

JAN - 2 2025

OFFICE OF THE CLERK

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## SUPREME COURT OF THE UNITED STATES

DUANE ANTIONNE FAIRFAX,

*Applicant,*

v.

TRACEY NICHOLE MARTINEZ

*Respondent.*

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**EMERGENCY APPLICATION FOR STAY OF ENFORCEMENT OF  
DECEMBER 1, 2025 ORDER**

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(Supreme Court Rule 23; 28 U.S.C. § 1651(a))

Submitted to the Circuit Justice

with Request for Referral to the Full Court

On Application for a Stay of Enforcement

from the Circuit Court of Stafford County, Virginia

Duane Antionne Fairfax  
Applicant, Pro Se  
7 Ferrous Ct.  
Stafford, VA 22554  
Phone: 240-273-4906  
Email: duane.fairfax@gmail.com

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RECEIVED

JAN - 6 2026

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## **APPLICATION FOR STAY**

Applicant respectfully requests a temporary stay of enforcement of the December 1, 2025 enforcement order entered by the Circuit Court of Stafford County, Virginia, pending disposition of Applicant's appeal and related stay proceedings in the Court of Appeals of Virginia, or further order of this Court.

### **I. JURISDICTION**

This Emergency Application is submitted pursuant to Supreme Court Rule 23 and the All Writs Act, 28 U.S.C. § 1651(a). Applicant seeks narrowly tailored interim relief to prevent enforcement of a state trial court order that would irreparably impair federal statutory and constitutional protections and defeat meaningful federal review.

The December 1, 2025 enforcement order entered by the Circuit Court of Stafford County, Virginia is presently under appellate review in the Court of Appeals of Virginia (VCOA Record No. 2108-25-4). Applicant has sought emergency stay relief in that court, and no stay is currently in place.

Absent temporary relief from this Court, continued enforcement of the December 1 order will result in irreparable mootness of substantial federal questions, including claims arising under the Supremacy Clause and 38 U.S.C. § 5301(a), before those issues may be addressed through the ordinary appellate process. This Application does not seek review of any final judgment but requests interim relief in aid of this Court's authority to prevent state action from foreclosing federal protections.

### **II. PROCEDURAL POSTURE AT A GLANCE**

- Underlying divorce decree — review denied by Supreme Court of Virginia (SCV Record No. 250503)
- Prior contempt enforcement — contempt purged by \$25,000 payment; suspended

incarceration remains outstanding; appeal pending; emergency stay denied (SCV Record No. 250845)

- Current enforcement order — entered December 1, 2025; authorizes garnishment; sets new enforcement deadlines; preserves authority to activate suspended incarceration
- Current appellate proceedings — appeal and emergency stay pending in Court of Appeals of Virginia; no ruling; no stay (VCOA Record No. 2108-25-4)
- Present request — temporary stay of enforcement to preserve federal protections and prevent irreparable harm

### **III. FEDERAL QUESTIONS PRESENTED**

1. Whether the Supremacy Clause and 38 U.S.C. § 5301(a) prohibit a state court from enforcing spousal support through contempt, garnishment, or equivalent coercive mechanisms when compliance is impossible without surrendering federally protected VA disability compensation.
2. Whether due process permits enforcement measures where the obligor lacks any lawful means of compliance other than the use of federally protected benefits.

### **IV. PROCEDURAL HISTORY**

Applicant is a disabled veteran whose VA disability compensation is protected from attachment, levy, or other legal process under 38 U.S.C. § 5301(a).

Applicant previously sought discretionary review in the Supreme Court of Virginia, which declined review. Subsequent enforcement proceedings have continued notwithstanding unresolved federal questions. In later enforcement proceedings, the circuit court entered a contempt order imposing a suspended sentence of incarceration. Applicant purged that contempt by tendering a \$25,000 payment, funded in substantial part through VA disability compensation. That contempt order remains on appeal.

On December 1, 2025, the circuit court entered a further enforcement order authorizing garnishment of Applicant's remaining non-exempt income, setting new compliance deadlines, and preserving authority to activate the previously suspended incarceration. (App. A)

While an emergency stay application was pending in the Supreme Court of Virginia in connection with the ongoing contempt appeal (SCV Record No. 250845), Applicant submitted the December 1, 2025 enforcement order as supplemental authority. At that time, the Supreme Court of Virginia was the appropriate court to consider interim relief. Notwithstanding that submission, emergency relief was denied. (App. E)

Following entry of the December 1, 2025 enforcement order, Applicant timely noted an appeal from that order and simultaneously sought emergency stay relief in the Court of Appeals of Virginia on December 8, 2025 (VCOA Record No. 2108-25-4). No ruling has issued, and no stay is presently in effect. (Apps. B-C)

## **V. WHY INTERIM RELIEF FROM THIS COURT IS WARRANTED NOW**

Although state appellate proceedings remain pending, interim relief from this Court is warranted because no stay is presently in effect and continued enforcement of the December 1, 2025 order threatens irreparable impairment of federal statutory and constitutional protections. Applicant has sought emergency stay relief in the appropriate state courts at each procedural stage, and no ruling has issued.

