



COMMONWEALTH of VIRGINIA

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INVESTIGATIVE REPORT FAIRFAX COUNTY COMMONWEALTH'S ATTORNEY

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I. Nature of the Investigation

At 11:35 p.m. on July 15, 2025, Andres Caceres-Jaldin was released on bond for July 2, 2025 offenses of felony hit-and-run and misdemeanor reckless driving. Less than three days later, at approximately 11:45 a.m. on July 18, 2025, Caceres-Jaldin was captured on video abducting a 3-year old girl at the Fair Oaks Mall in Fairfax County. According to public reports, Caceres-Jaldin picked the child up and carried her away after she “walked away from the play area going towards another store in the mall.”¹ Caceres-Jaldin took the child to the second floor of the mall, where the child’s mother confronted him and he eventually fled.² Caceres-Jaldin was charged with abduction of a child and grand larceny of an automobile, and as of this writing remains in custody.³

Prior to the 2025 hit-and-run and abduction charges, Caceres-Jaldin had a lengthy history of police involvement in Fairfax County, Loudoun County, and Prince William County for domestic violence, repeated property damage, and dangerous criminal traffic violations. Public concerns arose about how Caceres-Jaldin was able to abduct a child while already on bond for a serious felony, and after his lengthy prior history of police contact. Further public examination of Caceres-Jaldin’s prior history of police involvement revealed that the Fairfax County Commonwealth’s Attorney’s Office had *nolle prossed*, or requested to withdraw, approximately ten criminal charges against Caceres-Jaldin since 2021. These charges included serious violent felonies. Additional public concerns arose about the propriety of the Fairfax Commonwealth’s Attorney’s repeated decisions not to prosecute Caceres-Jaldin.

On August 1, Governor Glenn Youngkin asked my office to investigate this matter **as a result of a pattern of failure by the Fairfax Commonwealth’s Attorney’s office to make protecting its victims, law abiding citizens, and surrounding populations from violent criminals its top priority.** The following is a preliminary report of my Office’s investigative findings.

II. Sources of Information and Applicable Laws and Regulations Reviewed

Whistleblower disclosures and records received from Fairfax County prosecutors and law-enforcement officers

Police and Sheriff Incident Reports (various sources/incidents)

Va. Constitution, Article I, § 7 (Laws should not be suspended)

Va. Constitution, Article I, § 8-A (Rights of victims of crime)

Va. Code, Title 19.2, Chapter 1.1 (Crime Victim and Witness Rights Act)

¹ Melissa Kim, *Man arrested in Chantilly hotel after allegedly abducting toddler at Fair Oaks Mall*, WUSA9 (July 21, 2025, 6:44 p.m.), <http://bit.ly/4lrEn8G>

² *Id.*

³ All current criminal charges against Caceres-Jaldin are merely allegations and Caceres-Jaldin is innocent until proven guilty.

Virginia Rules of Professional Conduct

Interviews with and statements by multiple crime victims

Information requests lodged with Fairfax Commonwealth's Attorney

Various media reports

III. Factual Findings and Legal Violations

Our investigation aggregated years' worth of examples of the Fairfax Commonwealth's Attorney committing *Brady* and discovery violations, violating crime victims' statutory and constitutional rights, entering into improper plea agreements, demonstrating prosecutorial incompetence, and enacting unlawful or unconstitutional policies. Many of the Fairfax Commonwealth's Attorney's failures have been identified by judges in published opinions during active criminal cases. Many other such failures have been identified through media reporting after the failures escaped court scrutiny. These factual findings identify and aggregate the Fairfax Commonwealth's Attorney's failures, including any applicable statutory, constitutional, or ethical provisions they violate.

A. Violations of Victims' Rights

Article I, Section 8-A of the Bill of Rights to the Virginia Constitution requires that "in criminal prosecutions, the victim shall be afforded **fairness, dignity and respect** by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts..." The General Assembly further enacted the **Crime Victim and Witness Rights Act**, which provides:

In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law.⁴

The Crime Victim and Witness Rights Act further guarantees various procedural rights, including the provision of financial assistance, advance notice of court proceedings, and the right

⁴ Va. Code § 19.2-11.01(A).

to consult on proposed plea agreements.

1. Commonwealth v. Wilmer Ramos-Giron: Fairfax Commonwealth's Attorney Falsely Claims Victim Consent to Plea Agreement, Allowing Twice-Deported Illegal Alien to Avoid Abduction and Strangulation Convictions

Wilmer Osmany Ramos-Giron, a Guatemalan national, was deported from the United States in 2012 and 2020 and has a 2020 federal conviction for being an illegal alien in possession of a firearm.⁵ In January 2025, Ramos-Giron choked his ex-wife during an argument and brandished a knife at her.⁶ Ramos-Giron was charged with felony abduction by force, felony strangulation, and misdemeanor assault and battery against a family member.⁷ The Fairfax Commonwealth's Attorney requires prosecutors to consider "immigration consequences" when offering plea agreements and urges prosecutors to attempt to avoid immigration consequences whenever possible.⁸

The Fairfax Commonwealth's Attorney allowed Ramos-Giron to plead guilty to lesser charges of assault and battery and brandishing a bladed weapon, two misdemeanors.⁹ Fairfax Commonwealth's Attorney Deputy Chief of Staff and Public Information Officer Laura Birnbaum issued the following claim:

The resolution in this case was based primarily on the victim's wishes...She expressed that she wanted the defendant to face accountability, have jail time, and not contact her again (outside of communication regarding their child in common); but that she wanted to minimize the impact on his record and avoid a felony conviction...With that in mind, an agreement was reached where he was convicted of two charges...**This agreement achieved the outcomes that the victim wanted.**¹⁰

However, the victim denied the Fairfax Commonwealth's Attorney's public claim about the "outcomes that the victim wanted."¹¹ The victim stated that she refused to agree to charges being dropped and that she wanted Ramos-Giron to serve at least a year in prison.¹²

Ramos-Giron was released from the Fairfax jail in March 2025 after serving only two

⁵ Nick Minock, *Victim denies Fairfax County prosecutor's claims that she agreed with 'lenient' plea deal*, ABC 7 News (Apr. 7, 2025, 3:09 p.m.), available at <http://bit.ly/3Hh4hxV>.

⁶ Nick Minock, *ICE arrests man accused of assaulting woman after Fairfax Co. cuts plea deal, releases him*, KFOX 14 News (Apr. 29, 2025, 7:07 a.m.), available at <http://bit.ly/4fKEevG>.

⁷ *Id.*

⁸ Fairfax Commonwealth's Attorney Procedure Memorandum: Plea Bargaining, Charging Decisions, and Sentencing Policy (Dec. 15, 2020), available at <http://bit.ly/4mF77eV> (last visited Aug. 18, 2025).

⁹ Nick Minock, *ICE arrests man accused of assaulting woman after Fairfax Co. cuts plea deal, releases him*, KFOX 14 News (Apr. 29, 2025, 7:07 a.m.), available at <http://bit.ly/4fKEevG>.

¹⁰ *Id.* (emphasis added).

¹¹ Nick Minock, *Victim denies Fairfax County prosecutor's claims that she agreed with 'lenient' plea deal*, ABC 7 News (Apr. 7, 2025, 3:09 p.m.), available at <http://bit.ly/3Hh4hxV>.

¹² *Id.*

months on the above misdemeanor charges.¹³ The Fairfax County Sheriff refused to honor a detainer request placed by United States Immigration and Customs Enforcement.¹⁴ Immigration and Customs Enforcement subsequently arrested Ramos-Giron in Chantilly, Virginia in late April 2025.¹⁵ Ramos-Giron will now face his third deportation proceeding.

Violations:

Virginia Constitution Article I, Section 8-A (“That in criminal prosecutions, the victim shall be afforded fairness, dignity, and respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts...”)

Va. Code § 19.2-11.01(A)(4)(d) (“In a felony case, the attorney for the Commonwealth shall consult with the victim either verbally or in writing (i) to inform the victim of the contents of a proposed plea agreement and (ii) to obtain the victim's views about the disposition of the case, including the victim's views concerning dismissal, pleas, plea negotiations and sentencing.”)

Virginia Rules of Professional Conduct 3.3(a)(1) (“A lawyer shall not knowingly...make a false statement of fact or law to a tribunal.”)

2. *Commonwealth v. Ryan Duarte: Fairfax Commonwealth’s Attorney Pressures 14-Year-Old Victim of Online Sexual Predator into Unwanted Plea Deal*¹⁶

In 2020, 39-year-old Ryan Duarte met a 14-year-old girl online and began grooming her using social media to participate in sexually explicit chats and sex acts. The victim’s parents discovered more than 8,000 text messages from Duarte to the 14-year-old victim, including, **“I was asking which position you wanted to the first time we had sex and how rough?”** and **“I kill people for fun.”** Following an investigation, Duarte was charged with multiple felonies, including production of child pornography and soliciting a minor to commit sex acts.

During the court process, the Fairfax Commonwealth’s Attorney led the victim to believe that she would be able to testify via closed-circuit television without having to be in the same room as Duarte. Instead, the victim was forced to testify in close proximity to Duarte. The prosecutor misinterpreted the victim’s nervousness about testifying as a weakness for the case.

According to the victim, the Fairfax Commonwealth’s Attorney then “pressured [her] into trying to give a plea deal to [Duarte] because [prosecutors] wanted to end the case as quickly as possible.”¹⁷ The victim stated that Fairfax County prosecutors “tried to pressure [her] into making a decision without my family present and they treated [her] more of like the perpetrator rather than the victim of a crime.” The victim stated that she did not want Duarte to receive a plea offer.

¹³ Nick Minock, *ICE arrests man accused of assaulting woman after Fairfax Co. cuts plea deal, releases him*, KFOX 14 News (Apr. 29, 2025, 7:07 a.m.), available at <http://bit.ly/4fKEvG>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Scott Taylor, *Victim, 14, speaks out about how Fairfax County prosecutors handled predator criminal case*, ABC7 News (June 14, 2022 4:00 p.m.), available at <http://bit.ly/45TJRnQ>.

¹⁷ *Id.*

Against the victim's wishes, the Fairfax Commonwealth's Attorney offered Duarte a plea agreement where he would plead guilty to only two of six pending felony charges; Duarte would not have to plead guilty to producing child pornography. The victim's attorney further stated that the victim's family never agreed to this plea offer: "They were kind of shocked when we went to court and they didn't know what was going on and they thought he was going to plead guilty to everything he was charged with."¹⁸ The victim's family submitted a court filing indicating that the unwanted plea offer forced on them by Fairfax County prosecutors did not justify the abuse and brainwashing the victim suffered at Duarte's hands.¹⁹

Duarte eventually pleaded guilty to two counts of using a computer to solicit a child under age 15 to commit a sex act. On the first count, Duarte was sentenced to ten years in prison with two years suspended, for an active sentence of eight years. On the second count, court records indicate Duarte received a ten-year suspended sentence (no active time to serve) and five years of probation. These offenses require Duarte to register with the Virginia Sex Offender and Crimes against Minors Registry.

