



**“Fairfax County, Virginia:
The Dangerous Consequences of Sanctuary Policies”**

TESTIMONY OF

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Hearing Before

The Subcommittee on Immigration Integrity, Security, and Enforcement

The Committee on the Judiciary

United States House of Representatives

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Thank you, Mr. Chairman and Ranking Member Jayapal, for inviting me to participate in today's hearing. This hearing is timely because the tragedy is no longer theoretical.

My name is Sean Kennedy. I serve as president of Virginians for Safe Communities, a nonprofit public-safety and victims' rights advocacy group based in Fairfax, Virginia. I am also an appointed member of the Fairfax County Criminal Justice Advisory Board.

My home county of Fairfax is a so-called "sanctuary" jurisdiction. The County Board of Supervisors adopted and enforces an official "Trust" policy. The elected sheriff refuses cooperation with ICE. And the county's chief prosecutor, Commonwealth's Attorney Steve Descano, blocks cooperation with immigration enforcement and actively seeks to avoid "collateral immigration consequences."

Calling these policies "sanctuary" policies is disingenuous. Sanctuary means "refuge," "safe haven," or a place where immunity or asylum is granted. The legal concept of sanctuary, like the origins of the word itself, connotes protection afforded inside a holy place. In the medieval context, sanctuary was granted to accused criminals from extrajudicial or extreme punishment, but it was usually temporary. The place of sanctuary then required the fugitive to leave the country or face justice.

True sanctuary should be afforded to the innocent and defenseless, not violent offenders and sexual predators. I invite this body to debate how we enforce our immigration laws. But in that debate, do not lose sight of who these sanctuary policies protect and who they abandon.

The vast majority of victims of criminal aliens are immigrants themselves. You are not defending immigrants, human dignity, or the Constitution when you support policies that shield dangerous offenders from prosecution and removal. You are defending heinous foreign criminals who prey on the innocent immigrants you claim to help.

Those victims deserve justice, safety, and protection. They deserve a government that stands between them and the monsters who walk among us. When we fail to uphold that obligation, we fail as a nation, as a government, and as human beings.

Make no mistake: Fairfax County officials are failing to uphold their oaths and their moral duty to the public.

I am heartened that members of both political parties and members of this committee agree that shielding dangerous criminal aliens from prosecution and eventual removal is unsafe and unacceptable.

Virginia Governor Abigail Spanberger "strongly believes violent criminals who are in the United States illegally should be prosecuted to the fullest extent of the law and deported," according to her official spokesperson.

Congressman Jamie Raskin stated last year that, “Those who commit horrific violent crimes like these must be prosecuted to the fullest extent of the law.”

Congresswoman Pramila Jayapal said: “Any person convicted of serious crimes should be held accountable.”

Unfortunately, that bipartisan consensus does not extend to the chief prosecutor’s office in Fairfax County.

According to Mr. Descano’s own words and policies, the Office of the Commonwealth’s Attorney for Fairfax County is abetting dangerous, violent offenders precisely because they are illegally present. Mr. Descano may cloak his policies in progressive principles, but they show a depraved indifference to human life.

The case of Hyrum Baquedano-Rodriguez shows what these policies mean in practice.

At about 4 o’clock in the morning on June 15, 2023, a 4-year-old girl was asleep in a ground-floor apartment at the Wedgewood on Little River Turnpike in Annandale, Virginia. She was sharing a room with her mother. According to the court’s statement of facts, a man entered through a window and attempted to take the child. The girl later said a “big man” had grabbed her. During a forensic interview the next day, she disclosed that the man picked her up by her torso and removed her from her bed. Police found a shoe print on a cushion near the window, wet shoe prints leading directly to the child’s bed, a handprint on the window, and latent prints outside and inside the window. Forensic analysis matched a thumb print and partial palm print to Hyrum Baquedano-Rodriguez.

This was not an abstraction. It was not a policy dispute in a committee room. It was a mother waking to her daughter screaming. It was a child dragged from her bed. It was a family left to live with the terror that the man who entered their home had been watching them.

Annandale Today reported days after the attack that the child remained traumatized. “She grinds her teeth in her sleep,” her mother Christy said, “and she’s afraid to go to the bathroom by herself.” Christy, a single mother, said, “I can’t sleep. I have to move out of this complex.” Her account was chilling in its simplicity. Her daughter woke up screaming. The blinds slammed and rattled as the intruder escaped through the same window he used to enter. When Christy asked what happened, the child said, “he grabbed me to the living room. It was a big boy.”

In the words of Fairfax County Circuit Judge Randy Bellows, the crime was a “parent’s worst nightmare.” But as the judge continued, a “criminal justice system that cannot protect a four-year-old child in such circumstances is a failure.”

The system did not fail that girl in the abstract. Fairfax Commonwealth’s Attorney Steve Descano did. The events of that night should never have happened.

The man arrested for the crime is Honduran national Hyrum Baquedano-Rodriguez.

According to ICE, Baquedano-Rodriguez first entered the United States illegally near Yuma, Arizona, in August 2018 and was released on immigration bond by a DOJ immigration judge in January 2019. At some point, he made his way to Fairfax, Virginia. Within six months, he was cited for buying tobacco under 21 and fined.

Then, in September 2021, Mr. Baquedano-Rodriguez allegedly committed “indecent liberties with a child” on two separate occasions and committed a separate incident of “indecent exposure” five days later. A month after that, he allegedly committed “indecent liberties with a child” yet again and was arrested on November 9, 2021.

The indecent liberties Class 5 felony charges, each carrying a penalty of up to 10 years in Virginia state prison, were reduced to two misdemeanors: disorderly conduct and contributing to the delinquency of a minor. He was sentenced to six months in jail in October 2022.

But Mr. Descano’s office made that deal although Baquedano-Rodriguez, who had been released before sentencing, had been arrested in July 2022 for two separate breaking-and-entering incidents, possession of burglary tools, and violation of his bail conditions. Tellingly, one of the charges was “destruction of property with no intent to steal.”

What was Mr. Baquedano-Rodriguez doing if larceny was not his objective? Both police and prosecutors knew. Still, Mr. Descano let him walk out of court that day a free man.

Within weeks, Mr. Baquedano-Rodriguez committed another break-in and was back in police custody for a Class 3 felony, “burglary at night to commit a felony,” which carries a mandatory minimum of five years and a potential sentence of 20 years.

Mr. Descano’s sentencing policy orders prosecutors to “make plea offers that avoid the legislatively mandated minimum jail sentence” by offering an amended charge that does not entail those penalties. A potential 20-year sentence became two months for the misdemeanor offense “enter a property to commit damage.”

Again, he did not even serve that sentence because he violated his probation in December 2022. When he was arrested again in February 2023, prosecutors once again dropped those charges, and Mr. Baquedano-Rodriguez walked free. For yet another probation violation, he earned 10 days in April 2023. Then he became a fugitive.

Two months later, Mr. Baquedano-Rodriguez attempted to abduct and sexually abuse that sleeping 4-year-old girl. He was arrested on June 17, 2023, on warrants for burglary, and abduction with intent to defile. The initial charges exposed him to life plus 20 years. Then the Commonwealth began reducing the charges. The burglary charge was amended from a felony carrying up to 20 years to misdemeanor unlawful entry carrying up to 12 months. The abduction charge was stripped of the “intent to defile” language. Later, the indictment omitted the victim’s age, reducing a potential life offense to a Class 5 felony carrying up to 10 years.

By March 2024, Mr. Descano's office had negotiated a plea agreement capping active incarceration at two years. The deal also included a lifetime protective order and no-contact provision. But Judge Bellows saw what every parent can see: protective orders mean little to a defendant who has already shown that he will not obey the law or the orders of a court.

Prosecutors claimed the case was flawed, despite saying the finger and palm prints of Baquedano "clearly prove" he broke into the home that night. Judge Bellows called several of the Commonwealth's justifications "inexplicable and certainly not persuasive."

Judge Bellows rejected the plea. He wrote that Baquedano-Rodriguez came before the court with a "deeply troubling record of unlawful conduct." Five of his six prior misdemeanor convictions had begun as felony charges, including two sex crimes involving minors and three burglaries. All had occurred in the prior three years. The sanctions already imposed, including jail and probation, had not stopped him. He had not even completed his last term of probation when he committed the current offenses.

Judge Bellows concluded that "the defendant has committed a crime of such gravity as being described as posing an existential threat to a child's life, the only goal of sentencing likely to protect the community is a lengthy period of incarceration. This Plea Agreement fell woefully short of that goal."

The Commonwealth's Attorney's Office bounced the case around circuit court for another year before it landed before Judge Susan J. Stoney in May 2025. Judge Stoney was equally alarmed by the proposed sentence, which called for one year and 11 months. With time served, Baquedano-Rodriguez would have walked out of court a free man that day.

Judge Stoney said:

"The court is concerned about the severity of the crime, the fact that the defendant's criminal history indicates a record of other involvement with minors, that the potential sentence here in this case is too lenient, and the court has a grave concern about the interest in public safety."

After the court rejected the plea, Mr. Descano dropped ("nolle prosequi") all charges in what can only be described as a dangerous fit of vindictive pettiness.

Before Mr. Baquedano-Rodriguez was processed out of the Fairfax County jail, the victim's family, who witnessed the court hearing and its aftermath, were stunned.

NBC 4 reported:

Natalie, the little girl's surrogate grandma, attended the hearing representing the family. She knew Baquedano Rodriguez may have been wanted by ICE. So after the hearing, she got on the phone.

"I called the hotline number, and I gave all the information I had to the person on the other end," Natalie said.

When Baquedano Rodriguez walked out of the Fairfax County jail on Friday, ICE agents were waiting for him and took him into custody. ICE says he's been served with an order of removal and is now in their custody in a detention center.

"It was a sigh of relief," Christy said. "I told my family, I said, 'God protected my little girl, but who is going to protect the next one?'"

After two long years, Christy and her family are finally feeling a measure of safety.

For the child victim's mother, the man charged with delivering justice, ensuring safety, and giving her family peace of mind failed them at every turn. Mr. Descano's office offered a criminal alien and child sexual predator extreme leniency. ICE gave that family the protection Fairfax prosecutors denied them. Mr. Baquedano-Rodriguez has been removed from this country.

But the little girl's mother asked the question every public official should answer: Who is going to protect the next one? Certainly not Mr. Descano.

The Fairfax County Commonwealth's Attorney's Office under Steve Descano has chosen to sacrifice victims, often children who suffered horrific sexual abuse, on an altar of ideology.

In December 2020, Mr. Descano adopted an official policy instructing his line prosecutors to consider "collateral immigration consequences" in all charging, plea, and sentencing decisions. The policy lamented the "detrimental impact that deportation/removal has on the families and communities those removed or deported leave behind."

Whose families exactly are Fairfax prosecutors shielding from those consequences?

In a statement to the ACLU, Mr. Descano laid out the meaning more bluntly, writing: "my office will not cooperate with ICE, nor will it notify or alert immigration officials or agencies regarding witnesses, victims, or defendants with whom the office comes into contact."

Note the word "defendants."

On Mr. Descano's own campaign website, which he scrubbed last month after it was publicly reported, he wrote, "If two people commit the same crime, but only one's punishment includes deportation, that's a perversion of justice and not a reflection of the values of Fairfax County."

Mr. Descano defends his policies as "fair, legal, and reflect the values of Fairfax County."

They are not fair. They are not legal. They do not reflect the values of Fairfax County. And Fairfax is less safe since he assumed office.

Mr. Descano operates a two-tier justice system: one for criminal aliens subject to deportation and another for American citizens. In the upside-down world of the Fairfax Commonwealth's Attorney's Office, citizenship confers fewer rights and protections, not more.

This is not one case. There is a broader pattern in which felony charges against illegal aliens are dropped or downgraded in ways that avoid collateral immigration consequences, often using Crespo plea deals. Many of the violent and sexual predators have benefited from Descano's policies have gone on to commit heinous offenses including murder, rape, child sex abuse, and malicious wounding. Through public records and media reports I have been able to identify dozens of these offenders including Abdul Jalloh, Juan Rodriguez Alfaro, Denis Humberto Navarette Romero, Wilmer Osmany Ramos Giron, Marvin Moralez-Ortez, and Maldin Anibal Guzman.

The Virginia Attorney General's office report years' worth of examples involving victims' rights violations, improper plea agreements, Brady and discovery violations, prosecutorial incompetence, and unlawful or unconstitutional office policies. It rightly observes that the Fairfax Circuit Court, which rarely posts its opinions online, took the extraordinary step of issuing a published opinion explaining why the court rejected the Baquedano-Rodriguez plea.

Under the Equal Protection Clause of the United States Constitution and Title VI of the Civil Rights Act, Mr. Descano's "consideration" of immigration status as a basis for charging, plea, or sentencing decisions constitutes discrimination. Further, claims that these policies comport with *Padilla v. Kentucky* are an intentional misreading of the Supreme Court opinion. Padilla recognized an affirmative obligation of defense counsel to inform a client of potential immigration ramifications of a guilty plea. It created no burden, much less an affirmative duty, for prosecutors to inform defendants of immigration consequences or minimize the effect of their convictions and sentences.

For victims, deportation may be the last available form of justice when local prosecutors deny them protection, accountability, and peace of mind.

The "immigration consequences" policies of Fairfax Commonwealth's Attorney Steve Descano have enabled repeat violent and sexual offenders to victimize Fairfax County.

Mr. Descano and Fairfax officials like to say Fairfax County is the safest jurisdiction of its size, but it is demonstrably less safe under his tenure. Justice is perverted and repeat offenders are free to re-offend and re-victimize the community.

crime rose, prosecutions fell, and repeat offenders learned that consequences were negotiable.

The clearest evidence is property crime. According to Virginia State Police data, property crime in Fairfax County rose 9.9% between 2019 and 2024, while it declined 2.2% across the rest of Virginia. That is not a statewide trend washing over Fairfax. It is Fairfax moving in the wrong direction while the rest of the Commonwealth improved.

The same pattern appears in crimes against persons. Fairfax reported 8,243 crimes against persons in 2020 and 11,038 in 2024, a roughly 34% increase. Major violent-crime totals reported through the Major Cities Chiefs Association nearly doubled from 651 in 2019 to 1,208 in 2024. The

problem is not merely shoplifting or post-pandemic disorder. It is violence, intimidation, assault, and repeat victimization.

At the same time, Descano's office produced fewer felony convictions and fewer trials. 7News reported that under Descano, Fairfax sent fewer felony cases to trial, dismissed or dropped more felony charges, and secured fewer guilty felony verdicts than during the previous Commonwealth's Attorney Ray Morrogh's final three years, even as major crime categories increased. Felony guilty verdicts fell from 1,629 in 2019 to 851 in 2020, 759 in 2021, and 1,185 in 2022.

The human cost is visible in strangulation cases. The Washington Post reported that Fairfax strangulation charges rose from 134 in 2021 to 217 in 2022, but many cases were dropped or pleaded down, and convictions remained sparse. A judge said there had been a "significant rise" in strangulation charges but not in prosecutions or convictions.

That is the Descano record: more crime, fewer consequences, more victims, and a prosecutor's office that too often treats accountability as an afterthought.

These policies are a menace to public safety in Fairfax County, and the Justice Department has rightly decided to investigate Mr. Descano's office for his illegal and immoral policies and practices.

We cannot undo the damage that his policies have wrought but we can prevent future injustices.

In shielding these criminal aliens, Mr. Descano and Fairfax County show a depraved indifference to human life. That is not compassion, it is cruelty.

The "immigration consequences" policies of Fairfax Commonwealth's Attorney Steve Descano have enabled repeat violent and sexual offenders to victimize Fairfax County.

APPENDICES:

1. Leniency Toward 25 Violent and Sexual Predator Criminal Aliens
2. Fairfax County Police Crime Charts
3. LELDF Complaint to Department of Justice
4. Cheryl Minter and Victims Rights Reform Council Complaint to Department of Justice
5. Judge Randy Bellows Order in Hyrum Baquedano-Rodriguez Case
6. Fairfax County Police Warnings to Fairfax Prosecutors Regarding Abdul Jalloh
7. Fairfax Commonwealth's Attorney "Guidelines for Plea Bargaining, Charging Decisions, and Sentencing (December 2020)

Here are 25 of those repeat violent and sex offenders benefiting from Mr. Descano's leniency:¹

Abdul Jalloh [Second-degree murder - February 2026]

Abdul Jalloh was charged with second-degree murder in February 2026 after Stephanie Minter's fatal stabbing in Hybla Valley. Before that killing, he had more than 30 prior arrests and more than 40 prior charges, including repeated violent felonies and multiple earlier stabbing-related cases. Prior charges included four malicious wounding, assault and battery, rape, and shooting or throwing into an occupied building. Public reporting tied him to four earlier alleged stabbings before the Minter killing. He was released from Fairfax custody in November 2025 and was back on the street before the February 2026 homicide of Stephanie Minter.

