoor Citizens Association
Bethesda Chevy Chase High School PTSA
International Federation of Professional and Technical Engineers, Local 4
NAACP
Lawyers Coordinating Committee- AFL-CIO
District of Columbia Bar Association

Former Memberships:
Westland Middle School PTA
Bethesda Elementary School PTA
Chesapeake Bay Foundation
Oklahoma Baptist University Young Democrats
Oklahoma Baptist University Athenians

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more during the past 5 years.

2009 Hillary Clinton Committee $50
2008 Obama for America $1000
2008 Hillary Clinton for President $490
2008 Democratic National Committee $50
2008 Al Franken for Senate $100

2007 Hillary Clinton for President $100
2006 Brad Henry for Governor $250
2006 Valerie Ervin for Montgomery County Council $100
2004-09 International Federation of Professional and Technical Engineers
LEAP PAC $750

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Robert S. Kerr Scholar in Public Affairs, Oklahoma Baptist University, 1974-77

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Copies of the following articles are provided:

White Collar Exemptions, Presented to the ABA Section on Labor and Employment Law, September 12, 2008

Developments in NLRB Representation Cases: April 2005 through March 2006. Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 2006

NLRA Protected Concerted Activity in Cyberspace: Union and Employee Use of Employer-Owned Technology for Organizing, Grievances, etc. ABA, Technology Committee, Section of Labor and Employment Law, April 21, 2004

NLRA Protected Concerted Activity in Cyber space, Labor Law Exchange Volume 21, November 2003

Use of Electronic Mail in Union Organizing Campaigns, Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 2002

Legal Developments under Chicago Teachers v. Hudson and Communications Workers v. Beck, Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 1999

Pending Amendments to the Fair Labor Standards Act, Presented to the ABA, Federal Labor Standards Committee, February 1996.

16. **Speeches:**

(a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics

relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

None of the speeches delivered in the last 5 years included written texts.

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

The Role of Collective Bargaining in Protecting ALJ Qualified Judicial Independence, Federal Administrative Law Judges Conference, April 17, 2009 (no written text)

Union Perspectives on Current Issues in Federal Labor Relations, Interagency Labor Relations Forum, approximately March 2007 (no written text)

Role of Professional Associations in Influencing Public Policy, Department for Professional Employees, AFL-CIO, March 15, 2005 (no written text)

Knowledge Workers in the New Economy: from Cliché to Contract, Chicago-Kent College of Law, April 20, 2004

Use of Electronic Mail in Union Organizing Campaigns, ABA, Technology Committee, Section of Labor and Employment Law, May 15, 2002

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I believe I was selected based on my background and experience in federal sector labor relations. For additional information, please see my response to question 17(b) below.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

For the last twenty years, I have been a practicing attorney specializing in labor relations. I have significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including union elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act.

Since 1995, I have served as the General Counsel of the International Federation of Professional and Technical Engineers. I am part of the management team of

this labor organization. Further, in addition to my legal and management responsibilities, I have had significant experience leading collective bargaining teams in complex negotiations with a number of large federal government and private sector employers. In this capacity, I have been instrumental in the mutually beneficial resolution of many labor disputes.

From 1980-1985, I served in a prosecutorial capacity as an Antitrust Division Trial Attorney at the United States Department of Justice.

B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

   No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

   No

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into

with the FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

- Consulted with House Committee on Oversight and Government Reform staff regarding a technical aspect of proposed amendments to the GAO Personnel Act.
- Briefed staff of the House Committee on Oversight and Government Reform, the Senate Homeland Security and Governmental Affairs Committee, and the House and Senate Legislative Branch Appropriations Committees on union election and collective bargaining at GAO.
- Consulted with staff of the House Committee on Oversight and Government Reform, the Senate Homeland Security and Governmental Affairs Committee, regarding the GAO Comptroller General selection process.
- Assisted union representatives and individual employees in meetings with Senators regarding the Employee Free Choice Act by answering questions regarding technical aspects of the legislation.
- Briefed Senators about how proposed Department of Labor regulatory changes would impact white collar employees' Fair Labor Standards Act coverage.
- Assisted union representatives in briefings with White House, FAA officials and Members of Congress regarding the impact of the Boeing Company engineers' strike on the certification of commercial aircraft.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

I was a party in a divorce proceeding in D.C. Superior Court in 1981.

In 1995, I was a witness in an arbitration in which an IFPTE-affiliated local union, sought to recover overtime wages for its members. I testified on the question of whether union-represented workers were entitled to bring overtime claims under the arbitration clause of their collective bargaining agreement.

In addition, IFPTE was involved in routine litigation, arbitration, and agency administrative proceedings during my twenty year tenure. IFPTE and its affiliated labor organizations have been parties to litigation, arbitrations and agency administrative proceedings in connection with constitutional, statutory, collective bargaining and representation matters, as well as individual employment matters (e.g. pay, discipline, discrimination, promotions etc.). None of these proceedings involved actions taken or omitted by me, nor did I testify in any of these matters.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

-REDACTED-

AFFIDAVIT

Julia AKins Clark being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Julia AKins Clark

Subscribed and sworn before me this 24th day of June, 2009

Heather L Vaughn

NOTARY PUBLIC
DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES OCTOBER 14, 2013

Notary Public

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

June 24, 2009

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Julie Akins Clark, who has been nominated by President Obama for the position of General Counsel, Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Don W. Fox
General Counsel

Enclosures - REDACTED

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire for the Nomination of
Julia Akins Clark to be General Counsel of the Federal Labor Relations Authority

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as General Counsel for the Federal Labor Relations Authority (FLRA)?

   I believe I was selected based on my background and experience in federal sector labor relations. For further information, see responses to questions 3 and 11 below.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

   No

3. What specific background and experience affirmatively qualify you to be General Counsel for the FLRA?

   For the last twenty years, I have been a practicing attorney specializing in labor relations. I have significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including union elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act.

   Since 1995, I have served as the General Counsel of the International Federation of Professional and Technical Engineers. I am part of the management team of this labor organization. Further, in addition to my legal and management responsibilities, I have had significant experience leading collective bargaining teams in complex negotiations with a number of large federal government and private sector employers. In this capacity, I have been instrumental in the mutually beneficial resolution of many labor disputes.

   From 1980-1985, I served in a prosecutorial capacity as an Antitrust Division Trial Attorney at the United States Department of Justice.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel for the FLRA? If so, what are they and to whom have commitments been made?

   No

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

II. Role of the General Counsel for the FLRA

6. What in your opinion is the role of the General Counsel and the Office of General Counsel?

The essential statutory role of the General Counsel is specified in 5 U.S.C. § 7104 (f) (2) (a) and (b) of the Federal Service Labor-Management Relations Statute (Statute). It is the responsibility of the General Counsel to protect and enforce employee, union and agency rights under the Statute through the investigation of alleged unfair labor practices (ULP) and prosecution of ULP complaints. The General Counsel has "direct authority over, and responsibility for" all employees in the office of General Counsel, including the seven regional offices of the FLRA. 5 U.S.C. § 7104 (f) (3). Finally, the FLRA Chair has delegated to the General Counsel responsibility under 5 U.S.C. § 7104 (f) (2) (c) for fulfilling the FLRA's responsibility to handle representation matters, i. e., determine appropriate units, investigate and hold representation hearings, direct elections, and conduct and certify secret ballot elections. These responsibilities are carried out primarily by FLRA regional office staff under the direction of the General Counsel.

In addition to these statutory and delegated responsibilities, I believe the General Counsel should provide training, guidance and leadership in the area of federal sector labor relations to employees, unions and agencies. It is my opinion that civil servants, be they rank-in-file employees, supervisors, mid-level managers, or high ranking career employees and political appointees, seek to serve the public interest, which includes compliance with the Statute. It is incumbent upon the General Counsel to provide them with clear, up-to-date and accessible information about their rights and responsibilities under the Statute and assist them in resolving disputes regarding those rights and responsibilities in a fair, consistent and timely manner. I believe this purpose is served by providing training, published guidance, alternative dispute resolution services, and where necessary, timely formal investigations, hearings and decisions.

7. What do you believe are the biggest challenges facing the Office of General Counsel? What steps do you plan to take, if confirmed, to address these challenges?

The greatest challenges facing the General Counsel are: (1) addressing the backlog of approximately 300 ULP complaint cases (ULP charges that have been investigated and recommended for prosecution) and the backlog of approximately 700 ULP appeals (ULP charges that have been dismissed by Regional Offices and appealed to the General Counsel); (2) coping with the current and likely increasing workload and in light of attrition and budget constraints; and (3) improving FLRA employee morale.

Backlog: If confirmed, I will make elimination of the pending backlog the highest priority. I would ask first that career staff group the pending cases in ways that would expedite the General Counsel's review of their recommendations for disposition. It is my expectation that by collaborating with career staff we can triage and manage the backlog in a manner that will reassure the parties that the FLRA will, with in a reasonable period of time, be back in the business of providing timely ULP processing services.

Workload Management: The FLRA staff has decreased by 50% since FY 2001. The Office of General Counsel's (OGC) FTE number has declined over this period from 125 to 64. This reduction occurred primarily through attrition and the failure to fill vacancies. Similarly, the FLRA budget authority declined from 25.1 million in 2001 to 22.7 in 2009. Work load increases are anticipated as a result of a number of factors, including the return of customers who chose not to seek FLRA assistance given the lack of a fully functioning OGC. In addition, Presidential or Congressional actions under consideration (e.g. the grant of bargaining rights to Transportation Security Agency employees, restoration of labor management partnerships, and the Public Employee's Cooperation Act) would dramatically increase the demand for OGC services.

It will be very difficult to address the above-described backlog, newly filed cases and expected workload increases under these circumstances. A first priority will be filling vacant OGC positions to the extent permitted by the current budget. Consistent with budgetary limitations, existing staff must be provided with the tools (training, technology, and case handling support) to maximize their effectiveness and efficiency. If confirmed, I would collaborate with FLRA Presidential appointees, senior staff and OGC employees to utilize existing resources to improve performance and productivity.

Employee Morale: The pressing need to improve FLRA employee work satisfaction is, in my view, among the biggest challenges facing the next FLRA General Counsel. While I am not prepared without further investigation to identify or comment on all important contributing factors, I believe that the lack

of effective management caused by extended vacancies in key positions, including the General Counsel position, has severely diminished staff morale. If confirmed, I would work collaboratively with The FLRA Chair, Members, senior staff, and FLRA employee representatives to develop a plan to address the areas of dissatisfaction. Furthermore, it is my general view that the General Counsel can contribute positively to OGC employee morale by working diligently to fulfill the statutory mandate, providing leadership and guidance to staff, communicating effectively with staff, ensuring that staff vacancies are filled in a timely manner, providing staff with adequate resources, technology, training and advancement opportunities, dealing openly and in good faith with employee representatives, and implementing family friendly work policies.

8. What will be your long-term priorities as General Counsel?

If confirmed, my long term goal will be to restore customer confidence in the OGC as a responsive, fair, and impartial protector of employee, union and agency rights and responsibilities under the Statute. In this regard, I believe all undertakings of the General Counsel's office should be evaluated based upon their likely contribution to the promotion of stable, constructive labor relationships between employees and unions and unions and agencies. I believe that publishing clear, precise, up-to-date guidance and training materials, fully staffing the OGC (including Regional Offices), providing targeted training and critical resources to career staff, making effective use of alternative dispute resolution services, and taking full advantage of information technology will further this goal. It will be essential to maintain a dialogue with customers as well as monitor performance to measure progress toward this goal. If confirmed, it is my hope that by the end of my term, the FLRA will be considered a leader in labor relations and a model to which others can look to for ideas and innovation.

9. The position of FLRA General Counsel has been vacant since February 2008. Have there been effects of this office being vacant for well over a year? How would you plan to address these matters?

The obvious concrete consequence is an ever increasing backlog of ULP complaints and appeals awaiting disposition by the General Counsel. In addition, this extended vacancy has contributed to a dramatic slide in confidence in the agency and morale among agency employees. Furthermore, absent a General Counsel there is no OGC official authorized to provide policy leadership with regard to the protection of employee, union and agency rights and responsibilities under the Statute.

Among the most meaningful first steps I would take as General Counsel would be to adopt a plan to address the backlog within a reasonable period of time. My preliminary thoughts are described above. In addition, I would ensure that the position of Deputy General Counsel is filled as quickly as possible, and remains

occupied. An essential function of the Deputy is to fulfill the General Counsel's statutory and delegated responsibilities in the absence of the General Counsel. It would be a principal goal to make sure that the OGC is always staffed with an individual who can act in the absence of the General Counsel.

10. Please describe your vision of what the relative roles and relationships should be between the Office of General Counsel and other agencies with government-wide civil service responsibilities, including the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Office of Special Counsel. Also, what do you believe the relative roles and relationships should be between the Office of General Counsel and the Chairman and members of the Federal Labor Relations Authority?

Other Agencies: Each of the identified agencies -- Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Office of Special Counsel – has a distinct role and responsibility. Each is authorized to play a vital role and make a significant contribution to the functioning of the federal government by managing federal personnel or ensuring compliance with federal employment laws. These agencies may collaborate on the effective use of resources, and developments in alternative dispute resolution techniques. As General Counsel, I would be open to opportunities to work collaboratively, where appropriate, with these agencies recognizing that these agencies may appear as parties in cases before the FLRA.

Chairman and Members: The FLRA Chairman is the Chief Executive of the agency and is responsible for all administrative and staff functions of the agency such as budget, personnel, finance and central services including information technology. The staff performing all of these functions report ultimately to the Chairman, along with the FLRA Solicitor. Further the Chairman, together with the Members make up the "decisional component" of the FLRA, which adjudicates negotiability appeals, exceptions to arbitration awards, petitions for review of Regional Director decisions in representation matters, and review of Administrative Law Judge decision in a ULP cases.

The General Counsel is a part of the FLRA management team together with the Chairman and Members, but also has a distinct and independent statutory function. As described above, the General Counsel has statutory authority for the investigation and prosecution of ULP allegations and direction of Regional Office operations, and delegated authority to direct the processing of representation matters. As the Chairman and Members are responsible for adjudication of appeals from OGC decisions, it is critical that the OGC safeguard its decisional independence thereby preserving the integrity and independence of both the OGC and the Authority decision-making processes.

At the same time, I would be committed to developing a collaborative relationship with the Chairman and Members regarding all other aspects of agency operations, e.g., budget, technology improvements, training, public relations, staffing, alternative dispute resolution programs, interagency cooperation and information sharing.

11. How does your prior experience prepare you to serve as General Counsel and to deal with the issues and challenges of this office?

Transition Team: I served on the Presidential Transition Project, Agency Review Team responsible for reviewing the FLRA during the time between the Presidential election and inauguration. This experience provided me with significant insights into short and long term challenges facing the FLRA and the capacity of the FLRA to meet those challenges.

Labor Relations Expertise: During my over twenty years as a labor relations attorney, I gained significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including representation elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act, which may provide models for solutions to challenges facing the FLRA.

Leadership/Management Experience: As the General Counsel of the International Federation of Professional and Technical Engineers (IFPTE), I have been part of the organization's management team. I am accustomed not only to providing leadership, but working collaboratively with a leadership team to accomplish difficult goals. In addition, I advise elected and senior union officials at both the national and local level on management and employment matters, including management's responsibilities with regard to the organization's relationship with its staff unions.

Dispute Resolution: I have lead collective bargaining teams in complex negotiations in both private and public sector contexts. As a result of this experience, as well as other significant settlement negotiations, I have gained relevant experience with alternative dispute resolution methods.

Prosecutorial Experience: Finally, I have significant prosecutorial experience. From 1980-1985, I served as a Trial Attorney at the United States Department of Justice.

III. Policy Questions

12. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

The FLRA plays a crucial role in Federal sector labor relations. The FLRA has been weakened by attrition and budget reductions and paralyzed by vacancies in key positions. Consequently, employees, unions and agencies have been left without the benefit of this neutral third party to assist in the resolution of disputes. This void has adversely effected good labor relationships and aggravated difficult relationships.

I believe that a fully staffed and functioning FLRA can make a meaningful improvement in Federal sector labor management relations. In my responses to the questions above and those that follow, I further describe my views about FLRA priorities and goals.

13. Do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

I am not currently prepared to recommend amendments to the Federal Service Labor-Management Statute. Should I be confirmed, I am willing to engage in an open and collaborative approach to the evaluation of possible improvements and offer my views as appropriate.

14. In many situations, federal employees work side-by-side with contract workers Do you believe a blended workforce of federal employee and federal contract personnel is having an effect on federal labor-management relations, and, if so, what? Do you believe that changes are needed in labor-management policy, and, if so, what do you believe would be appropriate?

The FLRA does not currently play a role in determining the appropriate balance between federal civil service employees and contract workers. The FLRA's role is to assist federal agencies and unions in their efforts to constructively address their interests through collective bargaining. I am committed to ensuring that the parties fulfill their bargaining obligations under the Statute.

15. If confirmed as General Counsel, you will have wide prosecutorial discretion in determining whether to pursue allegations of unfair labor practices and will operate, to a large extent, without review by the members of the Authority or any court. Federal courts have held that a decision by the General Counsel not to issue an unfair labor practice complaint is not judicially reviewable. Given this great responsibility, what factors will you consider in deciding whether or not to pursue unfair labor practice allegations?

The OGC has published criteria in its ULP Case Handling Manual for the exercise of prosecutorial discretion. These criteria include, but are not limited to, the seriousness of the violation, degree of harm to the bargaining relationship between the agency and the union, harm to employees, whether the violation is

an isolated one or part of a pattern, whether the violation has been cured, or whether the circumstances preclude an effective remedy, and whether the alleged violation presents a novel issue, the litigation of which may contribute important legal precedent. While these factors seem reasonable, I will evaluate the criteria and update it as needed with the assistance of senior staff. I believe that clear, published guidance based upon input from experienced senior staff regarding the exercise of prosecutorial discretion and transparent, consistent decision making will ensure that this important statutory responsibility is carried out in the public interest.

16. When Regional Directors determine, on behalf of the General Counsel, to issue an unfair labor practice complaint, they are required to make decisions on the remedy that will be sought in litigation. What kinds of remedies do you believe should be available to an aggrieved party and what type of evidence would be necessary to establish the appropriateness of each remedy?

The essential purposes of a remedy in a ULP proceeding are to recreate the conditions and relationships that would have existed had there been no unfair labor practice; and to deter future violative conduct, while not being punitive. It is important to note that OGC guidance in this area has been lacking for many years. If confirmed, I will consult with staff and issue updated guidance to Regional Offices and parties regarding OGC policy on remedies as quickly as possible. That guidance will be consistent with the Statute and Authority precedent in all respects.

The broad outline of an appropriate OGC remedies policy is prescribed by Statute and the Authority's interpretive decisions. If confirmed, my policy would be consistent with both. The Statute (5 U.S.C. § 7118 (a) (7)) provides the following specific remedies: cease and desist orders; orders requiring parties to negotiate a contract and to give it retroactive effect; and orders reinstating an employee with backpay. The Statute and Authority precedent also permit further innovative remedies, as long as the Statute is effectuated, the evidence establishes the need for such a remedy, and the remedy is not otherwise inconsistent with the Statute or other external law.

17. Do you have a sense for the issues and other factors that give rise to unfair labor practice (ULP) complaints? If so, what are the issues and other factors that underlie ULPs and what can be done to help reduce the number of ULP complaints?

Issues that frequently give rise to unfair labor practice allegations include: a party's refusal to respond to a request for information; unilateral implementation of changes to working conditions; bad faith bargaining; infringement on self organizational rights; discrimination/retaliation for engaging in protected activity; breach of the duty of fair representation; bypass of the exclusive bargaining representative; failure to provide the union with the opportunity to be

present at a formal discussion with represented employees; and failure to provide union representation at investigatory meetings.

Among the factors that contribute to the commission of ULPs by agencies and unions is the lack of a fully functioning OGC. Many ULP disputes are the result of misunderstandings about the applicable law and procedures. The General Counsel can contribute to a reduction in the number of ULP allegations, and consequently ULP complaints by educating FLRA customers about their rights and responsibilities under the Statute and FLRA processes. The OGC should publish clear, precise, up-to-date guidance and training materials, and provide outreach to customers (employees, unions and agencies) urging them to familiarize themselves with this information. It is reasonable to expect that as a result of these efforts, parties will be better equipped to avoid committing ULPs and file only meritorious claims. In addition, the General Counsel can provide leadership and guidance in alternative dispute resolution techniques that will serve to strengthen labor management relationships and support the parties' efforts to resolve disputes short of formal litigation.

18. The backlog of cases and difficulties meeting performance goals have been persistent problems for the Office of General Counsel. What is necessary to ensure that cases are investigated and resolved in a timely and fair fashion?

    a. In your view, what is the relationship between the timeliness of case investigation and disposition by the Office of General Counsel and the quality of decisions and actions taken?

I believe there is a strong correlation between timely case investigation and disposition and the quality of decision making. It is critical that OGC staff be allowed adequate time to investigate and dispose of allegations if we are to expect high quality results. However, ULP allegations do not arise in a static environment. Instead, facts and circumstances related to the allegations continue to change. Consequently, to have a meaningful and positive impact on labor relations, the OGC must carry out these functions in a timely manner. The General Counsel is responsible for providing guidance and monitoring and improving performance in this regard.

    b. Do you believe that the quality of case processing and disposition should be measured? If so, how?