Absent temporary intervention, the state trial court's enforcement mechanisms will compel compliance through garnishment or incarceration, effectively nullifying federal protections afforded under 38 U.S.C. § 5301(a) before those protections may be meaningfully reviewed. Once enforced, the resulting loss of liberty and compelled surrender of federally protected benefits

cannot be undone, and subsequent appellate review would be rendered moot. Interim relief is therefore necessary in aid of this Court’s authority to prevent state action from foreclosing federal rights.

## **VI. REASONS FOR GRANTING A STAY**

### **A. IRREPARABLE HARM**

Absent a stay, Applicant faces imminent and irreparable harm. The December 1 order authorizes garnishment of Applicant’s remaining non-exempt income, including federal civilian wages and the portion of military retired pay not already awarded to Respondent. Applicant’s only remaining income consists of VA disability compensation.

If enforcement proceeds, Applicant will be left without lawful income for basic living expenses other than VA disability compensation, indirectly compelling the use of federally protected benefits to satisfy state-ordered obligations. Federal law prohibits states from accomplishing indirectly what 38 U.S.C. § 5301(a) forbids directly. See *Howell v. Howell*, 581 U.S. 214 (2017).

The order also preserves authority to activate the previously suspended incarceration if compliance is deemed insufficient. Loss of liberty cannot be remedied after the fact and would moot federal review. (App. A; App. D)

Enforcement proceedings have already required Applicant to report the matter to federal security authorities, causing collateral and ongoing harm to Applicant’s federal employment and security clearance that cannot be undone by later relief.

### **B. Federal Preemption**

Applicant’s VA disability compensation is protected from attachment, levy, or legal process under 38 U.S.C. § 5301. Enforcement mechanisms that indirectly compel use of protected benefits violate the Supremacy Clause. See *Howell v. Howell*, 581 U.S. 214 (2017).

### **C. BALANCE OF EQUITIES**

The balance of equities strongly favors a temporary stay. Absent relief, Applicant faces irreparable

loss of liberty and compelled surrender of federally protected VA disability compensation. By contrast, Respondent will suffer no comparable harm from a brief pause in enforcement. Applicant does not seek to vacate or modify the underlying support order and seeks only to preserve the status quo while federal questions are resolved through ongoing appellate review.

#### **D. PUBLIC INTEREST**

The public interest favors granting a stay. Congress has expressly determined that VA disability compensation must remain insulated from attachment, levy, or other legal process. A temporary stay preserves the supremacy of federal law, prevents states from accomplishing indirectly what federal law forbids directly, and ensures that constitutional questions are not mooted through coercive enforcement before appellate review can occur. Granting interim relief also promotes uniform application of federal veterans' protections nationwide.

#### **VII. RELIEF SOUGHT**

Applicant respectfully requests that this Court enter a temporary stay of enforcement of the December 1, 2025 enforcement order entered by the Circuit Court of Stafford County, Virginia, including any contempt, garnishment, or equivalent coercive measures, pending resolution of Applicant's appeal and emergency stay proceedings in the Court of Appeals of Virginia.

Applicant seeks this relief solely to preserve substantial federal statutory and constitutional protections and to prevent irreparable mootness of federal questions before they may be addressed through the ordinary appellate process. Applicant does not seek review of the merits of the underlying support order and requests only interim relief necessary to maintain the status quo until state appellate review is completed or further order of this Court.

#### **CONCLUSION**

For the foregoing reasons, Applicant respectfully requests that the Court grant the requested emergency stay to preserve substantial federal protections and prevent irreparable harm pending completion of state appellate review.

