

ONE HUNDRED NINETEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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August 24, 2026

The Honorable Stephen Descano
Commonwealth's Attorney
Office of the Fairfax County Commonwealth's Attorney
4110 Chain Bridge Road, Suite 114
Fairfax, VA 22030

Dear Commonwealth's Attorney Descano:

On January 15 and June 4, 2026, the Committee requested relevant materials regarding your office's preferential treatment of foreign national criminals to ensure that they do not face immigration consequences for their criminality.¹ Your July 2 and July 24 responses to the Committee alleged, incorrectly, that the Committee's requests were "based on a misunderstanding" of your office's prosecution policies² and claimed that the Committee lacks oversight authority over your office's pro-criminal alien policies.³ We reject those arguments and assertions and reiterate our requests for your cooperation.

The assertion in your July 2 and July 24 letters that the Committee lacks authorization to "investigate and gather information about individual criminal cases prosecuted by a local prosecutor's office in state court"⁴ is incorrect. The Supreme Court has repeatedly affirmed Congress's oversight powers as "broad and indispensable,"⁵ "encompass[ing] inquiries into the administration of existing laws, studies of proposed laws, and surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them."⁶

¹ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Steve Descano, Fairfax Cnty. Commw. Att'y (Jan. 15, 2026) [hereinafter Jan. 15 Letter] (on file with Comm.); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Steve Descano, Fairfax Cnty. Commw. Att'y (June 4, 2026) [hereinafter June 4 Letter] (on file with Comm.).

² See Letter from Steve Descano, Fairfax Cnty. Commw. Att'y, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 2, 2026) [hereinafter July 2 Letter] (on file with Comm.).

³ See *id.*; see also Letter from Steve Descano, Fairfax Cnty. Commw. Att'y, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 24, 2026) [hereinafter July 24 Letter] (on file with Comm.).

⁴ See July 2 Letter, *supra* note 2; see also July 24 letter, *supra* note 3.

⁵ *Trump v. Mazars USA, LLP*, 591 U.S. 848, 862 (2020) (quoting *Watkins v. United States*, 354 U.S. 178, 187 (1957)).

⁶ *Id.*

Congressional oversight has encompassed issues involving state criminal justice systems—among many other state and local matters⁷—when they intersect with federal interests.⁸

The problem of sanctuary jurisdictions like Fairfax County flouting immigration law clearly involves federal interests. Failing to prosecute or under-prosecuting foreign nationals so that immigration consequences can be avoided implicates Congress’s plenary power over immigration, which the Supreme Court repeatedly has described as the authority “to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.”⁹ Your pro-criminal alien policies appear intentionally designed to thwart this authority. Moreover, preferential treatment of foreign nationals by your office may also violate federal civil rights laws.¹⁰

In stark contrast to longstanding Supreme Court precedent that supports the Committee’s oversight obligations in this matter, you cite a single Supreme Court decision that you have misinterpreted as approving discrimination against U.S. citizens.¹¹ In *Padilla v. Kentucky*, a divided Court held that a *defense* attorney, not the prosecutor, “must advise her client regarding the risk of deportation” as a result of certain criminal charges.¹² The Court’s decision in *Padilla* does not endorse the preferential treatment of foreign national defendants in criminal proceedings, much less address the question of prosecution policies designed to thwart the nation’s immigration laws so that criminal aliens can escape deportation and remain in the United States indefinitely. Your reliance on *Padilla* as support for your office’s pro-criminal alien policies is baseless and has no bearing on the Committee’s constitutional oversight obligations.

⁷ See *Affirming Congress’ Constitutional Oversight Responsibilities: Subpoena Authority and Recourse for Failure to Comply with Lawfully Issued Subpoenas*, Hearing Before the H. Comm. on Sci., Space & Tech., 114th Cong., at 13 (2016) (written testimony of Jonathan Turley, Professor, Geo. Wash. Univ. L. Sch.) (“There are a myriad of ways that states can negate federal policies, deny individual rights, or frustrate federal laws. Congress has the inherent right to seek out information on the actions and impact of state programs.”).

⁸ See, e.g., Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Fani T. Willis, Dist. Att’y, Fulton Cnty. Dist. Att’y’s Off. (Sept. 27, 2023), <https://www.congress.gov/118/meeting/house/117301/documents/HHRG-118-FD00-20240515-SD018-U18.pdf>; Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. to Alvin L. Bragg, Jr., Dist. Att’y, N.Y. Cnty. Dist. Att’y’s Off. (Mar. 25, 2023), <https://www.congress.gov/118/meeting/house/116381/documents/HHRG-118-JU00-20230920-SD020.pdf>; Letter from Rep. Lamar Smith, Chairman, H. Comm. on Sci., Space & Tech., to Maura Healey, Att’y Gen. of Mass. (Aug. 24, 2016), https://science.house.gov/_cache/files/8/2/82bc49dc-7eaa-4c16-8d5b-59b5a44d555e/34C011DE8974BD1124CEEAE4F2D7E3366BE122B0A1EBCF7C6B14F6A0EE7AF74F.08.24.16-sst-letter-to-ag-healey.pdf.

⁹ See *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972); see also *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

¹⁰ See, e.g., Press Release, Justice Department Notifies Fairfax County, Virginia Commonwealth’s Attorney of Investigation into His Plea Bargaining, Charging Decisions, and Sentencing Policy, U.S. Dep’t of Justice (May 6, 2026), <https://www.justice.gov/opa/pr/justice-department-notifies-fairfax-county-virginia-commonwealths-attorney-investigation-his> (Department of Justice launching an investigation into whether the policies violate federal law).

¹¹ See July 2 Letter, *supra* note 2.

