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The Dismissal of FCPA Charges Against Gautam Adani – and new insights into Rule 48(a) and its use by the Trump Department of Justice

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On August 10, 2026, Judge Nicholas Garaufis of the Eastern District of New York (EDNY) granted in part a motion by the Department of Justice (DoJ) under F. R. Crim. P. 48(a) to dismiss an indictment charging Gautam Adani and others with massive corruption, fraud, and obstruction of justice. Judge Garaufis' 47-page opinion provides a stunning insight into the current administration's handling of cases under the Foreign Corrupt Practices Act (FCPA); his obvious disdain for, and lack of trust in, the DoJ impelled him to reframe Rule 48(a) dismissals to ensure a vigorous judicial oversight of the DoJ, and essentially gives little or no presumption of regularity to its acts.

The Indictment

On October 24, 2024, a few weeks before the 2024 election, during the presidency of Joseph Biden, a Grand Jury in the EDNY returned an indictment of Mr. Adani and several others charging them, in strong language and significant detail, with massive corruption by making huge bribes to officials in India to permit certain business transactions, with fraud against their investors and others, and with various forms of obstruction of justice. Shortly thereafter, the Securities & Exchange Commission (SEC) filed civil enforcement actions against Adani and others that were deemed to relate to the "same transactions or events" as the criminal case. All of the defendants in the criminal case are non-US citizens not living in the United States; for more than a year and a half, no one appeared in the case and there was no activity in it.

Shortly after the indictment was filed, Donald Trump was elected President. As noted in the press, but also as colorfully summarized by Judge Garaufis in his opinion, Mr. Adani immediately took note of this in at least three publicly confirmed ways. First, within hours of the election Mr. Adani issued the first of several posts describing Trump as the "one person on Earth who stands as the embodiment of unbreakable tenacity, unshakeable grit, relentless determination and the courage to stay true to his beliefs…" Second, he followed this post with others claiming that in light of Trump's election, "the Adani Group is committed to leveraging its global expertise and invest $10 billion" in U.S. infrastructure projects. And third, in August 2025 he retained Robert Giuffra, a noted U.S. securities lawyer who has also served as Trump's principal personal lawyer in, among other things, the appeal from his own criminal conviction.

The Motion to Dismiss

From the material submitted to Judge Garaufis and summarized in his opinion, we learn in some detail that Mr. Giuffra and his firm Sullivan & Cromwell expended significant energy preparing presentations to the DoJ demanding that it dismiss the charges against Mr. Adani. These efforts included a 118 page letter outlining their

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arguments plus a 12-page "supplemental submission," a 95-page slide deck presented in February 2026 (as well as a copy of an even longer slide deck presented to the SEC) and a further 35-page slide deck presented in April 2026. They also submitted more than 200 pages of expert reports relating to "U.S. and Indian subject matters."

On May 18, 2026, the DoJ filed a motion under F. R. Crim. P. 48(a) asking that the indictment against all of the defendants be dismissed with prejudice. The motion was signed by R. Trent McCotter, who had joined the DoJ in January 2026 as Principal Associate Deputy Attorney General after a career that Judge Garaufis took pains to note appears not to have included significant experience with criminal justice, and by the U.S. Attorney for the EDNY. The motion was very brief, noting principally that "The Department of Justice has reviewed this case and has decided, in its prosecutorial discretion, not to devote further resources to these criminal charges against individual defendants." It added that "No defendant has appeared. Counsel for all defendants consent to this relief."

In three lengthy and detailed footnotes to his subsequent opinion, Judge Garaufis noted that the motion to dismiss, and the settlement of the SEC actions as well as of an action by the Office for Foreign Assets Control, had caused significant controversy in the press and elsewhere about the possible "transactional" nature of the requested actions in light of Mr. Adani's statements about Trump, his retention of Trump's personal lawyer, and a reported meeting between Mr. Adani and Trump's eldest son Donald Trump Jr.

A month after the Rule 48(a) motion was filed, and in the apparent absence of any request from the Court (or indeed any procedural step at all appearing in the docket), Mr. Adani's attorneys submitted an eight-page letter asking Judge Garaufis to grant the DoJ's motion, as well as an application by the SEC to enter agreed-upon Consent Judgments. The letter emphasized that the Court should defer to the prosecutor's exercise of discretion, and added considerable detail (presumably drawn from the firm's lengthy submissions to the DoJ) why that discretion had been appropriately executed.

There followed a rather extraordinary series of filings that led to Judge Garaufis's final decision on the motion.