I believe that the General Counsel, in consultation with staff, should endeavor to develop measures for quality of case processing and disposition. I understand the importance of developing quality measures and am committed to doing so should I be confirmed.

    c. Should there be performance goals related to case processing and decision quality? If so, what goals would you recommend? If not, please explain why.

I believe that the OGC should develop performance goals related to case processing and decision quality. While I am not prepared to recommend specific goals at this time, I believe they should be developed in consultation with staff.

19. President Bush revoked President Clinton's Executive Order on federal labor-management partnerships. What are your views on labor-management partnerships? Generally, do you believe it is desirable to promote collaborative, as opposed to arms-length, labor-management relationships in the federal government?

Whether mandated by Executive Order, statute, or based upon bi-lateral agreement, labor-management partnerships can mutually benefit employees, unions and agencies and further the public interest. It is my view that collaborative labor management relationships are desirable and can result in mutually beneficial solutions to complex problems. Often collaborative decision making not only yields better outcomes, but also requires fewer resources than more formal rights oriented decision making.

20. Under 5 U.S.C. § 7118(a)(5), the General Counsel may prescribe regulations providing for informal methods by which an alleged unfair labor practice may be resolved prior to the issuance of a complaint. What kind of methods do you feel would be most effective in enabling the parties to resolve disputes prior to the issuance of a complaint?

It is premature for me to comment on specific regulatory proposals in this regard. However, as stated in response to other questions, OGC efforts to avoid the occurrence of factors that result in ULP allegations and resolve ULP disputes short of litigations are in the public interest. I would evaluate potential regulatory changes in light of their potential to achieve these goals.

21. There has been increasing use of alternative dispute resolution (ADR) techniques to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations law.

    a. What do you believe are the advantages and disadvantages of ADR, from the point of view of the employee, of the employing agency, and of the public interest?

In my view the advantages and disadvantages of ADR apply in largely the same way regardless of the stakeholder's point of view. Among the advantages are the preservation and improvement of labor management relationships by reaching mutually agreed, rather than imposed solutions and a reduction in litigation, which is a resource-intensive activity. On the other hand, each litigated ULP complaint provides an opportunity to clarify the

law, create precedent, and thereby provide parties with guidance on compliance with the Statute and/or deterrence from violating the Statute.

b. What are your views on the use of ADR to resolve federal workplace disputes, and what changes, if any, do you believe should be made in ADR policies and practices in the federal workplace?

It is my view that the use of ADR to resolve workplace disputes contributes positively to labor management relationships and, therefore is in the public interest. Before making specific recommendations about changes to these policies and practices, I would collaborate with the Chairman, Members and FLRA staff, look to guidance from other successful ADR programs and make such recommendations at the appropriate time.

22. The Office of the General Counsel offers training on rights and obligations under the labor-management relations statute, relevant case law, and regulatory filing requirements. In addition, the Office of the General Counsel provides training in such areas as labor-management partnerships, relationship building, interest-based negotiations and problem solving, alternative dispute resolution design, labor relations strategic planning, and pre-decisional involvement. What do you think are the principal results that such a program should achieve? Do you have any views on the current training program, and have you considered what changes, if any, you would make?

I am aware of an extensive training program offered by the OGC prior to 2001. That program assisted parties in understanding their respective rights and responsibilities, building productive labor management relationships, ADR, and more. In my view the principal goal of such training is to promote stable, constructive labor relationships between employees and unions and unions and agencies. I do not have sufficient information to evaluate the current training program or recommend changes at this time. If confirmed, I would make it a priority to evaluate this program and, in consultation with staff, make appropriate changes and implement the best possible training program.

23. In the 2009 Best Places to Work rankings by the Partnership for Public Service, based on the data collected in the Federal Human Capital Survey, the FLRA ranked last for all small federal agencies that submitted data. In your view, what can be done to help improve the situation at FLRA, and, if you are confirmed, what steps would you recommend to address these human capital challenges and improve employee morale?

While I am not prepared without further investigation to identify or comment on all important contributing factors, I believe that the lack of effective management caused by extended vacancies in key positions, including the General Counsel position, has severely diminished staff morale. If confirmed, I would work collaboratively with The FLRA Chair, Members, senior staff, and FLRA

employee representatives to develop a plan to address the areas of dissatisfaction. Furthermore, it is my general view that the General Counsel can contribute positively to OGC employee morale by working diligently to fulfill the statutory mandate, providing leadership and guidance to staff, communicating effectively with staff, ensuring that staff vacancies are filled in a timely manner, providing staff with adequate resources, technology, training and advancement opportunities, dealing openly and in good faith with employee representatives, and implementing family friendly work policies.

24. Much has been said about the graying of the federal workforce and the proportion of the workforce at or near retirement eligibility. Given the current situation within the Office of General Counsel, what role should succession planning play and what approach would you take to dealing with this challenge?

I am aware of the importance of succession planning to ensure that the OGC is staffed with appropriately trained and experienced employees at every level. I believe the General Counsel should consult with appropriate FLRA staff, obtain necessary factual data, and develop a succession plan in consultation with the FLRA Chairman, Members, senior staff, and FLRA employee representatives.

IV. Relations with Congress

25. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes

26. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

I am committed to communicating and working with Congress in carrying out my responsibilities at FLRA.

V. Assistance

27. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

These answers are my own. I also consulted with current FLRA personnel designated by the FLRA Chairman for this purpose.

AFFIDAVIT

I, Julia Akins Clark, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

J A Clark

Subscribed and sworn before me this 22nd day of July, 2009.

Pamela R. Oxley

Notary Public

Pamela R. Oxley
Notary Public, District of Columbia
My Commission Expires 11/30/2013

Executive Order 13203 of February 17, 2001 (reprinted at 66 Fed. Reg. 11227, Feb. 22, 2001), revoking Executive Order 12871 of October 1, 1993, as amended by Executive orders 12983 and 13156, and revoking the Presidential Memorandum of October 28, 1999, entitled "Reaffirmation of Executive Order 12871 – Labor-Management Partnerships."

Opening Statement of Rafael Borras
Nominee for Under Secretary for Management, U.S. Department of Homeland Security
Before the U.S. Senate Committee on Homeland Security and Governmental Affairs

Chairman Akaka, Senator Voinovich, and distinguished members of the Committee: I am humbled and honored to appear before you today as you consider my nomination by President Obama to serve as the next Under Secretary for Management at the U.S. Department of Homeland Security. Thank you for your consideration of my nomination. I thank the President for the opportunity to once again serve this great country and Secretary Napolitano for her confidence in me and her support throughout this confirmation process.

I also thank this Committee and its members for being guardians of the Department of Homeland Security. While I have only been an observer of this Department, your efforts obviously have safeguarded the institution and its mission, provided intelligent and thoughtful oversight, and legislatively ensured that the Department's management functions are properly considered in the context of government-wide policies. Not only were you responsible for the creation of the Department, you have led the fight in finding DHS a home at St. Elizabeths. You have ensured that the Department grew more resilient as a result of your investigation into Hurricanes Katrina and Rita and your subsequent legislative and oversight work reforming the Department. And I have learned from listening to those in the Department that you have instilled an understanding of the need to set goals and measure progress so the Department can be accountable to you and to the American taxpayer.

As an observer, I have noticed that the Department's interactions with this Committee, both the members and the staff, have fostered a climate of bipartisan collaboration, devoid of partisan rancor. If confirmed, I look forward to working with you to ensure that this Department fulfills the vision of the Secretary and this Committee – "ONE DHS" that is an integrated, efficient, Department that understands and executes its mission.

There is no professional challenge or reward greater than ensuring that the Department of Homeland Security achieves its mission. If confirmed, I know that I will have the immense responsibility of providing management support to the mission of protecting America.

Early in life, I heard the call to public service, and over the course of a 27-year professional career in the public, non-profit, and private sectors, I have again and again been presented with opportunities to serve. With the love and support of my parents and many mentors, I was encouraged to enter public service. I have been able to combine my abilities to lead and inspire; my willingness to work hard to overcome hardened challenges; and my desire to assist others to grow and flourish. There have been moments of personal satisfaction and reward during my service to Metro-Dade County, the cities of Hartford and New Rochelle, and the Department of Commerce and GSA.

I look back over my long career and find many examples of the benefits of hard work and dedication to the public good. Working on rightsizing government and implementing Community Oriented Policing at the City of Hartford; leading an effort to implement integrated acquisition management at the Commerce Department; managing a high performing organization

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at GSA and pushing it to even greater success; and, currently, achieving great success supporting the efforts of major public capital improvement projects at the federal and local levels while working in the private sector. At every progressive level of management responsibility I have held, I am confident that I have left behind a legacy of strong financial management, innovative acquisition reform, and a passionate dedication to working on behalf of our most important strategic asset – our employees.

If confirmed, I have three principal areas of focus at the Department of Homeland Security: financial management, acquisition management, and human capital management.

A) Financial Management – My major priorities in the financial management area include the following:

(1) I would assess the ability of the current financial systems to provide the necessary data to aid in the decision making process at the senior management levels of DHS. I would explore the development of an executive information system or dashboard to accomplish this goal. Since DHS is in the process of acquiring a new consolidated and authoritative asset, acquisition, and financial management system, an umbrella dashboard system may be a viable option to overcome what I believe is one of the major challenges to monitoring Departmental performance and reporting results. While at the Commerce Department, we developed a system to be used as a major decision support system called EARS. Through this system, we were able to consolidate accounting, budget, procurement, performance and human capital data into a single environment for the CFO, the Secretary, and senior officers throughout the Department. The system provided touch screen and drill down capability to procurement, personnel, payroll, and financial data for the components and the Office of the Secretary. It also enabled users to gauge Departmental performance utilizing a common platform that was available across the Department.

(2) I would look to immediately work with the CFO and his/her staff on implementing the existing Internal Controls Over Financial Reporting (ICOFR) playbook and to develop action plans to address all outstanding material weaknesses identified by either the IG or GAO. It is critically important to gain the support and confidence of both the GAO and the IG in supporting the major initiatives required to aid in the improvement and transformation of DHS.

(3) Another major priority would be to work closely on the evaluation of existing DHS performance measures, and recommendation of new measures. It is important to drive results throughout the Department, with a focus on measures that tie budget, agency and program success, and individual performance in a way that better allows DHS to demonstrate and communicate to the public and Congress the "return on investment."

B) Acquisition Management -- I would improve the acquisition function at DHS in cooperation with the Chief Procurement Officer, I suggest DHS:

(1) Focus on the front end of the acquisition process, namely strengthening the requirements phase.

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(2) Evaluate the use of an integrated approach to the entire acquisition lifecycle, by pulling together teams from business areas of Finance, Acquisition, and Information Technology to move the emphasis of acquisition away from measuring procurement time, to focusing on the outcome – what the program delivers. At the Department of Commerce, one of my most significant accomplishments was the implementation of such as program, which we called "Concept of Operations" (CONOPS).

(3) Strengthen the project management capabilities with the Headquarters and component agencies at DHS.

(4) Support and augment as possible, a robust intern program to begin to address our acquisition workforce challenges.

Also, if confirmed, I would review the existing Acquisition Review Board (ARB) process as well as the reporting relationship between the component acquisition personnel and the Office of Procurement to assess if changes or modifications are required.

C) Human Capital Management – If confirmed, I would ask the Chief Human Capital Officer to conduct a thorough assessment of available employee resources to assist the Headquarters and component agencies in meeting their workforce needs. Information support also appears to be lacking in the human capital area, and I would look to the development of the aforementioned dashboard system to aid in providing the necessary information to develop recruitment and retention plans.

Finally, if confirmed, I would focus on the root causes of the issues identified in the most recent Federal Employees Surveys. My review of the survey results suggests that although there are challenges, the Department's employees demonstrate a very strong support for and connection to the Department's mission. I believe that strong employee support for the Department's mission can be an important tool to motivate and inspire employees in support of the Secretary's "One DHS" goal.

In sum, my approach to these three areas of focus would provide an integrated solution process that would link an emphasis on financial management, acquisition review and transformation, and a holistic approach to human capital management that would help drive DHS toward improved management, accountability, and performance.

I pay tribute to those hard working and dedicated public servants who helped stand up the Department of Homeland Security. I especially want to recognize the contributions of the current Under Secretary for Management, Elaine Duke, who has given so much over her long and exemplary career, and has provided able and confident stewardship during this period of transition.

If confirmed, I would look forward to working with you and your staff, to provide effective and responsible stewardship toward the protection of our nation's most valuable assets – the American people and our homeland. I look forward to taking your questions.

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BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   - Rafael Borras
   - Ralph Borras

2. **Position to which nominated:**

   - Under Secretary for Management

3. **Date of nomination:**

   - July 6, 2009

4. **Address:** (List current place of residence and office addresses.)

   - Home: -REDACTED-
   - Office: URS Corporation, 200 Orchard Ridge Drive, Gaithersburg, MD 20878

5. **Date and place of birth:**

   - July 13, 1957, Bronx, New York

6. **Marital status:** (Include maiden name of wife or husband's name.)

   - Married: Ivelisse Baez

7. **Names and ages of children:**

   - Jason Rafael Borras, (28)
   - Nicole Marie Borras, (25)
   - Chanel Morales, (25), Stepdaughter
   - Carole Allison Crossley, (21), Stepdaughter
   - Patrick William Crossley, (20), Stepson

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   - North Miami Beach High School, Florida, 1970 – 1974, June, 1974
   - Miami Dade Community College, 1974 – 1977, A.A., June 1977
   - Florida International University, 1977 – 1981, B.A. – Political Science, June 1981

- Florida International University, Public Administration Graduate Program, 1981 – 1984, no degree

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

    - Administrative Officer, Metropolitan Dade County Government, Miami Florida; December 1982-December 1984
    - Director of Communications, International City and County Management Association, Washington, DC; January 1985-January 1991
    - Deputy City Manager, City of Hartford, Hartford, Connecticut; January 1991-March 1993
    - Deputy City Manager and Commissioner of Human Services, City of New Rochelle, New Rochelle, New York; March 1993-June 1994
    - Consultant, Department of Commerce, Washington DC; August 1994-December 1994
    - Associate Director of Minority Business Development, Department of Commerce, Washington DC; January 1995-June 1996
    - Deputy Assistant Secretary of Administration, Department of Commerce, Washington DC; June 1996-March 1997
    - Regional Administrator, US General Services Administration, Washington DC; March 1997-January 2000
    - Vice President, URS Corporation, Washington, DC; January 2000–Present

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

    - Commissioner, Montgomery County (MD) Ethics Commission (2007 – Present)

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

    - Vice President, URS Corporation, Washington, DC; January 2000–Present

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

    - Construction Management Association of America, Member (2006 – Present)
    - International City/County Management Association, Member (1991 – 1994)

- Connecticut City and Town Managers Association, Member (1991 – 1993)

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

- None

(b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

- None

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more during the past 5 years.

- None

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

- National Hispanic Field Service Fellowship for Graduate Studies in Public Administration (1981)

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

- None other than short pieces that I authored as the editor of Public Management magazine, a publication of International City/County Management Association (ICMA). I have requested all articles I wrote from the magazine and will make them available as soon as I receive them.

16. **Speeches:**

(a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

- I delivered no formal speeches or testimony during last 5 years.

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee.

Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

- As Regional Administrator, I gave informal remarks to different groups and organizations. I have only been able to identify one set of remarks that I have attached – "Building Livable Communities" before the National Field Officers' Training Workshop on September 15, 1999.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen to be a candidate for this nomination as a result of my relevant professional background and experience in the area of public sector management.

My 27-year career managing a wide array of administrative functions at all levels of government, including my experience as a city official, federal government senior executive, as well as my private sector executive experience make me well suited to oversee a large government agency portfolio—including finance, human capital, facilities, information technology, procurement and security, among others—at DHS.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe that both my professional experience and approach to management of large, complex organizations affirmatively qualifies me for appointment to the position of Under Secretary for Management. I have held positions of significant management responsibility at the U.S. Department of Commerce and the U.S. General Services Administration, both with responsibility for a portfolio of administrative functions similar to the Under Secretary of Management position Department of Homeland Security. In particular, the Department of Commerce, much like DHS, is a cabinet agency made up of multiple bureaus with each bureau carrying out a distinct but related mission. That experience provides a wealth of similarities pointing to the need for strong and effective management coordination, oversight, and collaboration to maintain financial integrity, consistency with procurement guidelines, identify and eliminate redundancies, and provide well administered personnel practices to enable an effective and productive workforce. I strongly believe that my combination of professional experiences and commitment to public service qualifies me for this assignment.

B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   - Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   - No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

   - No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   - No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   - Yes

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

   - Yes. I held the position of Deputy City Manager, New Rochelle, New York from 1993-1994. My position was eliminated from the budget and the City Charter in 1994. I was laid off as a result.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   - In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated

agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. I am not aware of any other potential conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

- None

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

- Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

- No

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

- No

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

- In 1989 I was a party in a divorce proceeding in Dade County Circuit Court.
- In 1994 I was a defendant in a suit in New Rochelle, NY, by Wohl Real Estate, whose services I had enlisted to help locate a rental home. The plaintiff sought a finder's fee even though I found a place to rent on my own. The lawsuit was dismissed.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

   - N/A

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   - None.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

-REDACTED-

AFFIDAVIT

Rafael Borras being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 8th day of July, 2009

Notary Public

My Commission Expires 4/25/2012

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
ROOM SD-340
(202) 224-2627

WASHINGTON, D.C. 20510-6250

SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE NOMINATION PROCESS

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

Question 9:

Due to a typographical error in response to the Committee's biographical and financial questionnaire, the following correction is made:

- Associate Director of Minority Business Development, Department of Commerce, Washington DC; January 1995-January 1996
- Deputy Assistant Secretary of Administration, Department of Commerce, Washington DC; January 1996-March 1997

AFFIDAVIT

Rafael BORRAS being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 10th day of September, 2009

Notary Public

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

July 8, 2009

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Rafael Borras, who has been nominated by President Obama for the position of Under Secretary for Management, Department of Homeland Security.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
Director

Enclosures - REDACTED

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Rafael Borras to be
Under Secretary for Management, Department of Homeland Security

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Under Secretary for Management at the Department of Homeland Security ("DHS" or "the Department")?

RESPONSE: I believe I was nominated as a result of my relevant professional background and experience in the area of public sector management. My 27-year career managing a wide array of administrative functions at all levels of government, including my experience as a city official, federal government senior executive, as well as my private sector executive experience make me well-suited to oversee a large government agency portfolio—including finance, human capital, facilities, information technology, procurement and security, among others—at DHS.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

RESPONSE: There have been no conditions attached to my nomination.

3. What specific background and experience affirmatively qualifies you to be Under Secretary for Management?

RESPONSE: I believe that both my professional experience and approach to management of large, complex organizations affirmatively qualifies me for appointment to the position of Under Secretary for Management. I have held positions of significant management responsibility at the U.S. Department of Commerce and the U.S. General Services Administration, both with responsibility for a portfolio of administrative functions similar to the Under Secretary for Management position at the Department of Homeland Security. In particular, the Department of Commerce, much like DHS, is a cabinet agency made up of multiple bureaus with each bureau carrying out a distinct but related mission. That experience provides a wealth of similarities pointing to the need for strong and effective management coordination, oversight, and collaboration to maintain financial integrity, consistency with procurement guidelines, identification and elimination of redundancies, and provide well administered personnel practices to enable an effective and productive workforce. I strongly believe that my combination of professional experiences and commitment to public service qualifies me for this assignment.

In addition, I believe my service as Deputy City Manager in both Hartford, Connecticut, and New Rochelle, New York, exposed me managing under difficult financial constraints, challenging me to look for innovative and creative techniques to deliver necessary services while practicing fiscal constraint. I am most proud of my role in balancing three consecutive budgets

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without raising taxes while serving as Deputy City Manager in Hartford. I describe additional relevant experiences throughout my responses to these pre-hearing questions.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Under Secretary for Management? If so, what are they, and to whom were the commitments made?

RESPONSE: No, I have made no such commitments.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain the procedures and/or criteria that you will use to carry out such a recusal or disqualification.

RESPONSE: In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

My recusal will follow the guidelines of the Director, U.S. Office of Government Ethics, especially, the Director's memo for DAEOs, DO-04-012, of June 1, 2004, and the advice of the Department's Designated Agency Ethics Official.

II. Role and Responsibilities of the Under Secretary for Management

6. What is your view of the role of the Under Secretary for Management?

RESPONSE: I view the role of the Under Secretary of Management (USM) as the principal official responsible for the proper operation of the management function of the Department, with responsibility to carry out the Secretary's management priorities for the Department. In addition, the Under Secretary for Management provides leadership, prioritization, and guidance to the major functional areas reporting to the USM. The USM is the major advocate for sound business practices within the Department, working closely with all of the operational agencies and organizations that make up the 22 components, directorates, and offices of DHS. Finally, the USM can be a powerful Departmental integrator and a leader in ensuring that the Secretary's and this committee's vision of "One DHS" is achieved.

7. What do you regard as the major internal and external challenges facing the Directorate for Management in DHS? If confirmed, how will you address these challenges?

RESPONSE: The Department of Homeland Security is a young agency at an important crossroads; it is transitioning from a start-up organization to the goal of a fully-functioning and high performing agency with sound financial and management practices. Based on this stage of

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development, it is important to recognize and respond to the most immediate internal and external challenges.