Respectfully submitted,



DUANE ANTIONNE FAIRFAX

Applicant, Pro Se

7 Ferrous Ct.

Stafford, VA 22554

Phone: (240) 273-4906

Email: duane.fairfax@gmail.com

## **Appendix Index**

Appendix A — Circuit Court Enforcement Order dated December 1, 2025

Appendix B — Notice of Appeal to the Court of Appeals of Virginia  
(VCOA No. 2108-25-4)

Appendix C — Emergency Motion for Stay filed December 8, 2025  
(VCOA No. 2108-25-4)

Appendix D — Circuit Court Contempt Order and Purge Conditions (Suspended Incarceration & \$25,000 payment)

Appendix E — Supreme Court of Virginia Order Denying Emergency Stay  
(SCV No. 250845)

**Appendix A**

CIRCUIT COURT OF STAFFORD COUNTY, VIRGINIA

ENFORCEMENT ORDER

DATED DECEMBER 1, 2025 (Docket No. CL3104-01)

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE  
COUNTY OF STAFFORD**

DUANE ANTIONNE FAIRFAX, )  
Plaintiff/Counter-Defendant, )  
v. ) CL22-3104  
TRACEY NICHOLE MARTINEZ, )  
(formerly known as Tracey Nichole Fairfax) )  
Defendant/Counter-Plaintiff )

**ORDER COMPELLING PLAINTIFF/COUNTER-DEFENDANT  
TO COMPLY WITH FINAL DECREE OF DIVORCE**

This matter came before the Court on December 1, 2025, at 1:00 p.m., upon the Notice and Motion for Order requiring the Plaintiff/Counter-Defendant's Compliance with and enforcement of the Final Decree of Divorce filed by the Defendant; Counsel for the Defendant was present, the Plaintiff was present and the matter was heard.

Upon consideration of the evidence presented and the testimony of the Plaintiff and Defendant and the argument of Counsel, it is **ORDERED**,  
**ADJUDGED AND DECREED** as follows:

**ADJUDGED, ORDERED AND DECREED** that the Plaintiff, Duane Antionne Fairfax shall be confined and imprisoned in jail for period of \_\_\_\_\_ *pp*

NAGEOTTE, NAGEOTTE  
& NAGEOTTE, P.C.  
ATTORNEYS AT LAW  
  
SUITE 201 & 202  
AQUIA PROFESSIONAL VILLAGE  
385 GARRISONVILLE ROAD  
STAFFORD, VIRGINIA 22554  
LOCAL: (540) 659-5050  
FAX: (540) 659-2166  
FAX: (540) 288-0960

unless the Plaintiff, Duane Antionne Fairfax shall be sooner discharged by due process of law;

Provided, however, the Plaintiff may purge himself of his contempt by complying with the Final Decree of Divorce dated November 20, 2023 and it is

**ORDERED:**

That the Plaintiff pay Defendant \$ 96,332.22 <sup>including</sup>, in cashier and or certified funds, with post rate judgement of interest of six percent (6%) from February 18, 2024 until paid, as and for the funds awarded to Defendant on or before 1/30/26  
return in Judge Barr's hearing the matter; it is further

That the that the Court ORDERS the Plaintiff to pay Defendant \$20,000.00 as and for the joint account awarded to her in the Final Decree of Divorce on or before 1/30/26 a sum in Judge Barr's hearing the matter, it is further

That the that the Court ORDERS the Plaintiff to pay Defendant \$50,510.00 in spousal support arrears as of November 20, 2023 through November 20, 2025, with post rate judgment of interest of 6% included, on or before Jan 30, 2026 a sum should be timely paid \$2,000.00 each month thereafter as well by garnishment to ensure timely payment of Defendant's spousal support award in the amount of \$2,000.00;

**ADJUDGED, ORDERED AND DECREED** that the Court ORDERS the Plaintiff to pay to the Defendant an award of the Defendant's fees and costs in seeking Plaintiff's compliance, with said amount being \$ 1275.00, to be paid to the Defendant, through her Counsel of Record, Yvonne J. Nageotte, Esquire, Nageotte, Nageotte & Nageotte, PC, 385 Garrisonville Road, Suite 202, Stafford, Virginia 22554, within 120 days from entry of this Order; it is further

NAGEOTTE, NAGEOTTE  
& NAGEOTTE, P.C.  
ATTORNEYS AT LAW

SUITE 201 & 202  
AQUIA PROFESSIONAL VILLAGE  
385 GARRISONVILLE ROAD  
STAFFORD, VIRGINIA 22554  
LOCAL: (540) 659-5050  
FAX: (540) 659-2166  
FAX: (540) 288-0960

THIS CAUSE IS CONTINUED to January 5, 2023, 2023. *ADS*

  
Judge Designate

SEEN:

  
Yvonne J. Nageotte, Esquire  
VSB No. 39494  
Nageotte, Nageotte & Nageotte, P.C.  
385 Garrisonville Road, Suites 201 & 202  
Stafford, Virginia 22554  
(540) 659-5050  
Facsimile (540) 288-0960  
Counsel for Tracey Nichole Martinez

A COPY TO THE  
*MH*  
PROSECUTOR'S OFFICE, STAFFORD  
CIRCUIT COURT, STAFFORD, VA

SEEN: AND Objected To.

