

**EXHIBIT “A”**

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June 15, 2017

Hon. Bridget M. Rohde  
United States Attorney  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, NY 11201

Re: FOIA Request; LIRR fraud prosecution declined by  
the EDNY.

Dear Ms Rohde,

As the attorney for Joseph Rutigliano, a former LIRR conductor who was convicted in the SDNY of fraud allegations involving the U.S. Rail Road Retirement Board ("RRB"),<sup>1</sup> this FOIA request seeks the production of the Declination of Criminal Prosecution memoranda generated by your office<sup>2</sup> and related supporting documents records, which explain the reasons your Office declined to bring a criminal prosecution following an investigation based upon

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<sup>1</sup> *United States v. Rutigliano*, 790 F.3d 389 (2d cir.2015)

<sup>2</sup> See: USAM 9-2.001 ("Whenever a case is closed without prosecution, the United States Attorney's files should reflect the action taken and the reason for it.")

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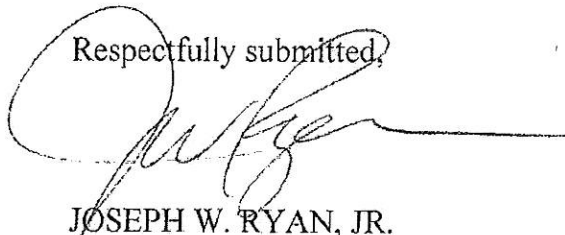
media-generated allegations of fraud committed by LIRR retirees, including Mr. Rutigliano, upon the RRB.

The SDNY prosecution acknowledged that your office had previously declined prosecution after an EDNY investigation.<sup>3</sup> That acknowledgment was contained in an Opposition to a defense pre-trial motion filed with the Court, a copy of which is attached.

Please note the procedure outlined in EOUSA Resource Manual section: “3-17.130 - Procedure for Requests Under FOIA Received by the U.S. Attorney's Office.”

Thank you for your prompt attention.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Ryan', is written over a horizontal line. The signature is fluid and cursive.

JOSEPH W. RYAN, JR.

cc: Joseph Rutigliano

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<sup>3</sup> SDNY 11-1091, Dkt. No. 274 at 88 (“the EDNY conducted an investigation of this case, and ultimately did not file charges”)

**Excerpt United States v. Rutigliano,  
SDNY 11-1091 Dkt. No. 274 at 88-88**

**6. Opinion Work Product in the Possession of the EDNY**

Both Lesniewski and Ajemian seek the disclosure of materials relevant to the decision not to prosecute made by the EDNY. (*See* Lesniewski Mem. 6-7; Ajemian Mem. 14-16). As noted (and as the defense is well aware), the EDNY conducted an investigation of this case, and ultimately did not file any charges. Subsequently, this Office initiated its own investigation. Thus, there never was any collaborative or joint investigation, in which decisions were made in concert or in consultation. Nevertheless, this Office did make a request of the EDNY that it provide fact materials it gathered in its investigation to the SDNY, including grand jury documents and interview memoranda. That request was honored, and those materials were obtained and thereby did come into the possession of the SDNY. Those documents have been produced as appropriate. If there remain any such materials within the possession of the EDNY, this Office is not aware of it. To be clear, the SDNY did not request, and generally has not received the EDNY's work product, such as, for example, opinions of the prosecutors as contained in memoranda and emails.

However, to the extent the defense seeks the opinions of prosecuting attorneys regarding the declination of the EDNY to prosecute, such materials need not be disclosed for the reasons set forth above. *See, e.g., Kohring*, 637 F.3d at 907; *Williamson v. Moore*, 221 F.3d at 1182-83; *United States v. NYNEX Corp.*, 781 F. Supp. 19. In short, this request is moot to the extent it

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seeks production of discoverable materials in the Government's possession; the motion should be denied to the extent it seeks any non-discloseable opinion work product, much less work product that is not even within the prosecution team's possession.

In sum, the Government emphasizes that it takes its *Brady* obligations seriously. As set forth above, where the Government knows, or has reason to believe, the RRB or any other agency possesses exculpatory information about a criminal defendant, the Government would seek to obtain that information — as it has done and will continue to do. But *Brady* would be pushed well past its breaking point if the Government were required to honor a blanket request that it conduct an exhaustive review for some speculative exculpatory material — identical in kind to that already disclosed — within the vast amount of data storehoused by various independent Government agencies outside the prosecution team. Accordingly, there is no need for any Court order regarding production of *Brady* materials. The defendants' motions should therefore be denied.