Violations:

Virginia Constitution Article I, Section 8-A ("That in criminal prosecutions, the victim shall be afforded fairness, dignity, and respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts...")

3. *Commonwealth v. Oscar Zaldivar: Fairfax Commonwealth's Attorney Ignores Victim Opposition to Plea Agreement in Rape Case; Judge Concludes "Your government has failed you"*

Oscar Zaldivar was charged with abduction with intent to defile, two counts of forcible sodomy of a child under age 13 and four counts of aggravated sexual battery of a child under age 13. Abduction with intent to defile and forcible sodomy are punishable by up to life in prison, and forcible sodomy of a child carries a mandatory minimum life sentence under Virginia law.

Zaldivar sexually victimized a young female relative between the ages of 5 and 10, as well as a second young girl who was not his relative.²⁰ Zaldivar pleaded guilty to two counts of forcible sodomy, three counts of aggravated sexual battery, and one count of sexual battery.²¹ The Fairfax Commonwealth's Attorney allowed Zaldivar to enter an *Alford* plea, meaning that Zaldivar did not actually have to admit that he was guilty.²²

Zaldivar would lock one of his victims in a room with other family members and sexually

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Justin Jouvenal, *Va. judge tells young victim of sex abuse: 'Your government has failed you'*, Washington Post (Sept. 20, 2021), available at https://www.washingtonpost.com/local/public-safety/judge-zaldivar-sentence-abuse/2021/09/20/85258424-1a40-11ec-8380-5fbadbc43ef8_story.html.

²¹ *Id.*

²² *Id.*

abuse her; Zaldivar told her to keep the abuse a secret.²³ Zaldivar confessed to police that he molested both girls.²⁴

The administration of former Fairfax Commonwealth's Attorney Raymond F. Morrogh offered Zaldivar a plea deal whereby the maximum prison sentence would be 30 years; Zaldivar rejected that offer.²⁵ Following the election of Steve Descano as Fairfax Commonwealth's Attorney, the new prosecutor handling the case negotiated a different plea agreement with Zaldivar calling for a maximum sentence of 17 years and two months.²⁶

The victim's family retained an attorney and informed the prosecutor that they viewed Zaldivar's new plea agreement as a miscarriage of justice.²⁷ The prosecutor told the victim's family that he was not satisfied with the plea, that his superiors had given him "no reasoning" for the plea, and that he feared challenging the plea because he was worried about losing his job.²⁸

When the Fairfax Commonwealth's Attorney continued pushing the plea deal for Zaldivar that the victim's family did not want, the family filed a motion seeking to invalidate the plea, but the judge ruled that the victim's family did not have standing to disrupt it.²⁹

At Zaldivar's sentencing, the victim related to Zaldivar testified that "I don't really trust anyone because of him."³⁰ She testified that Zaldivar's abuse caused a major rift in her family and caused her to need therapy.³¹ A Fairfax circuit court judge accepted Zaldivar's plea agreement despite stating that it was "woefully inadequate."³² **The judge referred to Zaldivar as the "worst kind of predator" and told the victim that she had been victimized not only by Zaldivar, but by the Fairfax Commonwealth's Attorney.**³³ Again referencing the Commonwealth's Attorney, the judge continued, "I don't know how people can listen to your pain and disregard it...I'm offended for you."³⁴ The judge told the victim from the bench, **"Your government has failed you."**³⁵ Zaldivar is currently scheduled to be released from prison in June 2033.³⁶

²³ Justin Jouvenal, *Parents are fighting a Va. prosecutor to get a stiffer sentence for the man who admitted sexually abusing their daughter*, Washington Post (Sept. 16, 2021), available at https://www.washingtonpost.com/local/public-safety/fairfax-victim-family-fights-plea/2021/09/16/3c368fda-1598-11ec-9589-31ac3173c2e5_story.html.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Justin Jouvenal, *Va. judge tells young victim of sex abuse: 'Your government has failed you'*, Washington Post (Sept. 20, 2021), available at https://www.washingtonpost.com/local/public-safety/judge-zaldivar-sentence-abuse/2021/09/20/85258424-1a40-11ec-8380-5fbadbc43ef8_story.html.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Virginia Department of Corrections, *General Public, Inmate Locator*, <https://vadoc.virginia.gov/general-public/inmate-locator/> (last visited Sept. 22, 2025).

The mother of one of Zaldivar's victims described how her experience with the Fairfax Commonwealth's Attorney had destroyed her confidence in the justice system: "Sometimes I think if this happened to a close friend I'd think twice about advising them to get involved in this process...It hurts more to see that justice is not done."³⁷

The victim's father described his sense of the priorities Fairfax Commonwealth's Attorney after the favorable outcome for Zaldivar: "They put more importance on the defendants than on the victims...They leave the victims on the side. That's the way we feel."³⁸

Violations:

Virginia Constitution Article I, Section 8-A ("That in criminal prosecutions, the victim shall be afforded fairness, dignity, and respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts...")

4. *Commonwealth v. Sherrell D. Chastain: Fairfax Commonwealth's Attorney Attempts to Avoid Statutory and Constitutional Duty to Inform Assault Victim of Trial Date*³⁹

Sherrell Chastain was convicted of misdemeanor assault and battery in Fairfax General District Court without the participation of the Fairfax Commonwealth's Attorney. Chastain appealed to Fairfax Circuit Court, and the Fairfax Commonwealth's Attorney informed the court that it again would not participate in the prosecution. A trial was set, and Chastain moved to dismiss the prosecution because (1) the Fairfax Commonwealth's Attorney refused to prosecute, and (2) the victim had not appeared. A prosecutor from the Fairfax Commonwealth's Attorney's Office informed the trial judge that the office had not contacted the victim. The victim provided his name, address, and phone number to Fairfax County Police during the investigation.

The trial judge ordered further briefing on Chastain's motion to dismiss, and in response, the Fairfax Commonwealth's Attorney argued that they were "under no obligation to provide notice" of the trial date to the victim. The Fairfax Commonwealth's Attorney also argued that they were only obligated to notify the victim of the trial date if the victim made a request in writing.

The trial judge rejected the Fairfax Commonwealth's Attorney's arguments in a written letter opinion. **The judge found that the Fairfax Commonwealth's Attorney failed to follow multiple portions of the Virginia Crime Victim and Witness Rights Act.** The judge noted that "the right of crime victims to advance notice of judicial proceedings is a core protection." The judge held that "while the Commonwealth's Attorney may exercise its discretion not to participate in certain misdemeanor prosecutions, it has no discretion to opt out of the Crime Victim and Witness Rights Act." The judge concluded that "the Office of the Commonwealth's Attorney did not meet its legal obligation to provide a victim of an alleged assault notice of the trial date."

³⁷ Justin Jouvenal, *Parents are fighting a Va. prosecutor to get a stiffer sentence for the man who admitted sexually abusing their daughter*, Washington Post (Sept. 16, 2021), available at https://www.washingtonpost.com/local/public-safety/fairfax-victim-family-fights-plea/2021/09/16/3c368fda-1598-11ec-9589-31ac3173c2e5_story.html.

³⁸ *Id.*

³⁹ *Commonwealth v. Chastain*, No. MI-2020-961 (opinion of Bellows, J.) (Fairfax Cir. Ct. Jan. 29, 2021), available at <http://bit.ly/4oB7BED>.

Violations:

Va. Code § 19.2-265.01 (“The attorney for the Commonwealth shall give prior notice when practicable of such trial and attendant proceedings and changes in the scheduling thereof to any known victim”)

Va. Code § 19.2-11.01(A)(3)(b) (“Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.”)

Virginia Constitution Article I, Section 8-A (“That in criminal prosecutions, the victim shall be afforded fairness, dignity, and respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts...”)

B. Brady and Discovery Violations

Virginia prosecutors have a federal constitutional duty to provide “exculpatory” evidence to criminal defendants. Failure to provide this “Brady” material is a violation of the Due Process clause of the United States Constitution: “The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”⁴⁰

The Supreme Court of Virginia echoes *Brady* and holds prosecutors to additional evidence disclosure duties. They must

make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense. In fact, the prosecutor remains responsible for gauging the effect of undisclosed evidence regardless of any failure by the police to bring favorable evidence to the prosecutor’s attention. More specifically, the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.⁴¹

Virginia prosecutors must further comply with court rules requiring them to make discovery disclosures of important evidence such as defendant statements, police reports, scientific analyses, expert declarations, a list of witnesses, and other physical evidence.⁴²

1. *Commonwealth v. Kelvin Omar Gonzalez: Fairfax Commonwealth’s Attorney Sanctioned for Brady Violation in First-Degree Murder Prosecution; Defendant Released Early and Becomes an Armed Drug Dealer*

⁴⁰ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

⁴¹ *Workman v. Commonwealth*, 272 Va. 633, 646 (2006) (cleaned up) (quoting *Kyles v. Whitley*, 514 U.S. 419 (1995)).

⁴² Rules of the Supreme Court of Virginia 3A:11(b).

Kelvin Gonzalez was charged with first-degree murder and use of a firearm in the commission of a felony.⁴³ The Fairfax Commonwealth's Attorney possessed evidence that (1) a witness heard Gonzalez tell the victim not to approach him because Gonzalez had a gun, (2) the witness saw the victim with a knife in his hand before the shooting, and (3) the Commonwealth had collected the knife as evidence but did not have it analyzed for DNA or fingerprints.⁴⁴ This information suggested Gonzalez may have acted in self-defense, but the Fairfax Commonwealth's Attorney did not provide it in its initial discovery response.⁴⁵ Moreover, when the Fairfax Commonwealth's Attorney finally turned over the evidence related to the witness who saw the victim with a knife, the Commonwealth's Attorney refused to give Gonzalez's attorney the witness's contact information.⁴⁶ Gonzalez moved to quash the murder and firearms indictments, claiming that the Fairfax Commonwealth's Attorney's "inexcusable nine-month delay" in providing this evidence was a *Brady* violation.⁴⁷

The Fairfax circuit court issued a lengthy written opinion finding that the Fairfax Commonwealth's Attorney's failure to provide evidence in a timely manner was indeed a *Brady* violation.⁴⁸ As to the failure to disclose the witness's statement, the court held that the statement was exculpatory, and that the Fairfax Commonwealth's Attorney's failure to disclose it earlier "prejudiced Mr. Gonzalez because it came so late that the information disclosed cannot be effectively used at trial..."⁴⁹ The court found that "The Commonwealth buried its head in the sand. This witness was bad for their case. They will never call this witness."⁵⁰

The judge further admonished the Fairfax Commonwealth's Attorney's misconduct:

Here is the problem: we do not abide sham trials. We do not wink and nod at fairness and justice. At least we should not do these things. If just outcomes are the correct outcomes, whatever the result, it must be through a process that views prosecutorial obligations as hallowed rather than an inconvenient but necessary duty...