Two days after receiving counsel's letter, Judge Garaufis issued a five-page order noting that "the Government's terse, bland, and conclusory statement affords the court neither a sufficient basis to reach any conclusion, nor the opportunity to conduct any analysis of the Government's request for dismissal," adding further that "the Government has failed to meet its obligation to supply adequate reasoning and sufficient facts to support dismissal of the Indictment." He directed the Government "to advise the court of each reason for dismissing the Indictment with prejudice as against all Defendants and to provide the court with sufficient factual support for each basis."

This was followed by further colorful filings, including:

- A ten-page letter from Mr. McCotter arguing that Judge Garaufis should not inquire into the prosecutor's exercise of discretion at all, but purporting to provide six "overlapping" bases for dismissing all of the charges, as well as several additional, "charge-specific" reasons for the dismissal of each specific charge.
- An affidavit from Mr. Adani himself, responding to a direct request from the court, denying that there had been any "quid pro quo" relationship between his statements about making US investments and the motion to dismiss.
- An affidavit from Mr. Giuffra – which Judge Garaufis emphasized had <u>not</u> been requested, and in fact was not appreciated – summarizing and repeating the arguments he had made why the criminal action should be dismissed.
- An email from US Attorney Nocella relating to his very limited participation in the case.

Judge Garaufis's opinion.

Ultimately, Judge Garaufis granted the Rule 48(a) motion and dismissed the indictment, with prejudice, as to the three defendants, including Mr. Adani, who had appeared in the case (but not the claims against several "non-appearing defendants"). Remarkably, however, he did so only after examining in detail each of the many "bases" (or reasons) for dismissal proffered by the DoJ, all but one of which he rejected; the dismissal was based solely upon a single one of the many explanations the DoJ offered to explain its abandonment of the prosecution. Such a review appears to be literally unprecedented; if followed, it could have major implications for the administration of federal criminal justice. At a minimum, it reflects very badly on the administration of justice by the current DoJ.

Key to Judge Garaufis's analysis was his explanation of his role as a judge reviewing a Rule 48(a) dismissal. He noted that in the federal system, the prosecutor has essentially unreviewable discretion whether or not to prosecute, but that once a grand jury returns an indictment "the prosecution is no longer entirely within the realm of . . . [E]xecutive authority." He emphasized in particular that Rule 48(a) requires "leave of the court" before an indictment can be dismissed, reasoning that the inclusion of this language "contemplates exposure of the [government's] reasons for dismissal in order to prevent abuse of the uncontrolled power of dismissal previously enjoyed by prosecutors". Under this interpretation of the Rule, a federal prosecutor seeking dismissal of an indictment must provide "a statement of reasons and underlying factual basis" for each dismissal. In response, the court must follow a two-step process: first to determine whether "the proffered reasons are the real reasons for the dismissal," and second, with respect to each proffered reason found to be "real," "(a) whether the government has provided 'sufficient factual information,' and if so, (b) whether that particular reason is 'substantial.'"

On the first step, he concluded with little discussion that he was "satisfied that Defendant Gautam Adani's $10 billion investment promise was, in fact, a 'non-consideration,'" and that the "real" reasons for the dismissal were those listed by Mr. McCotter, whom he found to be the "sole decision-maker."

The heart of Judge Garaufis's opinion then consists of a remarkably detailed analysis of the six "general" reasons claimed by Mr. McCotter as the basis for the demand for dismissal, and then of the claimed bases that were "charge-specific." Remarkably, he rejected every single one of the general bases, and all but one of the charge-specific ones.

At risk of obvious oversimplification, the six general bases argued by Mr. McCotter could be summarized as follows:

1. This was a "foreign case."
2. India had found no actionable conduct.
3. Not a penny was lost.
4. The Biden administration had created a "potential quagmire" by bringing the case.
5. The case had extraordinary proof problems.
6. The defendants have not appeared and probably never would.

In each instance, Judge Garaufis found either that the argument was "unsupported" by the "speculative" facts that had been submitted (and in some instances was contradicted by factual assertions in the indictment), or that the argument was "insubstantial." Much of the discussion focuses, by name, on the weakness of the arguments made by Mr. McCotter ("McCotter gives the court no way to evaluate the veracity of his statement"), for whom the Judge clearly had little respect ("McCotter's baseless assertion [that the Biden administration had created a 'quagmire'] is unbecoming of his office. It is also inconsistent with this court's experience.")

