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U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA

v.

STEVEN J. ROSEN and
KEITH WEISSMAN,

Defendants.

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CRIMINAL CASE NO. 1:05CR225
The Honorable T.S. Ellis, III

**DEFENDANTS' NOTICE OF SUPREME COURT DECISION RELEVANT TO
DEFENDANTS' JOINT MOTION TO DISMISS THE SUPERSEDING INDICTMENT**

Defendants Steven J. Rosen and Keith Weissman, through counsel, respectfully submit the following notice of the Supreme Court's May 30, 2006, decision in *Garcetti v. Ceballos*, -- U.S. -- (Slip Op. May 30, 2006). While *Ceballos* arises out of a different context (i.e. a § 1983 lawsuit based on retaliatory employment actions) than the matter presently before the Court, it is informative on the First Amendment issues raised in the Defendants' Joint Motion to Dismiss the Superseding Indictment, particularly the distinction between the constitutionally permissible regulation of speech of government employees versus that of private citizens.

In *Ceballos*, the Supreme Court held that the First Amendment does not insulate speech by government employees from employer discipline when those employees make statements pursuant to their official duties. Slip Op. at 5. The Court's conclusion was premised on a clear distinction between the speech of government employees and non-government employees for purposes of the First Amendment; the Court reaffirmed that the speech of public citizens is

deserving of a greater degree of protection. Slip Op. at 8-11. This distinction has been central to the defendants' First Amendment as applied and substantial overbreadth claims.

Ceballos confirms the defendants' argument that while it may be proper to sanction a government employee for certain types of speech, the First Amendment does not allow the government to punish subsequent oral transmissions by non-government individuals. The Motion to Dismiss should be granted.

Respectfully submitted,

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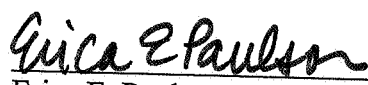
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Dated: June 2, 2006

CERTIFICATE OF SERVICE

I certify that I hand-delivered Defendants' Notice of Supreme Court Decision Relevant to Defendants' Joint Motion to Dismiss the Superseding Indictment to the following on June 2, 2006:

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