...So, when a person, as here, is charged with taking a life, and there is available evidence to demonstrate a potential justifiable defense, the government should be happy to provide evidence that supports the principle that a prosecution is not merely about winning, but is the practical quintessence of justice. But here, anyway, it appears to be just about "getting the W."⁵¹

The judge declined to dismiss the indictments but ruled that the jury would be informed

⁴³ *Commonwealth v. Gonzalez*, No. FE-2020-326 (opinion of Mann, J.) (Fairfax Cir. Ct. Nov. 5, 2020), available at <http://bit.ly/45z609W>.

⁴⁴ *Id.* at 2.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 5–6.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.* at 8.

⁵¹ *Id.* at 9.

about the Fairfax Commonwealth's Attorney's *Brady* violation during jury instructions.⁵² According to the judge, part of the jury instruction would read as follows: "The jury should infer that this testimony, had it been disclosed to the Accused in a timely fashion, would have been favorable to his claim of self-defense which could lead to the acquittal of the Defendant and the dismissal of this indictment."⁵³

Following this ruling, the Fairfax Commonwealth's Attorney chose not to take Gonzalez's case to trial. Gonzalez was released on a pretrial, cashless bond, and he was allowed to plead guilty to voluntary manslaughter instead of first-degree murder. The Fairfax Commonwealth's Attorney withdrew the use of a firearm indictment. Gonzalez received a sentence of 10 years with 9 suspended for manslaughter in Fairfax Circuit Court on March 19, 2021.

In late December 2023, Gonzalez was discovered to be selling drugs while in possession of firearms in Arlington County. Gonzalez was arrested on January 5, 2024 on three counts of selling a Schedule I/II controlled substance, two counts of possessing a Schedule I/II controlled substance with intent to distribute, two counts of conspiracy to distribute a Schedule I/II controlled substance, being an accessory to the distribution of marijuana, possessing a firearm while possessing drugs, and being a violent felon in possession of a firearm.

In September 2024, Gonzalez pleaded guilty to three drug distribution felonies and possession of a gun with drugs in Arlington Circuit Court. He received an active prison sentence of five years, and he will face a probation violation on his Fairfax County manslaughter conviction.

Violations:

U.S. Constitution, Amdt. 14 (due process clause violation for late disclosure of exculpatory evidence)

Brady v. Maryland, 373 U.S. 83, 87 (1963) (applying the due process clause to state actors who fail to timely disclose exculpatory evidence)

Rules of the Supreme Court of Virginia 3A:11(b) (requiring the Commonwealth to provide discovery to the defendant)

2. *Commonwealth v. Ronnie Reel: Fairfax Commonwealth's Attorney Falsely Blames Child Victim after Missing Discovery Deadline, Reduces Forcible Sodomy Charges to Misdemeanor Assault*

Ronnie Reel was indicted in 2021 for forcible sodomy of a child and aggravated sexual battery of a child, related to the sexual abuse of an 11-year-old boy.⁵⁴ **Forcible sodomy of a child carries a mandatory minimum life sentence under Virginia law.**

⁵² *Id.* at 14–15.

⁵³ *Id.* at 15.

⁵⁴ Lindsay Watts, *Virginia man who confessed to sexually abusing 11-year-old offered plea deal in Fairfax Co.*, Fox 5 News (Sept. 19, 2022, 11:36 p.m.), available at <http://bit.ly/4mrvOfk>.

Reel confessed to police, and the victim's mother recorded an 18-minute phone call in which Reel confessed to details of the abuse.⁵⁵ **However, the Fairfax Commonwealth's Attorney missed a discovery deadline by four months, leading to a motion to dismiss the indictments.**⁵⁶ The Fairfax Circuit Court ruled that the Commonwealth's Attorney was prohibited from using the confessions as evidence, holding that the discovery deadline was "woefully, woefully missed in this case, which is just a disservice to the victim in this case and is very concerning to the Court..."⁵⁷

A George Washington University law professor reviewed the transcript of the court ruling and agreed that the Fairfax Commonwealth's Attorney committed a discovery violation: **"It's a shame...the victim is disserved. The public is disserved...I get the sense the judge was sending a message to the Fairfax County prosecutor's office."**⁵⁸

After the Fairfax Commonwealth's Attorney lost the ability to use Reel's two confessions as evidence, it blamed the victim, claiming that there were now contradictions in testimony and that the victim had memory issues.⁵⁹ The Fairfax Commonwealth's Attorney allowed Reel to plead guilty to misdemeanor assault and battery instead of forcible sodomy and aggravated sexual battery. Reel was sentenced on September 13, 2022; he served approximately six months in jail and was released.

In January 2023, as a result of his assault and battery conviction, Reel was sentenced to 18 months in prison for a Stafford County probation violation on a prior conviction for stealing a car. Reel was released from prison early on October 10, 2023. On July 19, 2024, Reel committed felony obtaining money by false pretenses in Fredericksburg County; he was sentenced to another 18 months in prison in November 2024. Reel was also arrested in Prince William County for felony receiving stolen property, driving on a suspended license, and felony failure to appear in August 2024, but those charges were *nolle prossed* in June 2025. Reel now faces another probation violation in Stafford County for his 2024 conviction for obtaining money by false pretenses.

Reel's victim's mother provided our office with the following statement about her experience with the Fairfax Commonwealth's Attorney:

My name is Amber Reel, and back in the summer of 2020 my son was raped by my brother-in-law. The prosecution said it was a open and closed case as we had two confessions, and DNA evidence. Not once was the prosecution in contact with me or my lawyer during the process. The Friday before the trial I received a call, not from the prosecution, but the support people that there might be an issue as the prosecution failed to file the motion of discovery...

... because of the major fail[ure] to file all evidence and testimony, it would not be

⁵⁵ *Id.*

⁵⁶ Lindsay Watts, *Court docs shed new light on botched Fairfax Co. sex crimes case*, Fox 5 News (Sept. 30, 2022, 8:35 a.m.), available at <http://bit.ly/4ly2FxG>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Lindsay Watts, *Virginia man who confessed to sexually abusing 11-year-old offered plea deal in Fairfax Co.*, Fox 5 News (Sept. 19, 2022, 11:36 p.m.), available at <http://bit.ly/4mrvOfk>.

allowed in the trial. Only my son's testimony would be heard. The abuser only received an assault charge. He received no sex crime charges and would not have to register as a sex offender. Furthermore, after the case was over, I apologized to the prosecutor about my attitude and she simply looked at me and said, I will not lose sleep over this. But we will and we did.

3. *Commonwealth v. Robert Reynolds: Fairfax Commonwealth's Attorney's Discovery Violation Causes Dismissal of Rape Case with Prejudice*

Robert Brent Reynolds was charged with raping an 11-year-old girl between 1983 and 1986.⁶⁰ However, the Fairfax Commonwealth's Attorney failed to provide discovery to Reynolds' attorney in a timely manner.⁶¹ A Fairfax county judge dismissed the charge against Reynolds with prejudice because of the Commonwealth's Attorney's discovery violation, meaning that the charge can never be refiled.⁶² The victim gave the following statement to our office:

"Pia Miller, Commonwealth Attorney under Steve Descano's office, told me that my voice could not be heard because of political reasons. In that moment, my hope was shattered. I cried and cried, unable to understand why the judicial system had failed me again.

It took me 38 years to gather the courage to be honest and tell someone what had happened to me. I had hidden my pain for decades, suffocating in silence and trying to appear "okay" on the outside while hurting on the inside.

When I finally decided to speak out, I called the Fairfax County non-emergency line and was connected to a detective. He conducted a controlled call between myself and my rapist, Robert Brent Reynolds. During that call, he admitted to my accusations and even said, "Well, [name redacted], someone hurt me, and I got over it."

This man — the one who stole my innocence when I was 11 years old — fled to Ukraine after he was not prosecuted. The reason? Pia Miller, under Steve Descano's leadership, failed to deliver discovery on time...

...They had three years to submit discovery, yet instead I was shuffled between three different Commonwealth Attorneys.

Pia Miller met with me six times after the deadline had passed. Each time, I left in tears — feeling like I didn't matter, like I wasn't believed, and questioning why I had even told my story at all.

The worst part? She told me it was political."

Violations:

⁶⁰ Nana-Sentuo Bonsu, *Rape victim says she's 'disgusted' after her accused rapist walked free*, Fox 5 News (Dec. 12, 2022, 10:21 p.m.), available at <http://bit.ly/4fMZUre>.

⁶¹ *Id.*

⁶² *Id.*

Virginia Constitution Article I, Section 8-A (“That in criminal prosecutions, the victim shall be afforded fairness, dignity, and respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts...”)

Rules of the Supreme Court of Virginia 3A:11(b) (requiring the Commonwealth to provide discovery to the defendant)

Virginia Rules of Professional Conduct 1.1 (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”)

4. *Commonwealth v. Tyler Timberlake: Fairfax Commonwealth’s Attorney Violates Defendant’s Right to Receive Exculpatory Evidence Timely*

Fairfax County police officer Tyler Timberlake was charged with three counts of misdemeanor assault and battery for the purportedly illegal use of a Taser during an encounter with a citizen.⁶³ Timberlake and another officer saw a disoriented man walking around in the middle of the street, audibly rambling and speaking about wanting to “detox.”⁶⁴ Officer Timberlake’s training and experience led him to believe that the man was under the influence of PCP.⁶⁵ Toxicology tests found PCP and cocaine in the man’s system.⁶⁶ Officer Timberlake also mistook the man for a different person named Anthony whom Timberlake knew to be violent.⁶⁷ Officers had attempted for several minutes to get the man into an ambulance to go to a detox center,⁶⁸ and Officer Timberlake used his Taser on the man when he did not comply with commands and then resisted arrest.⁶⁹

After Timberlake was charged and trial was approaching, he filed a motion to dismiss his charges claiming that the Fairfax Commonwealth’s Attorney had failed to disclose exculpatory evidence.⁷⁰ The withheld evidence included the lead detective’s report, a 911 call, bystander video of the alleged assault, and an interview with the victim—which the lead detective testified he had given the Fairfax Commonwealth’s Attorney months before Timberlake’s motion.⁷¹

After the Fairfax Commonwealth’s Attorney claimed that no discovery violation had occurred, a judge of the Fairfax Circuit Court noted “a great deal of concern regarding the reliability of and appearance of the misrepresentation of statements made by the Commonwealth to a circuit court judge as it relates to exculpatory evidence.”⁷² The judge declined to dismiss the

⁶³ Alejandro Alvarez, *Fairfax Co. police officer found not guilty in 2020 stun gun charges*, WTOP News (Mar. 25, 2022, 6:25 p.m.), available at <http://bit.ly/4fMXRmT>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Jury finds Fairfax officer who used stun gun on black man not guilty of assault*, NBC 4 Washington (Mar. 25, 2022, 6:59 p.m.), available at <http://bit.ly/4mwgz4U>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Justin Jouvenal, *Judge reprimands prosecutors in high-profile Va. police brutality case*, Washington Post (June 25, 2021), available at <http://bit.ly/47AJv6Q>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

indictments, but reprimanded the Fairfax Commonwealth's Attorney for the late disclosure of exculpatory evidence and issued an order prohibiting the Commonwealth's Attorney from calling expert witnesses.⁷³ According to the judge,

The court declines the invitation to ignore the Commonwealth's failure to meet its affirmative duty to timely disclose materially exculpatory evidence, including impeachment evidence...To turn a blind eye and acquiesce in prosecutorial pronouncements of purported open file discovery not only adversely affects defendant's rights to a fair trial, but also shakes the public's confidence in a process that is based on justice and fairness.