Maldin Anibal Guzman [malicious wounding by mob / homicide case - July 2024]

Maldin Anibal Guzman accumulated a lengthy repeat-offender history before the July 2024 Oakton killing of a homeless man outside a convenience store. Over roughly two years, he amassed about 22 charges and 9 arrests, including assault and multiple malicious-wounding cases, and was repeatedly released on recognizance before the homicide case. July 2024 case: malicious wounding by mob tied to the fatal beating of a homeless man in Oakton.

Prior record: about 23 charges between July 2022 and July 2024 and 9 arrests. Prior assault charge in October 2022. Prior attempted malicious wounding charges in March 2023. Prior malicious wounding charge in June 2023. He was released on recognizance on prior cases, including the June 2023 malicious wounding case. Most prior charges were dismissed or dropped. Sentenced to only 5 years for homicide in April 2026

Marvin Fernando Morales-Ortez [Att. Murder – September 2025, Murder – December 2025]

In 2021, Mr. Descano's office dropped charges against Salvadorian national Marvin Morales-Ortez in connection with the 2019 Reston murder of Jose Lorenzo Guillen Mejia, despite prior findings of probable cause and proffered evidence (including an alleged confession to key facts). In August 2023, Morales-Ortez was charged with assaulting a police officer and charges were again dropped. Then in June 2024, he was charged with theft and had charges dropped. In September 2025, Morales-Ortez faced charges of brandishing a firearm and aggravated malicious wounding with victim "severely injured." On December 16, 2025, Mr. Descano's office dropped those charges and within 24 hours, Morales-Ortez allegedly killed a man in Reston.

¹ All charge, plea, disposition, and criminal history details are derived from 1) Fairfax County Police Department, Arrest Records November 2020-December 2025, obtained via Virginia FOIA by Nicole Miller and provided to the author for analysis. 2) Virginia Judiciary, Online Case Information System, General District Court filings, <https://eapps.courts.state.va.us/ocis/landing>. 3) Fairfax County Circuit Court, "eCaseSearch" public access system, https://www.fairfaxcounty.gov/apps/ECS_Public/ All records are available upon request.

Wilmer Osmany Ramos Giron [Abduction by force / strangulation - January 2025]

Wilmer Osmany Ramos Giron was arrested in January 2025 on abduction by force, strangulation causing injury, and assault on a family member. He was released from local custody in March 2025, and ICE arrested him in April 2025 after a prior federal firearm conviction and two earlier removals. Fairfax charges in January 2025: abduction by force, strangulation causing injury, and assault on a family member resolved via Crespo plea, avoiding conviction/deportation. Released from local custody in March 2025. Arrested by ICE in Chantilly in April 2025. Prior record included a 2019 federal firearm conviction. Prior removals occurred in 2012 and January 2020. Victim disputes Mr. Descano's account that she agreed with plea deals.

Jorge Armando Melendez-Gonzalez [Malicious woundings / firearm in commission of a felony - August 2023]

Jorge Armando Melendez-Gonzalez was charged after a triple shooting in Merrifield in August 2023. Since 2018, Fairfax had arrested him 10 times and charged him 19 times, including violent and firearm-related offenses. August 2023 charges: 3 counts of malicious wounding and 3 counts of use of a firearm in the commission of a felony. Prior Fairfax charge categories included malicious shooting, unlawful wounding, firearm offenses, assault and battery, and grand larceny. He had been apprehended at the border in 2015 and ordered removed in 2016.

Hyrum Baquedano Rodriguez [Abduction / attempted rape of 4-year-old - June 2023]

Hyrum Baquedano Rodriguez built up a substantial prior record before a June 2023 case involving the attempted abduction and attempted rape of a 4-year-old. Two judges later rejected plea deals, all charges were dismissed in May 2025, and ICE arrested him that same month. Prior charges from 2018 to early 2023 included illegal entry or false-statement-related conduct, indecent exposure involving a child, bail violation, breaking and entering with tools, breaking and entering, probation violations, burglary at night, and failure to appear. June 2023 case: abduction and attempted rape involving a 4-year-old. A judge rejected a plea deal in May 2024. A second judge rejected another plea deal in May 2025. All charges were dismissed in May 2025. ICE arrested him in May 2025.

Denis Humberto Navarette Romero [Rape / abduction with intent to defile - November 2024]

Denis Humberto Navarette Romero was charged after a November 2024 attack on the W&OD Trail in Herndon. He later picked up an escape-related jail charge, and a Fairfax judge found him incompetent to stand trial in September 2025. Charges from the November 2024 case: rape and abduction with intent to defile. Police alleged he pulled the victim into bushes and raped her. Additional jail-related charge followed an April 2025 attempted escape incident. Found incompetent to stand trial in September 2025.

Juan Rodriguez Alfaro, a Honduran national, had been previously deported three times engaged in a month- long sex crime spree in the summer of 2022, exposing himself and attempting to abduct women along a popular hiking trail. Felony charges were all downgraded to misdemeanors, thus allowing the perpetrator to avoid immigration consequences.

Jose Veizaga Vargas, a Bolivian national, who illegally entered the United States in April 2023 was arrested for rape of a child (carrying up to a life sentence) in May 2024 but his charges were reduced to a misdemeanor with a 6 months suspended sentence and he was released. Then he was arrested for DUI on August 8, 2024, and was again released until he was arrested a week later for child pornography offenses and released. ICE apprehended and removed him

Oscar Roberto Zaldivar sexually abused at least two children for years between 2011 and 2018. One victim was 5 years old. The Commonwealth's Attorney prior to Mr. Descano sought to incarcerate Zalvidar for life. Mr. Descano capped the child rapist's sentence at 17 years, which with "good time" credits would mean less than 12 years for the abuse. Fairfax judge rebuked the prosecutors and told the victim, "Make no mistake: your government has failed you." The "government" that failed that little girl was Mr. Descano's policies.

Simon Parina Sandi (DOB: 10/28/1980), a Bolivian national, was charged with attempted rape (Class 4 felony carrying up to 10 years in prison) on August 5, 2024. He released on recognizance (no bail). The charge was reduced to misdemeanor assault and battery and disposed as a "deferred disposition" in March 2025 per a Crespo plea (which allows immigrant defendants to admit guilt without incurring a conviction).

Carlos Humberto Sanchez Hernandez, an illegal immigrant from El Salvador, raped his 11-year-old step-daughter at least 40 times between 2017 and 2020, according to his own admission. Those crimes entail a mandatory minimum of life in prison. Due to a 2021 plea agreement with Mr. Descano's office, Sanchez-Hernandez received 12 years and will serve less than 8 under "good time" credit rules.

Jesus Arevalo Cruz (DOB: 10/18/1993)

Arevalo Cruz was arrested in July 2023 for sexual abuse of a child under the age of 13. He was released on a personal recognizance bond (no money) five days later. He was arrested again in February 2024 with additional child sex crimes; he was again released from custody. ICE apprehended him in April 2024 and began removal proceedings.

Marlon Joel Arita Figueroa (DOB: 09/15/1999)

Arrested 11 times and charged with 40 known offenses from Sep. 14, 2023, to Jul. 2, 2024, including malicious wounding.

First known arrest: Sep. 14, 2023 - burglary and credit card fraud.

Later arrests: credit card fraud (Nov. 2023); domestic assault (Jan. 2024); domestic assault (Feb. 2024); burglary (Mar. 2024); pickpocketing (Apr. 2024); domestic assault (Apr. 2024); violating a protective order (Apr. 2024); illegal alien in possession of a firearm (Apr. 2024); malicious wounding (May. 2024); burglary (Jul. 2024).

Luis Fernando Guardado Moreno (DOB: 07/17/2001)

Arrested 3 times and charged with 11 known offenses from Mar. 14, 2022, to Aug. 30, 2022, including malicious wounding causing serious injury.

First known arrest: Mar. 14, 2022 - illegal alien in possession of a firearm and possessing a firearm at school. Later arrests: malicious wounding causing serious injury (Mar. 2022); fugitive from justice (Aug. 2022).

Victor Manuel Matrigales (DOB: 08/06/2001)

Arrested 6 times and charged with 33 known offenses from Jan. 3, 2024, to Mar. 28, 2025, including abduction by force.

First known arrest: Jan. 3, 2024 - selling hard drugs and possession of hard drugs.

Later arrests: possession with intent to sell hard drugs (Mar. 2024); abduction by force (Mar. 2024); giving false identity to police (Aug. 2024); felony failure to appear (Mar. 2025).

Fredy Ronaldy Ochoa Ramirez (DOB: 04/17/1999)

Arrested 13 times and charged with 29 known offenses from Jul. 8, 2022, to Dec. 31, 2023, including shooting a firearm in public causing injury.

First known arrest: Jul. 8, 2022 - shooting a firearm in public causing injury and illegal alien in possession of a firearm.

Later arrests: receiving stolen goods (Apr. 2023); brandishing a machete or blade (Jun. 2023); auto theft (Jul. 2023); possession of hard drugs (Jul. 2023); auto theft (Jul. 2023); auto theft (Aug. 2023); identity theft (Oct. 2023); credit card fraud (Nov. 2023); possession of hard drugs (Nov. 2023); violating release conditions (Nov. 2023); violating release conditions (Nov. 2023); possession with intent to sell hard drugs (Dec. 2023).

Luis Alonso Patriz Hernandez (DOB: 10/09/1991)

Arrested 6 times and charged with 16 known offenses from Jul. 5, 2023, to Jul. 23, 2025, including foreign national in possession of a firearm.

First known arrest: Jul. 5, 2023 - assault

Later arrests: possession of hard drugs (May. 2024); public intoxication (Jun. 2024); foreign national in possession of a firearm (Jul. 2024); public intoxication (Oct. 2024); assault on law enforcement (Jul. 2025).

Gerson Alexis Paz Ramos (DOB: 08/20/2003)

Arrested 9 times and charged with 19 known offenses from Oct. 21, 2022 to May. 2, 2024, including malicious assault of a pregnant victim.

First known arrest: Oct. 21, 2022 – theft

Later arrests: possession of hard drugs (Mar. 2023); possession of hard drugs (Mar. 2023); possession of hard drugs (Apr. 2023); misdemeanor failure to appear (Apr. 2023); felony failure to appear (Oct. 2023); selling hard drugs (Jan. 2024); malicious assault of a pregnant victim (Apr. 2024); violating deferred disposition (May. 2024).

Julio Gabriel Rivera Molina (DOB: 04/20/2002)

Arrested 9 times and charged with 17 known offenses from May. 23, 2022 to Jul. 24, 2023, including strangulation causing injury.

First known arrest: May. 23, 2022 - strangulation causing injury and domestic assault.

Later arrests: possessing a firearm with hard drugs (Dec. 2022); foreign national in possession of a firearm (Dec. 2022); possessing a firearm with hard drugs (Feb. 2023); violating release conditions (Mar. 2023); possession of hard drugs (Apr. 2023); selling hard drugs (Jun. 2023); felony failure to appear (Jul. 2023); felony failure to appear (Jul. 2023).

Marvin Alberto Rodriguez Corvera (DOB: 12/28/1998)

Arrested 5 times and charged with 16 known offenses from Jun. 14, 2022 to Aug. 22, 2024, including displaying a firearm while selling drugs.

First known arrest: Jun. 14, 2022 - possessing a firearm with hard drugs and carrying a concealed weapon.

Later arrests: felon in possession of a firearm (Jul. 2022); possession of hard drugs (Jul. 2023); possessing a firearm with hard drugs (Aug. 2023); displaying a firearm while selling drugs (Aug. 2024).

Jose Martin Mendoza Ramirez (DOB: 10/14/1990)

Arrested 7 times and charged with 19 known offenses from Feb. 25, 2021 to Dec. 22, 2024, including forcible rape and sexual assault.

First known arrest: Feb. 25, 2021 - possession with intent to sell hard drugs.

Later arrests: firing a gun in public and foreign alien in possession of a firearm (Mar. 2021); forcible rape and aggravated sexual battery (Mar. 2022); probation violation (May. 2022); selling hard drugs for profit (Sept. 2023); second DWI within five years and refusing a blood or breath test (Dec. 2024).

Wilson Giova Menjivar Guerra (DOB: 06/30/1997)

Arrested 4 times and charged with 15 known offenses from Aug. 16, 2021 to Jul. 24, 2024, including brandishing a firearm and carrying a concealed weapon.

First known arrest: Aug. 16, 2021 - assault on a family member.

Later arrests: brandishing a firearm and trespassing after being forbidden to enter (Jul. 2022); possessing a fake ID and hard drugs (Aug. 2023); carrying a concealed weapon, foreign alien in possession of a firearm, and possessing a firearm with hard drugs (Jul. 2024).

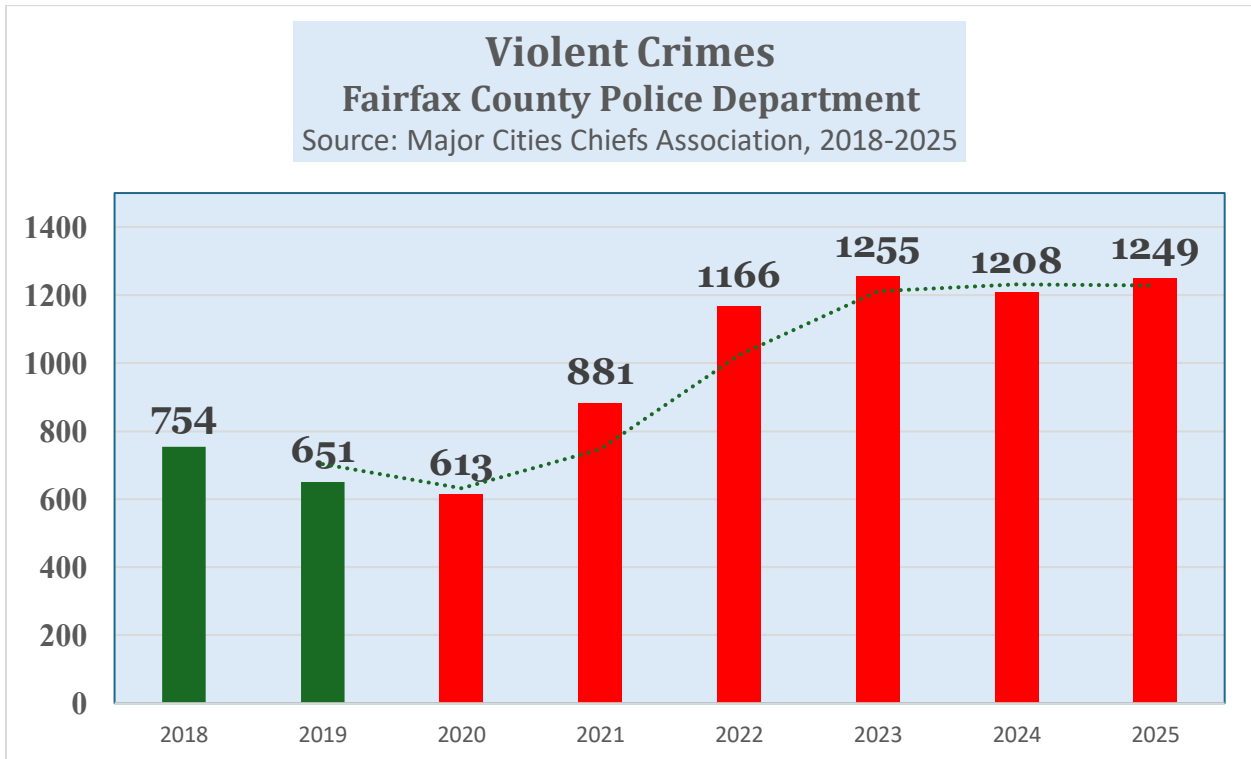
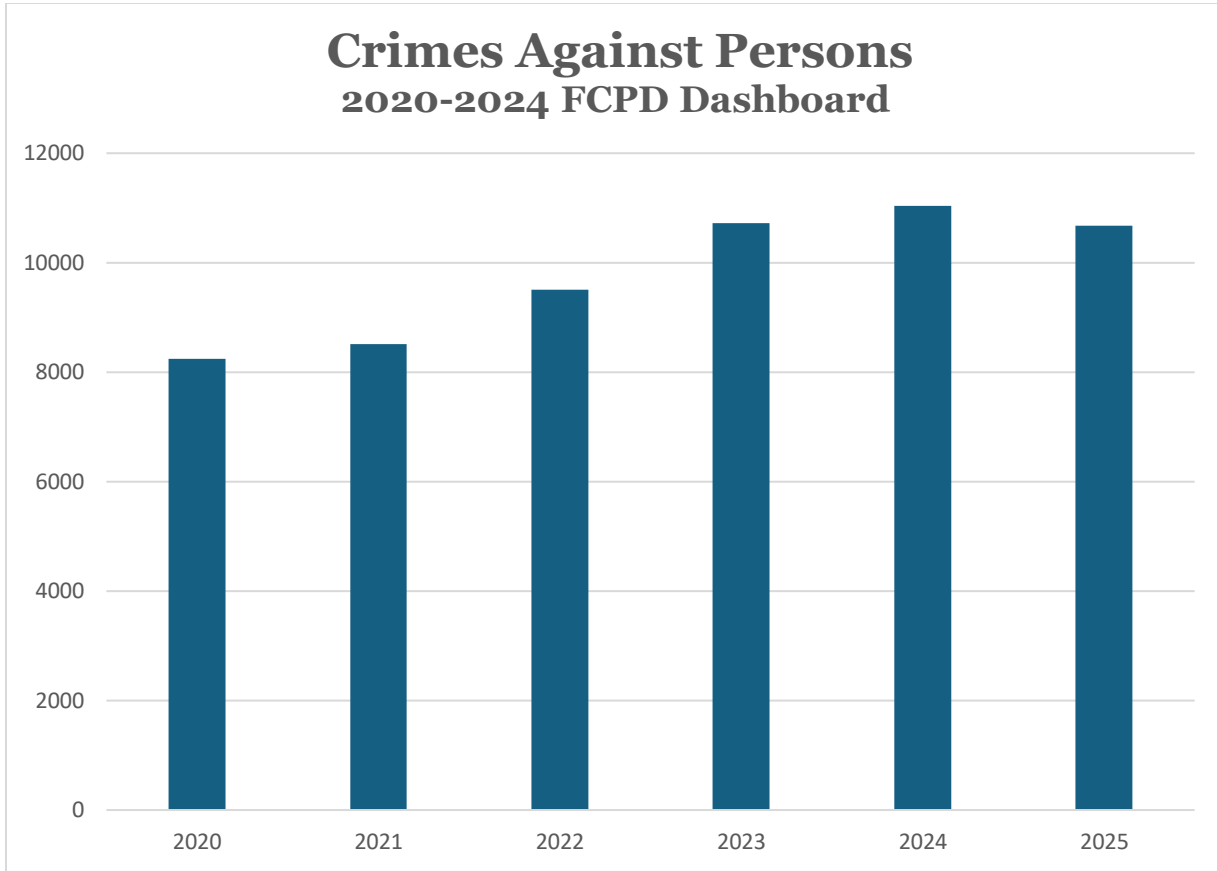
Yohandri Roger Mosquera-Rosas (DOB: 02/09/1994)