Briefly, the most significant internal challenge is to build a framework for effective management and management controls by establishing an interdependent management directorate that shares a common platform for conducting its business practices, understands and respects its customer needs, and is recognized for adding value to DHS. Similarly, the management directorate's external focus should be meeting and satisfying its stakeholder needs, providing clear communications to Congress and the public on the business practices and demonstrating progress against pre-defined goals and objectives.

8. What are the highest priority items you intend to focus on if confirmed as Under Secretary for Management? What do you hope to accomplish during your tenure as Under Secretary?

RESPONSE: If I were to be confirmed as Under Secretary for Management, my highest priorities, and those that DHS seems to be in greatest need of focus by the USM, would include areas in which I have demonstrated successes in my public and private sector career, namely ensuring sound financial management practices, establishing a comprehensive acquisition management strategy, and promoting effective human capital management. I strongly believe that a strategic focus that addresses those three areas would encompass the breadth of the management directorate's mission. All of the functions of the directorate -- IT, Security, Administrative Services, Procurement, Financial and Budget Management, and Human Capital operate within a similar framework that would benefit from enhanced focus on the three priorities I have mentioned above.

As for accomplishments, throughout my career I have judged my success on leaving my organization better off than when I started. My hope is that at the conclusion of my tenure at DHS, the Department will have developed a financial and information system platform that unifies all of the component agencies and provides DHS management and all stakeholders the ability to measure our performance and progress. Additionally, I plan to have completed and institutionalized a comprehensive acquisition approach that provides a consistent and uniform structure for procurements based on fairness, transparency, and integrity. Finally, I would like to improve internal morale and external perceptions of the Department, so that DHS is viewed as an exciting place to work, build a career, and contribute to the public good.

III. Policy Questions

General Management

9. Secretary Napolitano has spoken frequently of her goal of "One DHS" – an integrated department with a shared vision uniting its disparate components. If confirmed, what will you do to help achieve this goal? Please provide examples of management practices that you believe can play a role in promoting "One DHS."

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RESPONSE: With respect to the Secretary's goal of transforming the Department into "One DHS," if confirmed I will draw on my previous experience helping to bring about organizational change. In my experience, efforts to change organizations and culture begin with a firm and consistent commitment from the top. However, for change to become institutionalized the commitment to the integration of the Department needs to be adopted throughout the organization and this requires the commitment of all levels of leadership and the entire workforce. A strong definition of the expected outcomes of a "One DHS" needs to be clearly articulated, understood, and supported by the entire organization. I would intend to work closely with the Secretary and the DHS leadership to achieve the necessary level of clarity in order to meet the Secretary's goal.

With respect to examples of management practices that can aid in the promotion of "One DHS," I would suggest the following examples:

- Structure – I believe that rather than stifle creativity or innovation, properly implemented structure can provide the foundation for enhancing the efficiency of an organization by providing a common platform for the operation through which the mission is accomplished.

- Processes and Systems – In an organization as large and diverse as DHS, it will be necessary to evaluate the current processes and systems to determine if the right tools are available to support responsible decision making and measure performance.

- Information Dissemination - It is critically important for an organization as large as DHS to have a "common language" to communicate to its workforce and stakeholders. I believe that establishing a reporting function that ties together the Department in an executive or dashboard system will allow the Department to have access to the necessary information to better evaluate and communicate how the component effort measures up against Departmental goals. Employees at all levels of the organization would benefit from the collection and dissemination of this information.

10. The Department's headquarters are currently spread throughout 70 buildings and 40 sites across the National Capital Region making communication, coordination, and cooperation among DHS components a significant challenge. To address this problem, DHS plans to begin consolidating the majority of these offices at the St. Elizabeths Hospital Campus in Washington, DC in 2009. As Under Secretary for Management, you will be responsible for managing this project.

    a. Do you believe consolidating the headquarters of the Department is integral to addressing the integration and management challenges the Department currently faces?

RESPONSE: Yes, I believe that headquarters consolidation is an integral component to addressing the management challenges of the Department. The current scattered real estate portfolio for DHS and component facilities throughout the National Capital Region (NCR) does not support the effective management or efforts to unify the Department, operationally,

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logistically or culturally. The consolidation of major components of DHS at the St. Elizabeths site will be a major step in meeting the goal of Departmental integration.

b. The St. Elizabeths headquarters project is the largest federal construction project since the Pentagon and, as such, involves multiple federal agencies, the District of Columbia, numerous non-governmental stakeholders, and Congress. Coordination of these many players has been a challenge in the past and has slowed the construction timeline for St. Elizabeths. How will you ensure this project remains a priority and continues on schedule?

RESPONSE: Should I be confirmed, the successful execution of the DHS Headquarters Consolidation Plan would be one of my most important responsibilities and one where my executive experience at the General Services Administration and in construction/engineering field with private industry will be of great benefit. I look forward to working with all of the DHS components, our non-governmental stakeholders and members of Congress to assure this vital project to support DHS operations and integration, remains focused, on track and on schedule. I will be particularly focused on how the Department manages scope, schedule, and cost containment. I would also look to work closely with my former colleagues at GSA to ensure that this project receives their highest priority. If confirmed, as reflected in my ethics agreement, I would recuse myself from any particular action that would have a direct and predicable economic impact on my current employer URS.

c. Assuming sufficient appropriations are provided, when will the St. Elizabeths headquarters project be completed? When will the first DHS tenants be able to move in?

RESPONSE: The DHS Consolidated Headquarters development at St. Elizabeths is proposed as a 3 Phase development. This plan is intended to achieve initial (Phase 1) occupancy in FY 2013 by the U.S. Coast Guard, followed by DHS HQ, FEMA and the National Operations Center and collocation of component operations centers in FY 2014 (Phase 2), and final occupancy by TSA, CBP and ICE (along with liaison presences of USSS, USCIS, S&T and DNDO) in FY 2016.

11. The St. Elizabeths campus will house approximately half of the DHS headquarters staff. The remaining DHS headquarters staff will be consolidated into a handful of other facilities in the National Capital Region. Can you please provide an update on the non-St. Elizabeths headquarters consolidation? How many facilities do you anticipate utilizing in addition to the St. Elizabeths campus, and what is the timeline for this consolidation?

RESPONSE: The Department requested $75M in the FY 2010 Budget to begin the consolidation of mission support functions that do not relocate to St. Elizabeths. Working with GSA, I understand that DHS developed a strategy that will allow the Department to reduce from the more than 40 locations down to about 8 or 9, minimizing vacancy risk and aligning the schedule with the phased occupancy for St. Elizabeths. Consequently, this mission support consolidation is proposed to be completed concurrently with the St. Elizabeths Campus in 2016.

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In addition to St. Elizabeths, I understand the current plan is to keep the space in federally owned locations at the Nebraska Avenue Complex (NAC), the U. S. Secret Service HQ and the Ronald Reagan Building. Finally, DHS has two long term leases that will also be retained – the TSA HQ in Arlington, VA, and the ICE HQ in SE Washington, DC.

12. The Under Secretary for Management at DHS has overall responsibility for performance measurement at the Department. In the past, the Department has struggled to develop appropriate measures to assess how well it was meeting its varied goals.

    a. What do you believe are some of the most significant challenges in identifying appropriate measures to gauge the performance of the Department and its components? How would you address these challenges?

RESPONSE: I believe that the most critical challenge is the ability to gauge the performance of the Department through information systems that tie the various performance measures of the Department into a unified reporting structure, such as an executive dashboard. I have worked in many organizations in both the public and private sector that make effective use of information systems. For example, at the Commerce Department, we developed a system to be used as a major Decision Support system. In this system, called EARS, we were able to consolidate accounting, budget, procurement, performance and human capital data into a single environment for the CFO, the Secretary, and senior officers throughout the Department. At the time it provided touch screen and drill down capability to procurement, personnel, payroll, and financial data for components of the Office of the Secretary. This system allowed for the ability to gauge Departmental performance utilizing a common platform that was available across the Department.

If confirmed, I would explore opportunities to build a similar dashboard system for DHS.

    b. Have you reviewed any of the sets of performance measures that the Department and/or its components currently use? If so, what is your opinion on the usefulness of these measures?

RESPONSE: I have been provided with some information on the performance measures as a part of briefings I received in the nominations process. If I am confirmed I intend to review and evaluate those measures based on the best practices of the federal government, as well as those applicable performance measures found outside of the federal government. I am a firm believer in the development and use of performance measures that allow evaluation of agency performance, as well as a way to communicate to the workforce how their efforts relate to Departmental success.

    c. If confirmed, do you intend to maintain staff specifically devoted to performance measurement and management?

RESPONSE: Having a staff dedicated to performance management is fundamental to the ability of DHS to monitor and evaluate performance, as well as report on progress to all of its stakeholders. My intention is not only to maintain, but enhance the Department's performance

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measurement capability by providing senior leadership emphasis on this critical area, and using performance results in key decision making processes, such as strategic planning, resource allocation, and senior executive service accountability.

d. If confirmed, what actions will you take to improve how the Department is able to assess its performance and to use the results to improve its performance?

RESPONSE: Should I be confirmed, my priority is to enhance the Department's performance management capability by providing the senior leadership emphasis to this critical area. This would translate into working to advance the four goals established in the performance management arena: 1) Lead the performance management community, 2) Enhance the assessment and improvement of performance, 3) Improve performance integration and accountability, and 4) Expand transparency and reporting of results.

13. The Government Accountability Office (GAO) first designated DHS's implementation and transformation as high risk in 2003 because of the difficulty of transforming 22 disparate agencies into one department. In addition, many of these individual agencies were facing their own management and mission challenges before they were moved into DHS. Most importantly, the failure to effectively address DHS's management challenges and program risks could have serious consequences for our homeland security. DHS Transformation remained on the High Risk List in 2005, 2007 and 2009. However, in its most recent High Risk Update, GAO found that DHS had developed and started to implement an *Integrated Strategy for High Risk Management* and corrective action plans for specific management functions like financial, acquisition, information technology, and human capital management.

a. Have you had a chance to review the *Integrated Strategy* and corrective action plans? What is your opinion of them?

RESPONSE: I have briefly reviewed the Integrated Strategy. Based on my review, the Integrated Strategy appears to be a comprehensive approach to addressing fundamental challenges that the Department continues to face. Still, I also agree with GAO's latest assessment of the Integrated Strategy in that specific corrective action plans should be improved to include:

- Analysis and determination of root causes
- Identification of resources required to implement corrective actions; and
- Performance measures sufficient to accurately monitor progress.

If I am confirmed I intend to review this strategy is greater depth.

b. Do you intend to implement these plans?

RESPONSE: Should I be confirmed, it would be my among my highest priorities that the Department develop and implement corrective action plans for any management challenge or high-risk issue that jeopardizes the mission of the Department and limits the efficiency or performance of mission goals and strategic priorities.

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c. What additional resources do you believe are necessary to fully implement the plans and to move DHS transformation off GAO's High Risk List?

RESPONSE: If confirmed, I would intend to work closely with GAO to gain a thorough understanding of those areas that constitute our highest level of risk and would not hesitate to recommend additional measures and/or resources to support solutions.

14. The Department's management chiefs – Chief Financial Officer, Chief Information Officer, Chief Human Capital Officer, etc. – report through their respective components but are overseen by the Under Secretary for Management. For example, the CFO at ICE reports to the ICE Assistant Secretary for Management, not directly to the DHS CFO.

    a. What do you think of this management structure? Does it need to be modified to be more effective?

RESPONSE: In both local and federal government, I have managed within a structure that provides for strong oversight over decentralized operational components such as those found at DHS. From a management perspective, this model is dependent to a great extent on a level of operational consistency and adherence to a common decision making platform to ensure effective and responsible operations. As I have previously stated, I would look to determine if our systems and processes were adequate enough to provide sufficient confidence in how the Department is managed. At this time, I do not believe a modification of the organizational structure is needed; however, if confirmed, I will assess this in greater detail.

    b. Are there different considerations with respect to the different chief positions – for example, would direct line authority be more helpful with respect to certain of the management chief positions than others?

RESPONSE: This question raises very legitimate concerns about the Department's governance structure and the need for a case-by-case evaluation of the role of the chiefs. There are two fundamental reasons for the authority of the chiefs. First, there is the overarching Departmental role of setting Department-wide policy and conducting oversight. Each chief must have oversight of the operational components to ensure the business functions are executed in accordance with statute, regulation, and policy. Secondly, the chiefs play a very important role in helping to assess the operational efficiency of the component agencies as well as supporting the mission of each of the headquarters components. This second role is an often overlooked role of being a service provider to the component agencies.

If confirmed, I will review and work with the chiefs to ensure that the functional authority of each chief is sufficient to manage the Department.

15. The Integrated Wireless Network (IWN) project began in 2003 to create a nationwide, consolidated, interoperable wireless communications system for employees of DHS, the Department of Justice (DOJ), and the Treasury Department. Despite the hundreds of millions of dollars spent, a December 2008 GAO report found that IWN is no longer

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being pursued as a joint development project. Specifically, GAO found that the departments could not agree on a common outcome or purpose to overcome their differences in missions, cultures, and ways of doing business. Instead of moving forward jointly on IWN, the departments and their subcomponents are moving forward with independent efforts to modernize their own wireless communications systems.

a. What are your plans for reviewing the status of IWN and determining whether the independent investments of DHS components will be interoperable with other systems?

RESPONSE: In my previous experience I confronted the issue of a coordinated communication systems operating on a common platform for public safety responders. During my tenure with the City of Hartford, Connecticut, I led an effort to bring the police, fire, and code enforcement Departments under a unified radio system. This system, advanced for its day, enabled these three public safety agencies to communicate on a single handheld radio device, facilitating greater cooperation and more timely response to emergencies. Initially met with resistance, a collaborative planning process, with an emphasis on improving overall public safety response times, resulted in a total commitment to the project. The system was made operational and became an integral part of the City's Community Oriented Policing program.

I understand that IWN project is primarily coordinated at DHS through the National Protection and Programs Directorate's Office of Emergency Communications. If confirmed, I would revisit the status of the existing IWN project, seek to determine how the current plan would address matters of interoperability, and work with the component agencies to address any revisions and/or modifications to the overall approach that would match the investment commitment with the intended operational requirements.

b. What are your plans for pursuing interagency coordination to ensure that employees of different federal agencies are able to communicate with each other during a disaster?

RESPONSE: As stated in my response to question 15.a, I have seen first hand the benefit of a common communication platform to facilitate improved coordination and public safety response between governmental agencies. If confirmed, I would seek to better understand the stated impediments to interagency cooperation on this project, and work with my counterparts in DOJ and Treasury to determine if the inter-agency objectives of the IWN project could be revived.

c. In the DHS response to the GAO report on IWN, the reason given for abandoning the joint IWN program was "because DOJ and DHS have different regional priorities -- a common system will not work at a national level..." Is it possible for DOJ and DHS to use the same interoperable communications system in cities where they both have a presence?

RESPONSE: Although cities where DHS and DOJ both have a presence may present opportunities for coordination, differing operational priorities may preclude the Departments from pursuing new investments in these cities at the same time. If confirmed, I would review the

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GAO report and the DHS response and work with my DHS counterparts to continue to explore possible alternatives to renewing this project.

d. Would Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and Customs and Border Protection (CBP) agents along the border benefit from using the same communications system?

RESPONSE: Although I would not presume to speak for the Department of Justice, it appears that ATF and CBP may present opportunities for this type of coordination in some common areas of operation. This issue warrants further exploration and should I be confirmed I would revisit the status of the IWN project.

e. Even assuming the IWN solution would not work across the country in all regions for DHS, do you agree that DHS could realize some cost savings by working jointly with DOJ, Treasury, and other U.S. government components to develop an interoperable communications system that would operate in some regions?

RESPONSE: I would agree that it would be highly desirable to realize cost savings as a result of a joint investment strategy between multiple government agencies when possible and consistent with mission requirements. I understand that IWN project is primarily coordinated at DHS through the National Protection and Programs Directorate's Office of Emergency Communications, and should I be confirmed I would revisit the status of the IWN project.

f. In response to the GAO report on IWN, the DOJ stated that the agencies involved in IWN do not have sufficient funding to deploy an interagency interoperable communications system at this time. Even if DHS is not yet ready to deploy upgraded interoperable communications equipment as part of IWN, because of scarcity of funding, do you agree that DHS can complete planning with DOJ on how they will jointly deploy an interoperable communications system?

RESPONSE: I believe that further exploration of the IWN project, although hampered by insufficient funding, may yield additional benefits. This issue warrants further exploration and should I be confirmed I would revisit the status of the IWN project.

g. Instead of pursuing common radio communications systems among DHS components such as CBP, ICE, and the Coast Guard, the Department has allowed these components to deploy different and non-interoperable communications systems. Even if there is a breakdown in coordination between federal agencies, why has DHS not at least embraced interoperability within its own department by pursuing common radio communications systems among DHS components?

RESPONSE: I am not sufficiently aware of past DHS decisions to explain actions undertaken by DHS. As I have stated, I understand that IWN project is primarily coordinated at DHS through the National Protection and Programs Directorate's Office of Emergency Communications, and should I be confirmed I would revisit the status of the IWN project.

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Human Capital Management

16. What is your approach to managing staff, and how has it developed in your previous management experiences?

RESPONSE: Throughout my career, I have managed staff by being clear, consistent, and open. Beginning with my experience in City Government, the demands and pressure of timely and accurate response to urgent matters, such as public safety issues and/or budget crisis has disciplined me to be very specific in setting expectations. At the local level of government, time is of the essence and the opportunity for review and discussion are often limited. By establishing clear and concise direction, as well as creating appropriate expectations, I expect senior managers to meet or exceed their objectives and be willing to accept accountability for their actions. Similarly, I want my managers and staff to expect guidance and counsel from me, consistency in my decision making, and fairness in my approach.

As I moved from the local level to the federal level, I found a cadre of highly capable and experienced managers at both the Department of Commerce and GSA. Working with senior federal executives to instill the discipline of responding in a timely manner, bringing matter to closure, and focusing on outcomes proved to be a worthwhile investment of my time. Making the commitment of time to invest in relationship building, getting to know the workforce at all levels of the organization, and listening and responding to feedback have all been important elements of my management approach.

17. According to the Office of Personnel Management's (OPM) 2008 Federal Human Capital Survey, DHS's biggest challenges remain in the areas of recognition and performance management.

    a. What do you believe are the principle challenges facing the Department in the area of human capital management?

RESPONSE: With over 200,000 employees, DHS is one of the largest Departments in the federal government. A principal challenge for the Human Capital management is to operate as an organization that responds to and anticipates the needs of the workforce. Clearly, the results of the Federal Human Capital Survey shows that some progress in employee morale has been achieved, much work needs to be done to improve the perception of the DHS work environment. That is a fundamental challenge that should be a top priority for the Department.

Additionally, a thorough review of the existing workforce, if not already completed, needs to be done to determine where vulnerabilities exist in various labor categories. A workforce review will determine what other critical position vulnerabilities exist so that a targeted plan to attract and retain employees in those labor categories in most demand or related to mission critical can be put in place.

Finally, greater attention should be paid to evaluating current personnel practices against best practices in and out of government in order to realize greater efficiencies in operations across the Department.

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b. What do you believe should be done to meet those challenges?

RESPONSE: If confirmed, I will work with the Chief Human Capital Officer to build and strengthen a Department-wide comprehensive and integrated human resources management approach with specific and measurable goals that flow from the DHS strategic plan to each individual employee performance goal. I will also work to ensure that the Chief Human Capital Officer has the resources necessary to both hire and, more importantly, retain, the very best talent for its workforce.

c. What do you see as your role, if confirmed, in addressing the human capital challenges facing DHS?

RESPONSE: In addition to the above response, I have previously commented that addressing the human capital challenges facing DHS would be among my three top priorities.

d. How will you work with DHS's Chief Human Capital Officer to address the concerns mentioned in the 2008 Federal Human Capital Survey?

RESPONSE: If confirmed, I will work closely and in cooperation with the Chief Human Capital Officer, as well as the various component agency heads, to understand the survey results, adjust or supplement action plans as necessary in response to the survey results, and to communicate the results and corresponding remedial actions to the workforce and our stakeholders. In cases where the Chief Human Capital Officer identifies Department-wide human capital programs to address employee concerns, if confirmed, I will ensure that component heads cooperate in the implementation of those programs.

18. In the past, DHS has received low ratings on various employee attitude surveys, although scores are improving. According to OPM's 2008 Federal Human Capital Survey and the Partnership for Public Service's *2009 Best Places to Work in the Federal Government*, while DHS has showed significant increases, compared to other federal agencies, in the areas of leadership and knowledge management, talent management, and job satisfaction, DHS still remains among the lowest ranked for large agencies. As Under Secretary for Management responsible for human capital issues in the department, what steps would you take to help DHS rise in the ranks, continue to improve employee morale at DHS, and make the agency a model employer for both the public and private sectors?

RESPONSE: If confirmed, I will work with Secretary Napolitano and the component leadership to ensure we are taking steps to improve the workplace, include organized labor, and listen to what the workforce is telling us. While DHS has made incremental improvement in its Annual Employee Survey scores over the last few years, clearly there is room for improvement and I believe DHS can and should build significantly upon the progress it has made of late.