  
Duane Antionne Fairfax  
7 Ferrous Court  
Stafford, Virginia 22554  
Plaintiff/Counter-Defendant *Pro se*

NAGEOTTE, NAGEOTTE  
& NAGEOTTE, P.C.  
ATTORNEYS AT LAW

SUITE 201 & 202  
AQUIA PROFESSIONAL VILLAGE  
385 GARRISONVILLE ROAD  
STAFFORD, VIRGINIA 22554  
LOCAL: (540) 659-5050  
FAX: (540) 659-2106  
FAX: (540) 288-0960

**Appendix B**

**COURT OF APPEALS OF VIRGINIA**

**NOTICE OF APPEAL**

**VCOA RECORD NO. 2108-25-4**

December 8, 2025

***VIA VACES ELECTRONIC FILING***

A. John Vollino, Clerk of the Court  
Court of Appeals of Virginia  
109 North Eighth Street  
Richmond, VA 23219-2321

Re: Duane A. Fairfax v. Tracey N. Martinez  
Stafford Circuit Court Case No.: CL22-3104-01  
**Record No.: (to be assigned)**  
Notice of Appeal Filed in Circuit Court

Dear Mr. Vollino:

Please be advised that on December 8, 2025, I filed a Notice of Appeal with the Stafford County Circuit Court from the Enforcement Order entered on December 1, 2025, in the above-referenced matter. A copy of the Notice of Appeal, including the Certificate of Service, is being submitted herewith for the Court's records.

I understand that the Court of Appeals will assign a Record Number upon receipt and processing of this filing, and I will reference that number in all future submissions.

Please advise if any additional information, documents, or fees are required at this stage.

Thank you for your assistance.

Respectfully submitted,



Duane A. Fairfax  
Appellant, Pro Se

Enclosure

December 8, 2025

VIA HAND DELIVERY

Kathleen M. Sterne, Clerk of the Court  
Stafford  
County Circuit Court  
P.O. Box 69  
Stafford, VA 22555

Re: Duane A. Fairfax v. Tracey N. Martinez  
Case No.: CL22-3104-01  
Notice of Appeal from December 1, 2025 Enforcement Order

Dear Ms. Sterne:

Please accept for filing the enclosed Notice of Appeal from the Enforcement Order entered on December 1, 2025, in the above-referenced matter.

Pursuant to Rule 5A:6, the Notice of Appeal is being timely filed with the Circuit Court, and service has been completed on counsel for Appellee, as reflected in the Certificate of Service.

Please date-stamp the enclosed copy and provide a stamped copy for my records.

Thank you for your assistance.

Respectfully submitted,

  
Duane A. Fairfax  
Appellant, Pro Se

Enclosure

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF STAFFORD**

**Notice of Appeal to the Court of Appeals of Virginia**

**Record No.: (to be assigned by VCOA)**

**DUANE ANTIONNE FAIRFAX**

**Plaintiff/Counter-Defendant**

**v.**

**TRACEY NICHOLE MARTINEZ  
(F/K/A TRACEY NICHOLE FAIRFAX)**

**Case No.: CL22-3104-01**

**DEFENDANT/COUNTER-PLAINTIFF**

**NOTICE OF APPEAL TO THE VIRGINIA COURT OF APPEALS**

COMES NOW the Appellant, Duane Antionne Fairfax, pro se, and hereby gives notice of his appeal to the Court of Appeals of Virginia from the Enforcement Order entered by this Court on December 1, 2025 in the above-referenced matter.

Pursuant to Rule 5A:6 of the Rules of the Supreme Court of Virginia, Appellant states as follows:

1. Appellant appeals the December 1, 2025 Enforcement Order entered in this case.
2. The appeal is taken to the Court of Appeals of Virginia.
3. A transcript is not available for the December 1, 2025 hearing; Appellant intends to proceed on a Written Statement of Facts pursuant to Rule 5A:8 if needed.