Venezuelan illegal immigrant arrested at least 4 times and charged with multiple known offenses from Jan. 2023 to May 2024, including malicious wounding, DWI, hit-and-run, and firearm offenses.

First known arrest: Jan. 2023 - malicious wounding, reckless handling of a firearm, leaving a loaded firearm so as to endanger a child under 14, and use of a firearm in commission of a felony. He received a 3-year suspended sentence and was released.

Later arrests: gun charge (June 2023); driving offenses (Feb. 2024 and May 2024). ICE arrested him in Springfield, Virginia, on Sept. 12, 2024, after multiple detainers were allegedly ignored.

Fairfax County Police Department Crime Data





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December 23, 2025

Harmeet K. Dhillon

Assistant Attorney General for Civil Rights
Civil Rights Division, U.S. Department of Justice
950 Pennsylvania Avenue NW
Office of the Assistant Attorney General
Washington, DC 20530

Via Electronic Mail and Regular Mail

Re: Request for Civil Rights Division Investigation - Fairfax County (VA) Commonwealth's Attorney's Office; Marvin Morales-Ortez matters

Dear Assistant Attorney General Dhillon:

It is both immoral and unlawful for a government agency to engage in systemic discrimination against U.S. citizens to the benefit of those illegally present. Further, any law enforcement agency engaged in such conduct imperils the lives of Americans while protecting foreign criminals. The Civil Rights Division of the United States Department of Justice (hereinafter "DOJ") must investigate and end these practices by the Fairfax County, Virginia, prosecutor's office and across the country. Otherwise, there will be more needless victims.

Recent developments in Fairfax County, Virginia, together with an official referral by the Virginia Attorney General, raise serious concerns that the Fairfax County (Virginia) Office of the Commonwealth's Attorney (Hereinafter "FCCOCA"), a governmental authority, is engaged in the unconstitutional exercise or non-exercise of law enforcement authority. In particular, the official policy and practices of the FCCOCA expressly treat similarly situated individuals differently based upon race, ethnicity, and immigration status, which deprives persons of rights, privileges, or immunities secured by the Constitution or Laws of the United States.

Under the United States Attorney General's authority to seek legal remedy either through direct prosecution or through civil action under **34 U.S.C. § 12601** ("Law Enforcement Consent Decree" statute), we ask that you launch an investigation into the FCCOCA for potential civil rights violations, namely illegal discriminatory practices and policies based on immigration status.

- 1. Background.** Public reporting states that the FCCOCA office dropped a first-degree murder charge against Marvin Morales-Ortez in connection with the 2019 Reston murder

of Jose Lorenzo Guillen Mejia, despite prior findings of probable cause and proffered evidence (including an alleged confession to key facts), Morales-Ortez has since been charged in a December 2025 Reston homicide. Whether that dismissal was meritorious or not, it shines a bright light on the unlawful, discriminatory policies and practices of the FCCOCA.

Numerous other cases reflect a deliberate “pattern and practice” of illegal discrimination on behalf of those based on their immigration status – offering preferential and/or lenient treatment to avoid collateral immigration consequences for the offender.

- a. **Hyrum Baquedano Rodriguez**, a Honduran national, was charged with illegal entry in 2018 and ordered deported but allowed to stay pending appeal, and then went on to be arrested for multiple felony sex crimes against children, bail and probation violations, breaking and entering/burglary, and theft between 2021 and 2023. Every felony charge was dropped or downgraded to a misdemeanor (making the offender ineligible for deportation). In June 2023, Baquedano Rodriguez broke into a home and attempted to kidnap and rape a 4-year-old child. The original charges carried a mandatory minimum sentence of more than 30 years, yet FCCOCA offered the defendant no more than two (2) years’ incarceration and did not require him to register as a sex offender. Two separate judges rejected the plea agreement as “woefully inadequate.” In response, Descano dropped all charges entirely – setting the defendant free, until ICE apprehended him (after being alerted by the victim’s mother) and began deportation proceedings.¹
- b. **Juan Rodriguez Alfaro**, a Honduran national, had been previously deported three times engaged in a month- long sex crime spree in the summer of 2022, exposing himself and attempting to abduct women along a popular hiking trail. Felony charges were all downgraded to misdemeanors, thus allowing the perpetrator to avoid immigration consequences.²
- c. **Denis Humberto Navarette Romero**, a Honduran national, had been deported twice before illegally re-entering the country at an unknown date. Unemployed and on public assistance, Navarette Romero committed a series of crimes including “assaults, battery, trespassing, using a stolen vehicle, weapon violations, drinking and smoking marijuana in public, loitering, and indecent exposure” according to WJLA News.³ None of those charges, including felonies, resulted in convictions eligible for deportation.⁴ Then in

¹ Fairfax County Circuit Court, *Commonwealth of Virginia v. Hyrum B. Rodriguez*, FE-2024-69 (Fairfax, VA: Fairfax County Circuit Court, 2024), <https://www.fairfaxcounty.gov/circuit/sites/circuit/files/Assets/Documents/PDF/opinions/fe-2024-69-cov-v-hyrum-b-rodriguez.pdf>.

² *Fairfax Times*, “W&OD Trail Suspect Is Undocumented Immigrant,” *Fairfax Times* (article page; author and publication date not accessible via my web tools), accessed December 22, 2025, https://www.fairfaxtimes.com/articles/fairfax-county/w-od-trail-suspect-is-undocumented-immigrant/article_b671a370-3536-11ed-b523-ab2aa9212772.html.

³ “Man arrested in Herndon for sexually attacking a woman on W&OD Trail: Police.” 2024. WJLA. November 25, 2024. <https://wjla.com/news/local/man-arrested-herndon-sexually-attacking-woman-wod-trail-police-washington-old-dominion-walking-running-rape-ferndale-avenue-grace-street-fairfax-county-dmv-crime-defile>.

⁴ Jasmine Hilton, “Man Convicted of Sex Assault Escaped Custody before Trial in Fairfax,” *Washington Post*, April 3, 2025, <https://www.washingtonpost.com/dc-md-va/2025/04/03/navarette-romero-trail-rape-escape-fairfax/>.

November 2024, days after his release from jail for another sex crime, Navarette Romero allegedly abducted and raped a woman along a walking trail.⁵

- d. **Wilmer Osmany Ramos Giron**, a Guatemalan national, had been previously removed and convicted of federal firearms charges. Despite his history of domestic abuse, when Ramos Giron strangled and threatened his children's mother with a knife in 2025, FCCOCA offered the defendant (who was eligible for more than 15 years in state prison) a plea deal for a misdemeanor two months' incarceration in the local jail, which does not cooperate with ICE.⁶ After his release, it took ICE over two months to apprehend Ramos Giron.⁷

Other cases where the FCCOCA has apparently offered preferential treatment include known gang-members, accused killers,⁸ and child rapists,⁹ as Descano's own website states: "Wherever possible, Steve will make charging and plea decisions that limit or avoid immigration consequences."¹⁰ The FCCOCA's first term report (2023) promised, "To improve community safety, promote confidentiality, and restore trust, employees of the OCA do not cooperate with ICE on civil deportation matters."¹¹

And FCCOCA often makes these preferential agreements over the vehement objections of victims.¹² Ramos Giron's victim publicly denied claims by FCCOCA that she agreed to the 'lenient' plea deal for her abuser.¹³ In a series of child rape cases, Fairfax County judges excoriated the prosecutor's office for its leniency and indifference to victims of illegal alien abusers – with one telling the juvenile victim, "your government failed you."¹⁴

⁵ Angela Woolsey, "Suspect in Herndon Rape Was Released from Jail Days Earlier, Sheriff's Office Says," *FFXnow*, November 21, 2024, <https://www.ffxnow.com/2024/11/21/suspect-in-herndon-rape-was-released-from-jail-days-earlier-sheriffs-office-says/>.

⁶ Nick Minock, "Man who is in the US illegally and allegedly raped a woman has long criminal history," *WJLA* (ABC 7 News), November 25, 2024, updated November 26, 2024, accessed December 22, 2025, <https://wjla.com/news/local/virginia-crime-herndon-virginia-man-arrest-repeat-offender-sexual-assault-rape-case-denis-humberto-navarette-romero-united-states-immigration-deportation-ice-illegal-immigrant-migrant-washington-old-dominion-railroad-trail-investigation>

⁷ Fairfax County Office of the Commonwealth's Attorney, *Report on the Office's Activities and Achievements* (Fairfax, VA: Fairfax County Government, 2024),

<https://www.fairfaxcounty.gov/commonwealthattorney/sites/commonwealthattorney/files/Assets/Report%20Final%20Version.pdf>.

⁸ Nick Minock, "Fairfax County Refused Multiple ICE Detainers Linked to Man Who Is Now a Murder Suspect," *WJLA* (ABC 7 News), July 25, 2024, updated July 26, 2024, <https://wjla.com/news/local/ice-immigration-dc-maryland-virginia-crime-detainers-fairfax-county-loudoun-arlington-police-investigation-illegal-noncitizens-undocumented-murder-suspect-maudin-anibal-guzman-videz>

⁹ "Alleged Rape and Undocumented Immigrant Crimes Raise Concern," *Fairfax Times* (Fairfax County section), n.d., https://www.fairfaxtimes.com/articles/alleged-rape-and-undocumented-immigrant-crimes-raise-concern/article_89b9b702-ac29-11ef-b68d-f7c74f6106d3.htm

¹⁰ Steve Descano, "Community," *SteveDescano.com*, accessed December 22, 2025, <https://stevedescano.com/community>.

¹¹ Fairfax County Office of the Commonwealth's Attorney, *Report on the Office's Activities and Achievements* (Fairfax, VA: Fairfax County Government, 2024),

<https://www.fairfaxcounty.gov/commonwealthattorney/sites/commonwealthattorney/files/Assets/Report%20Final%20Version.pdf>.

¹² Virginia Office of the Attorney General (Jason S. Miyares), News Release (09/26/2025) referencing investigative report and DOJ referral: <https://www.oag.state.va.us/media-center/news-releases/2916-september-26-2025-attorney-general-jason-miyares-releases-report-detailing-misconduct-failures-and-constitutional-violations-by-fairfax-county-commonwealths-attorney-steve-descano>

¹³ Nick Minock, "Victim Speaks Out after Fairfax County Plea Deal for Illegal Immigrant," *WJLA ABC 7 News*, March 2025, <https://wjla.com/news/local/virginia-crime-fairfax-county-convictions-wilmer-osmany-ramos-giron-victim-interview-strangulation-charge-attorney-steve-descano-democrat-plea-deal-sentences-safety-court-documents-jason-miyares>.

¹⁴ Justin Jouvenal, "Va. Judge Tells Young Victim of Sex Abuse: 'Your Government Has Failed You,'" *Washington Post*, September 20, 2021, https://www.washingtonpost.com/local/public-safety/judge-zaldivar-sentence-abuse/2021/09/20/85258424-1a40-11ec-8380-5fbadbc43ef8_story.html

2. Applicable federal civil-rights authorities. The DOJ derives its authority to act in such circumstances from 34 U.S.C. §12601. Historically this authority has been exercised by first initiating a comprehensive investigation of the governmental authority believed to be engaged in a pattern or practice of conduct which deprives persons of rights, privileges, and immunities protected by the Constitution.

Based on publicly available information, there is more than sufficient evidence that FCCOCA has adopted formal policies and practices that enforce state and local statutes differently based, at least in part, on immigration status— a suspect classification – which violate the Equal Protection Clause of the Fourteenth Amendment.¹⁵ The policy memorandum promulgated by the FCCOCA on December 15, 2020, states:

Consideration of Immigration Consequences. ACAs shall consider immigration consequences where possible and where doing so accords with justice.

Although not outcome determinative, prosecutors shall consider: (i) the collateral immigration consequences of the specific crime(s) the defendant is charged with, and (ii) the detrimental impact that deportation/removal has on the families and communities those removed or deported leave behind. However, in some case, there will be significant limits as to what an ACA can do to avoid collateral immigration consequences. The weight accorded to potential adverse immigration consequences must be considered on a sliding scale. At one end of the scale, where the seriousness of the offense is significant and the harm to the victim is great, the weight accorded to potential adverse immigration consequences will be minimal. In a case where there is an act of violence and/or great harm done to a victim, the community's public safety interest in mitigating any future harm will likely outweigh other factors in the analysis. Conversely, where the offense is less serious and there is no identifiable victim, the ACA will have greater latitude in negotiating a resolution that takes adverse immigration consequences into account. The resolution will be different in a way that avoids or lessens the collateral immigration consequences, but will not be better than a resolution offered to a defendant that does not face such collateral issues. [pg. 10-11, bold author's]

Because state and local classifications based on immigration status are generally subject to strict scrutiny, a formal policy which prescribes violative conduct or a documented pattern of disparate charging, plea-offering, or sentencing recommendations against citizens, as compared with non-citizens, constitutes a sufficient legal predicate for a §12601 investigation and/or enforcement action to ensure non-discriminatory administration of the criminal justice system.