I view the results of the survey as a key identifier in addressing workplace satisfaction, and should I be confirmed, I would ensure that the components' leadership are aware of the importance the Secretary and I place on the Annual Employee Survey. I have been made aware

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of the Department's Survey Engagement Council and would expect that its members would focus on identifying and sharing best practices. I also think adding a new requirement that our leaders hold focused discussions with the purpose of fleshing out low scoring items in order to better understand them and develop action plans to improve the underlying issues will help to further improve our scores. By adding the front-line action planning to the action planning process, and ensuring top leadership commitment, I believe it is possible for the Department to meet or exceed the government-wide average.

19. In the last two to three years, the headquarters components of the Department, including the Office of Intelligence and Analysis and the National Protection and Programs Directorate, have dramatically increased their hiring of employees - leading, in some cases, to backlogs in the hiring and on-boarding processes, managed by the Office of the Chief Human Capital Officer, as well as the processes for conducting suitability reviews and security clearance investigations, managed by the Office of Security. As Under Secretary for Management, what steps will you take to ensure that these Offices are managing the hiring process effectively and ensuring that the Department is able to bring on employees with greater efficiency?

RESPONSE: This issue is a good example of the need for a standardized process for hiring that will lead to greater unification under the "One DHS" banner. Both the efficiency of the hiring process, as well as a common on-boarding process for new hires, are important steps in creating the "One DHS" mindset which is central to the Secretary's goal for the Department. I am aware that the Secretary's Department-wide Efficiency Review Initiative has one specific initiative that addresses the hiring process, with the desired end result of decreasing the time necessary to fill vacant positions and reducing the cost of security background checks. I believe that this is a very good first step in prioritizing the improvement of the hiring process Department-wide.

If confirmed, I will work with the DHS Chief Human Capital Officer and Chief Security Officer to facilitate Department-wide implementation of the Secretary's Efficiency Review Initiatives. I will also be closely monitoring the rollout of the Enterprise-wide hiring system, TALENTLink. My interest will not only be full implementation by the dates promised, but also the level of service being experienced by DHS headquarters and component customers.

20. What actions in your past executive experiences demonstrate your style and approach in the area of labor-management relations?

RESPONSE: Beginning with my tenure in the City of Hartford in 1991, I have worked in public organizations that have had a highly unionized workforce. Being a part of management, I have tried to balance the need to represent the interests of the government, negotiate fairly and openly, and respect the rights of organized labor to address their collective concerns. Establishing an open dialogue away from the bargaining table allows for the building of respect which can help minimize mistrust and animosity at the bargaining table. I have participated in many variations of labor-management councils, and have found that frequent and open dialogue between the parties can set the stage for more productive labor-management relations.

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21. Over the past eight years, Congress has enacted a number of workforce flexibilities for agencies to use in the recruitment and retention of highly qualified applicants. Some believe that flexibilities such as category rating, student loan repayment programs, direct hire authority, and recruitment, retention and relocation bonuses are not used as often as they should be. Instead, many agencies continue to seek independent statutory authority and come to Congress looking for greater authority to waive the competitive hiring process for direct hire authority or a similar flexibility. This is partly because agencies do not know that the flexibilities are available for them to use or they do not know how to use them.

    a. What do you believe to be the value of workplace flexibilities such as these, and what is your opinion about whether DHS is using them enough?

RESPONSE: In general, workplace flexibilities can be useful when used correctly and when subject to proper controls. Both the public and private sectors have innovated over the last many years with implementing tools to address both recruitment and retention challenges. I have not yet been briefed in depth as to how DHS has used these tools, but I will work with the Chief Human Capital Officer to review how extensively these tools are used, under what circumstances have they been successful, and what, if any changes need to be made to Departmental guidance to make them more useful.

    b. Do you believe that there are additional workforce flexibilities needed to help DHS build a modern workforce?

RESPONSE: As with the use of any tool, the use of workforce flexibilities should have a strategic purpose and intended outcome that is beneficial to the Department and its employees. These programs must put the mission first, value our workforce, provide them with the tools they need to succeed, and maintain transparency from start to finish. I believe it is important to canvass the DHS hiring managers to learn what tools have been deemed useful and what, if any, gaps remain as impediments to our recruitment and retention programs. Additionally, it is vital to provide training for managers and supervisors so they understand how to make good decisions when choosing and using these tools.

22. What has been your experience working with pay-for-performance personnel systems in government agencies, and what has been your experience with systems under which pay is less flexibly tied to performance? What conclusions have you drawn from these experiences? Generally, what is your opinion about the use of pay-for-performance in the federal government?

RESPONSE: I am aware of the current discussion regarding pay for performance, but I have not worked in an organization where it has been used. I am interested in the general discussion as to how better compensate employees and measure performance and would intend to follow the studies being conducted by OPM on this matter. I am an advocate for exploring alternatives to our current system, provided they can be developed in a manner that is deemed fair and equitable.

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Acquisition Management

23. In your positions at the Department of Commerce and the General Services Administration, what were the largest acquisitions in your line of responsibility?

RESPONSE: Both Commerce and GSA had substantial and complicated acquisition activities. For example, much like DHS, the Department of Commerce has a very diverse contracting environment. Acquisitions at Commerce included such diverse elements as procuring sophisticated satellite equipment at National Oceanic and Atmospheric Administration (NOAA); buying highly mission critical scientific equipment for National Institute of Standards and Technology (NIST); oversight of one of the largest real estate leasing actions in the Washington DC area for the Patent and Trademark Office (PTO); and acquiring a financial management system for the consolidation of 13 independent systems within the Department. Since the Director of Acquisition was a direct report to my position, I had Departmental oversight responsibilities for each of these critical acquisitions. All of these acquisitions were well in excess of $100 Million.

As Regional Administrator of GSA's Region 3 (Mid-Atlantic), I similarly had major responsibility for equally challenging acquisitions, serving in the role of the Head of Contracting Activity (HCA). Region 3 has major responsibility for acquisitions beyond the Mid-Atlantic region, such as overseeing GSA's National Furniture Center, region-wide telecommunications contracts in excess of $250M, and major technology procurements for the Navy valued at over $200M. Additionally, during my tenure we procured over $800M in design and construction related services to support region 3's public building program.

24. In the area of acquisition management, what should be DHS's top priorities for FY2010? What should be the top five priorities over the next few years?

RESPONSE: Regarding the top priorities for FY 2010, appointing a new Chief Procurement Officer is certainly a top priority. Also, reviewing the existing acquisition workforce to determine if current staffing is adequate, and if not, developing a plan to address staff shortages.

Over the next few years, I believe the top five priorities would include 1) a strong emphasis on overall acquisition management, with a concentration on strengthening program management across DHS to insure that all major programs have certified program managers overseeing major acquisitions; 2) risk management, which includes a systemic way to identify and manage acquisition programs with a high risk profile; 3) the pre-planning acquisition process, with a major emphasis on standardizing how the Department approaches the requirements phase; 4) cost and schedule, making sure that the Department is using the most reliable methods to develop realistic cost estimates and schedules; and, 5) the acquisition workforce, with the focus on building and sustaining a top quality acquisition workforce, ensuring all acquisition career disciplines are defined and supported with training and development opportunities.

25. The DHS acquisition review process requires executive decision making at key points in an investment's life cycle, including program authorization. In November 2008, GAO reported (GAO-09-29) that the process has not provided the oversight needed to identify

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and address cost, schedule, and performance problems in major DHS investments. Specifically, GAO reported that 45 of 48 major investments requiring milestone and annual reviews did not adhere to the Department's investment review policy. Billions of dollars have been invested in these major programs without the benefit of a complete acquisition review.

a. The Under Secretary for Management issued revisions to the DHS acquisition review process last year. However, GAO review raised concerns in large part due to DHS's lack of adherence to its acquisition review process, not because of major deficiencies in the process itself. What steps will you take to ensure that the Department complies with the new acquisition review process?

RESPONSE: I was briefed that the Department previously used the Investment Review Process to review major investment decisions but now uses an improved Acquisition Review Process that was implemented in Directive 102-01 (Acquisition). I was told GAO's comments in its November 2008 report on DHS's investment oversight problems were accurate for the period that report covered (FY2004 to March 2008).

If confirmed, I will work with the Chief Procurement Office's Acquisition Program Management Division (APMD) to ensure adequate oversight of the DHS acquisition portfolio. Individual acquisition programs will be subject to review prior to advancing to the next acquisition phase. Should I be confirmed, I will strongly advocate oversight policy and process improvements by ensuring that acquisition executives within my organization and the components are held accountable for the execution of acquisition programs. Additionally, I have outlined further steps I would take to improve the overall process, such as a concentration on risk management and cost and scheduling in my response to question 24.

b. How do you view the role of the Under Secretary for Management in the acquisition review process?

RESPONSE: The responsibility of the Under Secretary for Management is that of the de facto DHS Chief Acquisition Officer, responsible for the proper operation of the DHS acquisition process. The Under Secretary for Management is a sitting member of the Acquisition Review Board and is the primary support for the Deputy Secretary in her role as the Acquisition Decision Authority for Level 1 programs. If confirmed, I would also be the Acquisition Decision Authority for Level 2 programs; as such, I would serve as the chair for Acquisition Review Boards for such programs. If confirmed, I will vigorously execute my responsibilities in all of these roles.

c. The December 2008 Acquisition Review Board (ARB) review of the Transformation and Systems Consolidation (TASC) program was completed only 22 days before the issuance of the RFP for the program. Do you believe this review process was effective and consistent with Departmental directives? How will you ensure that the Department properly and thoroughly reviews major investments, including TASC, before the Department commits large amounts of money to the programs?

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RESPONSE: I am not in a position to comment on the procurement actions of DHS, as I have had no involvement, and briefings on a current acquisition may violate procurement integrity.

If confirmed, I intend to ensure the Department properly and thoroughly reviews major information technology investments, including TASC, by submitting these investments to a rigorous review process as these programs progress through the Acquisition Life Cycle. I am aware that this process and events for these reviews are specified in DHS's Acquisition Directive 102-01. The process already requires approval from the appropriate governance board before any funds are released to the program office.

d. If confirmed, will you ensure that the current acquisition plan for the TASC program is adequate, particularly as it relates to the business case for the program, analyses of alternatives to the program, requirements definitions, and the associated cost estimate, including the full lifecycle cost of the program?

RESPONSE: Yes, if confirmed I will ensure that TASC conforms to all of the requirements of DHS Acquisition Directive 102-01. The involvement of DHS's program cost estimating team would help to ensure that the associated cost estimate includes the full file cycle cost of the program. I would expect that the estimate would be independently verified to ensure that it is accurate and includes the entire range of life cycle costs.

26. Poor acquisition planning and, in particular, poor definition of requirements for procurements can lead to a number of problems during the acquisition cycle. What additional improvements in the requirements process should DHS put in place so that DHS components have a clear understanding of what they need to buy before they embark on a major procurement?

RESPONSE: I understand that the Chief Procurement Officer has worked with both the Office of Policy (Strategic Planning), and the Program Analysis and Evaluation (PA&E) division under the CFO, to strengthen program requirements documentation. As I stated in my response to question 24, I firmly believe that a top priority for the Department's acquisition function is a major emphasis on the upfront process of the acquisition life cycle, namely the requirements phase. In my experience, the roots of many of the acquisition failures occur during this phase. I would expect that the Department would institute a rigorous review process that looks at planned acquisitions by type, enabling reviews to be conducted by Departmental personnel that are experienced in the subject matter and minimize delays. I would also look to strengthen the identification of risk and mitigation strategies to lessen potential exposures.

If confirmed, I will be actively involved in the process that is already underway, as well as looking to strengthen the acquisition process in the future.

27. Do you believe that DHS should make greater use of independent verification and validation to help DHS assess its technical, managerial, and financial oversight of major procurements?

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RESPONSE: Independent verification and validation can be a valuable mechanism helping to oversee and assess major program performance. I understand that independent verification and validation is utilized by the Department, and if confirmed, I intend to review its use within DHS acquisition prior to making a decision on requiring greater use across DHS acquisition.

28. DHS continues to be heavily reliant on contractors to perform core Departmental missions, including policy development, budget planning, and acquisition. This reliance has raised serious questions about how to ensure that DHS retains the core capabilities needed to perform its missions, that contractors do not perform functions that are properly performed by government employees, and that contractors are used in a cost-effective way. While contracting can be an effective means of fulfilling some responsibilities of government, it is critical that the Department has sufficient staff on board with the necessary skills to establish policy, maintain a strong institutional memory, and effectively manage acquisitions.

    a. Contractors are prohibited by law from performing "inherently governmental functions." However, it is not unusual for contractors at DHS to provide services that, even if they do not technically meet the definition, closely support inherently governmental functions. What will you do to strengthen DHS's own ability to perform those tasks at the core of its operations, whether inherently governmental or closely supportive of inherently governmental functions?

RESPONSE: I am aware that earlier this year, DHS issued a comprehensive workforce data call to collect information on the various DHS functions and the extent DHS relies on contractors to deliver such services. I also understand that, as a part of the Secretary's Efficiency Review process, DHS-wide guidance has been issued which requires professional services contracts to be independently reviewed to ensure that any proposed contract award or option exercise does not include inherently governmental requirements, inappropriate personal services requirements or impact core functions that must be performed by Federal employees. These reviews will help ensure that DHS has adequate personnel to provide direction and oversight of its contractors. Should I be confirmed, I would follow through on current efforts to issue additional guidance to (1) make sure inherently governmental services are not being performed by contractors; (2) ensure that we have enough Federal employees to manage DHS contracts; and (3) determine a course of action that seeks to return the DHS core functions, either inherently government or closely supportive, to performance by federal employees.

    b. What would you suggest are the key considerations in determining the appropriate role of contractors in supporting DHS missions?

RESPONSE: The key consideration in utilizing contractors in support of DHS missions is balancing the need to find the required expertise, meeting the time requirements of a programmatic need, and having the necessary resources needed to meet our critical homeland security requirements. Clearly, contractors should not be allowed to engage in inherently governmental policy or oversight responsibilities that must remain the purview of Federal employees. Likewise contractors should not be asked to perform those functions that constitute

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the Government's long-term, in-house core performance or oversight capability. The Government must maintain a baseline competency.

I recognize that all warranted Contracting Officers, Contracting Officers Technical Representatives (COTRs), and all responsible program mangers are considered inherently governmental. I understand that DHS has also begun to ask program offices to demonstrate that there are sufficient federal employees within the organization to provide program direction and oversight to the service contractor - before the contract is awarded. This critical assessment during the requirements phase is an essential first step in evaluating the justification for contractor support. If the justification is met, against a pre-established set of criteria, the programmatic needs can be supplemented by technically qualified contractors, cleared of potential conflicts-of-interest.

c. What do you believe is the appropriate role for contractors in supporting acquisitions, and how do you plan to ensure contractors are used properly in this role?

RESPONSE: With proper oversight, and with safeguards against any potential conflicts-of-interest, contractors can and do play and important role in supporting our acquisitions process. When in proper balance, the business partnership between inherently governmental decision makers and our acquisitions support and service support contractors can play an important role in supporting the DHS mission requirements. If confirmed, I will continue to work with the Chief Procurement Officer and the components to ensure DHS has the necessary qualified government personnel to both manage and oversee its acquisition programs.

d. DHS contractor employees often work side-by-side with DHS employees and perform the same or similar functions as their government counterparts. Have you had any experience in managing such a "blended" workforce, and what are your views on ensuring that DHS provides appropriate safeguards to prevent conflicts of interest by DHS contractor employees?

RESPONSE: I am generally aware that there are a large number of contractor employees that work side-by-side with DHS employees. The issue of a blended workforce has increased substantially over the years, due in part to the large attrition that has occurred in the public sector workforce. My basic position is that the use of contractors should be used in cases where there is an insufficient number of qualified personnel to complete a task with the existing workforce.

As the use of contractor employees is often an engagement for personal services, I strongly believe that the best way to avoid blending inherently governmental functions is by preparing well-defined requirements, with specific and measurable outcomes. It is also advisable to institute strong oversight and local project management of the blended workforce. First, a thorough audit of the number of contractors is required to ascertain the extent of the blended workforce. Secondly, a review of the performance requirements and the management protocols in place to supervise the contractor employees will need to be conducted. Finally, a review would need to occur, either in sample form or broad scale, to sort out potential conflicts of interest due to ill-defined requirements, lax supervision, or mission creep – cases where the original intent of the contract have been exceeded or altered. My focus would be on developing

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a better profile of workforce needs, matching potential recruitment and/or promotional opportunities to right-size the DHS workforce, and minimize the potential for waste, fraud, or abuse.

29. Do you believe that the Under Secretary for Management should be the Chief Acquisition Officer of the Department? Do you recommend any changes to the role of the Under Secretary for Management with respect to acquisition?

RESPONSE: Yes. The responsibility of the Under Secretary for Management is that of the de facto DHS Chief Acquisition Officer, responsible for the proper operation of the DHS acquisition process. The Under Secretary for Management is a sitting member of the Acquisition Review Board and is the primary support for the Deputy Secretary in her role as the Acquisition Decision Authority for Level 1 programs. If confirmed, I would also be the Acquisition Decision Authority for Level 2 programs; as such, I would serve as the chair for Acquisition Review Boards for such programs. If confirmed, I will vigorously execute my responsibilities in all of these roles.

30. Improving the acquisition workforce has been a priority of DHS over the last several years, but significant gaps remain in the Department's acquisition workforce. A recent GAO report (GAO-09-30) found that while DHS has made significant strides in increasing the number of contract specialists within DHS, there is still a shortage of these specialists in many DHS components. Nearly one-third of DHS contract specialists will be eligible to retire by the end of 2012. Moreover, DHS needs to develop a long-term strategy for bringing in a broader range of skilled employees needed to plan and oversee contracts, such as program managers, systems engineers, and financial managers. What steps will you take to address the long-term challenge of bringing these skills to DHS?

RESPONSE: As with many of these critical challenges, the solutions are linked with other core management functions, and thus require an integrated approach. In this case, I will address the workforce issue related to support the vital acquisition process in conjunction with the Chief Human Capital Officer, the Chief Procurement Officer, and the management of the component agencies. All of the disciplines related to the acquisition process, such as those mentioned in the above question, are critical positions that need to be addressed strategically. First of all, improving the perception that DHS is a great place to work and retaining and attracting qualified personnel is key. Developing career paths for these labor categories that motivate employees to stay with DHS is also a key. Providing the necessary training and support is an important factor in maintaining a high level of employee satisfaction and boosting performance. Finally, committing to a strong intern program is an excellent way to grow your workforce from within.

31. According to an analysis prepared last year by the Office of Federal Procurement Policy, DHS ranked 14th out of the 18 agencies with the largest amounts of procurement in terms of the percentage of contract dollars competed. The rankings were based on FY2007 data and showed that DHS competed only 70% of contract dollars. What will you do to increase the rate of competition by DHS in its procurements?

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RESPONSE: First of all, I am committed to competitive procurements as a way to manage the costs of goods and services bought. I believe when planning an acquisition, the requirements phase is the best time to adequately determine the appropriate contractual vehicle, procurement strategy, and assess the market availability of the intended procurement to plan for a competitive acquisition. I understand that DHS has improved upon its 70% ranking, increasing that percentage to 75%. However, if confirmed I will continue to work with the acquisition team and the components to expand training programs to strengthen contracting personnel and program managers, review both procurement policy and oversight processes, and explore the use of innovative technological solutions to expand the use of competitive procurements.

32. DHS has established Department-wide contracts for information technology (IT) services and commodities. The Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE) contracts provide IT service solutions, and FirstSource contracts provide IT commodity products. While agency-wide contracts may help an agency meet particular needs, they also might undermine the ability of the federal government to leverage its purchasing power through government-wide contracts, such as those offered by the General Services Administration. If confirmed, will you review these contracts and report back to the Committee on whether you believe that they are cost effective or redundant?

RESPONSE: I would prefer to review the specifics of EAGLE and FirstSource contracts in order to provide the committee with a well informed response on whether these contracts are redundant or cost effective. If confirmed, I will review these contracts and share my views on them with the committee.

Information Technology Management

33. IT management remains a challenge for the department, as legacy systems are integrated into a single infrastructure. In FY2010, DHS is requesting $6.3 billion for IT projects, more than any non-intelligence agency except the Department of Defense.

    a. What do you believe the key challenges are for the Department with respect to IT management?

RESPONSE: I believe that integrating the information technology (IT) systems, networks, and capabilities of the various legacy agencies to form a single infrastructure for secure, effective communications and information exchange remains one of DHS's biggest challenges. There are multiple aspects to achieving such an IT infrastructure. Implementing a Department-wide program that ensures effective information security controls and addresses IT risks and vulnerabilities is equally critical. Further, improved IT planning, requirements identification, and analysis will be essential, not only to acquire and implement the systems and other technologies needed to streamline operations within individual DHS component organizations, but also to support effective homeland security information sharing with state and local governments, the private sector, and the public. Without sound Department-wide planning, coordination, and direction, the potential for integrating advanced data mining functionality and capabilities to address homeland security issues will remain untapped also. Finally, DHS faces a major

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challenge in addressing privacy concerns while integrating its myriad systems and infrastructures.

b. If confirmed, what will your priorities be in this area?

