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January 18, 2006

BY FEDERAL EXPRESS

The Honorable Colleen McMahon
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, New York 10601

Re: Steven J. Hatfill v. Donald Foster, et al., 04 Civ. 9577 (CM) (GAY)

Dear Judge McMahon:

Enclosed please find a courtesy copy of Non-Party Department of Justice's Memorandum of Law in Opposition to Condé Nast Publications's Motion to Compel. We are also enclosing a declaration from the Chief of the Criminal Division of the United States Attorney's Office for the District of Columbia, Stevan E. Bunnell, dated January 18, 2006, which the government respectfully seeks leave to file under seal and ex parte. See Doe v. Ashcroft, 317 F. Supp. 2d 488, 491 (S.D.N.Y. 2004) ("Documents filed with the Court may be sealed 'if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" (quoting In re New York Times Co., 828 F.2d 110, 117 (2d Cir. 1987))). The declaration contains information revealing of the on-going investigation into the anthrax mailings of 2001 and related grand jury proceedings, and thus cannot be filed publicly. In addition, we have provided a Sealed and Impounded Record envelope for the declaration. Should the Court deny the request to file the Mr. Bunnell's declaration under seal and ex parte, we respectfully request that the declaration be withdrawn rather than placed on the public record.

We will also make available for the Court's review an ex parte declaration from Michael A. Mason, the Acting Executive Assistant Director for Administration of the FBI ("EAD") and former Assistant Director In-Charge of the FBI's Washington Field Office, dated January 18, 2006. This declaration contains information classified at the "SECRET" level, and thus cannot be disclosed publicly or handled by court personnel who lack the requisite security clearance. The declaration also contains detailed information concerning the investigation into the anthrax mailings of 2001. The declaration is in the possession of Andrew O'Toole of the United States Attorney's Office for the Southern District of New York and will be delivered for review by the

Court upon request to Mr. O'Toole. Finally, we respectfully request leave to file this letter on the docket.

We thank the Court for considering these requests.

Respectfully submitted,

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