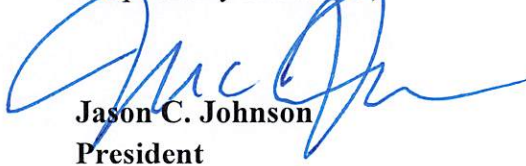
¹⁵ Fairfax County Office of the Commonwealth's Attorney, *Plea Bargaining, Charging Decisions, and Sentencing Policy* (Fairfax, VA: Fairfax County Government, 2024), <https://www.fairfaxcounty.gov/commonwealthattorney/sites/commonwealthattorney/files/Assets/Documents/Fairfax%20CWA%20-%20Plea%20Bargaining%2C%20Charging%20Decisions%2C%20and%20Sentencing%20Policy.pdf>

Although §12601 has most often been used to investigate and remedy violations by police agencies, there is clear precedent allowing the DOJ to exercise its statutory authority to remedy violations by district attorneys' offices. In 2012, DOJ launched an investigation into the Missoula County (Montana) Attorney's Office for its prosecutorial policies discriminating against victims of sex abuse. The parties entered into a Memorandum of Understanding (MOU) to ensure the prosecutor's compliance with federal law. Similarly, the DOJ launched an investigation and found civil rights violations by the Orange County (California) District Attorney's office.¹⁶

3. Requested action. I respectfully request that the Civil Rights Division open an investigation into whether the FCCOCA has engaged in a pattern or practice of violations, including misuse of official authority under color of law and discriminatory treatment of criminal defendants based upon the defendant's race, ethnicity, immigration status, or national origin, in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Fairfax residents should not have to choose between safety and civil rights. An impartial federal investigation is necessary to determine whether these allegations reflect isolated errors or systemic deprivation of rights. Thank you for your prompt attention to this urgent matter.

Respectfully submitted,



Jason C. Johnson
President

¹⁶ LE Knowledge Lab, *Federal Interventions Dashboard*, accessed December 22, 2025, <https://leknowledge.org/resources/federal-interventions-dashboard/>.



Victims Rights Reform Council
On Behalf of Cheryl Minter

April 21, 2026

Harmeet K. Dhillon
Assistant Attorney General for Civil Rights
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Via Electronic Submission and U.S. Mail

Re: Request for Civil Rights Division Investigation into a Pattern or Practice of Discriminatory Prosecutorial Conduct by the Fairfax County Commonwealth's Attorney's Office

Dear Assistant Attorney General Dhillon:

On behalf of Cheryl Minter, mother of Stephanie Minter, the Victims Rights Reform Council writes to you to respectfully request an immediate investigation into whether the Fairfax County Commonwealth's Attorney's Office ("FCCOCA") under Steve Descano has engaged in a "pattern or practice" of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, in violation of 34 U.S.C. § 12601 and the Equal Protection Clause of the Fourteenth Amendment.

This complaint arises from the murder of Stephanie Minter, who was stabbed to death at a Fairfax County bus stop on February 23, 2026. The man charged with her murder, Abdul Jalloh, is an illegal immigrant and a repeat violent offender who, after receiving undue leniency from Steve Descano's office, continued to terrorize the community through acts of violence. Police issued repeated, explicit warnings to Descano's office that Jalloh would maim or "worse" again, yet he was released. Her murder was the direct result of discriminatory prosecutorial policies that favor illegal immigrants over law-abiding citizens and of agenda-driven negligence that returned a violent offender to the community again and again until he killed Stephanie.

The Department has the authority to act. Section 12601 authorizes the Attorney General to investigate a governmental authority that engages in a pattern or practice of conduct depriving persons of constitutional or federal statutory rights. The Department has exercised that authority with respect to prosecutors' offices before.

A prosecutor's office does not stand above federal civil-rights enforcement when its official policies produce unequal justice, endanger the public, and deny the equal protection of the laws.

Fairfax law enforcement repeatedly warned FCCOCA that Jalloh posed an escalating and grave danger. Those warnings matched Jalloh's actual history of violence. FCCOCA ignored them. Three months after the final warning, Stephanie Minter was dead.

County records and FOIA'd emails (attached as Appendix C) document that police urged prosecutors to keep Jalloh detained because he "has a history of stabbing community members," was "on probation during the most recent assault," had shown a "blatant disregard for human life," and remained "a danger to the community." A Fairfax police major later warned that Jalloh was a "repeat (and violent) felony offender," that his conduct was "becoming more violent and explosive," and that "it is not a question of if, but rather when he will maliciously wound (or worse) again." Police repeated that warning in November 2025. FCCOCA received direct notice that Jalloh would seriously injure or kill again if released.

County records also describe a years-long pattern of violence, including multiple stabbings, malicious-wounding cases, and other assaults. In 2023, Jalloh was convicted of malicious wounding and sentenced to seven years, with five years suspended. In May 2025, police again sought to keep him detained after another stabbing. In August 2025, while that case remained pending, he allegedly committed yet another malicious wounding after attacking an older man and stomping on his head. In November 2025, after his release, police again demanded answers as to why he was "out again so soon."

The outcome was the direct result of FCCOCA's official written policy requiring prosecutors to consider and mitigate immigration consequences in criminal case resolutions. Under the heading "Consideration of Immigration Consequences," the policy states that prosecutors "shall consider immigration consequences where possible and where doing so accords with justice." It directs prosecutors to consider "the collateral immigration consequences of the specific crime(s) the defendant is charged with" and "the detrimental impact that deportation/removal has on the families and communities those removed or deported leave behind." It further states that, in certain cases, prosecutors will negotiate a resolution that "avoids or lessens the collateral immigration consequences."

Steve Descano has publicly affirmed that policy, stating: "If two people commit the same crime, but only one's punishment includes deportation, that's a perversion of justice and not a reflection of the values of Fairfax County." That statement announces that FCCOCA will alter criminal outcomes to protect illegal immigrants from immigration consequences. It codifies illegal discrimination.

FCCOCA's policies and practices deny equal protection by treating similarly situated offenders differently based on immigration-related consequences. The public-safety injury is equally clear. FCCOCA repeatedly released a violent illegal immigrant after direct warnings from law enforcement that he was escalating and likely to attack again. That combination of discriminatory policy and deliberate inaction created a direct threat to public safety. Stephanie Minter paid for that threat with her life.

This matter warrants a full investigation into whether FCCOCA has engaged in a pattern or practice of unconstitutional and unlawful conduct, including discriminatory charging and plea practices based on immigration-related considerations; preferential treatment for illegal immigrants over native-born citizens and

other defendants not facing removal; deliberate indifference to known threats posed by repeat violent offenders; and systemic disregard of the rights and safety of victims and the public. The Civil Rights Division should obtain and review all relevant policies, training materials, plea and charging data, communications concerning immigration consequences, and communications concerning Abdul Jalloh and similarly situated offenders.

In addition to the constitutional concerns described above, there is substantial public interest in determining whether the policies and practices of the Fairfax County Commonwealth's Attorney's Office have been influenced, developed, or shaped in whole or in part by external non-governmental organizations ("NGOs") or advocacy groups.

The existence of a formal policy directing prosecutors to consider and mitigate immigration consequences—combined with public statements affirming that position—raises questions as to whether such policies were developed independently or in coordination with outside entities advocating for specific criminal justice outcomes.

Accordingly, this complaint respectfully requests that the Civil Rights Division investigate:

- The extent to which any NGOs, advocacy organizations, or third-party entities participated in drafting, advising on, or influencing FCCOCA policies, including those related to immigration consequences, charging decisions, plea agreements, or bail practices;
- All communications between FCCOCA personnel and such external organizations concerning prosecutorial policy, case handling, or criminal justice reform initiatives;
- Any training materials, manuals, guidance documents, seminars, or continuing legal education programs provided to FCCOCA prosecutors by outside organizations;
- Whether such external input contributed to policies or practices that resulted in the repeated release of violent offenders or the differential treatment of defendants based on immigration-related considerations.

Where prosecutorial decision-making may be influenced by entities outside of government, particularly in ways that affect public safety or the equal application of the law, federal review is warranted to ensure transparency, accountability, and compliance with constitutional obligations.

As the mother of Stephanie Minter, I believe that Commonwealth's Attorney Steve Descano has failed in his duties under both state and federal law to protect the citizens of Virginia and the United States. He is releasing numerous illegal immigrants who are not on any path to citizenship and who pose a grave danger to the people of this state and nation. The policies currently in place in our state are a profound disservice to its law-abiding citizens. Far too many people have been harmed or have lost their lives because illegal immigrants who commit the same crimes as U.S. citizens receive far less punishment. It appears that citizens are serving far more time and facing greater punishment for identical offenses than these illegal immigrants. Had I murdered someone, I would be serving a life sentence in prison. As citizens, we are not being adequately protected under our constitutional rights.

If not for these illegal and immoral policies, Stephanie would be alive today. My daughter died because Fairfax prosecutors chose ideology over safety, favoritism over equal justice, and leniency for an illegal immigrant over protection for innocent citizens. I ask you, as a grieving mother, to act now so that no other mothers have to bury their children.

The Victims Rights Reform Council and Cheryl Minter respectfully request that the Civil Rights Division open a full investigation under 34 U.S.C. § 12601 and the Equal Protection Clause. The Civil Rights Division should further investigate the extent of any external influence on FCCOCA policy and decision-making, including by obtaining and reviewing communications with non-governmental organizations, advocacy groups, and third-party entities; identifying any such organizations involved in shaping prosecutorial policies; and examining all related training materials, guidance documents, and policy frameworks provided to or adopted by FCCOCA.

Respectfully submitted,
Victims Rights Reform Council

By: _____

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Cheryl Minter
Individually and on Behalf of the Estate of Stephanie Minter

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA)	CRIMINAL NUMBER FE-2024-69
VERSUS)	
HYRUM BAQUEDANO RODRIGUEZ)	INDICTMENT - ABDUCTION (COUNT I) and UNLAWFUL ENTRY (COUNT II)

MEMORANDUM OPINION AND ORDER REJECTING PLEA AGREEMENT

The matter came before the Court on May 24, 2024, for the Court to determine whether to accept or reject the Plea Agreement entered in the above-entitled matter and, if it accepted the Plea Agreement, to impose sentence. For the following reasons, the Court rejected the Plea Agreement. Based on the Court's rejection of the Plea Agreement, the Defendant withdrew his pleas of guilty, and the matter was set for status on June 21, 2024, at 9 a.m., to be heard by another judge of this Court. As required, this Court can have no further involvement in the case. See Rule 3A:8(c) of the Rules of the Supreme Court of Virginia.

The purpose of this Opinion and Order is to explain the Court's reasons for rejecting the Plea Agreement. See, generally, *United States v. Robertson*, 45 F.3d 1423, 1438 (10th Cir. 1995), *United States v. Miller*, 722 F.2d 562, 566 (9th Cir. 1983), and *United States v. Moore*, 916 F.2d 1131, 1135-36 (6th Cir. 1990). Although the Court articulated its reasons for rejecting the Plea Agreement at the hearing on May 24, 2024, the Court "speaks through its orders," *McBride v. Commonwealth*, 24 Va. App. 30, 35 (1997). It is particularly important in a matter this grave that the Court's Order reflect not only the Court's decision to reject the Plea Agreement, but *why* the Court decided as it did.

A circuit court in the Commonwealth is vested with the explicit authority to accept or reject any plea in which the parties have agreed to a specific sentence or otherwise constrained the court's sentencing discretion, see Va. R. Sup. Ct. 3A:8(c)(2). However, the respect due a coordinate branch of government, coupled with the recognition that the prosecutor is generally in the best position to assess the merits of a case, counsels the Court to exercise its authority with restraint and caution, and to take such action only in those cases where the Court concludes that to do otherwise would constitute an abdication of the Court's independent responsibility to act in the public interest.

This is just such a case.

Statement of Facts

The "Statement of Facts" provided by the Office of the Commonwealth's Attorney to the Probation Office reads as follows:

At approximately 4:13 a.m. on June 15, 2023, Officer Manrique Munoz of the Fairfax County Police Department responded to [victim's address] in Annandale, Virginia for a call regarding a burglary in progress. The caller, [victim's mother], advised that someone had broken into her apartment through her window and had attempted to take the victim, her four-year-old daughter, [victim's name].

Once on scene, Officer Manrique Munoz spoke with [victim's mother], who indicated that she and her daughter were sleeping in two different beds within the same bedroom on the night of the incident. [Victim's mother] stated that she was awakened by [victim] yelling in the living room. [Victim's mother] indicated that she ran towards [victim] and noticed the blinds of the window rustling as if somebody had moved them. [Victim's mother] indicated that she did not see anyone inside or outside. [Victim's mother] advised that [victim] indicated that a big man had grabbed her but gave no other description of the subject. [Victim's mother] stated that [victim] also indicated that the man grabbed her buttocks and shoulder. [Victim's mother] later informed Detective Isa Martin – who was ultimately assigned as the lead investigator in this case – that [victim] had immediately indicated to her that the individual had 'grabbed her through the living room.' During a forensic interview conducted with [victim] the following day, [victim] also disclosed that the individual picked her up by her torso and removed her from her bed.

In speaking with Officer Manrique Munoz on scene, [victim's mother] also indicated that the window was closed before she went to sleep with her daughter and that the blinds were down. [Victim] had no marks or bruises on her skin from the incident. Upon checking the apartment, Officer Manrique Munoz noticed a shoe print on a cushion in front of the window used as the point of entry and exit. Officer Manrique Munoz likewise noted wet shoe prints leading directly to [victim's] bed. Additionally, Officer Manrique Munoz identified a handprint on the window that was slightly smudged. Detectives Leach and Fortner from the Crime Scene Unit of the Fairfax County Police Department later responded to the scene and were able to lift latent prints from outside of the window in question, as well as a footprint located on the cushion of a couch.

On June 16, 2023, Detective Martin was notified that the thumb print lifted from the exterior frame of the victim's window and the partial palm print lifted from the interior frames of the victim's window were preliminarily identified as a match for the defendant, Hyrum Baquedano-Rodriguez. Additional analysis later confirmed that the thumb and palm prints were, in fact, a match for the defendant. Detective Martin subsequently obtained a recent arrest photo of the defendant and asked [victim's mother] and her two adult sons – [names] – if they recognized the individual in the photo [Victim's mother] and [one son] stated that they did not recognize the defendant, but [second son] immediately said he did. [Second son] stated that the defendant loitered in front of his building and in a vacant storage area located in the basement of their building. [Second son] stated that he

had observed the defendant using drugs in the neighborhood, as well as in the hallways of his building, on several occasions. [Victim's mother and both sons] all indicated that they had not interacted with the defendant, nor were they aware of him ever having been inside their apartment. Following that conversation with [victim's mother and both sons], Detective Martin sought warrants for the defendant, who was later apprehended by Officer Jenkins.

The Charges

The Defendant was arrested on June 17, 2023, on two warrants. One warrant charged the Defendant with Statutory Burglary, pursuant to Va. Code §18.2-90, specifically that "on or about 06/15/2023 [the accused] did unlawfully and feloniously in violation of Section 18.2-90, Code of Virginia: enter in the nighttime the dwelling house or adjoining occupied outhouse of [], a four year old with the intent to commit murder, rape, robbery, or arson" The other warrant charged the defendant with Abduction, with Intent to Defile, pursuant to Va. Code §18.2-48, specifically, that "on or about 06/15/2023 [the accused] did unlawfully and feloniously in violation of 18.2-48 Code of Virginia: abduct [], a 4 year old, with the intent to defile such person." The maximum period of active incarceration for the crime of Statutory Burglary is 20 years. The maximum period of active incarceration for the crime of Abduction, with Intent to Defile, is Life. Thus, the initial charges facing the Defendant carried a maximum period of potential active incarceration of Life + 20 years.

The initial Burglary charges were subsequently reduced upon motion of the Commonwealth in the General District Court. On November 20, 2023, the Burglary charge was initially amended from charging the Defendant with entering the victim's house with the intent to "commit murder, rape, robbery, or arson," pursuant to Va. Code §18.2-90, to entering the house with the intent to commit "a felony or any larceny therein," pursuant to Va. Code §18.2-89. On February 1, 2024, the charge was amended again, this time "by agreement of parties," from the felony of Burglary to the misdemeanor of Unlawful Entry, pursuant to Va. Code §18.2-121. The effect of the amendment was to reduce the maximum period of potential active incarceration from 20 years to 12 months.

The initial Abduction, with Intent to Defile, charges were also modified upon motion of the Commonwealth. On August 9, 2023, the Virginia Code section was changed from §18.2-48 to §18.2-47, and the words "with the intent to defile" were crossed out on the warrant. Significantly, the age of the abduction victim – a "4 year old" – remained in the warrant. The reason this is significant is that Va. Code §18.2-47 lists two potential punishments in Section C of the statute. Abduction "of a minor" remains a Class 2 felony, with a maximum potential imprisonment of Life. However, an abduction "for which no punishment is otherwise prescribed shall be punished as a Class 5 felony." A Class 5 felony carries a maximum period of potential active incarceration of ten years. Identifying the victim as a four-year-old in the warrant meant that the charge remained a potential Life offense.