RESPONSE: I understand that DHS's IT infrastructure remains a collection of legacy networks, systems, and data centers. If confirmed, these issues must be addressed and I will be actively involved in advancing them. My priorities would include:

- Consolidation and unification of the Wide Area Network (WAN) services across DHS.
- Data Center Services Consolidation, bringing 24 existing DHS component Data Centers into two secure geographically diverse locations.
- CyberSecurity for the DHS IT Enterprise. This includes ensuring FISMA Compliance; directing Network and Security Operations Centers to manage IT security threats and incidents within the firewall; and establish Trusted Internet Connections.

I also understand that creating an adequate disaster recovery capability for DHS's information systems is also a major concern. All of these critical areas will require considerable attention and effort, as well as coordination between the component agencies. If confirmed, I will look to review the existing program plans and acquisition strategies in place to address these priorities.

c. What do you believe the relationship should be between the Under Secretary of Management and the Chief Information Officer?

RESPONSE: The Chief Information Officer (CIO) is a key member of the Under Secretary's Executive Management Team. The CIO should have clear Departmental authority over IT Policy, Investments, Acquisitions, and Program Evaluations and Reviews. The role of the CIO is a provider of IT services that are aligned to and fully support the functions of the Department, according to agreed service levels between DHS business functions and IT service providers.

d. What do you believe the relationship should be between the Chief Information Officer and the component Chief Information Officers?

RESPONSE: DHS component CIOs have a direct-line (solid) reporting relationship to the component head and a functional-line (dotted) reporting relationship to the DHS CIO. The CIO ensures transparency of IT investments to ensure focus on component and/or Departmental mission outcomes and has a powerful impact on IT delivery and IT Programs. I believe this relationship is appropriate.

e. Please describe your familiarity and experience in managing information technology projects.

RESPONSE: I have been involved in the management and acquisition of information technology programs dating back to my tenure at the City of Hartford, Connecticut. In the early 1990's, a major shift was taking place in the type of systems used in management operations, as well as the organizational shift from centralized systems to decentralized systems, also known as

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the desktop revolution. I began by overseeing the acquisition of large mainframe computers to support community policing initiatives, moving quickly to developing a 5 year Information Technology Master Plan which led us into distributed systems. By mid 1993, the City of Hartford was one of the first cities to have a comprehensive IT Master Plan and have completed a move to desktop computing. Additionally, we re-organized the IT Department to resemble more of an in-house consulting agency, made up of city employees, to help manage the introduction of and transition to technology based solutions to improve workflow and processes.

Upon joining the Commerce Department in 1994, I was quickly thrust into IT projects that included the development and acquisition of information systems, specifically migrating to a common email system, supporting the acquisition of new technologies to strengthen many of programs at NOAA, NIST and the Bureau of the Census. I have found it critically important to make sure that customer needs and requirements are balanced against prudent cost control measures to minimize out of scope changes, which can drive up costs. Equally important, and this is true for all projects, is the need for project management plans (PMP's) that enable the user community to implement IT projects in accordance with an outcome based and measurable success factors. The failure of many IT projects stem not just from poor performance during the acquisition phase, but often during the implementation phase. Properly developed and executed PMP's play an important role in helping to ensure an IT projects success.

34. Department-level involvement of review boards in selecting and overseeing agency IT projects is critical to ensuring that these projects meet mission needs and that federal funds are not wasted. How do you plan to fully implement DHS's acquisition review process so that it may be useful for effective planning and oversight of major IT investments?

RESPONSE: If confirmed, I would intend to ensure the Department properly and thoroughly reviews major information technology investments by submitting these investments to the Enterprise Architecture Board (EAB) and as appropriate, the Acquisition Review Board process during each phase of its acquisition Life Cycle.

This process would help ensure that programs do up-front capability need definition, analysis to refine capabilities into programmatic requirements, and capture of these capability needs and program requirements into record documents. A standardized process should include the relevant component agency participants, as well as the Chief Information Officer. I intend to actively implement all aspects of the Acquisition Directive and require only those programs who pass the review process be provided funding and authority to proceed with their acquisitions.

35. Having sufficient, qualified IT staff is essential for good IT management. In the past, DHS has experienced problems recruiting and retaining qualified IT personnel.

    a. What are your views on whether DHS has sufficient IT human capital with the appropriate mix of critical knowledge, skills, and abilities?

RESPONSE: Consistent with my responses to other management human capital issues related to sufficient personnel, my belief is that the CIO's staffing levels may be insufficient to carry out

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IT management responsibilities, specifically the IT Acquisition Review process. As I have stated with regard to contracting personnel, I believe that recruitment and retention of the IT staff is a top priority. Again, DHS needs to be viewed by IT professionals as a great place to work, with a mission and professional experiences that are unequaled elsewhere in the workplace. We need to comprehensively address the human capital issues and create an attractive workplace environment to bolster the number of IT staff in the Department. Finally, the availability of training for IT employees to keep up with the pace of technological advancements in this industry is also necessary.

b. To the extent that you believe there are deficiencies in existing IT human capital at DHS, what would be your strategy for addressing such deficiencies?

RESPONSE: The need for additional IT human capital along with acquisition personnel, are the two most important human capital priorities of not only DHS, but also the entire federal government. If confirmed, I would address the IT human capital deficit with a comprehensive approach to IT employee recruitment, development, retention and recognition. A coordinated outreach program to identify new sources of potential members of the federal workforce will involve close collaboration with our educational institutions. Additionally, we have to begin to explore alternative workplace solutions, such as virtual offices and telework, to compete with the high demand for these IT and acquisition professionals.

c. Do you believe that DHS has made sufficient progress in implementing their human capital plan with respect to IT personnel?

RESPONSE: I understand that during FY2009, the OCIO accelerated hiring process to fill vacant positions and is currently 100% staffed at 94 FTE. Additionally, the CIO evaluated its current staffing levels and completed a formal Staffing Plan to increase the number of federal employees by 220 FTE. An increase of DHS personnel will alleviate CIO's heavy reliance on contractors to perform necessary functions. If confirmed, I would consider this staffing challenge equal to the need for expanding the acquisition workforce.

d. In the past, DHS has had challenges in recruiting and retaining qualified project managers for their IT projects. If confirmed, what steps will you take to ensure that IT projects are being properly managed?

RESPONSE: The ability to recruit and retain IT professionals is highly challenging. A comprehensive approach to IT employee recruitment, development, retention and recognition that includes individual development plans, training, clearly defined career paths, and performance goals, along with improvements in the perception of DHS as a great place to work need to be prioritized. This approach will improve the Department's ability to attract and retain talented government IT professionals. If confirmed, I will support this effort and work toward appropriate implementation.

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e. Overall, what is the Department's approach to improving its management of IT projects, in light of the significant number of projects on the Office of Management and Budget's Management Watch List?

RESPONSE: I have been informed that the CIO IT Strategic Plan for FY09-13 goals include improved transparency and accountability through effective governance of cross-Departmental IT portfolios. I would expect, if confirmed, to review the process currently in place to provide oversight of the Department's IT projects, and would seek to strengthen the internal review process by instituting or augmenting the risk identification element of the IT Acquisition Review Process.

36. For several years, GAO has reported on information security weaknesses at DHS and its component agencies and has designated information security as a government-wide high-risk issue. The Department has reliably improved its Federal Information Security Management Act (FISMA) grade, but more work remains to be done.

a. If confirmed, what would be your strategy for implementing an effective information security program within DHS and its component agencies?

RESPONSE: If confirmed, my strategy is to build upon the Department's successes and rely upon the advice and council of the DHS CIO and its Chief Information Security Officer (CISO) to identify the most pressing issues and provide suggested solutions to improve enterprise security. I support the following four goals outlined in the information security strategic plan and look forward to working with the Department's senior information security professional to build security into all our systems, thereby improving the overall security posture of the Department.

- Goal 1: Strengthen IT Security Governance Framework
- Goal 2: Improve Compliance Activities
- Goal 3: Embrace Enterprise Services
- Goal 4: Enhance Business Acumen and Resource Allocation

b. What do you believe the roles and relationships are of the Under Secretary for Management, the Chief Information Officer, the Chief Information Security Officer, and the Director of US-CERT in protecting DHS's systems and networks?

RESPONSE: The roles and responsibilities related to information security of the Under Secretary for Management, the DHS CIO, and the DHS Chief Information Security Officer (CISO) are clearly delineated in law; for example, the Clinger-Cohen Act and the Federal Information Security Management Act (FISMA), relevant DHS directives (MD 140-1 Information Technology Systems Security), and policy (MD 4300A Sensitive Systems Policy). Primarily as the Under Secretary's responsibilities are for compliance with laws and directives and strategic planning, specifically resource identification and performance. Should I be confirmed and in that capacity, I would:

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- Ensure that adequate funding for information security is included for all IT systems budgets and provided for component IT systems.
- Ensure that the requirements for an information security performance metrics program are implemented and the resulting data maintained and reported.

37. In the last few years, there have been several incidents where government computers – including those at DHS – were stolen or lost, potentially compromising the information contained on them. Certain DHS components, in carrying out their missions, must maintain personal information on U.S. citizens.

    a. What will you do to minimize the risk that the personal information contained on DHS computers and in DHS information systems is not compromised?

RESPONSE: If confirmed, I would take a no-tolerance approach to the risk of exposing Personal and Privacy Information. I would ensure that the Chief Privacy Officer and the CIO/CISO worked "hand in glove" to ensure the proper identification and protection of Privacy Data. I understand that many of the previous exposures of Privacy data on personal computers was the result of agencies/individuals not complying with Department policies of AES Encryption on Laptops and all portable media. I would also work with the Privacy Office, IG, and other resources to bring every computer and piece of media into compliance. The risk to privacy data on the networks is dependant on DHS personnel complying with policy and making the network defenses the very best they can be.

    b. If confirmed, how would you respond to reports that personal data had been compromised – for example if a computer containing personal information about U.S. citizens was lost or stolen?

RESPONSE: My understanding is that the DHS Privacy Office has exisiting policy and procedures for this. If confirmed, I would ensure that we have an accurate understanding of all data that was exposed or at risk of exposure and ensure that all the individuals affected were notified and all possible remediation aid be made available to them. Then I would seek to identify the cause of the compromise and ensure that any misconduct is addressed and all defciencies repaired as well as the process re-evaluated to determine how it was allowed to occur.

38. The FY2008 Information Technology Management Letter (OIG-09-50) found that "IT control weaknesses limited DHS's ability to ensure that critical financial and operational data were maintained in such a manner to ensure confidentiality, integrity, and availability." If confirmed, how will you address these weaknesses?

RESPONSE: If confirmed, I would take a proactive approach to ensuring that critical financial and operational data are sufficiently secure. I would ask that the CFO take the lead for all DHS Financial systems, as these are critical to the Departments performance. Financial data is too sensitive to be treated lightly. Governement financial systems contain privacy and acquisition sensitive data, and therefore, cannot be compromised. Therefore, information security controls and best practices must be implemented as quickly as possible. This requires the cooperation and

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coordination of numerous Management offices: the CIO, the CFO, the CHCO, the CSO and the CPO.

Should I be confirmed, I would also look into the appropriate security controls that must be applied, and when technologic solutions are not readily available, what manual processes will need to be upgraded. Continuous monitoring of these systems is a "must", so the necessary resources (both financial and human capital) will need to be indentified, and if required, reallocated. If possible, financial systems that are currently in development could be rolled out faster to ensure that proper security controls are quickly deployed.

39. The IT Management Letter also found that: "DHS lacks an effective agency-wide method of tracking the remediation progress made on findings at various components. In addition, while the components have made improvements in addressing the root cause of IT weaknesses, we found that focus is often placed on the tracking of response to audit recommendations, instead of on developing the most effective method of addressing the actual control weakness."

    a. If confirmed, how will you track the remediation progress of the component agencies?

RESPONSE: Ensuring the accuracy and integrity of financial processes is one of DHS's top priorities, and as I have previously stated, would be one of my top three. To help ensure IT weaknesses are resolved in a timely manner, should I be confirmed, I would increase the amount of assistance provided to the components in developing remediation plans that are realistic, achievable and address the root cause of the problem. This assistance would take the form of increased training on the root cause analysis process as well as hands-on support. Additionally, I would increase accountability. I will have component CFOs and CIOs brief their plans to remediate weaknesses shortly after audit findings are issued and then require a status update of their plans periodically, at least quarterly.

    b. How would you ensure that proper focus is placed on addressing root causes of IT weaknesses throughout the department, instead of concentrating on tracking the responses to audit recommendations?

RESPONSE: In my experience, repeat findings are primarily the result of root causes not being addressed. If confirmed, I would focus attention on reducing the number of repeat findings. In addition to increased training and assistance visits, I would establish working groups with participation by all components with financial systems to help determine root causes, share best practices, and identify common issues and solutions. The group would include representation from the financial, technical, security and management functional areas to ensure that potential solutions address the full spectrum of business processes as well as IT controls.

40. The Department either has committed or plans to commit itself to major information technology investments that total more than $1 billion dollars, including U.S. Customs and Immigration Service's (USCIS) business transformation project and the department-wide financial information technology consolidation. USCIS is making efforts to

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streamline and modernize how it conducts business and interacts with the public. In past reports, GAO has found that USCIS's efforts "have been unfocused, conducted in an ad hoc and decentralized manner, and, in certain instances, duplicative.[1]" In 2008, USCIS announced the awarding of the contract to modernize its case-management system to IBM. This five-year, $500 million contract is the cornerstone of USCIS's business transformation project. Additionally, the Department is in the process of entering into a procurement to conduct its Transformation and System Consolidation (TASC) initiative, which is intended to migrate and consolidate the financial systems of all of its components so they are all operating on common platforms using commercially available software. The Department previously attempted this same mission through the eMerge2 project, spending about $52 million before cancelling the project due to a lack of adequate planning and progress.

a. If confirmed, will you make these, and other major information technology investments, a priority for the Department?

RESPONSE: If confirmed, I will make these programs, as well as all other DHS major acquisitions programs, whether IT or non-IT, a priority for the Department. I am aware that both of these programs have been subject to the new governance process which resulted in Department-level reviews to assess the programs' status and progress with respect to cost, schedule, and performance.

These specific examples mentioned in the question are precisely the kinds of acquisition efforts that would benefit from a stronger requirements phase process, as well as a concentrated effort to better assess projects with inherent risk due to either the underlying technological requirements or planned costs associated with the project.

b. How will you oversee this and all of the Department's major information technology investments? What do you see as the Deputy's role? The components?

RESPONSE: I have been briefed on DHS's implementation of an Acquisition Oversight Program designed to provide comprehensive insight into acquisitions at the component level and apply successful management techniques to acquisition programs throughout DHS. As I understand the program, the objective is to improve the performance of program administration by planning acquisitions and effectively managing each acquisition from the requirements phase through closeout of the final contract action. I believe that strong implementation of acquisition oversight will directly contribute to meeting DHS's mission by ensuring that DHS receives supplies and services according to the performance standards, schedules, and prices established in each contract.

Additionally, DHS has a Program Review Board (PRB) to help the Deputy Secretary in determining priorities, ensuring interoperability, reducing redundant projects, and measuring the effectiveness of programs for resource allocation recommendations to the Secretary. The PRB

[1] U.S. Government Accountability Office. "USCIS Transformation: Improvements to Performance, Human Capital, and Information Technology Management Needed as Modernization Proceeds," pg. 2 (July 17, 2008). http://www.gao.gov/new.items/d071013r.pdf

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consists of senior executives throughout the Department. Another area the Department has grown is its investment review process. This process is governed by an Acquisition Review Board (ARB), and integrates information technology reviews into the single process and oversees all major acquisition programs.

These initiatives are coordinated by the Under Secretary for Management, and if confirmed, I will ensure they are a top priority for the Department.

c. What steps will you take to ensure that requirements for major information technology investments are set early in the procurement process and that procurement contracts are fixed price to the maximum extent practicable?

RESPONSE: If confirmed, I will require the use of a range of tools that I previously discussed, namely a strong requirements phase review and a rigorous risk identification and mitigation process to lessen the inherent risks associated with these major investments. Strong and effective governance is the beginning of success. It is incumbent upon the Department to ensure that major IT investments are strategically managed, with a deliberate process for ensuring success.

With good governance and a formal review process, mission and business requirements should be clear. The selection of technological solutions should be well grounded in a known set of capabilities. An effort should be made to consider commercial off-the-shelf technology with known implementation and operations costs wherever possible.

d. What steps will you take to ensure that these initiatives stay on time, on budget, and achieve the planned objectives?

RESPONSE: If confirmed, I will ensure that these programs are fully compliant with applicable acquisition and procurement policy and processes, and are rigorously overseen via the CIO's Enterprise Architecture Board and the DHS Acquisition Review Board processes at each step of their Acquisition Life Cycle.

LORAN

41. In 2006, DHS and the Department of Transportation jointly commissioned the Institute for Defense Analyses to conduct an assessment of the continuing need for the current LORAN infrastructure, as well as evaluate eLORAN as a potential next generation Position, Navigation and Timing (PNT) back up to GPS. The Institute created an Independent Assessment Team (IAT) to conduct this analysis. The IAT reviewed about 40 previous reports and interviewed key stakeholders, industry representatives, and other relevant subject matter experts. The IAT's report unanimously concluded that eLORAN should serve as the national PNT back up system for GPS, and that U.S. LORAN infrastructure should be maintained until full eLORAN deployment.

On February 7th, 2008, a DHS press release announced that the Department would begin implementing eLORAN to "mitigate any safety, security, or economic effects of a GPS

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outage or disruption." This press release further stated, "the signal strength and penetration capability of eLORAN will provide support to first responders and other operators in environments that GPS cannot support, such as under heavy foliage, in some underground areas, and in dense high-rise structures." This announcement is consistent with the findings of the Independent Assessment Team (IAT) as well as the Volpe Center's "Benefit-Cost Analysis of LORAN as Backup to GPS" project. What, is the status of the Department's efforts to evaluate the use of eLORAN as a national PNT back up to GPS and what, if any, new information has the Department ascertained since its 2008 decision?

RESPONSE: I have been told that DHS is working with the Position, Navigation and Timing Committee, Co-Chaired by the Department of Defense and the Department of Transportation, to determine if a national single system backup is needed for GPS. I am also aware that the President's budget cancels LORAN-C. If I am confirmed, I commit to looking into this matter in detail and providing the Committee with the information it is seeking. However, at this time, I am a nominee, and have not yet been provided with sufficient information to provide an informed response.

42. A GAO report published on May 7, 2009 ("Global Positioning System: Significant Challenges in Sustaining and Upgrading Widely Used Capabilities") raised concerns regarding the near and long-term health and reliability of the GPS network. Additionally, on June 17, 2009, a *Wall Street Journal* article, "GPS Satellite Glitches Fuel Concern on Next Generation," cited new interference problems with the signals being transmitted by a recently launched GPS satellite, raising additional questions about the timeline for the deployment of next generation GPS satellites. Most recently, in the July/August 2009 issue of Foreign Affairs, "The Pentagon's Wasting Assets: The Eroding Foundations of American Power," Andrew F. Krepinevich, Jr. notes, "In recent years, the Chinese military has shown that it can neutralize or destroy satellites in low-earth orbit (where most satellites are located) by launching anti-satellite ballistic missiles or firing ground-based lasers. As China's lunar exploration program matures, the PLA will likely acquire the ability to destroy the Global Positioning System (GPS) constellation..." With $160 million already invested in upgrading the LORAN infrastructure, do you agree that eLORAN represents the best alternative to GPS in the event that GPS is unavailable? Is the Department considering any other alternatives?

RESPONSE: Please see response to question 41.

43. The DHS Under Secretary for Management has been tasked with assessing whether there is a requirement for a national GPS back up. Under Secretary Beers' pre-hearing questionnaire noted that the previous Under Secretary for Management, Elaine Duke, had "requested a data call from Federal Agency's detailing their position, navigation and timing capabilities, requirements and assessment in the event of a loss of GPS-based services." He also noted that "NPPD is assisting the DHS Office of Management in reaching out and coordinating with the 18 Critical Infrastructure Resource Sectors (CIKR) sectors in regards to the data call..." Responses to this data call were due by June 19, with DHS's final assessment expected to be completed by July 30, 2009. In a

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post hearing question response submitted to the Committee on June 2, Under Secretary Beers noted that, "...at this point DHS has not received any responses from the 18 CIKR sectors on the GPS backup capabilities data call."

a. Please provide the list of federal agencies and CIKR sectors that responded to this call.

RESPONSE: If I am confirmed, I commit to looking into this matter in detail and providing the Committee with the information it is seeking. However, at this time, I am a nominee, and have not yet been provided with sufficient information to provide an informed response.

b. Were there any notable agencies or CIKR sectors that failed to respond to the data call?

RESPONSE: Please see response to 43(a).

c. Is the Department on track to complete this assessment by July 30?

RESPONSE: Please see response to 43(a).

44. Do you believe DHS should maintain some or all LORAN infrastructure until a final decision is made on whether eLORAN should serve as the national PNT back up system for GPS?

RESPONSE: If I am confirmed, I commit to looking into this matter in detail and providing the Committee with the information it is seeking. However, at this time, I am a nominee, and have not yet been provided with sufficient information to provide an informed response.

45. What is the estimated decommissioning cost of shutting down LORAN-C transmitting stations and securing LORAN-C infrastructure nationwide?

RESPONSE: If I am confirmed, I commit to looking into this matter in detail and providing the Committee with the information it is seeking. However, at this time, I am a nominee, and have not yet been provided with sufficient information to provide an informed response.