The Judge then turned to the "charge-specific" reasons proffered by Mr. McCotter, and rejected all but one of them. Specifically, he found that Mr. McCotter had not demonstrated that this was a non-domestic, "extraterritorial" prosecution under *Morrison v. Nat'l Australia Bank,* 561 U.S. 247 (2010), nor even that the case fell within the most recent prosecutorial guidelines in the so-called "Blanche memorandum" issued by the DoJ on June 9, 2025, limiting

FCPA prosecutions (the proffered reasons "do not plausibly satisfy any of the bases given in the Blanche Memorandum.")

The only basis upon which Judge Garaufis sustained the DoJ's motion was with respect to its argument that the alleged fraudulent misstatements attributed to Mr. Adani and others were mere "puffery" rather than actionable fraud: "[T]he alleged misrepresentations appear to be so broad as to qualify as inactionable puffery," thus sustaining the dismissal of the substantive charges against Adani and the other appearing defendants.

Analysis

Because Judge Garaufis ultimately dismissed the indictment as to those defendants who have appeared, there does not appear to be any basis for an appeal of his decision; had he refused to dismiss, both sides undoubtedly would have appealed and subjected his reasoning to review by the Second Circuit.

In his conclusion, Judge Garaufis made some effort to limit his ruling to the specific "irregularities" of Principal Associate Deputy Attorney General McCotter, who "appears to have eschewed the professional opinions of innumerable officials from various federal offices and replaced them with his singular judgment." But the intensity and depth of Judge Garaufis's analysis compel a conclusion that he intended his opinion to have a broader impact than simply a criticism of one official's performance.

The most far-reaching possible impact of the opinion is on the proper interpretation of Rule 48(a) and in particular the extent of the judicial review permitted by its "leave of the court" requirement. This is extremely important because federal prosecutors regularly negotiate outcomes by setting conditions in exchange for their promise to seek a Rule 48(a) dismissal. If their ability to actually obtain a dismissal is limited by the kind of intensive and detailed review adopted by Judge Garaufis – theoretically *sua sponte*, but almost certainly in response to public outcry about the motion -- their bargaining position will be diminished because their negotiation partners will now have to evaluate a risk that any deal they make might be rejected – and will be concerned about whether their private negotiating efforts, like those of Mr. Giuffra, will become public.

The extent, depth, and searching detail of Judge Garaufis's review are simply without precedent. In 2020, Judge Emmet Sullivan of the District of Columbia was faced with a similar problem when the local United States Attorney moved under Rule 48(a) to dismiss the indictment against former National Security Adviser Michael Flynn, who had pleaded guilty to having made false claims to an agent of the FBI. And in 2025, the DoJ moved to dismiss the SDNY indictment of New York City Mayor Eric Adams. Both applications created furors where many perceived that the motions were part an illicit deal by the Trump Administrations to reward a political ally, and each judge was under pressure from the public and several *amici curiae* to reject the Rule 48(a) motions, or at least inquire into their legitimacy. Judge Sullivan ultimately was relieved of this challenge when President Trump issued a pardon of Flynn. In the *Adams* case, Judge Dale Ho wrote a careful opinion –referenced by Judge Garaufis – in which he concluded that even though "many of the arguments" expressed opposing the Rule 48(a) motion "have merit," separation of the powers issues nonetheless constrained him to dismiss the indictment. A key element of his reasoning was that as a practical matter he really had no choice because "A court cannot force the Department of Justice to prosecute a defendant" if it declines to do – a point curiously not raised by Judge Garaufis. Interestingly, both Judges Sullivan and Ho, noting the absence of an adversarial process when both sides were in agreement, appointed an *amicus curiae* to provide an independent perspective; in contrast, Judge Garaufis seemed quite comfortable with his role providing a careful judicial review of the prosecutor's acts.

Judge Garaufis's startling opinion posits an extreme realignment of the respective roles and powers of the judicial and executive branches when a prosecutor decides to dismiss an indictment. Going forward, it is difficult to imagine a norm where every federal prosecutor seeking a dismissal is subjected to the detailed scrutiny Judge Garaufis employed here. Rather than a proposal for systematic change, his opinion is a bold and impassioned reaction to what he perceived to be systematic impropriety by the DoJ under President Trump, and essentially

signals his view that this DoJ can no longer rely on any presumption of regularity for its acts. While he focused on the hapless Mr. McCotter, anyone reading his opinion would know that McCotter was not acting on his own or in violation of the DoJ's current policies.