That changed on February 20, 2024, the day of the Defendant's indictment. Although the Defendant was still charged with the felony of Abduction, the charging instrument no longer made any reference to the age of the victim, thus reducing the charge from a Class 2 felony (with a potential sentence of Life imprisonment) to a Class 5 felony (with a potential sentence of 10 years imprisonment). The Burglary charge, previously amended in the warrant to the misdemeanor of Unlawful Entry, remained as such in the indictment, and carried a potential incarceration sentence of 12 months in jail.

The Plea and Plea Agreement

On March 11, 2024, the Defendant entered guilty pleas to the felony of Abduction, in violation of Virginia Code §18.2-47, and the misdemeanor of Unlawful Entry, in violation of Virginia Code §18.2-121. The terms of the Plea Agreement read as follows:

The defendant shall plead guilty to and be found guilty of abduction and unlawful entry. The Commonwealth and defendant agree that the total period of active incarceration which the defendant may receive on the aforesaid charges shall be capped at two (2) years. As part of this agreement, the defendant shall also agree to the entry of a lifetime protective order on behalf of the victim, [victim's initials], and her family or household members. The defendant shall also agree to have no contact with [victim] and her family or household members. There are no additional agreements as to sentence, and the parties remain free to argue all other conditions of the sentence, including but not limited to: (1) the length of any period of active incarceration which the defendant may receive, up to and including the cap of two (2) years; (2) the length of any suspended period of incarceration the defendant may receive; (3) the length of any probation the defendant may receive; (4) the length of any good behavior term the defendant may receive; and (5) any additional terms or conditions of probation and/or the suspended sentence.

Commonwealth's "Rationale for the Plea"

An Assistant Commonwealth's Attorney ("ACA") provided this Court, by email on May 22, 2024, an excerpt from its case memo entitled "Rationale for the Plea". It reads as follows:

While the facts of this case are aggravating, there are multiple evidentiary challenges inherent in this case. The victim in this case, [name of victim], was only four years old at the time of the offense and described the defendant simply as a "big man." Neither her mother nor her brothers saw the defendant or the offense, and the case cannot rest on the ability of a four year old to be deemed competent to testify or her ability to identify the defendant. One of the victim's older brothers – [victim's brother] – misidentifies a person at the bus stop as the perpetrator, without having a description of the defendant from [victim] or her mother. DNA analysis – to include TrueAllele analysis – was conducted on the victim's nightgown, but the analysis was inconclusive. While the defendant thumb and palm print on the victim's window help to identify the defendant and clearly prove that the defendant was guilty of breaking into the victim's apartment, they are less helpful – in the absence of an ability by the victim to identify the defendant as the person who abducted her – in establishing the defendant as the person who committed the abduction, particularly given the results of the DNA analysis. For all of these reasons, the Commonwealth reached the instant agreement. It should be noted, however, that this Commonwealth was exceedingly clear that this resolution does not include any active investigations regarding the defendant (the defendant is a suspect in an active burglary investigation, which Detective Martin believed the detective on that case was waiting to charge until he had DNA / fingerprint results).

Victim Impact Statement

The Court received and reviewed a Victim Impact Statement provided by the mother of the victim. In her statement, the mother of the victim described the "life altering" impact of the Defendant's crimes, including the terror that her child experienced when she was abducted, and the traumatic impact that the defendant's crimes have had on this child since June of 2023. The child's mother also described the profound impact that the crimes have had on her, as well as on other family members.

The May 24, 2024 Hearing

At the hearing on May 24, 2024, the Office of the Commonwealth's Attorney argued for acceptance of the Plea Agreement:

From this Commonwealth [Attorney]'s perspective, when I look at the rationale and I look at the case more broadly what this Commonwealth [Attorney] sees is a concern of what happens if we go to trial and we lose. And I think that my colleague looked at this case and in her professional experience evaluated it and considered the chances of losing to be higher than she was comfortable with.

The Court asked the ACA – who was not the attorney who negotiated the Plea Agreement – for *her* assessment of the case: "My judgment of this case is that it's triable. Frankly, if the Court were to reject the agreement, this Commonwealth stands ready, willing, and able to try it. However, I do see weaknesses inherent in this case."

Defense counsel also argued in favor of the Court accepting the Plea Agreement. Counsel made three arguments:

First, defense counsel asked the Court to consider the fact that there is "an extremely unlikely chance that [the defendant] will be able to remain in this country." Counsel suggested that this might give the Court "some assurances" or carry "some weight as far as the significance of the collateral consequences" to the defendant.

Second, defense counsel argued that the Court should also weigh the collateral consequence of the defendant being "a convicted felon," having to register as a sex offender, and having to be on very "strict" probation.

Third, defense counsel argued that, while the case might be a "triable" one, "I don't think the chances of success for the Commonwealth were very high."

Reasons for Rejecting the Plea Agreement

After giving the matter due consideration, reviewing case-related material¹, and hearing argument from counsel, the Court rejected the Plea Agreement. The Court based its decision on the following considerations:

First, the crimes of conviction are, as the Court stated during the hearing, a parent's "worst nightmare." The defendant broke into the victim's home in the middle of the night, entered the bedroom where mother and child were asleep, and tried to carry the child away. Fortunately, the defendant made it only as far as the living room, where the child's screaming apparently led the defendant to abandon his plan and flee.

Second, the Defendant comes before this Court with a deeply troubling record of unlawful conduct.² The Defendant has six prior misdemeanor convictions. Five of the six convictions began as felony charges, specifically two sex crimes involving minors and three burglaries. The prior convictions are as follows: (1) **Disorderly Conduct**, which was initially charged as "Indecent Liberties: Expose Genitals to Child" with Child Less than 15 Years of Age; (2) **Contributing to the Delinquency of a Minor**, which was also initially charged as "Indecent Liberties: Expose Genitals to Child" with Child less than 15 years of Age; (3) **Entering Property to Damage**, which was initially charged as Burglary; (4) A second **Entering Property to Damage**, which was also initially charged as Burglary; (5) A third **Entering Property to Damage**, which was also charged as Burglary; and (6) **Petit Larceny**.

Each of the crimes described above occurred in the last three years. The fact that these crimes occurred so recently is significant. It is evidence of the *present* danger posed by the Defendant. Nor have the sanctions imposed by the courts to date – including both jail time and probation – dissuaded the Defendant from committing further criminal acts. Indeed, the Defendant had not even completed his last term of probation when he committed the current offenses.

Third, the terms of the Plea Agreement precluded the Court from imposing any sentence of active incarceration greater than *two years*. That is less than one-fifth the amount of active incarceration the defendant would have faced had the Plea Agreement not imposed this limitation on the Court. True, the Court could have imposed additional periods of *suspended* incarceration – time that could be revoked in the event the Defendant committed new crimes while on probation – *but at what cost to new victims?* Beyond all other considerations, it is this restriction on the Court's sentencing authority that is the central reason for the Court's rejection of the Plea Agreement.

¹ Among the documents the Court has reviewed and considered are the following: (1) Contents of the Court file, including original charging documents, the indictment, and various other material; (2) Presentence Investigation Report, including the applicable Sentencing Guidelines; (3) Plea Agreements; (4) Defense Sentencing Memorandum; (5) Victim Impact Statement; (6) Objection to Victim Impact Statement; (7) Redacted Victim Impact Statement; (8) Commonwealth's "Rationale for the Plea" email; and (9) Additional emails related to the calculation of the Sentencing Guidelines.

² The Defendant's prior record and probation status is drawn from the Presentence Investigation Report.

This Court recognizes that prosecutors, and the courts in which they practice, have distinct and defined roles in the criminal justice system. Prosecutors decide who to prosecute, what charges to initiate, the nature and content of the indictment to present to a grand jury, and what, if any, plea agreements should be considered, offered, or accepted. As to any plea negotiations which might be undertaken by the Commonwealth and defense counsel, the Court is not only uninvolved in that process but *prohibited* from participation. See Va. R. Sup. Ct. 3A:8(c)(1)(C). However, when the parties have entered into a plea agreement that restricts the Court's sentencing discretion, the Court does have the authority and the responsibility to determine whether to accept or reject the agreement.

The crimes before the Court do not lie at the periphery of concern. Kidnapping a four-year-old child – stealing her from her bed in the middle of the night – is at the dead center of concern. A criminal justice system that cannot protect a four-year-old child in such circumstances is a failure. When the court system has tried without success to bring a defendant into compliance with the law, and when that defendant has committed a crime of such gravity that it can only be described as posing an existential threat to a child's life, the only goal of sentencing likely to protect the community is a lengthy period of incarceration. This Plea Agreement fell woefully short of that goal.³

Nor did the Court view the other terms of the Plea Agreement – such as entry of a protective order, or the obligation of “no contact” with the victim, or any period of probation the Court might impose – as reducing the danger posed by the defendant. Such terms are only meaningful and effective if the defendant actually obeys the obligations they impose; unfortunately, this defendant has demonstrated that he cannot be trusted to obey the law or obey the orders of a court.

Defense counsel makes the argument that the Court, in deciding whether to accept the Plea Agreement, should take some “assurances” from counsel's prediction that the Defendant is likely to be excluded from this country upon his release. There are multiple problems with this argument. First, while exclusion from the United States would be a significant collateral consequence of the Defendant's plea, the Court cannot simply assume it will occur -- especially given defense counsel's representation that the

³ In the Defendant's Sentencing Memorandum, the Defendant emphasized that the Sentencing Guidelines for this case are “probation/no incarceration or up to 6 months incarceration” and that since the Defendant has already served approximately nine months in jail, “[a] sentence of time-served would be well above the sentencing guidelines in this case and is appropriate.” *Defendant's Sentencing Memorandum*, at 6. Whatever merit this argument might have in connection with a sentencing determination, it has little persuasive force with regard to the determination whether to accept or reject a plea agreement. This is because the argument is circular: *The Plea Agreement makes sense because the cap exceeds the Sentencing Guidelines, but the reason the cap exceeds the Sentencing Guidelines is because of the Plea Agreement.* There are many factors that impact on the Sentencing Guidelines, but none is more significant than the offense of conviction. The charges in this case underwent fundamental change from the day of arrest to the day of plea. Some changes may have been due to the Commonwealth's assessment of the case independent of the potential for a plea, but it is reasonable to assume that the Commonwealth's decision to amend the Burglary felony to the Unlawful Entry misdemeanor was related to the Defendant's waiver of the Preliminary Hearing and signed statement of his intention to plead guilty, all of which occurred on February 1, 2024.

Defendant is in the United States pursuant to a lawful grant of political asylum. Second, exclusion from the United States is, in no respect, a panacea. It would essentially render meaningless the restrictions and requirements typically imposed on a probationer convicted of an offense that requires sex offender registration. This includes, and certainly is not limited to, sex offender registration itself, as well as sex offender treatment, GPS monitoring, substance abuse treatment if necessary, travel restrictions, and all the other requirements of probation supervision. Essentially, the Defendant will be physically free to do as he wishes, relieved of any constraints imposed upon him arising out of his convictions.

Against all of the foregoing, the Commonwealth makes one real argument: *They might lose if the case were to go to trial.* That is, of course, true. Litigation risk is always a concern in plea negotiations and plea agreements. But when the Commonwealth's principal rationale in support of a plea agreement is the risk of losing at trial, it is incumbent on the Court to give this rationale careful examination. The Court finds several of the Commonwealth's justifications to simply be inexplicable and certainly not persuasive.

First, the Commonwealth acknowledges that the presence of the defendant's thumb and palm print on the victim's window "clearly prove that the defendant was guilty of breaking into the victim's apartment." In other words, the Commonwealth acknowledges that there is essentially *no litigation risk* associated with the felony Burglary charge.

Second, the Commonwealth argues that "the case cannot rest on the ability of a four-year-old to be deemed competent to testify." It is certainly true that a court would need to make a determination of competency before the victim – who would presumably be at least five-years-old at the time of trial – would be permitted to testify.⁴ But there is no reason to assume that the victim would be found

⁴ The competency of a child witness is determined as of the date the child is offered as a witness, not the date of the events about which the child is called to testify. See *Cross v. Commonwealth*, 195 Va. 62, 64 (1953).

incompetent, and case law – in the Commonwealth of Virginia⁵, in other states⁶, in federal court⁷, and in the United States Supreme Court⁸ – certainly suggests otherwise.

Third, the Commonwealth argues that the victim will be unable to identify the Defendant as the person who abducted her, since she can only describe the individual as a “big man.” But why would it even be necessary for the *victim* to identify the Defendant when he has already been conclusively identified through forensic evidence as the person who broke into the victim’s apartment? The Commonwealth argues that the thumb print and palm print, while establishing that the Defendant broke into the apartment, are “less helpful” in “establishing the defendant as the person who committed the abduction.” Is the Commonwealth really concerned that the jury might think there were two break-ins that evening, one to abduct, and one for some other purpose? Moreover, to prove motive, opportunity, intent and even identity, the Commonwealth might well be able to seek the admission of “other crimes” evidence associated with

⁵ Virginia courts have determined that “a child is competent to testify if he or she possesses the capacity to observe, recollect, communicate events, and intelligently frame answers to the questions asked of him or her with a consciousness of a duty to speak the truth.” *Greenway v. Commonwealth*, 254 Va. 147, 153, 487 S.E.2d 224 (1997) (holding that allowing testimony of a twelve-year-old boy who did not have sufficient knowledge of the Defendant’s vehicle was harmless error); *see also Bynum v. Commonwealth*, 2013 Va. App. LEXIS 170 (Va. App. 2013) (finding a ten-year old competent to testify); *see Klevenz v. Commonwealth*, 2013 Va. App. LEXIS 45 (Va. App. 2013) (finding a four-year-old competent to testify); *Tinsley v. Johnson*, 2010 U.S. Dist. LEXIS 76117 (W.D.V.A. 2010) (finding an eight-year-old competent to testify); *Guzman-Soto v. Dir., Dep’t of Corr.*, 2010 U.S. Dist. LEXIS 18508 (E.D.V.A. 2010) (finding a ten-year-old competent to testify). In making a competency determination, Virginia courts “must consider the child’s age, his [or her] intelligence or lack of intelligence, and his [or her] sense of moral and legal responsibility.” *Greenway*, 254 Va. at 153 (quoting *Hepler v. Hepler*, 195 Va. 611, 619 (1954)).

⁶ *See, e.g., Rivet v. State*, 556 So. 2d 521 (Fla. 5th DCA 1990) (4 1/2 -year-old alleged victim competent to testify in sexual battery prosecution; holding that “[T]he established law of this state is that if an infant witness has sufficient intelligence to receive a just impression of the facts about which he or she is to testify and has sufficient capacity to relate them correctly, and appreciates the need to tell the truth, the infant should be permitted to testify.”); *Leon v. State*, 498 So. 2d 680 (Fla. 3d DCA 1986) (5-year-old alleged victim competent to testify in sexual battery prosecution); *Bradburn v. Peacock*, 135 Cal. App. 2d 161, 164 (1955) (“[B]ut in view of the many cases in this state which have upheld the trial judge’s discretion in allowing 5-year-old children to testify we must hold that in arbitrarily refusing to permit this 5-year-old to testify without a voir dire examination the trial judge abused his discretion.”); *People v. Trippell*, 7 Cal. 2d 612 (1936); *People v. Allen*, 131 Cal. App. 2d 72 (1955); *People v. Root*, 112 Cal. App. 2d 122 (1952); *People v. Norred*, 110 Cal. App. 2d 492 (1952); *People v. Goff*, 100 Cal. App. 2d 166 (1950); *People v. Terry*, 99 Cal. App. 2d 579 (1950); and *People v. Manuel*, 94 Cal. App. 2d 20 (1949).

⁷ *See United States v. Allen J.*, 127 F.3d 1292, 1296 (10th Cir. 1997) (“Over one hundred years ago, the Supreme Court held it was proper for a five-year-old to give critical testimony in a capital case... Since that time, the trend in the law has been to grant trial courts even greater leeway in deciding if a witness is competent to testify.”)

⁸ *See Wheeler v. United States*, 159 U.S. 523, 524-525 (1895).

five of the Defendant's prior convictions, specifically those that began as Burglary or Indecent Liberties charges. See Virginia Rules of Evidence 2:404(b).

There are litigation risks in nearly all cases, and the Court does not doubt their presence in the instant case as well. But the Court was not persuaded that any of the litigation risks in this case were so momentous or overwhelming that it warranted acceptance of a plea agreement that was this profoundly inadequate in light of the crimes the Defendant committed and the danger he poses, and likely will continue to pose.

It is for these reasons that the Court rejected the Plea Agreement. The matter is set for status before another judge of this court at 9:00 a.m., on June 21, 2024.