IV. Relations with Congress

46. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

RESPONSE: Yes.

47. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

RESPONSE: Yes.

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V. Assistance

48. Are these answers your own? Have you consulted with DHS or any interested parties? If so, please indicate which entities.

RESPONSE: The answers are my own. I have consulted with DHS, Department of Commerce, and/or GSA personnel to inquire as to factual or historical information required to provide responses to certain questions. I am responsible for the content of all responses.

AFFIDAVIT

I, Rafael Borras, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 22nd day of July, 2009.

Lydia Stampley
Notary Public

Lydia Stampley
Notary Public, District of Columbia
My Commission Expires 8/14/2010

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Senator George V. Voinovich
Follow Up Pre-Hearing Questions for
Mr. Rafael Borras, Nominee to be Under Secretary for Management
At the Department of Homeland Security

1) Mr. Borras stated his understanding that Secretary Napolitano had made a decision about collective bargaining for TSOs. This seems to conflict with Senator Voinovich's current understanding, so we'd like clarification on this point as soon as possible.

RESPONSE: During the staff interview I stated that I believe it is common knowledge that the Secretary supports collective bargaining and if confirmed I would expect to be involved in its implementation. As a nominee, I have not been involved in internal deliberative or decision making processes so my knowledge is based on discussions with senior Department officials. The TSO collective bargaining issue came up briefly during those discussions. What I did not explain is that the Secretary wants her TSA nominee confirmed in order to fully examine all of the implications of collective bargaining at TSA and to ensure that the path forward is one that the TSA Administrator is also a part of. As a TSA nominee has not been confirmed, it would not be correct to say that a formal decision has been made on this issue. I do believe that the Department is studying the impact of collective bargaining on TSA.

2) Mr. Borras talks about his positions of "significant management responsibility" at Commerce and GSA that help qualify him to be U/S of Management. What specific management responsibilities did he have at each of those jobs, and how have those specific management responsibilities prepared him for the roles and responsibilities of the U/S of Management at DHS?

RESPONSE: As Deputy Assistant Secretary of Administration at the Commerce Department, I directly managed the following offices: Acquisition Management; Budget, Management and Information; Civil Rights; Budgeting and Assistance Management (grants management); Financial Management; Human Resources Management; Security and Administration; and Systems and Telecommunications (IT). Prior to serving as Deputy Assistant Secretary for Administration, I served as Associate Director, and then Acting Director, of the Minority Development Business Agency (MBDA). I was specifically asked to serve at MBDA by the late Secretary Brown to address issues of employee morale, evaluate the performance of existing programs, determine the adequate staffing levels required to support the program, and move the agency through the budget process, which included testifying before Congress in support of our budget request.

Much like the Under Secretary for Management, in my role as Deputy Assistant Secretary I had Department-wide oversight responsibilities for the management functions for the Department. I also provided direct support to the Secretary and the Deputy Secretary on overall Departmental management issues, had responsibility for headquarter operations (the Hoover Building) and served as the liaison to the Office of the Inspector General on Management Audit issues.

As Regional Administrator of GSA's Mid Atlantic Region (Region 3), I oversaw all of the operations of the region's Public Building Service, Federal Supply Service, and the Federal

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Technology Service, as well as the regional Federal Protective Service. Each of the component groups had a financial, information technology, administrative, and acquisition function that reported to my Assistant Regional Administrators in charge of their respective service, as well as a "dotted line" reporting relationship to the Office of the Regional Administrator for regional finance, acquisition, administrative, and information technology management. This arrangement is very similar to the way the Department of Homeland Security's Under Secretary for Management and the lines of business Chiefs currently operate. In addition to my regional operations, I also had direct oversight for two major worldwide operations: GSA's National Furniture Center, now called the Integrated Workplace Acquisition Center (IWAC), and GSA's Travel Management Office. As Regional Administrator for Region 3, I also had responsibility for all GSA operations in Europe, the Mid-East, and Africa. Finally, I served as the region's Head of Contracting Activity (HCA), with the ultimate responsibility for ensuring that contract management systems, awards, and administration of contracts are in accordance with all laws and statutes of the federal government.

Both of these significant senior executive management experiences contributed greatly to the depth and breadth of my management experience by providing me with increasingly diverse and challenging management opportunities. I gained direct exposure to the highest levels of the federal government, working closely with OMB, OPM, OFFP, virtually all civilian and DOD agencies, as well as the Congress.

3) Mr. Borras talks about the fact that his responsibilities at both Commerce and GSA included "a portfolio of administrative functions" similar to the U/S of Management's responsibilities. In what specific ways were each of those portfolios similar to the U/S of Management's responsibilities, and in what ways do those portfolios differ from the U/S of Management's portfolio?

RESPONSE: I outlined my direct oversight of the full compliment of administrative departments at the Commerce Department in my response to question 2. As Deputy Assistant Secretary for Administration at Commerce, I had responsibility for overseeing the functions that provided overall management for the Department. I had full access to the Secretary, Deputy Secretary, and the Chief of Staff on all management issues for the Department. In fact, when Deputy Secretary Dave Barram was chosen to serve as Administrator of GSA, he specifically recruited me to join him at GSA and serve in the Region 3 Administrator position. This was due to his assessment of my skills and abilities to provide leadership and overall management to one of GSA's most important regions.

Based on my review of the position, the duties and responsibilities of the Under Secretary for Management at DHS appear to be very similar to the duties and responsibilities I had at Commerce and GSA. While DHS differs with Commerce and GSA in size and in mission, I believe that I was nominated for the position of Under Secretary for Management specifically for my leadership and management experience, and my record of taking on transformational issues at both Commerce and GSA. I outline several examples throughout my responses to these questions.

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4) Mr. Borras references the Department of Commerce being like DHS in that each Department includes multiple bureaus carrying out distinct missions. At Commerce, Mr. Borras was Deputy Assistant Secretary of Administration. In that role, what was the chain of command from the Secretary of Commerce to the Deputy Assistant Secretary of Administration, and what specific officials reports to the Deputy Assistant Secretary of Administration?

RESPONSE: As Deputy Assistant Secretary for Administration, my direct reports included the following: Director of Acquisition Management; Director for Budget, Management and Information; Director for Civil Rights; Director for Budgeting and Assistance Management; Director for Financial Management; Director for Human Resources Management; Director for Small and Disadvantaged Business Utilization; and Director for Systems and Telecommunications. Due to the absence of an Assistant Secretary/CFO, I initially reported directly to the Commerce Department's Chief of Staff. Upon the appointment of an acting CFO, I reported to that position. Throughout my service as DAS for Administration, I served as a member of the Secretary's cabinet, participating in the Secretary's weekly staff meetings and had responsibility for the financial management for the Office of the Secretary. This was in part due to my portfolio of responsibilities, as well as recognition by Secretary Brown that I was a valuable member of his overall management team. I also worked directly with the Deputy Secretary Dave Barram on overall operations of the Department.

Additionally, I worked closely with the leadership of all of the Department's bureaus and agencies including: Economics and Statistics Administration; Economic Development Agency; Bureau of Export Administration; International Trade Administration; U.S. Foreign and Commercial Service; Trade Development; National Oceanic and Atmospheric Administration; National Telecommunications and Information Administration; Patent and Trademark Office; National Institute of Standards and Technology; Minority Business Development Agency; and the U.S. Travel and Tourism Administration. I served with all of the component agency heads on the Secretary's cabinet, which provided me with the ability to clearly understand the mission and priorities of each of the bureaus and agencies, as well as improve my ability to develop inter-agency cooperation in support of Departmental improvement initiatives. This unique relationship and standing with each of the bureau and agency heads enabled me to overcome many of the potential obstacles to effectively managing the Department's management functions.

5) DHS, unlike Commerce, includes several components that have direct responsibility relating to national security. What specific experiences does Mr. Borras have that have prepared him to oversee and manage DHS' security missions?

RESPONSE: Within the office of the Under Secretary for Management, the most direct reporting relationship involving national security is the Office of Security. The principal relationship between the organization that I managed at Commerce and that of DHS is that both have as direct reports the Office of Security. At the Commerce Department, this office handled matters of security clearances, investigations, and the oversight of handling of classified materials. Although the Commerce Department's Office of Security does not have national security counterintelligence responsibilities, it does play an important role in protecting

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important trade and business information that is vital to the United States' interest at home and abroad.

In addition, a key component of the Secretary's vision for national security is coordination with local authorities, which relates well to my experience with local law enforcement. I had oversight responsibility for public safety while at the City of Hartford and for police while with the City of New Rochelle. Also, while serving at the GSA as Regional Administrator, I had direct reporting authority of the region's Federal Protective Service (FPS). Additionally, my responsibilities included the security for 187 federal building and 563 leased locations under my purview. Several of the government owned and leased facilities included classified sites considered essential to our national security.

While at GSA, I provided services to client national security agencies including the FBI and U.S. Customs. In my current position, I manage personnel that service many government agencies involved with national security, both civilian and military. Much of this work is classified. These experiences working for and with national security agencies would serve me well if confirmed to serve at DHS.

6) Mr. Borras references his ability to manage under difficult financial constraints, and points to helping to balance three consecutive budgets in Hartford in the early 90s. What was the general financial condition of Hartford at that time (ie – was it in the midst of particularly difficult economic times such that balancing the budget was especially difficult), and what are other specific examples of Mr. Borras' experience managing (at the federal, local, or private sector) under difficult financial constraints?

RESPONSE: During my tenure with the City of Hartford during the early 1990's, Hartford faced numerous challenges. Hartford was the nation's fourth poorest city with a population of over 100,000. Property taxes were the main source of revenue, but only one half of the city's property was taxable. Three-fourths of the city's residents lived in rental properties. One in four residents lived below the poverty level, and one out of five were on welfare. Unemployment was above the regional and the state averages at double digit rates. Many of the anchor corporate businesses, such as Travelers, Aetna, and the Phoenix, were undergoing downsizing and moving back room operations out of the city. City taxes were the highest in the region, and tax receipts, a once reliable source of city revenue, was declining. Crime rates were increasing, the schools were losing enrollments, and the city's parks and roads were crumbling. It was under these circumstances that I came to the City of Hartford, joining an administration that had to find ways to balance the budget, restore financial stability, and begin to fundamentally restructure government to survive. During my tenure, annual projected shortfalls were continuously in the range of 15 – 20% of the City's total budget.[1]

[1] For relevant overall economic facts, see "Insurance Capital Hartford Finds Itself Without its Net," *New York Times* (Dec. 4, 1995) (http://www.nytimes.com/1995/12/04/nyregion/insurance-capital-hartford-finds-itself-without-its-net.html); *The Comptroller's Report: Connecticut's Economic Health,* Connecticut State Comptroller (1996) (available at http://www.osc.state.ct.us/reports/economic/96cmprpt/crptchgf.htm).

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Our challenge in Hartford, against the above-mentioned backdrop, was to find news ways to deliver badly needed services, hold the line on tax increases, and begin to realign priorities to meet the critical long term needs of the city. During my tenure, some services were cut or eliminated on the basis of a performance-based review, and other services, including funding for public safety, were actually increased. For example, certain programs were eliminated, such as day care subsidies; and, grants were either eliminated or reduced to many social service agencies. However, new initiatives were created to beef up our economic development programs. I created a one-stop shop for new business development, which provided expedited permitting and coordinated previously scattered business support programs under one roof. My experience in Hartford provided me with arguably the most valuable managerial challenges of my career, and provided an excellent foundation on managing budget under difficult conditions, which I have used in subsequent managerial positions.

At the Commerce Department, I was confronted with several potentially difficult financial circumstances. I had to manage through an attempt to eliminate the Department, as well as an attempt to eliminate funding for the Minority Business Development Agency. Both circumstances provided significant budget and management challenges as well as opportunities to restructure governmental operations. For example we eliminated one Commerce agency, the Trade and Tourism Office. In this example, I led the management of the close-down and transfer of remaining functions to other Commerce agencies. We also used this opportunity to establish several new Departmental initiatives, such as CONOPS, which I discuss in other responses. I believe that the Department of Commerce came out of both of those challenges as a far better Department as a result.

At my current firm, URS, I have focused on building market capacity, maintaining operational efficiencies and growing profit margin. I have met these new challenges with great success, growing my profit contribution tenfold over the last three years. I run one of the most efficient organizations in the company, which regularly exceeds many important company-wide metrics for performance including: operational efficiency (30% above company average); profitability against net revenue (40% above company average); and indirect costs against gross revenue (less than 6%). All of these key metrics reflect my ability to manage efficiently and generate profit at a higher rate than the average profit and loss center. I believe this is a strong indicator of my ability to manage in both the public and private sectors and perform at a high level.

7) Mr. Borras states that his highest priorities as U/S for Management would be ensuring sound financial management practices, establishing a comprehensive acquisition management strategy and promoting effective human capital management. What are some of his specific ideas on how to begin accomplishing those things?

RESPONSE: If confirmed, I would have three top priorities: financial management, acquisition management, and human capital management. The following is a summary of some of the ideas I would bring to DHS:

A) Financial Management – My major priorities in the financial management area include the following:

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(1) I would assess the ability of the current financial systems to provide the necessary data to aid in the decision making process at the senior management levels of DHS. I would explore the development of an executive information system or dashboard to accomplish this goal. Since DHS is in the process of acquiring a new consolidated and authoritative asset, acquisition, and financial management system, an umbrella dashboard system may be a viable option to overcome what I believe is one of the major challenges to monitoring Departmental performance and reporting results.

While at the Commerce Department, we developed a system to be used as a major Decision Support system Called EARS. Through this system, we were able to consolidate accounting, budget, procurement, performance and human capital data into a single environment for the CFO, the Secretary, and senior officers throughout the Department. The system provided touch screen and drill down capability to procurement, personnel, payroll, and financial data for the components and the Office of the Secretary. It also enabled users to gauge Departmental performance utilizing a common platform that was available across the Department.

(2) I would look to immediately work with the CFO and his/her staff on implementing the existing Internal Controls Over Financial Reporting (ICOFR) playbook and to develop action plans to address all outstanding material weaknesses identified by either the IG or GAO. It is critically important to gain the support and confidence of both the GAO and the IG in supporting the major initiatives required to aid in the improvement and transformation of DHS.

(3) Another major priority would be to work closely on the evaluation of existing DHS performance measures, and recommendation of new measures. It is important to drive results throughout the Department, with a focus on measures that tie budget, agency and program success, and individual performance in a way that better allows DHS to demonstrate and communicate to the public and Congress the "return on investment."

B) Acquisition Management - I have previously stated that my approach to improving the acquisition function at DHS would be, in conjunction with the Chief Procurement Officer, to (1) focus on the front end of the acquisition process, namely the requirements phase; (2) strengthen the project management capabilities with the component agencies at DHS; and (3) evaluate the use of the CONOPS model (discussed in greater detail in response to Question 8) that we utilized at Commerce; and (4) develop and/or augment a robust intern program to begin to address our acquisition workforce challenges. I have also stated that if confirmed, I would review the existing Acquisition Review Board (ARB) process as well as the reporting relationship between the component acquisition personnel and the Office of Procurement to assess if changes or modifications are required.

The key management principle to successfully implement these strategies is to forge interdependencies between procurement and the component program offices. I would work with the CPO to lead efforts to implement an enhanced acquisition planning system to manage the initial phase of the acquisition cycle. On the back-end, we also look to implement a Business Intelligence tool to track progress. These are examples of using tools to proactively understand

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the customer's need and track progress throughout the acquisition life cycle. Finally, I look to implement Integrated Product Teams (IPTs) so key players in the process (e.g., program, procurement, legal) are involved throughout the process and changes can be made concurrently instead of using the traditional, less efficient sequential process.

C) Human Capital Management – I have strongly advocated for a human capital approach that values the DHS employee and provides the necessary support and resources to improve employee morale and performance of the Department. The major asset of DHS is its people. If confirmed, I would ask the Chief Human Capital Officer to conduct a thorough assessment of available employee resources to assist the component agencies meet their workforce needs. Information support also appears to be lacking in the human capital area, and I would look to the development of the aforementioned dashboard system to aid in providing the necessary information to develop recruitment and retention plans.

Finally, if confirmed, I would focus on the root causes of the issues identified in the most recent Federal Employees Surveys. My review of the survey results suggests that although there are challenges, the Department's employees demonstrate a very high support for and connection to the Department's mission. I believe that strong employee support for the Department's mission can be a strong tool to motivate and inspire employees in support of the Secretary's "One DHS" goal.

In sum, my approach to these three priorities would provide an integrated solution process that would link an emphasis on financial management, acquisition review and transformation, and a holistic approach to human capital management that would help drive DHS toward improved management, accountability, and performance.

8) Mr. Borras indicates that he supports "the development and use of performance measures that allow evaluation of agency performance." What specific personal experience does he have in developing such measures and evaluating performance based on such measures?

RESPONSE: I began my professional career in 1982 assigned to budget office in Metro-Dade County Government. Among my first tasks were working to review and rewrite, if necessary, performance measures for the agencies under my senior budget analyst's purview. Among those that I had to review included measures for the Correctional Department. I quickly noticed that many of the proposed measures dealt only with inputs. For example, common measures included number of prisoners processed, number of prisoners transported to state institutions, etc. – statistical information that did not appear to address performance, but rather documented activity. The correction's department actually had fairly good goals and objectives, but they were not being captured with the existing performance measures. Thus began my interest with the development and utilization of effective performance measures and tools, as well as law enforcement.

As my interest in law enforcement grew, I began to study the concepts of Problem Oriented Policing (POP), both to better understand ways to address the management of law enforcement organizations, and to seek ways to apply those principles to the management of government as a

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whole. Simply put, POP is a process whereby the discrete pieces of policing are analyzed to improve the strategies for policing and the prevention of crimes, with an emphasis not just on the quantitative data (inputs) but also the qualitative data (outcomes). This interest formed the basis of my continuing desire to apply these techniques as I progressed through my management career.

During my tenure with the International City Management Association (ICMA), and in conjunction with the National League of Cities (NLC), the National Association of County Officials (NACO), I worked with members of the management field, academia, and consulting groups to further explore these issues of performance management at our annual conferences and through our management publications. When I left the association and went back to government with the City of Hartford, I once again had the opportunity to use my skills and interest to further apply these techniques as a government executive.

Managing through the tough budget constraints at Hartford, I was involved in a comprehensive approach to evaluate existing performance measures and use that information to make recommendations to improve, restructure, or eliminate programs that did not demonstrate justifiable performance. This effort was a key to our ability to begin to restructure the city government. Additionally, I was in charge of the city's effort to implement Community Oriented Policing, and I worked closely with our Police Chief and the department to reorient the police department using these techniques and processes.

Upon joining the federal government, I have served in two senior executive positions where I had responsibility for overseeing the evaluation and development of performance measures. At the Department of Commerce, the most significant accomplishment was the implementation of a program we called "Concept of Operations" (CONOPS). Simply put, CONOPS was an integrated approach to the entire acquisition lifecycle, which included the departments of Finance, Acquisition, and Systems and Information Technology. The purpose of this program was to pull together teams from these three departments to move the emphasis of acquisition away from measuring procurement lead time, to focusing on the outcome – what did the program deliver. Each integrated team included representatives from each of the three departments under my purview, along with teams from a component agency of Commerce that was undertaking an acquisition program. All members of the team, including the program staff of the component agency, were measured against the performance of the delivered program, not the usual procurement metrics, such as lead time.

While at GSA, we took the national lead in developing new performance measures for the Public Building Service. For example, we worked with LMI, a non-profit consulting group, to develop new measures by comparing the average cost of PBS leased space against comparable commercial leased space in each market to benchmark our performance. This measure enabled us to move away from measuring inputs to actually setting an outcome-based measure that allowed us to demonstrate how well we performed and delivered savings to our federal agency clients. I also participated in the development of new measures for the maintenance of the federal buildings in our region. An example of this would be establishing standards for the level of cleanliness we expected, and determining if the cleaning staff met that those standards, rather

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than quantifying the number of times a building was cleaned. We used industry benchmarks as well as health and safety benchmarks to establish those new measures.

My initial impression of performance measures at DHS reveals that the Department still has work to accomplish in moving away from measuring activity to measuring results. I believe the Department is on the right track, with a concerted effort by the Office of Performance Improvement within the CFO's Office. If confirmed, I would look to work with the component agencies and the lines of business chiefs to push for a transformation in how we measure performance. I would also seek to develop integrated performance plans between DHS component agencies that tie back to the overall mission of the Department. Based on my experience, building integrated performance measures that tie agencies together based on outcomes would help strengthen the Secretary's goal of "One DHS".

9) Mr. Borras states that he would work to ensure DHS is "taking steps to improve the workplace, include organized labor, and listen to what the workforce is telling us." Senator Voinovich would like clarification on what "organized labor" he is referencing and how he would expand and change existing organized labor.

RESPONSE: I believe what I stated was that if confirmed, I would ensure that DHS is taking steps to improve the workplace, would include organized labor, and listen to what the workforce is telling us. This statement is consistent with other statements I have made that recognize the need for management to work closely with organizations representing employees. I made no attempt to suggest that if confirmed I or DHS should expand, change or in any way alter organized labor.

10) Mr. Borras states that workplace flexibilities can be useful tools. What experience does he have in utilizing such tools in the public or private sector?