Officer Timberlake was acquitted on all charges in March 2022.⁷⁴

Violations:

Rules of the Supreme Court of Virginia 3A:11(b) (requiring the Commonwealth to provide discovery timely to the defendant)

C. Improper Plea Agreements

Virginia Circuit Court judges have the authority to reject plea agreements.⁷⁵ However, rarely does a judge deem a Commonwealth's Attorney's proposed plea agreement to be so inappropriate that it should be rejected. Even more rare, and almost never seen, is the extraordinary step of a judge publishing a legal opinion detailing his reasons for rejecting the plea agreement. **In multiple cases, Fairfax Circuit Court judges have rejected plea agreements pushed by the Fairfax Commonwealth's Attorney which, because of their leniency toward violent, serious criminals, were rejected due to their offensiveness to the rule of law and the administration of justice.**

1. *Commonwealth v. Hyrum Rodriguez: Court Rejects Fairfax Commonwealth's Attorney's Lenient Plea Agreement for Illegal Alien after Burglary and Attempted Child Abduction*

Hyrum Baquedano Rodriguez, an illegal alien from Honduras,⁷⁶ "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...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."⁷⁷ Rodriguez left fingerprints on the outside of the victim's bedroom window and a palm print on the inside of the

⁷³ *Id.*

⁷⁴ Alejandro Alvarez, *Fairfax Co. police officer found not guilty in 2020 stun gun charges*, WTOP News (Mar. 25, 2022, 6:25 p.m.), available at <http://bit.ly/4fMXRmT>.

⁷⁵ Rules of the Supreme Court of Virginia 3A:8(c).

⁷⁶ Jared Wenzelburger, *ICE arrests Honduran national in Fairfax following dismissal of local criminal charges*, Fairfax County Times (May 9, 2025), available at <http://bit.ly/4mPkhpK>.

⁷⁷ *Commonwealth v. Rodriguez*, No. FE-2024-69 (Fairfax Cir. Ct. May 30, 2024), at 6 (opinion of Bellows, J.), available at <http://bit.ly/45yXR58>.

window; forensic analysis matched the prints to Rodriguez.⁷⁸ One of the victim's brothers had seen Rodriguez doing drugs in their apartment complex on several occasions.⁷⁹

Rodriguez was charged with abduction with intent to defile and statutory burglary.⁸⁰ Abduction with intent to defile is punishable by a maximum sentence of life in prison, and burglary by a 20-year prison sentence. In circuit court, the Fairfax Commonwealth's Attorney attempted to allow Rodriguez to plead guilty to the lesser crime of abduction by force, which carries a maximum 10-year-sentence.⁸¹ The Commonwealth's Attorney also attempted to allow Rodriguez to plead guilty to misdemeanor unlawful entry instead of statutory burglary.⁸² The Commonwealth's Attorney also attempted to cap Rodriguez's maximum sentence at 2 years' active incarceration.⁸³

A judge of the Fairfax Circuit Court rejected Rodriguez's plea agreement and issued a published opinion explaining the court's rationale. The court first noted that Rodriguez's crimes were "a parent's worst nightmare."⁸⁴ The court also noted Rodriguez's "deeply troubling record of unlawful conduct," including sex crimes involving minors and three burglaries.⁸⁵ Rodriguez had two counts of "Indecent Liberties: Expose Genitals to Child" reduced to disorderly conduct and contributing to the delinquency of a minor.⁸⁶ **Rodriguez also benefitted from having three different burglaries reduced to the same "unlawful entry" charge the Fairfax Commonwealth's Attorney was currently seeking to have Rodriguez plead guilty to.**⁸⁷ The court concluded:

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.⁸⁸

One week after the judge rejected Rodriguez's plea agreement, a United States immigration judge ordered Rodriguez removed from the United States to Honduras.⁸⁹

After a second judge rejected the Fairfax Commonwealth's Attorney's proposed plea

⁷⁸ *Id.* at 2.

⁷⁹ *Id.* at 2–3.

⁸⁰ *Id.* at 3.

⁸¹ *Id.* at 4.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 6.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *See id.*

⁸⁸ *Id.* at 7.

⁸⁹ Wenzelburger, *ICE arrests Honduran national in Fairfax following dismissal of local criminal charges*, Fairfax County Times (May 9, 2025), available at <http://bit.ly/4mPkhpK>.

agreement, the Commonwealth’s Attorney dropped the charges against Rodriguez.⁹⁰

United States Immigration and Customs Enforcement have since detained Rodriguez and served him with a lawful warrant of removal.⁹¹

2. *Commonwealth v. Bryan Rojas: Fairfax Commonwealth’s Attorney Misleads Court, Leading to Rejection of Plea Agreement in Police Assault and Animal Abuse Prosecution*⁹²

In 2023, after barricading himself in his home, Bryan Humberto Ramos Rojas was charged with attempted malicious wounding of a law-enforcement officer and felony cruelty to animals. During the barricade situation, Ramos Rojas swung a machete at a police officer, nearly striking him. Investigators also found that Ramos Rojas’ cat was dead as the result of “stab wounds and evidence of multifocal blunt force trauma.” A veterinarian performed a detailed necropsy on the cat and described significant traumatic injuries to the cat including “severing of the cervical vertebrae and exposure of the brain corresponding to the areas of fracture.”

The Fairfax Commonwealth’s Attorney allowed Ramos Rojas to enter a plea agreement in which he did not have to admit guilt.⁹³ The Commonwealth’s Attorney agreed to reduce the charge of attempted malicious wounding of a law-enforcement officer to the lesser offense of attempted assault of a law-enforcement officer. The Commonwealth’s Attorney also agreed to reduce the charge of felony animal cruelty to a misdemeanor, with the further agreement that Ramos Rojas could have the animal cruelty charge dismissed if he complied with probation.

The Fairfax Commonwealth’s Attorney provided the circuit court with the factual basis for Ramos Rojas’ plea agreement. Writing in a later published opinion, the circuit court noted that

As to the facts underlying the Cruelty to Animals charge, the Commonwealth’s proffer consisted *solely* of the following statement: “Once officers were finally able to enter the [Defendant’s] apartment, they discovered a 6-month old female cat below the window of the apartment with cuts on her head from a kitchen knife.”

The Fairfax Circuit Court withheld a finding of guilt pending a further hearing to inquire into several matters, including the actual facts of the cruelty to animals charge. Upon learning that the cat had died after suffering extensive injuries, the circuit court rejected the proposed plea agreement, explaining its reasoning in detail:

The injuries inflicted on this cat were gruesome, devastating, and lethal. It was incumbent upon the Commonwealth in its factual proffer in support of a *deferred* disposition to so inform the Court. Instead, all the [Assistant Commonwealth’s Attorney] told the Court at the time of the plea were that there were “cuts on her

⁹⁰ Julie Carey, *Charges dropped after judge rejects plea in attempted abduction of girl*, 4, News 4 Washington (May 2, 2025), available at <http://bit.ly/45GV5e2>.

⁹¹ Wenzelburger, *ICE arrests Honduran national in Fairfax following dismissal of local criminal charges*, Fairfax County Times (May 9, 2025), available at <http://bit.ly/4mPkhpK>.

⁹² *Commonwealth v. Rojas*, No. FE-2025-105, MI-2025-75 (Fairfax Cir. Ct. June 20, 2025) (opinion of Bellows, J.), available at <http://bit.ly/45KcT9v>.

⁹³ *North Carolina v. Alford*, 400 U.S. 25 (1970).

head from a kitchen knife.” The Commonwealth did not even inform the Court that the cat was dead, let alone that she had died from the injuries inflicted by the Defendant, or that she had 15 stab wounds, or that she had multiple fractures including three broken ribs, or that her neck was broken and her spinal cord severed. The Court acquired this essential information *only* because it made further inquiries at the June 18th hearing...

The Commonwealth’s repeated failure to fully inform the Court of the severity, lethality, and brutality of the injuries inflicted by the Defendant upon this cat, distorted these proceedings and now prevents the Court from accepting the proposed deferred disposition. Nor is the Commonwealth’s failure cured by, or ameliorated by, the Court’s belated acquisition of the full facts concerning the injuries inflicted by the defendant on the cat. These disclosures come far too late in these proceedings for the Court to have the necessary confidence that acceptance of the proposed deferred disposition is in the public interest.

Following the rejection of Ramos Rojas’ plea agreement, the Fairfax Commonwealth’s Attorney presented a similar plea agreement on the same charges to a different judge of the Fairfax Circuit Court, which remains pending as of the writing of this Report.

3. *Commonwealth v. Rey Amparado: Plea Rejected in Child Rape Case after Fairfax Commonwealth’s Attorney Offers 3-Year Sentence, Blames Police*⁹⁴

Rey Amparado was charged with four counts of raping a child under the age of 13. Three of the counts charged Amparado with raping the child while she was in fifth grade, and one of the rapes occurred when the victim was in seventh grade. The child was between the ages of 10 and 12 years old when the rapes occurred. The Fairfax Commonwealth’s Attorney possessed evidence of 13 other occasions on which Amparado engaged in criminal sexual behavior with the victim, including an additional rape when the victim was in fifth grade and another instance of forced oral sex. **Each charge of raping a child under the age of 13 was punishable by a mandatory minimum life sentence.**

The Fairfax Commonwealth’s Attorney offered Amparado a plea agreement whereby the Commonwealth would amend two of the child rape counts to the lesser charge of aggravated sexual battery. Aggravated sexual battery is punishable by up to 20 years in prison. Under the proposed plea agreement, Amparado would plead guilty to two counts of aggravated sexual battery, and the two other counts of child rape would be *nolle prossed*, or withdrawn by the Commonwealth. **The Fairfax Commonwealth’s Attorney also offered to agree that Amparado would only be sentenced to an active term of three years in prison.** Finally, the Fairfax Commonwealth’s Attorney offered to allow Amparado to enter an *Alford* plea, meaning that Amparado would not be required to admit that he was guilty.