SO ORDERED, this 30 day of May, 2024.



JUDGE RANDY I. BELLOWS

From: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>
Sent: Wednesday, June 11, 2025 10:07 AM EDT
To: Curry, James R. <James.Curry@fairfaxcounty.gov>
Subject: Re: Bond alert for Jalloh, Abdul

Sorry—emailed without reading!!

Jenna Sands
Deputy Commonwealth's Attorney
Fairfax County
4110 Chain Bridge Road, Suite 114
Fairfax, VA 22030
o. 703-246-2776
c. [REDACTED]

From: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>
Sent: Wednesday, June 11, 2025 10:06:14 AM
To: Curry, James R. <James.Curry@fairfaxcounty.gov>
Subject: Re: Bond alert for Jalloh, Abdul

Disregard, Mr. Jalloh is still in Jail.

Jenna Sands
Deputy Commonwealth's Attorney
Fairfax County
4110 Chain Bridge Road, Suite 114
Fairfax, VA 22030
o. 703-246-2776
c. [REDACTED]

From: Curry, James R. <James.Curry@fairfaxcounty.gov>
Sent: Wednesday, June 11, 2025 10:00:37 AM
To: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>
Cc: Bailey, Kent <Kent.Bailey@fairfaxcounty.gov>
Subject: Re: Bond alert for Jalloh, Abdul

We had the same thoughts; he is still incarcerated.

Jim

Captain James Curry
Criminal Investigations Division
Fairfax County Police Department
12099 Government Center Pkwy, VA
Follow us @FairfaxCountyPD

From: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>
Sent: Wednesday, June 11, 2025 9:59 AM
To: Curry, James R. <James.Curry@fairfaxcounty.gov>
Subject: Re: Bond alert for Jalloh, Abdul

Hi James,
Has anyone looked at Jalloh for yesterday's Rte 1 stabbing homicide?

Jenna Sands
Deputy Commonwealth's Attorney
Fairfax County
4110 Chain Bridge Road, Suite 114
Fairfax, VA 22030
o. 703-246-2776
c. [REDACTED]

From: Curry, James R. <James.Curry@fairfaxcounty.gov>
Sent: Monday, May 5, 2025 2:15:33 PM
To: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>; Gill, Kelsey <Kelsey.Gill@fairfaxcounty.gov>; Clingan, Eric <Eric.Clingan@fairfaxcounty.gov>; Sprissler, Kelly <Kelly.Sprissler@fairfaxcounty.gov>
Cc: Heiser, Mary L <Mary.Heiser@fairfaxcounty.gov>; McClelland, Brian J. <Brian.McClelland@fairfaxcounty.gov>
Subject: Fw: Bond alert for Jalloh, Abdul

Good afternoon,

Please see the bond alert sent by Detective Buffington. The suspect has a history of stabbing community members and was on probation during the most recent assault. For those reasons and the reasons outlined in the document, we ask that you argue he continues to be held at the ADC.

Thank you,
Jim

Event Summary

On 05/04/2025 officers responded to [REDACTED] Sacramento Dr. for a stabbed person. When officers arrived on scene, they spoke to the victim. The Victim stated that last night when he was sleeping outside with his girlfriend, for an unknown reason, a subject known to him as "A.J." stabbed him in the leg. The Victim described the "A.J." as a B/M heavier build. Officers developed Abdul Jalloh as a suspect and it was confirmed by a photo of Jalloh shown to the Victim. Without hesitation, the Victim stated that Jallow was the person who stabbed him.

Jalloh has been charged with numerous Malicious wounding and been convicted of one in 2023 and currently out on probation for the aforementioned crime and living in an OAR provided motel room.

PRIOR POLICE INVOLVMENT

- I/LEADS: alerts for mental SU, knife on person, and ban letter; 178 involvements going [REDACTED] JALLOH is a known shoplifter and is often intoxicated/high and located w/narcotics on his person
- 2024-1050044 – 04/14/24, JALLOH stabbed [REDACTED] in the head after [REDACTED] attacked a female and stole her money
- 2024-1050027 – 04/14/24, prior to attacking [REDACTED] he stabbed a homeless VI in the head and upper body when he was sleeping in a bus stop, telling him, "get up, you can't sleep here"
- 2024-0870188 – 03/27/24, he admitted to having armed himself w/scissors
- 2024-0210092 – 01/21/24, he reported he was [REDACTED]
- 2023-0390070 – 02/08/23, he attacked an elderly man, took his phone, and stabbed him
- 2023-0180163 – 01/18/23, he stabbed VI in McDonald's
- 2018-2920024 – 10/19/18, VI said JALLOH choked her, stomped on and burned her chest, and raped her

CRIMINAL HISTORY

- 02/08/23 Malicious Wounding sentenced to 7 years- 5 suspended

COMMUNITY TIES

- He has lived in Virginia since he was 9.
- Lived in community provided housing/ shelters in the MTV. Area for years.

DANGER

This individual has a long history of stabbing community members and is currently on probation for doing that very thing. He has shown a blatant disregard for human life and is a danger to the community.

Offender held NO BOND on 05/05/25

Captain James Curry

Criminal Investigations Division
Fairfax County Police Department
12099 Government Center Pkwy, VA
Follow us @FairfaxCountyPD

From: McClelland, Brian J. <Brian.McClelland@fairfaxcounty.gov>
Sent: Monday, May 5, 2025 1:53 PM
To: Curry, James R. <James.Curry@fairfaxcounty.gov>
Cc: Heiser, Mary L <Mary.Heiser@fairfaxcounty.gov>
Subject: Fwd: Bond alert for Jalloh, abdul

Bond alert sent for Jalloh
Sent from iPhone

Begin forwarded message:

From: "Buffington, John" <John.Buffington@fairfaxcounty.gov>
Date: May 5, 2025 at 12:03:24 EDT
To: OCWA-GDC <OCWA-GDC@fairfaxcounty.gov>, FCPD-MCB Commander <FCPD-MCBCommander@fairfaxcounty.gov>, JDRDC-GDC-ArrestmentOfficers <JDRDC-GDC-ArrestmentOfficers@fairfaxcounty.gov>, "McClelland, Brian J." <Brian.McClelland@fairfaxcounty.gov>, "Rivera, Sarai" <Sarai.Rivera@fairfaxcounty.gov>, "Melek, Jackie" <Jessica.Melek@fairfaxcounty.gov>
Subject: Bond alert for Jalloh, abdul

Bond alert for Jalloh, abdul. He was held NO bond on 5/5/25 by the magistrate.

Detective J. Buffington Jr. #4443
Fairfax County Police Department
Criminal Investigations- MT. Vernon District
Criminal Investigations, Cyber and Forensics Bureau
Desk-(703) 619-4303
Cell-[REDACTED]

From: Mauro, Jeff on behalf of Mauro, Jeff <Jeffrey.Mauro@fairfaxcounty.gov>
Sent: Wednesday, November 19, 2025 9:17 AM EST
To: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>
Subject: Re: RELEASED: Abdul Jalloh

Jenna,

I have a meeting at 0930, but will call you after 1000 hrs.

Major J. Mauro | Fairfax County Police Department | Mt Vernon District Station | 703.360.8400

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From: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>
Sent: Wednesday, November 19, 2025 08:56
To: Mauro, Jeff <Jeffrey.Mauro@fairfaxcounty.gov>
Subject: RE: RELEASED: Abdul Jalloh

I handled his malicious wounding charges personally. Happy to discuss. I'm available by phone this morning till 9:30 or after 10.

Jenna Sands
Chief Deputy Commonwealth's Attorney
Fairfax County
4110 Chain Bridge Road
Fairfax, VA 22030
O: 703.246.2776
C: [REDACTED]

From: Mauro, Jeff <Jeffrey.Mauro@fairfaxcounty.gov>
Sent: Tuesday, November 18, 2025 8:04 AM
To: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>
Subject: Re: RELEASED: Abdul Jalloh

Jenna,

Good morning. I hope things are well.

I wanted to bring Mr. Abdul Jalloh's release last week to your attention. Mr. Jalloh is one of the repeat (and violent) felony offenders I expressed concern about when we met. He has an extensive criminal history—he has stabbed multiple people, sexually assaulted at least one woman, and committed numerous other criminal offenses. Furthermore, his behavior appears to be escalating and becoming more violent and explosive.

I wanted to please get your insights on why he is out again so soon and ask if his prior suspended sentence (of I believe 5 years) can be pursued by your office?

Unfortunately, based on MTV Station's numerous dealings with him, I am concerned that it is not a question of if, but rather when he will maliciously wound (or worse) again.

Appreciate your input.

Major J. Mauro | Fairfax County Police Department
Mt Vernon District Station | (703) 360•8400

<https://www.fairfaxcounty.gov/police>

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From: Jeffrey.Mauro@fairfaxcounty.gov <Jeffrey.Mauro@fairfaxcounty.gov>

Sent: Saturday, November 15, 2025 5:20 AM EST

To: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>

Subject: Re: RELEASED: Abdul Jalloh

Jenna,

Good morning. I hope things are well.

I wanted to bring Mr. Abdul Jalloh's release this week to your attention. Mr. Jalloh is one of the repeat (and violent) felony offenders I expressed concern about when we met. He has an extensive criminal history—he has stabbed multiple people, sexually assaulted at least one woman, and committed numerous other criminal offenses. Furthermore, his behavior appears to be escalating and becoming more violent and explosive.

I wanted to please get your background on why he is out again so soon and ask if his prior suspended sentence (of I believe 5 years) was pursued by your office?

Unfortunately, based on MTV Station's numerous dealings with him, again I want to share my concern that it is not a question of if, but rather when he will maliciously wound (or worse) again. Unfortunately my concern came true after you and I last met with his last violent attack.

Appreciate your input.

Major J. Mauro | Fairfax County Police Department
Mt Vernon District Station | (703) 360•8400

<https://www.fairfaxcounty.gov/police>

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From: Levy, Rachel A. <Rachel.Levy@fairfaxcounty.gov>
Sent: Thursday, August 28, 2025 3:01 PM EDT
To: Wright, Brooke <Brooke.Wright@fairfaxcounty.gov>
Subject: Re: CID UPDATES: 08/21/2025 Midnight Shift
Attachment(s): "image001.png", "image002.jpg", "image003.jpg", "image004.png"

I'm direct, I'll follow up with CID on him.

Rachel

Deputy Chief Rachel Levy
Commander, Major Crimes Bureau
Fairfax County Police Department
12099 Government Center Pkwy
Fairfax, VA 22035
703-246-4251

On Aug 28, 2025, at 2:03 PM, Wright, Brooke <Brooke.Wright@fairfaxcounty.gov> wrote:

Awareness- this is the homeless guy who keeps assaulting/stabbing other homeless people who do not come to court.

Jenna and I had a specific conversation regarding them prosecuting without a victim in court for the stabbing given the circumstances and she was on board with a victimless prosecution.

Sent from my iPhone

Begin forwarded message:

From: "Cash, Richard" <Richard.Cash@fairfaxcounty.gov>
Date: August 28, 2025 at 12:26:03 PM EDT
To: "Wright, Brooke" <Brooke.Wright@fairfaxcounty.gov>
Subject: RE: CID UPDATES: 08/21/2025 Midnight Shift

Good afternoon,

The last stabbing from May is still working its way through the court system with an upcoming date of **September 30, 2025**. Listed below is the Bond Alert we sent in for this past stabbing to hopefully keep him incarcerated this time.

Subject: BOND ALERT: Abdul JALLOH

CASE NUMBER: 2025-2330223

DEFENDANT: Abdul JALLOH [REDACTED] 1993

CHARGES: Malicious Wounding, 18.2-51

VICTIM: [REDACTED]

LOCATION: 7849 Richmond Hwy, Alexandria VA 22306

EVENT SUMMARY

On August 21 at approximately 1936 hrs, officers were dispatched to a fight in progress at the Gum Springs Shopping Center located at 7849 Richmond Hwy. Officers arrived on scene and observed an older male (approximately 60 years of age), laying on the ground bleeding from facial injuries. The victim stated that JALLOH had approached him earlier in the day and asked

for money, the victim refused and JALLOH became upset. Later in the day (at the time of the call), JALLOH saw the victim again and began to physically assault him. JALLOH **punched** the victim in the face, **pushed** him to the ground, and **stomped** on his head. The victim had a black eye, laceration to his face, and his eye was completely swollen shut. The victim required multiple stitches to his face.


PRIOR POLICE INVOLVMENT

- JALLOH has had over 100 involvements with FCPD over the years, resulting in multiple charges and arrests, spanning from theft to violent crimes against persons
- JALLOH's offenses began with domestic violence incidents and escalated to assaulting other victims and threats with weapons (knives). He has been involved in multiple stabbing incidents with victims identifying him as the offender in these cases
- This year JALLOH has been the offender in a malicious wounding where he stabbed a man in **May 2025, in which he received a bond on July 31, 2025**— three weeks later, this incident occurred where he assaulted an older male and **stomped** his head into the ground

CRIMINAL HISTORY

- 1x convicted felon
- 2014: Assault on family member (nolle prossed)
- 2015: Assault on family member (nolle prossed)
- 2017: ID theft to avoid arrest (guilty)
- 2017: Assault (guilty)
- 2018: Possession of Marijuana (guilty)
- 2018: Destruction of property (guilty) (original charge: malicious shoot/throw occupied building)
- 2018: Contribute to delinquency of a minor (nolle prossed)
- 2018: Rape (nolle prossed)
- 2018: Grand Larceny (nolle prossed)
- 2022: Trespass (nolle prossed)
- 2023: Trespass (guilty)
- 2023: Disorderly conduct (guilty)
- 2023: Drugs: possess sch III (guilty) – (original charge: possess sch I/II)
- 2023: Malicious Wounding (nolle prossed)
- **2023: Malicious Wounding (guilty) – sentenced to 7 years with 5 years suspended**
- 2023: Steal property from person (nolle prossed)
- 2024: Petit larc (nolle prossed)
- 2024: Trespass (nolle prossed)
- 2024: Petit larc (nolle prossed)
- 2024: Disorderly conduct (nolle prossed)
- 2024: Malicious Wounding (nolle prossed)
- 2024: FTA (dismissed)
- 2025: Malicious Wounding – next court date **September 30, 2025**

COMMUNITY TIES

- 
- JALLOH does not currently have a home address and was living at the Relax Inn (5963 Richmond Hwy, Alexandria VA) when he was released from the jail earlier this year

DANGER

JALLOH is currently homeless with extensive violent criminal history. His pattern of behavior shows escalating violence towards the community and community members. He has been involved in multiple malicious woundings where he has stabbed multiple people. At the time of his arrest, he had a knife on his person, although he did not use this knife during this assault, he clearly has no issue using the knife to stab another person, according to his pattern of behavior. He demonstrates a consistent pattern of retail theft, particularly targeting alcohol from ABC stores, 7-Elevens, and other retailers. Store employees frequently recognize him, and he has been banned from multiple commercial properties. His repeated violent and explosive

behavior has resulted in him being banned from numerous hotels and shelters.

JALLOH is already out on bond on another pending malicious wounding charge and in less than one month, has violently assaulted an older man resulting in permanent damage – he is clearly a danger to the community and his behavior clearly demonstrates that he is violent.

Let me know if you would like any further information on this guy.

Rich

Captain Richard L. Cash, VCLEE-CO
Assistant Commander, Criminal Investigations Division
Major Crimes Bureau
Fairfax County Police Department
Cell: [REDACTED]

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From: Wright, Brooke <Brooke.Wright@fairfaxcounty.gov>
Sent: Tuesday, August 26, 2025 4:03 PM
To: Cash, Richard <Richard.Cash@fairfaxcounty.gov>
Subject: RE: CID UPDATES: 08/21/2025 Midnight Shift

Can you look at this guy's history and tell me what happened in court on the last stabbing he did?