¹² See *Padilla v. Kentucky*, 559 U.S. 356, 367 (2010); see also *id.* at 369 (emphasizing that “[w]hen the law is not succinct and straightforward” about the potential immigration consequences of a conviction, “a criminal defense attorney need do no more than advise a[n] [alien] client that pending criminal charges may carry a risk of adverse immigration consequences”).

Contrary to your assertions, the Committee’s request for records is lawful and appropriate. The House of Representatives has authorized the Committee to conduct oversight of “[i]mmigration policy and non-border enforcement,” “[c]riminal law enforcement,” and “the judiciary and judicial proceedings, civil and criminal.”¹³ The Committee’s oversight on sanctuary jurisdictions advances a legitimate—and important—legislative purpose and is clearly “a subject on which legislation could be had.”¹⁴ Although you may disagree about the need to reform federal law to end sanctuary policies, protect American communities, and ensure that foreign nationals do not receive preferential treatment over U.S. citizens, you cannot seriously contend that the Committee lacks the authority to do so.¹⁵ In fact, earlier this year, the Committee reported favorably H.R. 7640, the Shut Down Sanctuary Policies Act of 2026.¹⁶ This legislation addresses state and local officials who thwart the enforcement of federal immigration law and whose policies result in death and injury to countless Americans.¹⁷ To ensure that prosecutors cannot circumvent immigration law and allow aliens to escape accountability for their crimes, Congress may also consider amending the Immigration and Nationality Act to allow federal immigration officials to consider additional circumstances, such as admissions of guilt and not simply convictions, in making determinations about foreign nationals’ inadmissibility, deportability, and eligibility for immigration relief and benefits.

Despite sending the Committee two letters since the Committee’s June 4 letter,¹⁸ you have failed to answer the Committee’s basic questions. Although you assert in your July 2 letter that your pro-criminal alien policies’ “intended focus” was foreign nationals “with legal status,”¹⁹ you nonetheless failed to identify the “categories of aliens to which your policy”²⁰ actually applies *in practice*. Although eight months ago the Committee asked for “[a]ll documents and communications referring or relating to [your office’s] policies related to the prosecution of non-U.S. citizens,”²¹ which would show how your policies apply in such cases, you have not provided all the requested material. In addition, instead of clarifying whether your office considered immigration consequences in the cases identified by the Committee, your July 24 letter provided certain court documents, none of which reveals whether prosecutors in your office considered immigration consequences for the criminal aliens.²² Despite multiple opportunities—both at a public hearing and in two responses to the Committee’s June 4 letter—to clarify your policies and their effects on specific cases, you have refused to do so.

You have also failed to provide the number of cases for which your office moved for the court to enter a *nolle prosequi*, including the nationality of the defendant in each case.²³ Even if

¹³ Rules of the House of Representatives, 119th Cong., R. X (2025).

¹⁴ Mazars USA, LLP, 591 U.S. at 863 (internal quotation marks omitted).

¹⁵ See U.S. CONST. art. I, § 1; Rules of the U.S. House of Representatives, R. X(1)(9) (2025).

¹⁶ See H.R. 7640, Shut Down Sanctuary Policies Act of 2026.

¹⁷ See *id.*

¹⁸ See July 2 Letter, *supra* note 2; see also July 24 Letter, *supra* note 3.

¹⁹ See July 2 Letter, *supra* note 2.

²⁰ See June 4 Letter, *supra* note 1.

²¹ See Jan. 15 Letter, *supra* note 1.

²² See July 24 Letter, *supra* note 3.

²³ See July 24 Letter, *supra* note 3.

your office does not track the nationality of defendants, it does not follow that this information is unattainable.²⁴ If that were truly the case, it would mean that your prosecutors have routinely disregarded your directive to consider collateral immigration consequences.

Finally, your new effort to minimize both the scope and the effects of your office's collateral immigration consequences policy²⁵ is a surprising reversal after years of you boasting about the policy on your public campaign website.²⁶ For years, in fact, you promised Fairfax County voters that your office would, "[w]herever possible . . . take immigration consequences into account when making charging and plea decisions."²⁷ To date, however, you have been unwilling to identify the cases in which your office followed your own campaign promises and written policy. Because of your lack of cooperation with the Committee's requests, the Committee is unable to know the true scope of your policies or the full extent of their damaging effects on northern Virginia communities.

Accordingly, we demand that you produce the outstanding material requested in our January 15 and June 4 letters as soon as possible, but no later than 5:00 p.m. on September 7, 2026. The Committee may be forced to resort to compulsory process if these requests remain outstanding.

Sincerely,



Jim Jordan
Chairman



Tom McClintock
Chairman
Subcommittee on Immigration
Integrity, Security, and Enforcement

cc: The Honorable Jamie Raskin, Ranking Member

The Honorable Pramila Jayapal, Ranking Member, Subcommittee on Immigration
Integrity, Security, and Enforcement

²⁴ In at least one document provided to the Committee, for example, a criminal alien defendant was noted as "undocumented" and a "risk [of] flight." See Documents provided to H. Comm. on the Judiciary by Steve Descano, Fairfax Cnty. Commw. Att'y (July 24, 2026) (on file with Comm.).

²⁵ See July 2 Letter, *supra* note 2 (characterizing certain cases of criminal aliens as "a few individual criminal cases . . . out of over 10,000 cases" prosecuted by the office each year); *see id.* (claiming the office is "not aware of how any resolution in a local criminal case could prevent a defendant, who is without legal immigration status and removable under federal law, from being subject to removal").

²⁶ See Community: Protecting Immigr. Communities, Steve Descano, <http://www.stevedescano.com/community> (archived Mar. 10, 2026, at <https://web.archive.org/web/20260310203213/http://www.stevedescano.com/community>).

²⁷ See *id.*