When the Fairfax Commonwealth’s Attorney presented Amparado’s plea agreement to a judge of the Fairfax Circuit Court, the prosecutor stated that the victim and her mother were

⁹⁴ *Commonwealth v. Amparado*, No. FE-2020-276 (opinion of Bellows, J.) (Fairfax Cir. Ct. Sept. 27, 2021), available at <http://bit.ly/4mHUvnw>.

“angry” with the way the case was being resolved, but that they were “not objecting to it.” The court took the plea agreement under advisement while determining whether to accept or reject it.

Despite informing the circuit court that he expected that a jury would believe the victim, the prosecutor offered multiple reasons to justify the plea agreement including blaming the police for purportedly not disclosing evidence. The court found none of the prosecutor’s reasons for entering into the plea agreement to be persuasive. The court ultimately rejected Amparado’s plea agreement:

Given the facts before this Court – specifically, the Defendant’s repeated acts of raping this child beginning when she was in the Fifth Grade and continuing into the Seventh Grade – a plea agreement that requires the Court to impose a sentence of just three years of active incarceration does not remotely reflect the gravity of the Defendant’s misconduct.

The circuit court further noted that Amparado blamed the child rape victim for the crimes he committed: he “expresse[d] no remorse or acceptance of responsibility for the commission of these offenses. Indeed, he blames the child victim for the commission of these offenses.” The court ultimately concluded that “a sentence of active incarceration of just three years – given the Defendant’s egregious and repeated acts of sexual abuse of this child, and even in light of the Commonwealth’s expressed concerns – is not at all in the interest of justice.” Following the rejection of the plea, the victim’s mother approved of the judge’s decision, remarking, “Three years is nothing.”⁹⁵

D. Prosecutorial Incompetence

1. *Commonwealth v. Collins Agyei: Fairfax Commonwealth’s Attorney “Fundamentally Misleads” Court and Defense, Causing Charge Reduction in Shooting Case*

Collins Agyei was charged with aggravated malicious wounding and other firearms charges for a 2023 shooting that severely injured the mother of his child; aggravated malicious wounding carries a punishment of 20 years to life in prison.⁹⁶ However, a Fairfax Circuit Court judge found that the Fairfax Commonwealth’s Attorney failed to inform Collins’ attorney of critical evidence regarding the victim’s diagnosis.⁹⁷ After the prosecutor failed to correct medical testimony at trial, the judge held that the Fairfax Commonwealth’s Attorney “**fundamentally misled the defense with respect to the evidence supporting the Commonwealth’s assertion that the victim suffered “permanent and significant physical impairment.”**”⁹⁸ The judge struck the most serious charge of aggravated malicious wounding and forced the Commonwealth to proceed on the lesser offense of malicious wounding, of which Agyei was later convicted.⁹⁹

⁹⁵ Justin Jouvenal, *Va. judge rejects proposed plea deal for alleged child rapist saying 3-year sentence is too lenient*, Washington Post (Sept. 24, 2021), available at <http://bit.ly/3Uz3wmQ>.

⁹⁶ Matthew Torres, *Jury deliberates in domestic-related shooting trial after judge ruled prosecution violation*, WUSA 9 News (Dec. 16, 2024), available at <http://bit.ly/3V6kYPD>.

⁹⁷ *Id.*

⁹⁸ *Id.* (emphasis added).

⁹⁹ *See id.*

Violations:

Virginia Rules of Professional Conduct 3.3(a)(4) (“A lawyer shall not knowingly... offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.”)

2. *Commonwealth v. Yovani Flores: Fairfax Commonwealth’s Attorney Negligently Permits Unlicensed Prosecutor to Handle Aggravated Sexual Battery Prosecution*

In 2022, the Fairfax Commonwealth’s Attorney employed an assistant Commonwealth’s Attorney whose license to practice law was suspended for failure to pay bar dues.¹⁰⁰ While her license was suspended, the prosecutor tried Yovani Flores for three counts of aggravated sexual battery, resulting in a conviction on two counts and an acquittal on one count.¹⁰¹ The defendant moved to set aside his convictions claiming prejudice and prosecutorial misconduct, but an appellate court held that due process did not require the prosecutor to be licensed at the time of his conviction.¹⁰²

3. *Fairfax Commonwealth’s Attorney Fails to Adequately Train and Supervise Overwhelmed Sex Crimes Prosecutor*

In 2022, a Fairfax Assistant Commonwealth’s Attorney raised a concern with his supervisors indicating that he could not competently prosecute the cases he was assigned.¹⁰³ According to the Assistant Commonwealth’s Attorney:

I’ve realized that I am both incredibly overwhelmed and completely unprepared to handle 48 of the worst crimes in our society... Given what has happened in the last few weeks, I’ve realized that I have begun making numerous mistakes and missteps due to a lack of experience handling the complexities of these cases and being completely overwhelmed by the pressures and responsibilities that come with these heavy cases...

I’m wandering around blind here attempting to figure out how to handle 48 sex cases with very little input since everyone is so incredibly busy. Every case of mine that has been a major blow-up or issue has been the result of me stumbling around trying to figure out how to do this job... I have no clue how to handle the issues that are coming up on this massive scale...

...However, my experience is in traffic, misdemeanors, guns, drugs, financial crimes, and other low and mid-level felonies. Sex crimes are cases I have never dealt with... I have reached the end of my mental rope handling this many serious sex cases with limited training and no idea how to handle them. I fear that at best

¹⁰⁰ *Commonwealth v. Flores*, No. FE-2021-388 (opinion of Oblon, J.) (Fairfax Cir. Ct. July 6, 2022), available at <http://bit.ly/410Eu3B>.

¹⁰¹ *Id.*

¹⁰² *Commonwealth v. Flores*, No. 1645-23-4 (Va. Ct. App. Apr. 22, 2025), available at <http://bit.ly/45M7nDg>;

¹⁰³ Lindsay Watts, ‘Overwhelmed and untrained’ a Fairfax Co. Prosecutor’s plea for help, Fox 5 News (Apr. 7, 2022, 12:30 p.m.), available at <http://bit.ly/4fO8Dt4>.

I'll mess up one or more of these serious cases. At worst, I fear I'll mess up in a way that will cause me to lose my license.¹⁰⁴

This same Assistant Commonwealth's Attorney had previously attempted to push Oscar Zaldivar's child sexual abuse victims into agreeing to an unacceptable plea agreement¹⁰⁵ and advocated for a 3-year sentence for child rapist Rey Amparado.¹⁰⁶ A trial juror from one of the Assistant Commonwealth's Attorney's cases stated that he was frustrated by the Assistant Commonwealth's Attorney failure to present evidence available to him in a case in which a teacher was alleged to have had sex with a student.¹⁰⁷ The Assistant Commonwealth's Attorney resigned from the Fairfax Commonwealth's Attorney's Office in March 2022.¹⁰⁸

Violations:

Virginia Rules of Professional Conduct 1.1 ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.")

Virginia Rules of Professional Conduct 5.1(a) ("A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.")

Virginia Rules of Professional Conduct 5.1(b) ("A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.")

4. *Commonwealth v. Erick Estrada: Fairfax Circuit Court Overrules Fairfax Commonwealth's Attorney's Refusal to Prosecute*¹⁰⁹

Erick Estrada was on trial for reckless driving by speeding 102 mph in a 55 mph zone. The Fairfax Commonwealth's Attorney declined to represent the Commonwealth. Estrada moved to dismiss the reckless driving summons because of the Fairfax Commonwealth's Attorney's refusal to prosecute. However, in a published opinion, the Fairfax Circuit Court surveyed the law and held that the Virginia Code gave the court the authority to request, in certain contested traffic cases, that the Fairfax Commonwealth's Attorney appear and prosecute the case. After the court exercised its authority to require the Fairfax Commonwealth's Attorney to prosecute, the defendant

¹⁰⁴ *Id.*

¹⁰⁵ Justin Jouvenal, *Va. judge tells young victim of sex abuse: 'Your government has failed you'*, Washington Post (Sept. 20, 2021), available at https://www.washingtonpost.com/local/public-safety/judge-zaldivar-sentence-abuse/2021/09/20/85258424-1a40-11ec-8380-5fbadbc43ef8_story.html.

¹⁰⁶ Justin Jouvenal, *Va. judge rejects proposed plea deal for alleged child rapist saying 3-year sentence is too lenient*, Washington Post (Sept. 24, 2021), available at <http://bit.ly/3Uz3wmQ>.

¹⁰⁷ Julie Carey, *Ex-Fairfax county prosecutor sounded alarm on handling sex crime cases*, 4 News Washington (Apr. 6, 2022), available at <http://bit.ly/4oEErVn>.

¹⁰⁸ Watts, *'Overwhelmed and untrained' a Fairfax Co. Prosecutor's plea for help*, Fox 5 News (Apr. 7, 2022, 12:30 p.m.), available at <http://bit.ly/4fO8Dt4>.

¹⁰⁹ *Commonwealth v. Estrada*, No. MI-2021-147 (opinion of Oblon, J.) (Fairfax Cir. Ct. July 12, 2021), available at <http://bit.ly/45M6o62>.

pleaded guilty as charged.

5. *Commonwealth v. Harwinder Sangha: Fairfax Commonwealth's Attorney's Refusal to Prosecute Requires Dismissal of DUI-Related Misdemeanor, Setting Precedent for Future Dismissals of Criminal Traffic Offenses*¹¹⁰

Harwinder Sangha was convicted of DUI with a .19 blood alcohol content in Fairfax General District Court in February 2019. Sangha was convicted of misdemeanor non-compliance with the Virginia Alcohol Safety Action Program in September 2019 and jailed for several days.

In February 2020, Sangha was charged with a misdemeanor ignition interlock violation related to his original DUI conviction. Sangha was convicted of the offense in Fairfax General District Court and sentenced to six months in jail and a \$1,500 fine.

However, after Sangha appealed to Fairfax Circuit Court, the Fairfax Commonwealth's Attorney declined to represent the Commonwealth. Sangha moved to dismiss the ignition interlock violation because of the Fairfax Commonwealth's Attorney's refusal to prosecute. The Fairfax Circuit Court reviewed applicable Virginia law and concluded that Sangha's ignition interlock violation did not fall into a limited category of traffic cases which the court could request the Fairfax Commonwealth's Attorney to prosecute. The court also concluded that neither it nor the police could proceed with the prosecution in the absence of the Fairfax Commonwealth's Attorney. As a result, the court dismissed the ignition interlock violation against Sangha, noting that "the court is reluctant to dismiss the charge against Defendant because it would be better if what appears to be a legitimate charge was resolved on the merits..."