[211 // ASSAULT - Aggravated // 7849 Richmond Hwy // Other // 19:32 hours // 20252330223 // E252332459](#)

SPECIALTY CONSULTED
CICFB - CID2

Mount Vernon Officers responded to the listed location for a fight in progress. Officers quickly arrived on scene and were able to account for all individuals involved in the incident. It was determined that earlier in the day, the Offender had approached the Victim and asked for money. The victim declined the Offender's request. The Offender later saw the Victim in the parking lot of the Gum Springs Shopping Center and physically assaulted the Victim by punching him in the face and stomping on his head while he was laying on the ground. The Victim sustained a minor laceration to his head and had his right eye swollen shut. The Victim was transported to MTV Hospital NLT. WC2A was notified of the incident and a consult with the on-call CID supervisor was completed. The Offender did not want to speak to a detective. Patrol was able to handle the investigation without assistance, and the Offender was transported to the ADC where he was charged with Malicious Wounding and held on No Bond. INFO COPY: MTV CID, CM02, CM20

Offender: Jalloh, Abdul **Ethnicity:** Non-Hispanic **Race:** Black/African American **Gender:** Male **Age:** 32 **Birth Date:** [REDACTED] 1993

Address: No Fixed

Victim: [REDACTED]

- Asked victim for money earlier in the day
- Saw victim again and assaulted him
- Punched and stomped on the victim's head
 - Victim had cut on forehead and swollen eye
- Patrol quickly arrived and located ABDUL JALLOH and took him into custody
 - JALLOH refused to speak to a detective
- The Victim was alert and his injuries were not life threatening
- The Victim is [REDACTED]

- Transported to Mount Vernon Hospital
- Patrol advised that they were going to transport the offender to the ADC and handle the case.
- JALLOH was held on no bond and was charged on Malicious Wounding.
- INFO CID

Captain Richard L. Cash
Assistant Commander, Criminal Investigations Division
Major Crimes Bureau
Fairfax County Police Department
Cell: [REDACTED]

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From: Jeffrey.Mauro@fairfaxcounty.gov <Jeffrey.Mauro@fairfaxcounty.gov>

Sent: Saturday, November 15, 2025 4:57 AM EST

To: Sands, Jenna <Jennifer.Sands@fairfaxcounty.gov>

Subject: Re: RELEASED TODAY: Abdul Jalloh

Jenna,

Good morning. I hope things are well.

I wanted to bring Mr. Jalloh's release to your attention, because Mr. Jalloh is one of the repeat (and violent) offenders we discussed when we met.

I wanted to get your background on why he is out so soon and ask if his prior suspended sentence (of I believe 5 years) was pursued by your office?

Unfortunately, based on MTV Station's numerous dealings with him, it is not a question of if, but rather when he will maliciously wound (or worse) again. My role of keeping the public safe, prompts me to follow up on his status.

Major J. Mauro | Fairfax County Police Department
Mt Vernon District Station | (703) 360•8400

<https://www.fairfaxcounty.gov/police>

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On Nov 14, 2025, at 18:03, Vandermast, Emily <Emily.Vandermast@fairfaxcounty.gov> wrote:

Good Evening MTV,

Abdul Jalloh was released from the ADC this evening at 1725 hrs (11/14/2025) after serving his sentence for a probation violation. Attached is a biosheet from our crime analyst, for those that are unfamiliar with Mr. Jalloh. Alerts for: **mental SU, knife on person, and ban letter.**

A quick synopsis of Mr. Jalloh's involvements with PD: He is homeless, extensive violent criminal history, his pattern of behavior shows escalating violence towards the community and community members. He has been involved in multiple malicious woundings where he has stabbed multiple people. At the time of his last arrest, he had a knife on his person. He demonstrates a consistent pattern of retail theft, particularly targeting alcohol from ABC stores, 7-Elevens, and other retailers. Store employees frequently recognize him, and he has been banned from multiple commercial properties. His repeated violent and explosive behavior has resulted in him being banned from numerous hotels and shelters.

The majority of his police involvements have been in MTV and he has no fixed address **Please use caution if you come in contact with him.**

Stay Safe!

Emily

Detective E. Vandermast

Fairfax County Police Department

Criminal Investigations Division

Mount Vernon District Station

2511 Parkers Ln

Alexandria, VA 22306

Office: 703-619-4307

<JALLOH_Abdul_032425.pdf>



OFFENDER BIO SHEET

Fairfax County Police Department



Full Name: Abdul JALLOH

Offender Alias:	No known		
Offender Nickname:	AJ		
Date of Birth:	██████	/93	
SSN:	██████	Language:	English
OL Number:	██████	State:	VA
OL Status:	UNLICENSED	Picture Date:	04/18/24
Vehicle(s):	None found	SMTs:	No known
Last Known Address:	No fixed address	HGT:	5'07"
		WGT:	150

Drug History ?	YES	Weapons History ?	YES
Gang Affiliation ?	None known	Convicted Felon ?	YES

Criminal History: VA: Mal Wounding, FTA, Dis. Conduct, Larceny, Trespass., Poss. SCH I/II, Rape, Occupied Bldg: Shoot/Throw, Cont. to Delin. of Minor, Poss. Marij., Assault, ID Theft; DC: Assault, Destruction of Property, Poss. Prohib. Weapon, Threats to Do Bodily Harm.

Frequented Locations:	MTV, MAS, Kennedy Shelter, Rising Hope Shelter, Bailey's Shelter.	Associates:	Other homeless individuals, no one person in particular
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Virginia Employment History: Most recent is Q3/2022: Chipotle (no location provided)

Additional Information & Photos:

/LEADS: alerts for mental SU, knife on person, and ban letter; 178 involvements going ████████ JALLOH is a known shoplifter and is often intoxicated/high and located w/narcotics on his person

2024-1050044 – 04/14/24, JALLOH **stabbed** ████████ **in the head** after ████████ attacked a female and stole her money

2024-1050027 – 04/14/24, prior to attacking ████████, he **stabbed a homeless VI in the head and upper body** when he was sleeping in a bus stop, telling him, "get up, you can't sleep here"

2024-0870188 – 03/27/24, he admitted to having **armed himself w/scissors**

2024-0210092 – 01/21/24, he reported he was ████████

2023-0390070 – 02/08/23, he attacked an elderly man, took his phone, and **stabbed him**

2023-0180163 – 01/18/23, he **stabbed** VI in McDonald's

2018-2920024 – 10/19/18, **VI said JALLOH choked her, stomped on and burned her chest, and raped her**

██████████


Commonwealth of Virginia

COUNTY OF FAIRFAX

4110 CHAIN BRIDGE ROAD, ROOM 114

FAIRFAX, VIRGINIA 22030-4047

STEVE DESCANO
COMMONWEALTH'S ATTORNEY

COMMONWEALTH'S ATTORNEY PROCEDURE MEMORANDUM	
	Date: 12/15/2020
Policy Title: Guidelines for Plea Bargaining, Charging Decisions, and Sentencing	
Summary: This policy makes comprehensive changes to the way the Commonwealth's Attorney's Office negotiates pleas, makes charging decisions, and advocates for sentences to bring such practices in line with the values and needs of the community and reduce mass incarceration.	
Authorizing Signature: 	

INTRODUCTION, VALUES & MISSION

Thousands of community members have discussed their views on criminal justice with the Commonwealth's Attorney and the Commonwealth's Attorney's Office continues to meet with community members to hear their voices and concerns through the Justice Advisory Council, community events, and other avenues. The community's values are the values of this office. The mission of this office is to take these values, along with the needs of the community, and assimilate them into our criminal justice system. These values and needs must inform and guide the work this office performs.

The guidelines established herein will ensure that each Assistant Commonwealth's Attorney (ACA) actively negotiates, advocates for, and otherwise pursues outcomes that reflect these values, and that ACAs avoid practices that are in conflict with these values.

PLEA BARGAINING, CHARGING DECISIONS & SENTENCING

1. ACAs Shall Advocate for a Position in Every Case. It is the responsibility of each ACA to use the authority of their position to affirmatively advocate for outcomes that reflect the values of the community. When ACAs defer to the court, they surrender the authority the community has vested in the Commonwealth's Attorney to speak on their behalf. To be clear, this office should not abdicate its responsibility to affect an outcome or squander an opportunity to speak on behalf of the community it represents. Every time an ACA is given the opportunity to speak or take a position, the ACA shall do so. In no situation should an ACA simply defer to the court's discretion without taking a position as to the outcome of a case.

2. Permissible Sentencing Agreements. The goal of plea negotiations is to reach outcomes that accord with the community's needs and values. The Fairfax County Commonwealth's Attorney's Office's prior method of plea bargaining is an impediment to achieving these goals. Historically, it was the practice of this office to negotiate with respect to the number and/or nature of charges, but to refrain from making sentencing agreements. The new policy set forth below aims to give ACAs the tools to reach the appropriate outcomes. In addition to negotiating with respect to the number and/or nature of charges, the following sentencing agreements are permitted, provided they are consistent with the standards and requirements as set forth in other sections of this policy:¹
- (a) Agreed upon sentences for a specific amount of active or entirely suspended jail time, which should also, if possible, specify the period for which the time is suspended, the length of active probation (if any), and any special terms or conditions of probation (if any);
 - (b) Agreed upon sentencing ranges;
 - (c) Agreed upon sentencing caps;
 - (d) Agreement only as to the number and nature of charges to which defendants plead guilty; and
 - (e) Agreement to accomplish a deferred disposition.

It is important that ACAs not use the tools granted via this policy to extract maximum punishment as opposed to reaching the correct and just outcome. In making plea agreements, ACAs must conduct a 360 degree analysis of each case and strive to reach the result that meets the needs of the community according to the community's values. ACAs must do this case-by-case analysis and avoid the standardization of plea offers over time that creates de facto mandatory minimums. Much as statutory mandatory minimums interfere with the process of fashioning appropriate outcomes based on the specific facts and circumstances of each case, these self-imposed de facto mandatory minimums have the same negative effect.

A. Sentencing Agreement Considerations.

It is important, in addition to all other considerations, to comply with the statutory obligations in Code Section 19.2-11.01 *et seq.* regarding victim's rights. The sentencing judge may inquire as to the Commonwealth's compliance with such obligations in deciding whether to accept or reject the agreed upon plea deal.

In all situations, ACAs shall advocate for an agreement made by the Commonwealth, even if the agreement was made by another ACA. In no situation shall an ACA use any language to distance themselves from an agreement made by another ACA or in any way signal to the court their personal

¹ Where an agreement is permitted under this policy, ACAs should make an agreement as opposed to a recommendation.

disagreement with a plea deal. This office operates as one unit and each ACA will support and advocate for the decisions of their peers.²

3. Prosecutors Must Strike All Floor Adjustment Mandatory Minimums in Plea Agreements and Endeavor to Negotiate Around Remaining Mandatory Minimums.

A. Mandatory Minimum Definitions.

A properly functioning criminal justice system allows actors to fashion appropriate outcomes in each case based on the specific facts and circumstances of the individual case. Legislatively mandated minimum jail sentences interfere with this process. The Virginia Code contains hundreds of mandatory minimums, each of which fall into one of three categories. The steps reasonably available to limit the negative effects of mandatory minimums depend on the category of mandatory minimum at issue. The three types of mandatory minimums are as follows:

(a) *Floor Adjustment Mandatory Minimum*: an offense that: (1) is an enhancement to another offense based on the presence of an additional factor; (2) the presence of the additional factor creates a mandatory minimum floor of punishment; and (3) the presence of the additional factor does not affect the upper range of permissible punishment.³

(b) *Altered Sentencing Range Mandatory Minimum*: an offense that: (1) contains an enhancement to another offense based on the presence of an additional factor; (2) the presence of the additional factor creates a mandatory minimum floor of punishment; and (3) the presence of the additional factor increases the upper range of permissible punishment.

(c) *Mandatory Minimum Principal Offense*: an offense that contains a mandatory minimum floor of punishment that is not the result of an enhancement to another offense based on the presence of an additional factor.

² For this reason, it is critically important that an ACA handling a plea or sentencing have a full and complete picture of why a particular sentencing agreement was made. Accordingly, for each felony case where the ACA makes a plea agreement, it shall be the responsibility of the ACA to do the following prior the date of the plea: (i) memorialize in the "Case Notes" section of ePros an explanation of why the plea agreement was made (incorporating all aspects considered in the 360 degree view of the case); (ii) place a copy of the printed note in the physical file, and (iii) prepare and upload the Guidelines to the "File Cabinet" in ePros, in PDF format, labeled as "Commonwealth's Guidelines," and place a copy of the printed Guidelines in the physical file.

³ For example, under Section 3.2-4212, it is unlawful for a merchant to sell cigarettes that are not listed in the directory of cigarettes approved by the Commonwealth for sale. A violation of this law is punishable by a range of punishment from 0 to 12 months. However, if the violation involves 3,000 or more packages of cigarettes, the sentence shall include a mandatory minimum term of confinement of 90 days. The law thereby creates a floor of active incarceration but does not change the upper limit of the sentencing range available.

B. ACAs Must Strike All Floor Adjustment Mandatory Minimums in Plea Agreements.

With respect to all Floor Adjustment Mandatory Minimums, ACAs must make plea offers that avoid the legislatively mandated minimum jail sentence.⁴ This can be done either by: (i) striking from the charging document reference to the additional factor that creates the mandatory minimum floor of punishment, (ii) amending the charge to a different code section, or (iii) where multiple charges exist or can be charged, offering a plea to the charge or charges that do not carry a mandatory minimum sentence - whichever the ACA deems appropriate in their discretion.

In such situations, ACAs are not prohibited from negotiating or advocating for active incarceration if such an outcome is in accord with the community's values and needs. However, an ACAs objective must not be to extract the maximum amount of incarceration as opposed to reaching the correct and just outcome. Moreover, in determining what outcome is just, the ACA's thought process should not be anchored by amount of time that would have been required by the mandatory minimum. The primary consideration in negotiating case resolutions must be the community's values and needs.

The community is best served by having the negotiation and sentencing process based around charges that do not contain mandatory minimum floors but offer the same upper range of punishment as the originally charged mandatory minimum offense. By removing the Floor Adjustment Mandatory Minimum, the system actors are free to shape an appropriate outcome based on the specific facts and circumstances of the individual case.

C. ACAs Must Endeavor to Negotiate Around Altered Sentencing Range Mandatory Minimums Where Appropriate.

With Altered Sentencing Range Mandatory Minimums, the mandatory minimum floor of punishment cannot be avoided without also foregoing the expanded sentencing range. Mandating that ACAs negotiate around this type of mandatory minimum in *all* cases is problematic because in *some* cases the lesser available sentencing range would not be sufficient for proper rehabilitation and supervision. ACAs shall consider whether the non-mandatory minimum version of such an offense, or an entirely different offense, is appropriate under the circumstances, but ACAs are not required to offer such a plea if the increased sentencing range is necessary. In making such a determination, ACAs should focus their analysis on the portion of the increased sentencing range that exceeds the sentencing range for the non-mandatory minimum version of the offense. If active or suspended time (or license suspension) in this portion of the range cannot be justified by the ACA on a case specific factual basis, the ACA shall offer a plea to the version of the offense without the mandatory minimum.

⁴ DUI and DWI offenses shall continue to be handled as provided for in Policy 20.006.

D. ACAs Must Endeavor to Negotiate Around Mandatory Minimum Principal Offenses Where Appropriate.

Given that Mandatory Minimum Principal Offenses contain a minimum floor of punishment that is encompassed within the principal offense, rather than as an enhancement, avoiding the imposition of the mandatory minimum requires the charging of an entirely different offense. In such situations, ACAs are strongly encouraged, but not required in every instance, to offer a plea to an alternative, non-mandatory minimum offense or, where multiple charges exist or can be charged, the ACA should consider offering a plea to the charge or charges that do not carry a mandatory minimum sentence.

4. Excessive Active Probation is Prohibited. The length of active probation should always be specifically tailored to the actual needs of the case. In each case, active probation length should be devised to serve a specific rehabilitative goal, community safety need, or other purpose. The length agreed to, or advocated for, should never be a “standard” or reflexive length. Further, the sole purpose of active probation must never be to construct a framework for someone to serve an extended jail sentence in increments that was not otherwise justified at the time of sentencing.

Excessive active probationary periods are often unnecessary. Most probation violations occur within the first year, suggesting that supervision beyond that point serves little or no rehabilitative purpose.⁵ Accordingly, absent an articulable, fact specific basis, ACAs should endeavor to keep active probationary periods to 12 months or less. This is a general policy position, not an absolute. Cases involving violence, sexual abuse, sexual assault, a lengthy restitution period, or extensive substance abuse rehabilitative needs are examples where a longer active probationary period may be justified.

5. Deferred Dispositions Shall be Considered in Appropriate Cases. Prior to January 1, 2020, office policy was that ACAs would not agree to deferred dispositions in circuit court, or any other court, unless there was specific statutory authority for the deferred disposition (for example, 18.2-251, 18.2-57.3, etc.). This policy ended on January 1, 2020. The Virginia Supreme Court⁶ and the Virginia Attorney General⁷ have both opined that when the Commonwealth’s Attorney and defendant concur, a trial court has the inherent authority to defer disposition in a criminal case and consider dismissal when the defendant has complied with the established conditions. Additionally, during the 2020 Special Session, the Virginia Legislature passed, and the governor signed into a law, a

⁵ States that have shortened supervision periods have seen no resulting increase in crime or recidivism. See e.g., The Pew Charitable Trusts, “Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety,” August 2016, http://www.pewtrusts.org/-/media/assets/2016/08/missouri_policy_shortens_probation_and_parole_terms_protects_public_safety.pdf.