RESPONSE: During my career, I have worked in organizations, both public and private, that have utilized flex time, telecommuting, company-paid sabbaticals for educational purposes, recruitment and retention bonuses, referral bonuses, part-time permanent hires, and reduced workweeks. In my current position with URS, I often face a highly competitive market for new hires and have utilized several of these tools to better compete for talent. In the federal government, I have used telecommuting and flex time at GSA. I recognize the need for proper controls when utilizing these tools, but if effectively managed, they can become an important part of an overall workplace strategy to grow a workforce and improve morale.

11) Mr. Borras references a need to determine whether the current staffing of DHS's acquisition workforce is sufficient. The state of the federal acquisition workforce is on GAO's high risk list because it has been experiencing an increasing workload and complexity of responsibilities without adequate attention to its size, skills, knowledge and succession planning. What role would GAO's concerns play in Mr. Borras' determination regarding DHS's acquisition workforce?

RESPONSE: If confirmed, I would commit to meet with the GAO to gain a better understanding of their concerns regarding the DHS acquisition workforce. I believe the input of

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the GAO is a valuable tool to gain a better understanding of the DHS workplace needs and determine best practices. I have reviewed several GAO reports regarding DHS, such as "Implementing and Transforming the Department of Homeland Security," which stated that although the Department has taken steps to organize the acquisition process and has developed acquisition polices, it has not yet fully implemented these policies nor fully addressed the need to continue to develop its acquisition workforce. I have been informed that GAO's comments on DHS's investment oversight problems were accurate for the period that report covered. I see these action items as central to planning a corrective action plan and working with GAO to improve the Department's high risk designation in this area. In previous questions, above, I addressed a few ideas for improving the acquisition process at DHS if confirmed as Under Secretary for Management.

I have also reviewed the GAO report on "Government Performance, Lessons Learned for the Next Administration on Using Performance Information to Improve Results," and the 2007 report on the "Department of Homeland Security: Progress Report on Implementation of Mission and Management Functions," which also provides valuable insights into the challenges related to the acquisition function and workforce issues at DHS. Both reports would provide me, if confirmed, with a wealth of information and an effective tool to push for greater attention to the acquisition workforce challenge at DHS.

12) DHS is one of the largest agencies for procurement spending and has faced a number of procurement challenges since its creation, including negative cost and schedule implications as well as staffing shortfalls. What specific experience has Mr. Borras had with similar acquisition challenges, and how has he overcome such challenges?

RESPONSE: At Commerce, I oversaw a Department-wide initiative to use supply chain practices to improve the administrative functions (e.g., budget, finance, IT, procurement). The inefficiencies within the administrative functions negatively impacted the performance of key programs that relied on support from budget, procurement, information technology and finance. I oversaw a business process re-engineering analysis of the acquisition function and implemented key improvements such as co-location of personnel with program officials, establishment of solid metrics to provide "real time" progress, streamlining of outdated and conflicting policies, and training to improve the technical aptitude of many contracting officers.

Even with these improvements to the acquisition chain, we realized that full optimization would not occur without similar efforts from the CIO and CFO. By using a structured empirical approach and by bringing in the CFO and CIO, we were able to establish an integrated structure and processes to improve the efficiency of the enterprise-wide acquisition system. The program was called CONOPS (Concept of Operations) and established the policies and procedures through which all midrange and major programs were staffed and managed throughout the agency. This program received an award for its innovation and achievement.

When I served as Regional Administrator of the Mid-Atlantic Region of GSA, I was responsible for a federal contracting organization whose mission was to manage large procurement activities for client agencies (DOD and Non-DOD). In order to gain the assignment to support other government agencies who are considering turning over large procurements to GSA, we had to

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win the trust and confidence of the potential federal client agency. We were able to demonstrate our ability to manage our own regional procurements by showcasing that we led the entire GSA with projects meeting or beating cost and schedule targets.

Timely and accurate estimates form the basis of sound business decisions in the acquisition arena. My focus at GSA was on emphasizing constant and challenging training programs for the Contracting Officers and Contracting Officer Technical Representatives (COTR) within my region. My entire contracting community would meet monthly to stay abreast of the latest regulations and requirements. We also established a relationship with the Project Management Institute (PMI) to institute Project Management Professionals (PMP) certification for all of our Project Managers. Since schedule management is critically important, we also required the use of sophisticated schedule and analytical tools, such as Primavera Project Planner (at the time called P3), to aid our business analysis and risk assessments. An example of this effort's success is the growth of my regional Federal Technology Service (FTS) during my tenure. FTS grew ten fold during my service as Regional Administrator, and also won many awards for our staff.

13) What is the largest number of staff Mr. Borras ever overseen, in either the public or private sector?

RESPONSE: As Regional Administrator of the Mid Atlantic Region (1997 – 2000), I managed a staff of over 1,500 employees. By way of comparison, the current staffing level of the entire Under Secretary for Management organization is approximately 1,000 employees. As Deputy Assistant Secretary for Administration at the Department of Commerce, I managed the administrative departments for Commerce which included a workforce of over 500 employees. The total number of Commerce employees during my tenure was over 35,000 employees. During my tenure at the City of Hartford, the city had a workforce of over 2,500 employees. As the Deputy City Manager is effectively the chief operating officer for the administration, I had line authority for the entire workforce in the absence of the city manager.

14) What is the largest budget Mr. Borras has ever overseen, in either the public or private sector?

RESPONSE: As Deputy Assistant Secretary at the Commerce Department, with oversight for Department budgeting, my organization managed an annual budget of approximately $4.5 Billion. As Regional Administrator at GSA, I managed the Mid Atlantic region which had an operating budget of approximately $1.1 Billion.

15) What is the largest annual procurement budget Mr. Borras has ever overseen for the federal government?

RESPONSE: While at GSA, my regional Federal Technology Service and Federal Supply Service was responsible for overseeing and managing the spending of over $2.5 Billion of the U.S. Government's business with the civilian and military federal agencies. At the Department of Commerce, our annual procurement was approximately $2 Billion per year.

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16) On at least two occasions in recent years, Mr. Borras failed to report important personal information to the federal government, and his explanation is that the documentation relating to that information must have been put aside, missed, or not reviewed as closely as it should have been. In what ways will his attention to detail at DHS be different and improved from his attention to detail regarding personal matters?

RESPONSE: I have successfully managed in the federal government, in local government, and in the private sector for a $10 Billion Fortune 500 company. During my 27-year career in management, I have never had any issues related to inattention to detail. On the contrary, my professional record of accomplishment, as well as my reputation, is exemplary. If confirmed to serve as Under Secretary for Management at DHS, I will bring to the position not only my accumulated experience, but also my continued commitment to effective leadership and responsible management.

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Senator George V. Voinovich
Additional Questions for the Record
Nomination Hearing of Rafael Borras
July 29, 2009

1. *Mr. Borras, I have spent a great deal of time working to ensure that the Department of Homeland Security (DHS) Under Secretary for Management is qualified to manage DHS' complicated portfolio, including by setting statutory requirements for the DHS Under Secretary for Management. One of those statutory qualifications is strong leadership skills. Please describe your specific leadership skills and provide three examples of how you have used those skills to solve specific, complicated problems such as those you will face at DHS.*

The Undersecretary for Management must have strong and demonstrated leadership skills. In prior positions, I have demonstrated the ability to motivate, inspire and empower my employees to work towards a common goal, creating mutual dependencies among employees and teams. Fundamentally, management is a process, and I have been a process leader. I am adept at using management tools such as strategic planning, performance measures, and benchmarking to facilitate technical and systemic change. While putting into place key management processes to ensure performance and accountability, I also have created supportive working environments – I do believe that when leadership engages and listens to the workforce, the end result is often enhanced workforce performance. The three examples below review how I have applied my leadership skills to complicated problems.

1. Community Oriented Policing (Hartford, CT)

I led the Community Oriented Policing (COP) initiative while the Deputy City Manager. At its core, Community Oriented Policing is an intra-organizational effort to change a community's approach to crime prevention and response. The successful implementation of COP required that I engage the cooperation of the police department, the other public safety departments – fire, code enforcement, as well as other strategic departments such as public works, the health department, planning and zoning, and parks and recreation, to participate in both the training and implementation of COP. In order to implement COP successfully, all public safety departments had to reassess their role in the prevention and reduction of crime and buy into a new approach.

To this end, I brought in noted COP experts to educate the city leaders on the benefits of the program in order to build consensus for action and a commitment to change. I developed and instituted cross departmental training programs, with the intent of building institutional consensus on the goals and objectives of COP. I implemented systems to support the programmatic goals of COP, such as the intra-departmental trunked radio system which enabled all city employees with hand held radios to instantly communicate to any city department to report a quality of life violation or a crime in progress. Because I had effectively communicated the goals and objectives of the program and the intended

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outcomes of the investment, I secured funding from the Council at a time when the city was experiencing tight budget resources

I believe that this is applicable to the work I will be doing at the Department of Homeland Security. As the leader of the COPS initiative, I undertook a transformational effort with success in an era of austerity and competing demands. The solution required leadership to create consensus on an integrated approach, to secure a commitment of funds, to develop and implement training, and the development of process and systems in order to institute long lasting change. If confirmed, I will bring these leadership skills to my role at DHS.

2. CONOPS (Department of Commerce)

When I arrived at the Department of Commerce, the development for a new approach to acquisition management had been underway for years prior to my involvement with the department. Although senior leadership recognized that a comprehensive system was needed, the leadership had been unable to gain the support and commitment of the entire department to make the changes needed to reform how acquisitions were managed. Briefed on a new acquisition process in development, called "Concept of Operations," my role was helping to flush out the parameters of the program and providing the necessary leadership to get the "buy in" from the various Commerce agencies to support the initiative.

My first objective was to better understand the objections of the program by the bureaus, which turned out to be fear of departmental involvement and delays in procurement lead time. To overcome this objection, I worked closely with the bureau heads to educate them on the proper role of departmental oversight, working in cooperation with the buying agency. Establishing the authority and role of the departmental acquisition function was a key to providing the framework for implementing CONOPS. Active engagement of the key bureau opponents of the process also turned out to be a key, as their involvement served to lessen their objections and made them stakeholders in the outcomes of the program. I worked closely with the development team to provide guidance and counsel as the program developed, serving to balance the views of both the acquisition organization and the end user.

My goal was to provide the leadership to ensure that the success of the program was owned by the participants and would be long lasting. This example directly relates to DHS, as the reform of the acquisition review process and the need to build a committed and unified approach which includes all of the agencies of DHS is essential to transform DHS and resolve outstanding GAO issues of risk. I look forward to working with all of DHS's components in order to build consensus and commitment to a reformed and unified acquisition review process.

3. One GSA

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My third example of leadership focuses on an organization that was perceived to be a good performer, but needed to view itself as a great organization. When I took over the reins of the Mid-Atlantic region of GSA, I spent the first several weeks in a fact finding and information sharing mode, attempting to set the stage for what would be my top priorities as Regional Administrator. While on the surface Region 3 viewed itself as a top performing region, there were undercurrents of dissatisfaction with the regional hiring and promotional practices, frustration with the silo mentality of the region, and a perceived lack of integrated solutions focused on our customer base. After my period of active engagement with the staff, I conveyed to the entire regional staff (1,500+ employees) my top priorities: 1) Improved financial and performance management; 2) Business line growth for the Federal Technology Service; and 3) Customer focused integrated solutions. All of these priorities were designed to support Administrator Barram's overall goal of promoting One-GSA.

Specific steps that I took included cross utilization of acquisition personnel (i.e., FTS contract personnel managing procurements for PBS); establishment of new promotional rotations that required employees to move laterally before moving up in the organization; the promotion of project manager training within the region to enhance the skills of project managers; and, my signature legacy area, which was improving the financial management skills and business decision making abilities of our financial staff within the region. Ted Hall, my former Region 3 Finance Director can be reached at (215) 446-4905 to discuss the financial initiative.

My leadership approach was to raise the level of performance in the region, breakdown the barriers that resulted in a silo mentality within the three services (PBS, FSS, FTS), and address the lingering issues that, if left unaddressed, could affect morale. My leadership actions at GSA would be applicable to several aspects of my role at DHS, if confirmed, including supporting the Secretary's "One DHS" initiative, by helping to breakdown barriers among the 22 agencies; encouraging cross-utilization of services, which could lead to the creation of centers of excellence for various administrative functions within DHS; placing a strong emphasis on financial management and training for project managers; and taking personnel actions that could help raise DHS morale.

2. *Another statutory requirement for the DHS Under Secretary for Management is a proven record in achieving positive operational results. Please give us three specific examples of how you have achieved positive operational results in a difficult climate, such as the climate you will face at DHS, with both human capital and procurement challenges awaiting you.*

I have rarely experienced an easy climate in which to achieve positive results. Granted, there are very few situations as complex as DHS in any level of government, but I believe that the following three examples illustrate my proven record of achieving positive operational results in challenging situations.

a. Rightsizing at the City of Hartford

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In 1991, the City of Hartford was facing severe budget shortfalls in an economic climate that was rapidly deteriorating. Tough budget decisions needed to be made, which included downsizing or eliminating programs and services; additionally, layoffs were imminent. As Deputy City Manager for Administration and Public Safety, I had responsibility for the departments of budget, finance, personnel, information technology, procurement, police, fire, and code enforcement. As a result of my portfolio, I was intimately involved in all aspects of the budget struggles. Extensive reviews were conducted to determine which programs needed to be downsized or eliminated in order to close the budget shortfall and to develop a plan and process for the elimination of existing positions. The result of this process was the elimination of many city programs and over 175 positions from the workforce. We were able to achieve reductions in the actual size of government and balanced the budget without raising taxes.

The positive side of this example is that in following years, we operated a municipal government that was leaner, much more operationally efficient; further we were able to fund actual increases for public safety. Operational efficiencies were obtained by eliminating layers of management, consolidating and co-locating multiple program offices into single locations, and introducing new technologies to streamline operations in the office of code enforcement and public works. Throughout this process, the City of Hartford maintained the second highest bond rating in Connecticut at the time, a testament to the efficiency and integrity of our financial systems, policies and procedures.

b. CONOPS

My experience with CONOPS is applicable to DHS because many of the acquisition-related issues at DHS may be addressed by a formal process such as CONOPS. CONOPS which is also addressed in my response to question one, improved operational efficiencies in procurement at the Department of Commerce. The process represented a real change in the way procurement activities were carried out, including the establishment of performance requirements and financial targets. Performance monitoring was continuous during the entire acquisition life cycle. All of the component tools of the CONOPS process were designed to improve the efficiency of the acquisition process, and reduce operating costs during the complete lifecycle of the procured good or service.

The CONOPS model was awarded a Hammer award for innovation, as well as numerous awards from the acquisition community. CONOPS is still used today by the Commerce Department and its component agencies, and its success has been replicated in many other government departments and agencies.

c. EARS

One of the most pressing issues at DHS is the need for improvement to provide information that can be used at the enterprise level to aid in decision making and reporting. At the Commerce Department, we built an executive information system at an agency with 11 different bureaus and 13 different financial systems. This system became

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a cornerstone in improving the operational efficiency of the Commerce Department, as the absence of good information and the ability to apply analytical tools to the review of operations were a limiting factor. Enterprise Reporting System (EARS) became, and remains, a powerful tool that allows decision makers the ability to review enterprise wide information, set benchmarks for performance, and monitor and evaluate agency/bureau performance.

EARS, was designed to consolidate accounting, budget, procurement, performance, and human capital data into a single environment for use by the department's leadership. Prior to EARS, we had no way to begin to determine the current level of operational efficiency at the department, and had to rely on time consuming and often inaccurate data calls. Much of the impetus for developing this system was the department's need to respond to the requirements of the Government Performance and Requirements Act (GPRA) which had been enacted in 1993. Working closely with all of the bureaus and agencies within Commerce, we were able to build a system that was quite advanced for its time. EARS was developed using touch screen capabilities, which aided the user community to easily access the information. It also was a powerful tool to improve our reporting requirements under GPRA requirements and to improve the quality of information reported to Congress.

As an early advocate for information systems, I was the senior leadership's champion for EARS, and was personally involved in all aspects of its development. I describe additional details in my response to question seven.

3. *The DHS Under Secretary for Management is responsible for identifying and tracking performance measures for DHS. If confirmed, how would you fulfill those responsibilities?*

Should I be confirmed, my priority is to enhance the Department's performance management capability by providing the senior leadership attention to this critical area. This would translate into working to advance the four goals established in the performance management arena:

- Lead the performance management community,
- Enhance the assessment and improvement of performance,
- Improve performance integration, and
- Expand transparency and reporting of performance results.

To achieve these results, I will champion the work of the DHS Performance Improvement Officer Council and Performance Team in implementing improvements to DHS's current set of performance measures and avenues of reporting performance results. I will work to enhance the internal use of mission-oriented performance information in decision making for key decision making processes, such as strategic planning, resource allocation, and senior executive service accountability. I will also explore the feasibility of implementing innovative Information Technology systems with business intelligence capabilities that allow for integrated performance data presentation and drill-down

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capability available to those across the Department so they have the ability to gauge DHS's performance results.

4. *As you know, I am extremely concerned about the fact that since 2003, the Government Accountability Office (GAO) has included implementing and transforming DHS on its high-risk list of programs susceptible to waste, fraud, abuse, and mismanagement. If confirmed, what specific actions would you take in an effort to remove DHS from GAO's high risk list?*

Based on my review of GAO's 2009 High Risk List report, I am aware of the Department's recent efforts to meet transformation challenges, and that DHS has drafted an Integrated Strategy for High Risk Management that serves as a master corrective action plan. That being the case, I also agree with GAO's latest assessment in the High Risk report and have briefly spoken with Gene Dodaro, acting Comptroller General, about the findings and I discussed what my priorities would be, if confirmed. Should I be confirmed, my priorities of financial management, acquisition management/ reform, and attention to the Department's human capital needs all fit GAO's key recommendations for an integrated financial management system, improved management acquisition controls, and a fully developed human capital management strategy. If confirmed I will be committed to ensuring the Department's corrective action plans are amended to include the recent GAO recommendations; and, it will be one of my goals to get DHS removed from GAO's High Risk list.

5. *In its high risk list update this year, GAO noted that "DHS has not yet developed a comprehensive plan to address the transformation, integration, management and mission challenges GAO identified since 2003." If confirmed, do you intend to develop a comprehensive plan to address all of these challenges, and if so, how do you intend to develop that plan?*

It is the Secretary's goal, and if confirmed, mine, to get DHS off the high risk list. I will measure my success as the Under Secretary for Management based on the progress we make towards meeting that goal. The Integrated Strategy for High Risk Management is a plan that addresses the transformation, integration, management and mission challenges GAO identified. If confirmed, you have my commitment to improve upon and leverage this plan to design and implement corrective action plans for any management challenge or high risk issue that limits the efficiency or performance of mission goals and strategic priorities.

6. *I understand that while you worked at the Department of Commerce, you had to manage through an attempt to eliminate the Department. Please describe that situation, including what specific role you played in the matter.*

In 1995, there was a bill introduced to dismantle the Department of Commerce and either eliminate or transfer it functions to other government agencies. Managing at the

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Department of Commerce during this time required tremendous focus and discipline of the entire senior leadership. There was also increased pressure to ensure enhanced job performance. Under the direction of the late Secretary Ron Brown, many individuals played a key part in demonstrating the important role of the department in our nation's economy, and justifying the need and usefulness of the many valuable programs and services provided by the department.

I was responsible for effectively managing budgets and overseeing administrative departments. As a manager, I was responsible for ensuring that my employees were not distracted or demoralized because of the attempted dismantling effort. My focus was on continuing the operations of the department, supporting those employees under my direction, and providing leadership for the short, medium, and long term objectives and goals to which we were committed to.

7. *In your opening statement, you indicated that while you worked at the Department of Commerce, "we developed a system to be used as a major decision support system called EARS." What was your specific role in that effort and are there other individuals who worked on that effort who the Committee can discuss the work with?*

I was intimately involved in the development of the decision support system called EARS, while at the Commerce Department. I had been an advocate for executive dashboard systems and when I became Deputy Assistant Secretary for Administration, I worked with the "EARS" development team to help ensure that the implementation of the system received the cooperation and support of the various Commerce bureaus and agencies. I routinely worked with the development team members to help beta test the interface in order to help ensure that the system would be user friendly, as well as to assess the usefulness of the information provided. This effort is an example of how I provided focused leadership, helped commit the resources, and encouraged the cooperation and collaboration between the "EARS" development team and the operating bureaus to build this system at the Department of Commerce.

Clyde McShan, the former Director of Finance at the Commerce Department during my tenure, can be reached at (540) 888-4155 to discuss in greater detail this important project.

8. *You also make reference to your efforts to implement a "Concept of Operations" program at the Department of Commerce. What was your specific role in that effort and are there other individuals who worked on that effort who the Committee can discuss the work with?*

My specific role in the implementation of CONOPS was to provide leadership and help overcome significant resistance on the part of the bureaus and agencies within the Commerce Department to the implementation of a multi-disciplinary approach to improving our acquisition process. I worked closely with my colleagues in the budget, finance, and acquisition departments to help determine how we could gain the support for CONOPS within the department. I provided leadership to meet the timelines we set for

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CONOPS, actively sought out the initial procurements to test the process, and chaired the reviews in order to maintain the continuity of the strategic vision, provide the senior leadership commitment, and ensure that our timelines were met. CONOPS is still in use today at the Commerce Department, a testament to the hard work and dedication of the key staff who helped make CONOPS a reality.