6. *Commonwealth v. Richard Kenneth Cox: Fairfax Commonwealth's Attorney Refuses to Prosecute Repeat Child Sex Offender for Exposing His Genitals to Women and Children*

Introduction

Richard Kenneth Cox is a Tier III convicted sex offender who frequents Fairfax and Arlington County community recreation centers, schools, and other public facilities. Cox is a man who claims he is a woman. Cox enters community recreation centers and regularly undresses and showers in women's locker rooms.¹¹¹ Because Cox is a man, this results in women and girls being exposed to his unclothed male genitalia. All current criminal charges against Cox are merely allegations, and Cox is innocent until proven guilty.

1992 Conviction: Indecent Liberties with a Child for Public Masturbation at Arlington Community Center

Cox has been a registered child sex offender since the 1990s with a history of obscene sexual displays in public places. On April 10, 1992, Cox entered the Lubber Run Community

¹¹⁰ *Commonwealth v. Sangha*, No. MI-2020-565 (opinion of Gardiner, J.) (Fairfax Cir. Ct. Mar. 29, 2021), available at <http://bit.ly/4mCMBLV>.

¹¹¹ E.g., Nick Minock, *Child sex offender visited 2 schools, 2 rec centers in Arlington and Fairfax counties*, 3 News Las Vegas (Feb. 5, 2025, 2:48 p.m.), available at <http://bit.ly/4oCLRsd>.

Center in Arlington, Virginia and walked down the hall with his penis in his hand. Three children ages 10, 10, and 4 saw Cox holding his penis in his hand and fled into the restroom. When the children left the bathroom, they saw Cox masturbating down the hallway. He initially told police that he was hung over and took a detour to the community center while enroute to work. Cox claimed that he exposed his penis in hopes of being observed by someone in authority. Cox was convicted of taking indecent liberties with a child and required to register as a sex offender.

In the years following his indecent liberties conviction, Cox performed poorly on parole and was returned to prison for a parole violation. He gave numerous conflicting accounts of his obscene sexual display at the Lubber Run Community Center. In 1995, Cox told a parole officer that he was experiencing intense sexual anxiety and that exposing his penis to children was “a cry for help.” In 1996, Cox told the parole officer that he was intoxicated and did not remember what happened. In 1997, Cox told the parole officer that he exposed his penis to the children as a way of expressing his anger. In 1999, Cox told the parole officer, “Back then I would expose myself to anyone. I guess it was the thrill of doing it and never knowing who would see me.”

2006 Convictions: Child Pornography/Failing to Register as Violent Sex Offender/Trespassing at Fairfax Public Library

On October 23, 2006, a Fairfax County police officer came to the Woodrow Wilson public library for a trespass report. Library staff had previously banned Cox because he accessed the internet from a public library database without permission, and Cox was served with a trespass notice. That day, Fairfax Police discovered Cox loitering in the children’s section of the library with a laptop computer.

Cox admitted he was banned from the library. He also told police that he had been in Fairfax for two weeks, and that he was living in his van, which was parked in the library parking lot. However, Cox’s sex offender registry records at that time reflected that he lived in North Carolina.

Police seized a computer from Cox’s van and found a folder labeled “CP.” A forensic detective recovered six videos and 65 pictures of child pornography from Cox’s computer.

Cox pleaded guilty to eight counts of possession of child pornography, failure to register as a violent sex offender, and trespassing. He was ordered not to have any computer access.

February 2018: Cox Signs “Sex Offender Special Instructions” and Violates Sex Offender Probation Twice

On February 28, 2018, Cox and his probation officer signed Virginia’s standard “Sex Offender Special Instructions.” These rules are in addition to the traditional probation rules prohibiting drug use, requiring compliance with the probation officer, etc. In signing the “Sex Offender Special Instructions,” Cox agreed that he may not:

- “Frequent places where children congregate, such as parks, playgrounds, and schools.”

- (Condition H)
- “Live within 500 feet of a child day care center, primary, secondary, or high school.” (Condition T)
- “Enter school property during school hours or during the hours of school related activities.” (Condition U)
- Cox also waived his Fourth Amendment rights regarding search and seizure while on probation. (Condition Z).

These “Sex Offender Special Instructions” remained in force until Cox’s probation ended in August 2024. Between 2018 and 2024, Cox was also required to wear a GPS tracking device due to his status as a child sex offender.

September 2019: Cox Jailed for Suspicious, Unauthorized Internet Access

In September 2019, Cox was sentenced to serve 15 months on a probation violation from his original conviction for possession of child pornography. Cox had been caught in March 2019 in possession of an internet-enabled iPod Touch when a probation officer saw him using the device at a McDonalds. Cox initially resisted showing the officer what he was doing on the device. While he admitted to using the device to look up “music videos,” the device’s search and use history were deleted once Cox allowed the probation officer to inspect it.

August 2020: Cox Absconds from Probation and Sex Offender Registration after More Unauthorized Internet Access; Fairfax Commonwealth’s Attorney Reduces Charges

On August 17, 2020, Cox’s probation officer visited his home, and before entering, heard Cox on speaker phone with another person. The officer entered Cox’s home and Cox quickly turned the phone off. The officer asked Cox why he had an unreported smartphone and requested that Cox give him the passcode. Cox claimed he did not know the passcode despite having just made a call to another person on speaker phone. The probation officer informed Cox that he was on lockdown until a required meeting at the probation office on August 18, 2020 at 7:30 a.m.

On August 18, 2020, Cox failed to report for his probation meeting. His probation officer received a notification indicating that Cox had removed his GPS tracking bracelet. The GPS bracelet was found inside the room where he had been staying. Cox remained at large until October 2020, when he was arrested on three felony counts of failing to register as a violent sex offender.

The Fairfax Commonwealth’s Attorney *nolle prossed*, or withdrew, two of those charges in April 2021. Cox was allowed to plead guilty to one misdemeanor count of failing to register as a sex offender. Following his release from jail, Cox again signed “Sex Offender Special Instructions” with his probation officer.

2023-July 2024: Cox Resumes Exposing his Genitals to Women and Children in Public While Preparing to be Released from Probation

As Cox’s period of court-ordered probation was coming to an end, his probation officer repeatedly advised him of the continuing restrictions he would have to abide by even after being

released from probation.

On October 25, 2023, Cox's probation officer "reinforced that [Cox] is not to go inside of any public library or community center."

On April 9, 2024, Cox's probation officer instructed him to provide a current address for the Virginia Sex Offender Registry. Cox refused to do so, claiming that because he was not staying in one place for more than three days, he did not have to update his sex offender registration. The probation officer informed Cox that he was indeed required to update his sex offender registration.

On April 11, 2024, Cox complained to his probation officer that he was suffering from residence instability and threatened to file a complaint against the officer. The probation officer instructed Cox that notwithstanding his residence issues, "he can shower at whichever facility he is desired assuming it does not violate his conditions of probation or sex offender special instructions such as community rec centers."

On May 29, 2024, Cox informed his probation officer that "he would rather be referred to as Ricky and a male while he is on supervision. He feels that if he presents as a female, it could be a risk to him and he will pursue this after he is [off] probation."

On June 6, 2024, Cox exposed his penis to a woman in the women's locker room of the Planet Fitness located in Falls Church, Fairfax.¹¹² The woman filed a criminal complaint for indecent exposure against Cox.¹¹³ Cox claimed in a court filing that he was "transgender" and accused the victim of having "anti-trans discrimination that she harbors in her own mind," and accused the victim of harassing him.¹¹⁴ **The Fairfax Commonwealth's Attorney declined to participate in the prosecution of Cox, and the indecent exposure charge was later dismissed.**¹¹⁵ The Fairfax Planet Fitness is located in the same building as Jolly Yolly Kids Indoor Playground. Cox is prohibited from loitering within 100 feet of any place operating as a child day program.¹¹⁶ As such, Cox is subject to prosecution for a class 6 felony by virtue of his presence within 100 feet of the child day program at Jolly Yolly Kids Indoor Playground. However, the Fairfax Commonwealth's Attorney has refused to prosecute Cox for this incident.

On July 31, 2024, Cox was released from probation after his court-ordered term expired.

On August 24, 2024, Cox went into the Franconia Recreation Center, a Fairfax County facility.¹¹⁷ The Franconia Recreation Center is listed in Virginia Department of Social Services records as a licensed child day program with License No. 858195. As a sex offender convicted after July 1, 2006, Cox is "forever prohibited from loitering within 100 feet of the premises of any

¹¹² Nick Minock, *Sex offender 'exposed' himself in Fairfax Planet Fitness, Steve Descano didn't prosecute*, ABC 7 News (Feb. 7, 2025, 6:51 p.m.), available at <http://bit.ly/4oKDSZZ>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Va. Code § 18.2-370.2(B).

¹¹⁷ Nick Minock, *Registered sex offender visited multiple Fairfax County rec centers before arrest*, ABC 7 News (Feb. 27, 2025, 7:54 p.m.), available at <http://bit.ly/3UyFatt>.

place he knows or has reason to know is a child day program.”¹¹⁸ However, the Fairfax Commonwealth’s Attorney has refused to prosecute Cox for this incident.

In September 2024, Cox exposed his penis to a woman and her 9-year-old daughter in the girls’ locker room at Washington Liberty High School in Arlington.¹¹⁹ Cox has charges pending currently in Arlington County for this offense.

Between October and November 2024, Cox went to the swimming pool and women’s locker room in Wakefield High School and Washington-Liberty High School in Arlington multiple times.¹²⁰ Cox was issued a pool pass under the name “Riki Cox” and visited the Wakefield and Washington-Liberty high school pools eight times in October and once in November.¹²¹ A mother and her five-year old child saw Cox in the women’s locker room, standing naked in a shower stall with an erection.¹²² Two lifeguards at the Wakefield high school pool told police that they saw Cox fully naked.¹²³ These incidents resulted in Cox being charged with indecent exposure (2 counts), being on school property as a sex offender (2 counts), and loitering near a school as a sex offender (5 counts).¹²⁴

On November 30, 2024, Cox entered Barcroft Sports & Fitness Center in Arlington, which is immediately adjacent to Barcroft Park.¹²⁵ Cox was later charged with loitering near a school, daycare, park, or playground as a sex offender in Arlington for this offense.

On December 2, 2024, Cox entered Barcroft Sports & Fitness Center again and exposed his penis to an adult woman and two girls inside the women’s locker room.¹²⁶ Cox was later charged with two counts of taking indecent liberties with a child and one count of indecent exposure.¹²⁷

On December 6, 2024, Cox entered Barcroft Sports & Fitness Center, where he exposed his penis to another woman inside the women’s locker room.¹²⁸ Cox gave false identification information to police, but he was eventually arrested for identity theft and loitering near a school, daycare, park, or playground as a sex offender.¹²⁹ Cox has charges pending currently in Arlington County for these offenses.

After Cox’s arrest for the December 6, 2024 exposure, police identified him as the suspect

¹¹⁸ Va. Code § 18.2-370.2(B).