⁶ Starrs v. Commonwealth, 287 Va. 1 (2014); Hernandez v. Commonwealth, 281 Va. 222 (2011).

⁷ Va. Atty. Gen. Opinion No. 17-022, 2018 WL 6929179.

general deferred disposition statute that applies to all crimes and will take effect in March 2021.⁸ This new code section, 19.2-298.02, not only allows agreements to dismiss a case, but also allows agreements to reduce a charge from a felony to a misdemeanor once all conditions are met. Accordingly, ACAs shall consider deferred dispositions in any appropriate case, including felony cases in circuit court, where the goals of justice and rehabilitation can be accomplished, and the values and needs of the community can be served, without imposing the life-long consequences of a misdemeanor or felony conviction.⁹ In such cases, the ACA will accomplish the deferred disposition through an agreement rather than a recommendation.

An important part of Section 19.2-298.02 is the statutory ability of a defendant to expunge all or part of the matter after dismissal or reduction. Accordingly, no ACA shall propose or make any agreement where the ACA limits or prohibits a defendant's statutory right of expungement. Such an agreement would be contrary to the legislative intent behind the statute and the values and needs of the community.

6. ACAs Shall Dispose of Felony Charges as Misdemeanors Where Appropriate. In evaluating the nature of charge(s) to proceed with, whether for trial or a plea, if the disposition the ACA intends to advocate for can be accomplished with a misdemeanor conviction, and a misdemeanor appropriately reflects the alleged conduct, the ACA should consider proceeding with a misdemeanor charge. In other words, if the ACA does not intend to advocate for more than 12 months in jail (6 months to serve), and a misdemeanor is sufficient to achieve all other objectives, then the ACA should proceed with a misdemeanor.¹⁰
7. Mandatory Use of Alternative Sentencing. The Virginia Sentencing Commission utilizes the Nonviolent Risk Assessment Tool to enable the diversion of nonviolent defendants into alternative outcomes.¹¹ This tool, which is distinct from the Guidelines, but is calculated at the same time, is evidence-based and has proven to be effective in mitigating recidivism risk. This empirically-based

⁸ See Va. Code Section 19.2-298.02.

⁹ If an ACA would like to make such an agreement on a felony or a misdemeanor case that involves an identifiable victim of a violent offense (as defined footnote 11 of the Bond Policy dated December 7, 2020, Policy No. 20.013), the ACA must first discuss the matter with their supervising Senior Assistant Commonwealth's Attorney (SACA) and obtain the approval of the SACA. Once verbal approval is granted, and all statutory victim's rights (as noted in Section 2.D. above) have been compiled with, the ACA should memorialize the approval and compliance in an email to the SACA. The ACA should then upload the email, in PDF format, with the file name "Authorization for Deferred Disposition" to the "File Cabinet" in ePros.

¹⁰ The sole rationale for proceeding with a felony should not be that the person "needs felony level probation." The head of District 29 Probation and Parole informed this office that there is no material difference in the intensity in supervision of, or services available to, those on probation for felony theft, drug, or other nonviolent offenses versus those on probation for similar misdemeanor offenses.

¹¹ In 1994, the General Assembly required the Virginia Criminal Sentencing Commission to develop an empirically-based risk-assessment instrument for use in diverting "lowest-risk, incarceration-bound, drug and property offenders" to non-prison sanctions.

risk assessment takes into consideration over 200 unique factors. Accordingly, the Guidelines calculation may recommend a period of active incarceration, but the defendant may simultaneously qualify for alternative punishment/sentencing under the Nonviolent Risk Assessment Tool. Alternative sentencing may be as straightforward as an entirely suspended jail sentence, but can include other things such as the Intensive Supervision Program, home electronic and telephone monitoring, day reporting, diversion, community service, and substance abuse treatment.¹²

If the Nonviolent Risk Assessment Tool indicates that a defendant is “Recommended for Alternative Punishment,” the ACA shall advocate for an alternative punishment that does not involve incarceration (including incarceration in the Adult Detention Center) and may not make a plea agreement that requires a defendant to waive such alternative punishment. In the very rare instance where the ACA believes the facts of the case do not merit an alternative punishment, they must: (i) discuss the case and proposed sentencing request with their supervising SACA prior to the sentencing hearing or making the plea agreement, (ii) receive authority from the SACA to proceed as proposed (which will be granted only in the most compelling of circumstances), (iii) memorialize the authority in an email to their supervising SACA, and (iv) upload the email, in PDF format, with the file name “Authorization to Depart from Alternative Sentencing” to the “File Cabinet” in ePros prior to taking any action.

8. No Reflexive Reliance on the Virginia Sentencing Guidelines. In general, ACAs should not reflexively assume the Guidelines recommended sentence is appropriate. The Guidelines are based upon data from across the Commonwealth. In 2019, only 4.1% of this data came from Fairfax County cases.¹³ Accordingly, the Guidelines recommendation is not necessarily representative of the values and needs of the Fairfax County community. Therefore, ACAs are directed to consider whether a downward departure from the Guidelines’ recommended sentence is appropriate and consistent with the values and needs of the Fairfax County community.
9. Charging Solely to Increase the Guidelines is Prohibited. The act of indicting or authorizing the charging of numerous counts solely to artificially increase the active time recommended by the Guidelines is prohibited. When the sentencing range on one offense covers the maximum sentence an ACA would ask the court to impose, the ACA should avoid indicting or authorizing additional counts solely to increase sentencing guidelines. However, an ACA may indict or authorize additional counts as needed to accurately reflect the number of victims, accuracy

¹² See Offender Risk Assessment in Virginia, p. 20-22, available at http://www.vcsc.virginia.gov/risk_off_rpt.pdf.

¹³ 2019 Virginia Sentencing Commission Annual Report, p. 12, figure 1, available at <http://www.vcsc.virginia.gov/2019VCSCAnnualReport.pdf>.

of the charges, or for other reasons.

10. Death Penalty is Prohibited. In no case will this office seek the death penalty.

11. Review of Requests for a Life Sentence and Decisions to Proceed with Charges Carrying a Mandatory Life Sentence. ACAs may not: (i) advocate for a life sentence at a sentencing hearing, (ii) certify at preliminary hearing an offense carrying a mandatory life sentence, or (iii) indict, or amend a charge to, an offense carrying a mandatory life sentence without first: (a) drafting a written memorandum fully and fairly describing the details of the case and why a life sentence is both appropriate and consistent with the values of the community, (b) providing the memorandum to the Deputy of Court Strategies (DCS), with a copy to the ACA's supervising SACA, (c) receiving the written approval of the DCS to proceed as requested, and (d) uploading both the written approval and memorandum, in PDF format, with the file name "Authorization for Life Sentence" to the "File Cabinet" in ePros prior to taking the proposed action.

12. Unfairly Coercive and Retaliatory Tactics are Prohibited. ACAs should never threaten an adverse consequence solely because a defendant elects to have a preliminary hearing, argue a motion, or exercise a statutory or constitutional right. It may be the case that an ACA's offer does not change or becomes more or less favorable after seeing the presentation of evidence at a preliminary hearing or motion, or that an ACA amends a charge or indicts additional charges to accurately reflect the facts of a case that is proceeding to trial, but an ACA should not threaten to bring additional charges, enhance charges, or nolle pros and direct indict a case¹⁴ solely to unfairly coerce or punish a defendant for a decision to exercise a constitutional or statutory right.

13. Prosecutors Will No Longer Act to Unilaterally Transfer Juveniles to Circuit Court for Treatment as Adults.

A. Background

Virginia Code Section 16.1-269 permits the transfer of a juvenile from juvenile court to circuit court for more severe treatment as an adult. As a general rule, a justice system should treat children as children. The transfer of a juvenile to circuit court should be exceedingly rare and done only under extreme circumstances. The unbridled and unilateral transfer of juvenile defendants by prosecutors from juvenile court to circuit court for handling as adults is in contravention of the values of the community and is prohibited.

In limited situations, as specified in Subsection B of 16.1-269, the Code

¹⁴ All direct indictments, including those that will accompany a charge or charges certified at preliminary hearing, must be approved, in advance of the grand jury, by the DCS.

mandates transfer of a juvenile to circuit court.¹⁵ However, in the vast majority of other cases a prosecutor is permitted to make this decision as an exercise of discretion. When a prosecutor exercises this discretion, the prosecutor can elect to proceed under Subsection A or Subsection C of Section 16.1-269. If a prosecutor proceeds under Subsection A, a juvenile court judge is involved in the decision-making process and ultimately determines whether it is proper for the juvenile to be transferred to circuit court. If the prosecutor elects to proceed under Subsection C, the prosecutor bypasses the judge and unilaterally causes the case to be transferred to circuit court. Historically, a prosecutor's office would seek to transfer a juvenile to circuit court for treatment as an adult unilaterally under Subsection C avoiding the transfer hearing and divesting the juvenile court judge of a role in the decision-making process.

B. Prosecutors Shall Not Unilaterally Proceed with the Automatic Transfer of a Juvenile to Circuit Court for Treatment as an Adult.

In all scenarios where the Virginia Code does not mandate transfer, an individual ACA shall not unilaterally determine that a juvenile is a not proper person to remain within the jurisdiction of the juvenile court. Doing so deprives all involved of the benefit of the study and report called for under Section 16.2-269.2, prepared by probation services in anticipation of a transfer hearing under Section 16.1-269.1(A). Accordingly, ACAs shall not proceed with automatic transfer pursuant to Section 16.2-269.1(C), thereby bypassing the hearing provided for by Section 16.1-269.1(A) under any circumstances.

The community is served by the juvenile court holding a transfer hearing wherein probation services, defense counsel, and the Commonwealth examine the background and history of a juvenile offender, and the availability and appropriateness of services, so as to allow for a proper determination as to whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation. These decisions have lasting consequences and must not be taken without complete information and full and fair consideration.

In the rare case where an ACA determines it is appropriate to act under Section 16.2-269.1, the ACA must first obtain written approval and then proceed only under Subsection A. Before proceeding the ACA must: (i) draft a written memorandum fully and fairly describing the details of the case and addressing each of the factors in Section 16.1-269.1(A)(4)(a)-(j)¹⁶, (ii) provide the

¹⁵ A court is mandated by the Virginia Code to transfer a juvenile defendant to circuit court under Section 16.1-269.1(B) when: (1) the juvenile is 16 years of age or older and (2) is charged with murder under Sections 18.2-31, 18.2-32, or 18.2-40, or aggravated malicious wounding under Section 18.2-51.2.

¹⁶ Section 16.2-269.1(A)(4):

a. The juvenile's age;

b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged

memorandum to the DCS, with a copy to the ACA's supervising SACA, (iii) receive the written approval of the DCS to proceed as proposed, and (iv) upload both the written approval and memorandum, in PDF format, with the file name "JDR Certification Authorization" to the "File Cabinet" in ePros.

14. Consideration of Immigration Consequences. ACAs shall consider immigration consequences where possible and where doing so accords with justice. Although not outcome determinative, prosecutors shall consider: (i) the collateral immigration consequences of the specific crime(s) the defendant is charged with, and (ii) the detrimental impact that deportation/removal has on the families and communities those removed or deported leave behind.¹⁷ However, in some case, there will be significant limits as to what an ACA can do to avoid collateral immigration consequences. The weight accorded to potential adverse immigration consequences must be considered on a sliding scale. At one end of the scale, where the seriousness of the offense is significant and the harm to the victim is great, the weight accorded to potential adverse immigration consequences will be minimal. In a case where there is an act of violence and/or great harm done to a victim, the community's public safety interest in mitigating any future harm will likely outweigh other factors in the analysis. Conversely, where the offense is less serious and there is no identifiable victim, the ACA will

offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than 20 years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;

d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;

e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of intellectual disability or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

¹⁷See e.g., The Effects of Deportation on Families and Communities, American Journal of Community Psychology, Volume 62:3, Issue 12, July 31, 2018, available at <https://onlinelibrary.wiley.com/doi/epdf/10.1002/ajcp.12256>.

have greater latitude in negotiating a resolution that takes adverse immigration consequences into account. The resolution will be different in a way that avoids or lessens the collateral immigration consequences, but will not be better than a resolution offered to a defendant that does not face such collateral issues.

As a predicate to any discussion or consideration of potential immigration consequences by an ACA, counsel for a defendant must first provide to the ACA a written and signed analysis on law firm letterhead: (i) identifying the potential adverse immigration consequence, (ii) setting forth a substantive analysis of the legal basis for the potential adverse immigration consequence (including appropriate citations to supporting statutes and case law), and (iii) identifying a suggested course of conduct that avoids the identified potential adverse immigration consequence with an accompanying substantive legal analysis.

15. Full Consideration of Mitigation Evidence and the Case. Any mitigation evidence presented should be given meaningful and thoughtful consideration. Mitigation evidence should be weighed against other case factors. Consideration should be given to the entirety of the case and the defendant, which will include, among other things, the nature of the offense, the prior conduct of the accused, the prior record of the accused, and the background of the accused, including any factors that may be root causes of the alleged criminal behavior such as underlying mental health or substance abuse issues. ACAs must take a thoughtful and holistic approach to the case and the underlying issues. In every case an ACA must be able to articulate how their decision reflects the values and needs of the community.
16. Proper Consideration of Prior Criminal Records. With respect to prior criminal records, it is critical to look at the entirety of someone's history. For example, an offense committed many years ago as a teenager does not weigh as heavily in the analysis as an offense committed more recently, or one committed shortly after being released from incarceration. Moreover, if an old offense, with no intervening criminal conduct, results in an unnecessary and substantial elevation of the Guidelines sentence, it is appropriate for the ACA to account for this in making a sentencing agreement or argument to the court.
17. Drug Possession. The focus of any case where the charge is simple drug possession, whether felony or misdemeanor, should be treatment. ACAs should encourage the treatment, not criminalization of addiction. This office rejects the argument that a person's recovery effort is helped by being made a convicted felon. The lifelong consequences of a felony conviction make overcoming addiction more difficult, not less.
18. Mental Health – ACAs should make use of the Mental Health Docket in all appropriate cases to encourage the treatment, not criminalization, of mental health issues. If an ACA believes a case is appropriate for the Mental Health Docket, the ACA should discuss the matter with their supervising SACA. If the

SACA agrees the case is appropriate for the docket, and the person qualifies for the Mental Health Docket, the approval should be memorialized in an email from the ACA to the SACA, with a copy to the ACA responsible for overseeing the Mental Health Docket. The ACA should then upload the email, in PDF format, with the file name "MH Docket Authorization" to the "File Cabinet" in ePros.

19. Veteran's Treatment Docket - ACAs should make use of the Veteran's Treatment Docket specialized treatment program in all appropriate cases, including appropriate felony cases, to divert veterans from the traditional criminal justice system and assist veterans suffering with addiction and/or mental health issues. If an ACA believes a case is appropriate for the Veteran's Treatment Docket, the ACA should discuss the matter with their supervising SACA. If the SACA agrees the case is appropriate for the docket, and the person qualifies for the Veteran's Treatment Docket, the approval should be memorialized in an email from the ACA to the SACA, with a copy to the ACA responsible for overseeing the Veteran's Treatment Docket. The ACA should then upload the email, in PDF format, with the file name "VT Docket Authorization" to the "File Cabinet" in ePros.
20. Creation of Standard Offers are Prohibited. This office does not have "standard offers" nor are ACAs permitted to develop their own "standard offer" for any type of case. Each offer should be specifically tailored to the facts and circumstances of the case.
21. No Individual Policies. ACAs cannot fulfill their mission to advocate for the values of the community when they develop their own individual or personal policies. Accordingly, this practice is prohibited with respect to any matter in this office, including those beyond the scope of the matters discussed herein. The only policies ACAs may implement, or be guided by, in any respect are the official policies established and adopted by this office.

NO GRANT OF ADDITIONAL RIGHTS

This policy, like all policies of the Fairfax County Commonwealth's Attorney's Office, provides only internal guidance, which may be modified, rescinded, or superseded any time without notice. This policy is not intended to, and may not, be relied upon to create any rights, expectations, privileges, or benefit to any individual enforceable at law in any administrative, civil, or criminal matter. This policy is not inviolable and may be deviated from as is deemed necessary by the Fairfax County Commonwealth's Attorney.