Dr. Kenneth Buck, my former director for Acquisition Management, can be reached at (202) 210-2743 to discuss this effort in greater detail.

9. *You have indicated that while you were at the General Services Administration (GSA), "we took the national lead in developing new performance measures for the Public Building Service." What specific role did you play in that effort?*

While serving as Regional Administrator of the Mid-Atlantic Region of GSA, I worked closely with then PBS Commissioner Bob Peck to support a nationwide effort to develop new performance measures for the Public Building Service. I wanted my region to play a prominent role in the development of the national effort and arranged to have my Assistant Regional Administrator for PBS, Jan Ziegler, detailed to Washington to lead the national effort. I strongly believed that the PBS staff in my region and I had a unique perspective on performance measures. Strategically, I felt that if I could have my region play a prominent role in this nationwide effort, it would enhance my ability to push my region towards more far reaching and long lasting change. The overall push for developing new performance measures nationwide had a long lasting impact on the region, and served to empower our employees with a sense of national accomplishment as well as an institutionalized commitment to effective performance measurement. I believe this is one of my most lasting achievements at GSA.

10. *You also indicate that at GSA you "participated in the development of new measures for the maintenance of the federal buildings in our region." What specific role did you play in that effort?*

My role in this effort was tied to the overall nationwide effort described in my response to question nine. Specifically, I worked with LMI, our consultant in the performance measurement effort, to ensure focus on the development of useful measures that would allow us to benchmark our performance. I was interested in being able to measure what I believed to be true - that my region was a high performing region, arguably one of the best in GSA. I saw this effort as a unique opportunity to focus my regional staff on excellence in operations and customer service, as well as allowing them to see themselves as national leaders. Again, my strategic goal was to take the overall region, PBS, FSS, and FTS, and foster a commitment to collective excellence and a model of One-GSA. I had the compete support of Dave Barram, GSA's Administrator, as well as the PBS, FSS, and FTS Commissioners in this endeavor.

11. *While at the Department of Commerce and GSA, you indicate that you worked closely with the Office of Management and Budget, the Office of Personnel Management, the Office of Federal Procurement Policy, most federal agencies, and Congress. Can you*

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By virtue of my federal government positions, I worked closely with OMB, OPM, and OFFP. Since many of these interactions occurred 10 to 15 years ago, I do not have the names or current contact information for many of the individuals whom I worked with. I do recall working with Chris Edley (OMB), whose purview at OMB included the Commerce Department and GSA; Steve Kelman from OFFP, whom we worked closely with when we were planning CONOPS at the Commerce Department; and John Sepulveda from OPM.

12. *You have indicated that you were specifically recruited to join GSA by Deputy Secretary Dave Barram. Do you have a reference letter from Mr. Barram regarding why he recruited you to work at GSA and your work at GSA?*

The letter of reference from Dave Barram is attached. Dave remains an important mentor in my career and was a great supporter during my tenure at Commerce and GSA. He expressed a willingness to address any questions you have about my work at GSA. I have also attached a list of other individuals who I have worked with in my current and prior positions who would be able to speak about the quality of my work and my leadership.

13. *Please provide the Committee with organization charts from the Department of Commerce and GSA during the times you worked at each.*

The Department of Homeland Security Office of Legislative Affairs staff has requested an organizational chart from Department of Commerce for 1994-1997 and for GSA and GSA Region 3 for 1997-2000.

14. *The job for which you have been nominated requires an individual who pays significant attention to detail, so I remain gravely concerned about the fact that on more than one occasion, it seems that you failed to exercise reasonable care when filing your federal tax returns. At your nomination hearing, you acknowledged the multiple mistakes you have made in failing to report information to the Internal Revenue Services and failing to review your tax returns. However, I do not yet understand how or why you made so many mistakes, nor how this Committee can be assured that you would exercise more attention to detail at DHS. Please explain why, over a two year period, you failed to report almost $10,000 in income to your household but did report $270 as an offset to that income; failed to report $50 in income from an annuity; failed to report almost $1000 in interest income; and failed to report almost $6000 in income from an IRA withdrawal.*

I agree that the appearance of two consecutive years of incomplete tax filings could generate concern among members of the committee. Since I have successfully filed my tax returns over 30 years, I would describe those two years as an aberration. Furthermore, my professional record during those two years is devoid of any incidents

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that would suggest either careless behavior or inattention to detail. Although I have made no attempt to excuse those mistakes, those years in question were during a time of tremendous personal and emotional pressure due to the illnesses of both my parents. Their illnesses required frequent travel to and from Florida.

In 2005, I believe the best explanation for my inadvertent omission of my wife's W-2 from our 2005 return was that our other W-2 information was likely automatically carried over from the previous year and entered on our tax form by Turbo Tax. As this was the first time my wife would have received a W-2 from her second, part time employer, I may have inadvertently missed loading it. The $270 expense item is reported on another module of the filing, namely the deduction section. I would not have necessarily noticed that I missed the W-2 when I loaded deductions. Also since the $270 expense was not allowed due to the total income reported, it had no effect on my tax liability. With respect to the $50 1009-INT, I filed several 1099's that year, and missed the one for $50.

For the filing of 2006, I believe we did not receive a copy of the 1099-R related to my wife's early withdrawal from her IRA. As for the other 1099's, the only possible explanation I can offer is that I appear to have missed the entire section of Turbo Tax which required inputting 1099's. I am solely responsible for that error.

15. *Equally as concerning to me, given the position for which you have been nominated, is the fact that it appears that you did not even conduct a cursory review of your 2006 tax return, which clearly indicated multiple times that you were paying the bulk of taxes owed with a request for an extension even though you were not filing an extension. Given your failure to review your own tax returns, what assurances can you provide to the Committee that you will take the time necessary to read DHS financial audits and surveys on employee morale?*

I appreciate your concern and I believe that the best assurance I can provide the committee is to point to my two most recent tax filings, 2007 and 2008, which were filed without errors, a direct result of corrective actions I took to mitigate problems. I am keenly aware of the need to conduct my professional responsibilities in a thorough and responsible manner, and I have a 30 year record of professional accomplishment in that area. During that same time, my professional performance was undiminished despite the severe stresses I outlined above. I do appreciate the magnitude and complexity of the issues facing DHS and I understand what is required to carry out the job.

16. *It is my understanding that, when you did try to resolve this 2006 issue, you chose to communicate with the IRS on the phone. Given the number of issues associated with your tax filings, did you ever follow up on your conversations in writing, and why or why not?*

Due to my travel schedule, and my desire to seek immediate resolution of this issue, I chose to contact the IRS directly by phone. In hindsight, I agree that it would have been beneficial to follow up on these conversations with written correspondence to the IRS.

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David J. Barram
1515 Redwood Drive
Los Altos, CA 94024

August 11, 2009

The Honorable Joseph Lieberman
Chairman, Homeland Security & Governmental Affairs Committee
United States Senate
Washington, DC 20510

The Honorable Susan Collins
Ranking Member, Homeland Security & Governmental Affairs Committee
United States Senate
Washington, DC 20510

The Honorable Daniel K. Akaka
Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
United States Senate
Washington, DC 20510

The Honorable George V. Voinovich
Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
United States Senate
Washington, DC 20510

Dear Senators:

I am writing to support the confirmation of Ralph Borras as Undersecretary of Management for DHS.

Ralph and I worked together when I was Deputy Secretary of Commerce and again when I was the Administrator of the General Services Administration. I'd happily work with him again and think he'd be a terrific executive at DHS.

I think the Undersecretary job is especially important to this relatively new organization, especially about now in its life. As a citizen, I am sympathetic to the challenges that DHS has had over the past few years: to bring a number of existing agencies together and create something that could have a cogent, even holistic identity. And, to do all that while focused on such a grand mission as *homeland security*.

New organizations should focus on critical tasks; then, once they get some stability, they should try to bring coherence and process to the whole subject of management. Not everyone agrees, I imagine, but I think it was best for DHS to be task oriented then. Now, though, it seems the right time to put good management processes in place and gain the productivity, accountability and even joy that organizations get when well-managed.

I don't need to add to the litany of the good things that Ralph accomplished at Commerce or GSA. I expect you have received plenty of good information about that and about his work in Hartford and the private sector. But, I would like to offer a couple of comments in praise of him as a leader and manager.

At Commerce, we tackled procurement in as novel a way as we could. Ralph was key in championing the idea that acquisition went beyond the typical functions. If we were to make an agency that worked better and cost less, we had to have all the functions pulling together toward a common goal. I think that particular leadership skill and inclination will help Ralph succeed in a similar coordinating task at DHS. Often great leadership is seeing who needs coffee and either making it or getting it made. And when you lead a group, you want them to feel you are making each person and the team better. That way, what you worked on is sustained long after you have left.

At GSA, Ralph's leadership showed in the same way. We were pretty driven to develop leaders at every level. Ralph succeeded, in my eyes, because his people succeeded. I believe you have a recommendation from Paul McDermott. Listen to Paul. He was a very good employee at GSA. Working under Ralph's leadership, he became even better. I loved seeing Paul accomplish great things and set an example for others.

Ralph has a valuable set of experiences to draw from. I hope you will confirm him quickly.

Please feel free to contact me if you'd like to discuss further.

Sincerely yours,

Dave Barram

David J. Barram

djbarram@comcast.net

Gilles W. Burger
15109 Vicars Way
Darnestown, Maryland 20878

August 31, 2009

The Honorable Joseph Lieberman
Chairman, Homeland Security
& Governmental Affairs Committee
United States Senate
Washington, DC 20510

Dear Senator Lieberman:

It is my distinct pleasure to write you today and humbly urge you to support my friend and colleague, Rafael Borras, President Obama's nominee to the Department of Homeland Security's Under Secretary for Management.

Montgomery County (Maryland) Executive Isiah Leggett appointed both Rafael and I as two of Montgomery County's five Ethics Commissioners in late 2007. My association with Rafael started the day we met in our confirmation hearing. Rafael has impressed me as one of the most thoughtful, insightful, pragmatic, and creative minds I have ever associated with in my decades-long voluntary performance in government service. Although most of our work on the Commission is in closed session, I can tell you my colleagues and I routinely engage in active, spirited, and respectful deliberations. It is common that Rafael's attention to details introduces aspects of issues that enrich the thoughtfulness of our discussions and ultimate conclusions we make when we address ethics issues brought before us.

The Department of Homeland Security has many challenges of management transformation and I believe the time is right for someone to fulfill this role that has the creativity, energy, and fearlessness in thinking outside the box as Rafael has. I am confident Rafael will do the American people proud and I know your Committee will greatly value Rafael's contribution, energy, and performance as I currently do on the Ethics Commission. Rafael is an individual of great talent and I respectfully submit he is the perfect individual for this great challenge.

Please support the confirmation of President Obama's nomination of Rafael Borras to the position of Under Secretary for Management of the Department of Homeland Security. I would be honored to either clarify or provide additional information if you wish. You can contact me on my cell phone (301) 717-0732 at any time.

Sincerely,

Gilles W. Burger

Gilles W. Burger

Congressional Hispanic Caucus

United States Congress

Washington, DC 20515

CHAIRWOMAN

NYDIA M. VELAZQUEZ

12TH DISTRICT, NEW YORK

July 29, 2009

The Honorable Joseph Lieberman
Chairman
Senate Committee on Homeland
Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Susan Collins
Ranking Member
Senate Committee on Homeland
Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Lieberman and Ranking Member Collins;

On behalf of the Congressional Hispanic Caucus (CHC) we write to express our support for Rafael Borras as the Under Secretary for Management at the Department of Homeland Security. Mr. Borras' long career in both government and the private sector to DHS as a city management official, federal government senior executive and business manager, make him a candidate who is more than qualified for this position.

During the Clinton Administration, Mr. Borras served as a Regional Administrator of GSA's Mid-Atlantic Region. During his tenure, he successfully managed the organization, providing federal customer agencies with real estate services; supply and procurement, vehicle acquisition, and leasing services; and information technology telecommunications services. Prior to serving in this position, he served as Deputy Assistant Secretary for Administration in the U.S. Department of Commerce. In that position he was responsible for overseeing the department's financial, personnel, information technology, budget, administrative services, acquisition, grants, and Equal Employment Opportunity functions. Mr. Borras was responsible for the department's finances, personnel, IT, acquisition and grants—including 375 employees and a $3.8 billion budget.

Rafael Borras has proven himself to be efficient in providing direction and oversight as a management official and for this reason the CHC fully endorses Mr. Borras for the position of Under Secretary for Management. We feel that his relevant experience and excellent track record in improving procurement opportunities for small and minority businesses, alongside his many other accomplishments will make him successful in this position. We urge the Senate Homeland Security Committee to approve his nomination and look forward to a vote of the full Senate prior to the August recess.

Sincerely,

Nydia M. Velasquez
Chair
Congressional Hispanic Caucus

Charles A. Gonzalez
1st Vice Chair
Congressional Hispanic Caucus

2466 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2410

NOT PRINTED AT TAXPAYER'S EXPENSE

Dear Senator Lieberman,

I am writing to you in support of the confirmation of Mr. Ralph Borras for the position of Under Secretary for Management at the Department of Homeland Security. In 1996, Mr. Borras as the Regional Administrator of the Mid-Atlantic Region of the General Services Administration, selected me for the position of Assistant Regional Administrator. I worked as a direct report to Mr. Borras for approximately 4 years. There were a number of reasons it was an excellent experience to work under his leadership. Primarily it was because Mr. Borras embodied the characteristics of an outstanding leader: Integrity, Character, Creativity, Strategic, Visionary, Emphasis on Team, etc. These qualities coupled with his tireless work ethic and high energy made him the perfect role model for all of the employees in the Mid-Atlantic region to look up to as their leader. Regrettably, much too frequently, people in leadership positions are anything but leadership role models. Well, Mr. Borras was the exception and because of his leadership, the Mid-Atlantic region excelled on his watch.

After Mr. Borras selected me to be the Assistant Regional Administrator, I knew that I was taking over an average organization. I also knew that to take that organization to excellence was going to involve a significant culture change with all of the problems that go along with change management. During this overhaul, Mr. Borras consistently provided me with sound advice and guidance and strong support. When I was confronted with a difficult challenge, Mr. Borras was always available and willing to give me his perspective and share his wisdom with me. This journey from an average organization to an excellent organization took a few years and Mr. Borras' fingerprints can be found all over the final product. Some key outcomes were the Gallup Corporation measured this organization to be in the top 1% of government and industry for level of engagement of the employees. Customer satisfaction was found to be a 4.7 on a scale of 1 to 5 with 5 being the best. Also, as a fee for service organization, we were financially in the black every year. During Ralph's tenure, the organization received awards for Acquisition Excellence for the innovative approach in which those acquisitions were conducted. The Department of Homeland Security as well as the American Citizen would be very fortunate to have someone of Mr. Borras' caliber be an Under Secretary for Management for the Department of Homeland Security. This Department is faced with many difficult challenges going forward such as improving their acquisition process and employee morale and I have seen Mr. Borras accomplish these types of challenges in an outstanding manner in the past. This position requires high energy, integrity, resiliency, emotional intelligence, innovation, etc., all qualities which Mr. Borras has consistently demonstrated in the past. It's almost as if every job Mr. Borras had in the past was meant to prepare him to step in and perform at an extremely high level on day 1 as Under Secretary.

I am very respectfully asking you to support the confirmation of Mr. Ralph Borras to the position of Under Secretary for Management at the Department of Homeland Security. If you have any questions, I can be reached at 267-252-7947.

Thank you,

Paul Mc Dermott

Paul Mc Dermott
2410 Poplar Rd
Havertown, Pa 19083

August 11, 2009

The Honorable Joseph Lieberman
Chairman, Homeland Security
& Governmental Affairs Committee
United States Senate
Washington, DC 20510

Dear Senator Lieberman:

I am writing in support of the confirmation of Rafael Borras to the position of Under Secretary for Management in the Department of Homeland Security. I worked closely with Ralph in the mid-1990's, while I served as the Deputy Chief Financial Officer and he served as the Deputy Assistant Secretary for Management at the Department of Commerce.

At Commerce, Ralph served in the Office of the Secretary and was responsible for providing direction and overseeing Departmental financial management, grant management, travel management, budgeting, acquisition management, human resources management, and management of very large information technology projects. He had several Senior Executives reporting to him, including myself. I worked with and for him for about three years while he and I were both with the Department. Ralph and I had a great relationship while we were both at Commerce. In his role as Deputy Assistant Secretary for Management, he regularly discussed with me the status of projects that were in my area of responsibility.

One huge initiative that we undertook while we were both at Commerce was the development of rigorous and comprehensive requirements for a commercial off-the-shelf financial management system to replace the many systems in operation within the Department. We also completed an extensive procurement process to select the new system, set up an Implementation Center with the responsibility to coordinate with the many bureaus in the Department to develop an implementation strategy, implement the system, and provide training as to how program managers and staff were to interface with the new system. One important component of this new system was a feature we began developing called the Enterprise Reporting System (EARS) which was a major decision support system. Through this system, the Department could consolidate accounting, budget, procurement, performance, and human capital data into a single environment for the CFO, the Secretary, and senior officers throughout the Department. The system provided touch screen access with drill-down capability for use of personnel in Commerce, extremely advanced features at that time.

Another significant initiative undertaken under Ralph's leadership was the evaluation of the use of an integrated approach to vastly enhance the entire acquisition lifecycle. To accomplish this, he pulled together teams from business areas of finance, acquisition, and information technology to focus the

success of the acquisition process on the outcome of the program rather than measuring the time it took to complete the procurement. We called this program Concept of Operations or CONOPS for short.

I can attest to the fact that Ralph's management style was one of encouragement and one that painted a vision and direction for management within the Office of the Secretary and the many bureaus within the Department. In my dealings with him, he was not one to micromanage me or the other office directors reporting to him. As a direct result of his management style, the management within the Office of the Secretary was considered to be extremely effective and the projects we were responsible for were successfully delivered.

Based on my working relationship with Rafael Borras at the Department of Commerce, I know that he will do an outstanding job as Under Secretary for Management in the Department of Homeland Security. I therefore ask that you support his confirmation to this extremely important position. I would be happy to further discuss his qualifications and capabilities with you or with a member of your staff, if you desire. I can be reached at (504) 888-4155.
I am writing in support of the confirmation of Rafael Borras to the position of Under Secretary for Management in the Department of Homeland Security. I worked closely with Ralph in the mid-1990's, while I served as the Deputy Chief Financial Officer and he served as the Deputy Assistant Secretary for Management at the Department of Commerce.

Sincerely,

Clyde G. McShan, II
5500 Toby Lane
Kenner, LA 70065

RICHARD S. MROZ
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HADDONFIELD, NEW JERSEY 08033

PHONE: (856) 261-3066
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August 3, 2008

The Honorable Joseph Lieberman
Chairman, Homeland Security
& Governmental Affairs Committee
United States Senate
Washington, DC 20510

RE: Rafael Borras

Dear Senator Lieberman:

You may recall that we had a number or meetings in the summer and fall of 2008. I served as the State Campaign Coordinator for Senator McCain. We met on the several tours that you made to New Jersey along with John McCain and I always enjoyed speaking with you. I also know you are willing to take actions that are good for this country.

I am writing to provide you with some background about Rafael Borras who has been nominated to the position of Under Secretary for Management in the Department of Homeland Security and I would encourage you to support the nomination and vote to confirm Mr. Borras. I believe that his service will be a good thing for the President, for the Department and ultimately for the people of this country.

Mr. Borras, who goes by the nickname of Ralph, is a truly good person with great experiences in business and excelled in public service at the federal and local government levels. He is truly a professional in conducting his affairs. I came to know Ralph in business when I worked to consult with him and his colleagues at URS. He always conducted himself with integrity and initiative. However, I came to know his background as a recognized administrator in his prior government service. I have no doubt that he will serve in this new capacity at the Department of Homeland Security with integrity and competency.

I ask that you support the confirmation of Ralph Borras to the position of Under Secretary for Management in the Department of Homeland Security. Should you or your staff wish any additional information or need to discuss this matter please contact me at the number or email address above.

Very truly yours,

RICHARD S. MROZ

RSM/me

Senate
OF PUERTO RICO

Hon. Thomas Rivera Schatz
PRESIDENT

August 4, 2009

The Honorable Joseph Lieberman
Chairman
Homeland Security and
Government Affairs Committee
706 hart Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I hereby respectfully recommend Mr. Rafael Borrás for the position of Under Secretary for Management at the Department of Homeland Security.

Mr. Borrás is a dedicated professional, who has worked with integrity and honesty, demonstrating throughout his career in government a genuine commitment to his work and our nation's wellbeing. Rafael Borrás has served as Regional Administrator for the Mid-Atlantic Region of the U.S. General Services Administration. In addition to holding other high-ranking government management positions, he also served as Deputy City Manager in the City of Hartford, Connecticut, where he was responsible for the departments of finance, police, fire, code enforcement, information technology, purchasing, budget, and human relations.

Given his upstanding character, knowledge and vast experience, I wholeheartedly recommend Mr. Rafael Borrás to be our next Under Secretary for Management at the Department of Homeland Security.

I thank you for your kind consideration in this regard.

Sincerely,

Thomas Rivera Schatz

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