¹¹⁹ Nick Minock, *Child sex offender visited 2 schools, 2 rec centers in Arlington and Fairfax counties*, FOX Rochester (Feb. 5, 2025, 5:48 p.m.), available at <http://bit.ly/474CtHu>.

¹²⁰ *Id.*

¹²¹

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Nick Minock, *Child sex offender visited 2 schools, 2 rec centers in Arlington and Fairfax counties*, FOX Rochester (Feb. 5, 2025, 5:48 p.m.), available at <http://bit.ly/474CtHu>.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

from the November 30, 2024 and December 2, 2024 incidents.¹³⁰

Cox is currently jailed pending trial in Arlington County for the multiple exposure incidents detailed above. The Fairfax County Commonwealth's Attorney has refused to initiate proceedings against Cox for good behavior violations or any substantive criminal offense. Following Cox's arrest, multiple local lawmakers denounced the Fairfax Commonwealth's Attorney's unwillingness to investigate or prosecute Cox:

“I think there were a number of mistakes made here...I don't think the public is going to understand why those prosecutions don't take place...This is someone with a record of prosecutions for felonies in the past, he was known to your office, and I think you would pay special attention to that...Clearly, this has to be dealt with. Most people looking at this circumstance will say that common sense has not prevailed in the lack of prosecution in this case in Fairfax County.”

- Senator David Marsden (D-Fairfax)¹³¹

“If my family was in a changing room, I wouldn't want them to be exposed to that kind of situation...And I think we have a duty to make sure that people aren't exposed to, especially on a regular basis, for God's sake.”

- Senator Scott Surovell (D-Fairfax)¹³²

“I don't see anything in state law that's standing in the way of the investigation, the arrest, [and] prosecution of these offenses.”

- Delegate Vivian Watts (D-Fairfax)¹³³

As of the writing of this report, Cox has not been arrested or charged with any sex offender-related felony offenses in Fairfax.

E. Unlawful and Unconstitutional Policies

Commonwealth's Attorneys in Virginia are charged with the duty of prosecuting all felonies and ensuring the faithful execution of the criminal laws.¹³⁴ Every Commonwealth's Attorney also takes an oath to support the Constitution of the Commonwealth of Virginia.¹³⁵ The Fairfax Commonwealth's Attorney's duty to support the Virginia Constitution requires his adherence to Article I, Section 7 of the Bill of Rights, which provides that “That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives

¹³⁰ *Id.*

¹³¹ Nick Minock, *Democratic lawmaker calls out Steve Descano for not prosecuting sex offender in Fairfax*, ABC 7 News (Mar. 18, 2025, 7:16 p.m.), available at <http://bit.ly/3JFEFLD>.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Va. Code § 15.2-1627(B).

¹³⁵ Va. Code § 49-1.

of the people, is injurious to their rights, and ought not to be exercised.”¹³⁶ The Supreme Court of Virginia holds that an “obvious” unlawful suspension occurs “when an executive sets aside a generally applicable rule of law based solely upon his disagreement with it.”¹³⁷

Fairfax Commonwealth’s Attorney Steve Descano has publicly enacted several policies which set aside generally applicable laws passed by the Virginia General Assembly and replace them with a different legal code of his own invention:

1. Descano’s Policy Prohibiting Enforcement of Mandatory Minimum Sentences for Serious Crimes¹³⁸
2. Descano’s Policy Establishing a Different Statutory Threshold for Grand Larceny¹³⁹
3. Descano’s Policy Ignoring the Requirement of Cash Bail for Repeat Felons¹⁴⁰

These unlawful policies mirror the legislative agenda of the George Soros-funded “criminal justice reform” organization called “New Virginia Majority.”¹⁴¹ Descano has accepted nearly \$114,000 in donations from New Virginia Majority, which is his second-largest donor next to the George Soros-Funded “Justice and Public Safety PAC.”¹⁴²

NEW VIRGINIA MAJORITY
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Criminal Justice

We believe that a fair and just criminal justice system ensures that law enforcement officers are accountable to their communities, there are more community-based alternatives to incarceration, poverty is decriminalized, and returning citizens have a fair shot to succeed. We support legislation that will:

- 1 End cash bail, fees, and fines for pretrial services, and reduce pretrial detention.
- 2 Raise the felony larceny threshold from \$500 to \$1,500.
- 3 Increase community-based alternatives to youth and adult incarceration.
- 4 Repeal mandatory minimum sentencing and reinstate discretionary parole.
- 5 Decriminalize marijuana and expunge charges from individual records.
- 6 Create or strengthen the independent and civilian review of local police departments to increase transparency and community accountability.
- 7 Increase support for local reentry programs to reduce recidivism and facilitate a successful transition back into society.
- 8 End the privatization of Virginia's prison system.

1. Descano’s Policy Prohibiting Enforcement of Mandatory Minimum Sentences for Serious Crimes

¹³⁶ Va. Const. Art. I, § 7.

¹³⁷ *Howell v. McAuliffe*, 292 Va. 320, 347 (2016).

¹³⁸ Fairfax Commonwealth’s Attorney Procedure Memorandum: Plea Bargaining, Charging Decisions, and Sentencing Policy (Dec. 15, 2020), available at <http://bit.ly/4mF77eV> (last visited Aug. 18, 2025).

¹³⁹ Fairfax Commonwealth’s Attorney Procedure Memorandum: Grand Larceny Threshold & Larceny Third Offenses (Aug. 3, 2020), available at <http://bit.ly/3JEXQoU> (last visited Aug. 19, 2025).

¹⁴⁰ Fairfax Commonwealth’s Attorney Procedure Memorandum: Bond Policy (Dec. 7, 2020), available at <http://bit.ly/45JaiLK> (last visited Aug. 20, 2025).

¹⁴¹ New Virginia Majority, Priorities: Criminal Justice, available at <http://bit.ly/45NhhEB> (last visited Aug. 13, 2025).

¹⁴² Virginia Public Access Project, Top Donors: Steve Descano, available at <http://bit.ly/413CveX> (last visited Aug. 13, 2025).

Descano's policy requires that prosecutors "must strike all floor adjustment mandatory minimums in plea agreements and endeavor to negotiate around remaining mandatory minimums." The policy asserts Descano's policy belief that "legislatively mandated minimum jail sentences interfere" with a properly functioning criminal justice system. The policy instructs prosecutors that in many cases, "avoiding the imposition of the mandatory minimum requires the charging of an entirely different offense." However, Descano lacks any authority to set aside mandatory minimum sentencing laws based solely on his disagreement with them.

Descano's refusal to enforce mandatory minimum sentencing laws is directly responsible for many of the botched plea agreements reported above. The judgment of the Virginia General Assembly is that certain crimes are so dangerous and heinous that they deserve only one punishment that cannot be reduced or modified. **Descano lacks the authority to act as a legislator and unilaterally decide that the General Assembly was wrong to pass mandatory minimum sentences for crimes such as child rape and repeat drug dealing. Descano's refusal to enforce mandatory minimum sentencing laws is a violation of Article I, Section 7 of the Virginia Constitution, which prohibits the suspension of any law without the consent of the General Assembly.**

2. Descano's Policy Establishing a Different Statutory Threshold for Grand Larceny

Virginia law makes the theft of any property worth more than \$1,000 a felony.¹⁴³ If the value of the property stolen is less than \$1,000, the theft is a misdemeanor petit larceny.¹⁴⁴ Since 2018, the Virginia General Assembly has raised the grand larceny dollar threshold twice—from \$200 to \$500 in 2018,¹⁴⁵ and from \$500 to \$1,000 in 2020,¹⁴⁶ the first year of Descano's term. However, Steve Descano has decided that these laws do not apply in Fairfax County.

Descano's opinion is that "Virginia's felony larceny threshold—the value of stolen goods that gives rise to felony charges instead of misdemeanor charges—is far too low."¹⁴⁷ He references how "Fifteen states have felony larceny thresholds of \$1500 or higher."¹⁴⁸ As a result, Descano established a policy that "The threshold for proceeding with a felony grand larceny under VA Code Section 18.2-95 shall be \$1500."¹⁴⁹ Descano goes on to state that "This is the case regardless of the defendant's record."¹⁵⁰

However, Descano has no authority to substitute the lawfully enacted \$1000 felony larceny threshold for what he believes is an appropriate threshold enacted by another state. Descano's personal policy beliefs about Virginia's duly enacted larceny threshold are not a valid substitute for an act of the Virginia General Assembly. In Fairfax County, Descano refuses to enforce the General Assembly's clear statutory threshold in felony larceny cases. This refusal is

¹⁴³ *E.g.*, Va. Code § 18.2-95(A)(ii).

¹⁴⁴ Va. Code § 18.2-96.

¹⁴⁵ Va. Acts of Assembly cc. 764, 765 (2018), available at <http://bit.ly/3UCD1Nf>.

¹⁴⁶ Va. Acts of Assembly cc. 764, 765 (2018), available at <http://bit.ly/471OzkF>.

¹⁴⁷ Fairfax Commonwealth's Attorney Procedure Memorandum: Grand Larceny Threshold & Larceny Third Offenses (Aug. 3, 2020), available at <http://bit.ly/3JEXQoU> (last visited Aug. 19, 2025).

¹⁴⁸ *Id.* at 1.

¹⁴⁹ *Id.* at 2.

¹⁵⁰ *Id.*

unconstitutional, and it violates Article I, Section 7 of the Virginia Constitution, which prohibits the suspension of any law without the consent of the General Assembly.

3. Descano's Policy Ignoring the Requirement of Cash Bail for Repeat Felons

Virginia law requires that “Any person arrested for a felony who has previously been convicted of a felony, or who is presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be released only upon a secure bond.”¹⁵¹ This statutory requirement may only be waived “with the approval of the judicial officer and with the concurrence of the attorney for the Commonwealth.”¹⁵² However, Steve Descano has decided that this law does not apply in Fairfax County.

Descano's opinion is that “Cash bail is discriminatory, undermines public safety, and has no place in our criminal justice system.”¹⁵³ Descano cites a study from 1976 and various left-wing social science claims in support of this proposition.¹⁵⁴ **As a result, Descano has instructed his prosecutors never to seek a cash bond:** “ACAs [Assistant Commonwealth's Attorneys] must never request a cash bond – under any circumstances.”¹⁵⁵ Even if a magistrate or judge imposes a cash bond, Descano orders his prosecutors that they “must never request that the court maintain a cash bond set by the magistrate or a prior judge.”¹⁵⁶ Finally, Descano instructs his prosecutors that they “shall agree to waive the statutory requirement of a cash bond under Code 19.2-123...”¹⁵⁷

While Descano is entitled to his opinions about cash bail, he is not entitled to ignore the General Assembly's lawfully enacted command that no repeat felon may be released without a secure bond.¹⁵⁸ Descano's command that his prosecutors must always “waive the statutory requirement of a cash bond under Code 19.2-123” is not an exercise of prosecutorial discretion, it is a decision to ignore a law by never applying it. Descano can lobby the General Assembly to change Code § 19.2-123(A), but until the General Assembly decides that repeat felons no longer should have to post secured bonds, Descano lacks any authority to decide otherwise. Descano's refusal to enforce the law requiring secured bond for repeat felons is a violation of Article I, Section 7 of the Virginia Constitution, which prohibits the suspension of any law without the consent of the General Assembly.

Descano unlawfully and unconstitutionally suspends Virginia law to ensure that he aligns with the policy priorities of radical left-wing organizations. The above-listed policies violate both the Virginia Constitution and the oath Descano swore to support that Constitution. They convert Descano into a legislature unto himself, and they render Fairfax County a separate entity from the Commonwealth of Virginia in which only certain laws enacted by the General Assembly apply

¹⁵¹ Va. Code § 19.2-123(A). A “secure bond” requires the offender to pledge money or property as part of his promise to appear in court.

¹⁵² *Id.* § 19.2-123(A).

¹⁵³ Fairfax Commonwealth's Attorney Procedure Memorandum: Bond Policy (Dec. 7, 2020), *available at* <http://bit.ly/3UEPzDN> (last visited Aug. 21, 2025).

¹⁵⁴ *See id.* at 1–2.

¹⁵⁵ *Id.* at 3.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ § 19.2-123(A).

and are enforced by the prosecutor.

IV. Analysis, Conclusion, and Referral

Fairfax Commonwealth's Attorney Steve Descano is engaged in an ongoing pattern or practice of unlawfully and unconstitutionally denying crime victims the rights guaranteed by Article I, Section 8-A of the Virginia Constitution and § 19.2-11.01 *et seq.* of the Virginia Code, including but not limited to the right to be accorded fairness, dignity, and respect by officers of the courts.

Moreover, Fairfax Commonwealth's Attorney Descano is engaged in an ongoing pattern or practice of violating the Suspension Clause of the Virginia Constitution, Article I, Section 7, by implementing office policies prohibiting the enforcement of certain Virginia criminal laws. Virginia prosecutors do not have discretion to ignore criminal code provisions with which they disagree, and Fairfax County residents are entitled to the services of a prosecutor who obeys the Constitution and enforces all laws fairly and equally. Descano's unilateral suspension of laws with which he disagrees, his retention of and failure to properly train unqualified prosecutors, and his disregard for crime victims manifests itself throughout the case examples reported above.

Notably, Descano has a stated policy preference for helping illegal aliens avoid immigration consequences. He commands his prosecutors to ignore the civil immigration status of defendants,¹⁵⁹ and he requires them to help illegal aliens avoid immigration consequences during plea negotiations whenever possible.¹⁶⁰ Descano's clear preference to help illegal alien offenders at the expense of American citizens is evident in the cases reported above of Hyrum Baquedano Rodriguez and Wilmer Osmany Ramos-Giron. It is further amplified by the following examples of the Fairfax Commonwealth's Attorney showing leniency to illegal alien defendants, and specifically to accused sex offenders:

1. The Fairfax Commonwealth's Attorney decided not to prosecute illegal alien David Perez-Teofani for aggravated sexual battery of a child and indecent liberties with a child (charges *nolle prossed* August 1, 2024).¹⁶¹ Perez-Teofani has illegally entered the United States three times.¹⁶²

2. The Fairfax Commonwealth's Attorney decided not to prosecute illegal alien Maldin Anibal Guzman for aggravated malicious wounding, attempted malicious wounding, malicious wounding by mob, and obstruction of justice (case nos. GC23090955-00 and GC23040462-00 *et seq.*, charges *nolle prossed* May 17 and 23, 2023), instead allowing Anibal Guzman to plead guilty to lesser charges of simple assault and a fully suspended sentence on a

¹⁵⁹ Fairfax Commonwealth's Attorney Procedure Memorandum: Prohibition on Assisting with Civil Immigration Enforcement (Mar. 23, 2021), available at <http://bit.ly/4fSLLZC> (last visited Aug. 21, 2025).

¹⁶⁰ Fairfax Commonwealth's Attorney Procedure Memorandum: Guidelines for Plea Bargaining, Charging Decisions, and Sentencing, at p. 10, ¶ 14 (Mar. 23, 2021), available at <http://bit.ly/477e8AT> (last visited Aug. 21, 2025).

¹⁶¹ Victor Nava, *Screaming man who tried to run from federal officers in DC in viral video was previously arrested for child sex crimes and entered US illegally 3 times*, New York Post (Aug. 21, 2025, 1:56 a.m.), available at <http://bit.ly/4mKxMrr>.

¹⁶² *Id.*

burglary charge; Anibal Guzman has since been rearrested for 2nd degree murder.¹⁶³

3. The Fairfax Commonwealth's Attorney decided to reduce illegal alien Ander Josue Cortez Mendez's charge of Carnal Knowledge of a 13-14 year old to misdemeanor "Consensual Sex w/ Child 15Y+" and offer him a 90-day suspended jail sentence (case no. JA442367-01-00, plea entered May 20, 2024).¹⁶⁴

4. The Fairfax Commonwealth's Attorney decided to reduce illegal alien and Bolivian national Jose Fabricio Veizaga Vargas' Rape by Force/Threat charge to "Sexual Assault of Child 13-14," a misdemeanor, and allow him to have a fully suspended jail sentence on July 15, 2024; Veizaga Vargas was charged 10 days later, on July 25, 2024, with eight counts of possession of child pornography (case no. GC24131522-00 *et seq.*), and arrested for DUI with an elevated blood alcohol content on August 8, 2024 (case no. GT24128972-00 *et seq.*).¹⁶⁵

5. The Fairfax Commonwealth's Attorney decided to reduce illegal alien Yohandi Mosquera Rosas' charge of malicious wounding to unlawful wounding and agree to a sentence of time served, after dismissing charges of use of a firearm in the commission of a felony, endangering a child by leaving a loaded gun accessible, and reckless handling of a firearm (case no. FE-2023-000448, plea date June 14, 2024); the Fairfax Commonwealth's Attorney also allowed Rosas to plead guilty to a DUI with an elevated blood alcohol content of more than .20 and receive a suspended jail sentence despite the required mandatory minimum sentence of 10 days in jail¹⁶⁶ (case no. GT24024697-00, plea date Feb. 28, 2025); Rosas also committed a felony hit-and-run in April 2024 and is currently listed as a fugitive (case no. GT24070289-00).¹⁶⁷

6. The Fairfax Commonwealth's Attorney decided to *nolle prosequi* illegal alien Marvin Mateo-Alberto's charges of Incest with a 13-17 year old child and aggravated sexual battery by a parent on June 9, 2025 (case nos. JA444936-01-00 and JA222936-02-00).¹⁶⁸ Mateo-Alberto was ordered by an immigration judge to be removed from the United States to Honduras in April 2006.¹⁶⁹

Descano's lenient treatment of illegal aliens charged with violent felonies and child sex offenses, viewed in conjunction with his stated office policies of ignoring defendants' civil immigration status and helping illegal aliens avoid immigration consequences when negotiating

¹⁶³ Nick Minock, *Fairfax County refused multiple ICE detainers linked to man who is now a murder suspect*, ABC 7 News (July 25, 2024, 6:57 p.m.), available at <http://bit.ly/4mqLGyr>.

¹⁶⁴ ICE, *federal partners arrest illegal Guatemalan sex offender in Northern Virginia*, U.S Immigration and Customs Enforcement, April 7, 2025, available at <http://bit.ly/4mRyOkN>.

¹⁶⁵ Stephen Dinan, *Fairfax County defied DHS in releasing illegal immigrant with multiple gun, DUI, and hit-and-run charges*, The Washington Times (Sept. 26, 2024), available at <http://bit.ly/4oO5oFZ>.

¹⁶⁶ Va. Code § 18.2-270(A).

¹⁶⁷ Stephen Dinan, *Fairfax County defied DHS in releasing illegal immigrant with multiple gun, DUI, and hit-and-run charges*, The Washington Times (Sept. 26, 2024), available at <http://bit.ly/4oO5oFZ>.

¹⁶⁸ ICE, *federal partners arrest illegal Honduran national charged with incest, sex crimes in Virginia*, U.S. Immigration and Customs Enforcement, Apr. 15, 2025, available at <http://bit.ly/41MNI3I>.

¹⁶⁹ *Id.*

plea agreements, has enabled illegal alien criminal defendants to escape consequences for their crimes, remain on the streets, and reoffend against innocent Virginians. The above evidence strongly suggests that Descano provides rights, privileges, and immunities to illegal alien criminal defendants that his office does not otherwise extend to citizens of the United States charged with crimes.

Justice, properly understood, requires both the recognition of the inherent rights of victims to be treated with fairness, dignity, and respect, as well as the consistent enforcement of duly enacted laws to safeguard the common good. When prosecutorial discretion is exercised in a manner that selectively disregards statutory obligations for political purposes, two outcomes follow: (1) the denial of justice to individual victims, and (2) a corresponding erosion of public confidence in the rule of law.

In Fairfax County, Commonwealth's Attorney Steven Descano has, through repeated failures to prosecute serious offenses, effectively abdicated his responsibility to uphold the law. This conduct constitutes what may be described as *weaponized incompetence*—a deliberate refusal to discharge prosecutorial duties as entrusted by statute. The result is a manifest injustice to victims and a breach of the public trust that government is obligated to preserve.

Accordingly, I refer this matter to the United States Department of Justice for further civil or criminal investigation into whether the Fairfax Commonwealth's Attorney has engaged in a pattern or practice of (1) denying United States citizens the same rights, privileges, and immunities as illegal aliens in charging decisions and plea negotiations, and (2) concealing, harboring, or shielding from detection, or attempting to conceal, harbor, or shield from detection any illegal alien, in violation of 8 U.S. Code § 1324(a)(1)(A)(iii).

In addition to the above referral to the United States Department of Justice, I make the following **Recommendations** for action by the Virginia General Assembly:

1. Expand the prosecutorial discretion of the Office of the Attorney General granted in Virginia Code § 2.2-511(A) to include any sex crime against a minor as well as any violation of the sex offender registration obligation of any current sex offender registrant who is in violation of Virginia Code Sections § 9.1-902 and § 18.2-472.1.
2. Resume a rebuttable presumption against bail in Virginia Code Section § 19.2-120 for any violent offense listed in Virginia Code § 17.1-805(C) to protect the safety of the community during the pendency of any criminal case.
3. Establish a working group to assess and analyze statewide compliance with the Crime Victim and Witness Rights Act. The working group should also study, discuss, and develop a plan to assess the evaluation of input from victims when plea agreements, charging agreements, and sentencing agreements are crafted and conveyed to defendants and their attorneys.