4. Appellant has served notice of this appeal on counsel for Appellee as reflected in the Certificate of Service below.

Respectfully submitted,



Duane Antionne Fairfax  
Pro Se Appellant  
7 Ferrous Ct.  
Stafford, VA 22554  
240-273-4906  
duane.fairfax@gmail.com

December 8, 2025

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of December 2025, a true and correct copy of the foregoing Notice of Appeal was served via U.S. Mail upon:

Yvonne J. Nageotte, Esq. VSB #39494  
Counsel for Appellee  
Nageotte, Nageotte & Nageotte, P.C.  
385 Garrisonville Road, Suite 201 and 202  
Stafford, Virginia 22554

  
\_\_\_\_\_  
Duane Antionne Fairfax  
Appellant, Pro Se

Fairfax v. Martinez (f/k/a Fairfax)  
Notice of Appeal to the Virginia Court of Appeals  
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**Appendix C**

**COURT OF APPEALS OF VIRGINIA**

**EMERGENCY MOTION FOR STAY**

**FILED DECEMBER 8, 2025**

**VCOA RECORD NO. 2108-25-4**

# VIRGINIA APPELLATE COURTS EFILING SYSTEM

## DOCUMENT SUBMISSION SUMMARY

**Court:** Court of Appeals of Virginia

**Record Number:**

**Case Style:** Fairfax v. Martinez (f/k/a Fairfax)

**Confirmation Number:** 338993

**Submission Date/Time:** 12/8/2025 2:32 PM

**Calculated Fees:** \$0.00

**Fee Exemption Requested:** No

Document	Document Type
Ltr to VCOA Emergency Motion to Stay 20251208.pdf	Emergency Motion to Stay Enforcement Pending Appeal
VCOA Emergency Motion to Stay v2 20251208.pdf	Cover Letter

**Total number of documents submitted: 2**

December 8, 2025

***VIA VACES ELECTRONIC FILING***

A. John Vollino, Clerk of the Court  
Court of Appeals of Virginia  
109 North Eighth Street  
Richmond, VA 23219-2321

Re: Duane A. Fairfax v. Tracey N. Martinez  
Stafford Circuit Court Case No.: CL22-3104-01  
Record No.: (to be assigned)  
Emergency Motion to Stay Enforcement Pending Appeal

Dear Mr. Vollino:

Enclosed for filing, please find:

1. Appellant's Emergency Motion for Stay Pending Appeal pursuant to Rule 5A:7; and
2. Certificate of Service reflecting service by U.S. Mail upon Appellee or her last counsel of record.

This motion requires urgent consideration because the Circuit Court has scheduled a compliance hearing for January 5, 2026, at which Appellant faces potential incarceration based on an enforcement order that is the subject of this appeal.

Please process this filing at the earliest opportunity. Thank you for your assistance.

Respectfully submitted,



Duane A. Fairfax  
Appellant, Pro Se  
7 Ferrous Ct.  
Stafford, Va 22554  
duane.fairfax@gmail.com

Enclosure

**IN THE COURT OF APPEALS OF VIRGINIA**

DUANE ANTIONNE FAIRFAX,	)	
	)	
Appellant,	)	
v.	)	Record No. (to be assigned)
TRACEY NICHOLE MARTINEZ	)	
(f/k/a Tracey Nichole Fairfax)	)	
	)	
Appellee,	)	
	)	
<b>(On Appeal from Stafford Circuit Court</b>	)	
<b>Case No. CL22-3104-01)</b>	)	

**EMERGENCY MOTION TO STAY ENFORCEMENT PENDING APPEAL**  
**(RULE 5A:7; Imminent Irreparable Harm – Jan. 5, 2026 hearing)**

COMES NOW the Appellant, Duane Antionne Fairfax, pro se, and respectfully moves this Court for an **emergency stay** of the Stafford County Circuit Court's December 1, 2025 Enforcement Order pending resolution of the appeal. Enforcement without a stay will result in immediate and irreparable harm, including unlawful incarceration, violation of federal law, and coercive enforcement based on legally defective arrears.

**I. APPELLATE JURISDICTION AND PROCEDURAL POSTURE**

1. Appellant has timely filed a Notice of Appeal from the Circuit Court's December 1, 2025 Enforcement Order.
2. Issues in this appeal overlap with matters currently before the Supreme Court of Virginia (Record Nos. 250503 and 250845).

3. A compliance hearing is scheduled for January 5, 2026, at which Appellant faces the threat of incarceration based on an order entered without required findings and supported by defective arrears.

## **II. IMMINENT IREEPARABLE HARM (JANUARY 5, 2026)**

4. Without a stay, Appellant faces immediate incarceration, garnishment, and coercive enforcement measures that cannot be remedied through later appeal.
5. Enforcement would require Appellant to violate federal law, as his only remaining income includes protected VA disability compensation under 38 U.S.C. § 5301.
6. A stay is required to preserve Appellant's due-process rights and this Court's ability to issue meaningful appellate relief.

## **III. APPELLANT'S NONCOMPLIANCE WAS NOT WILLFUL AND WAS CAUSED BY APPELLEE AND COUNSEL**

7. Between March 21–26, 2024, Appellant attempted to tender the \$86,332.22 equity payment and repeatedly requested wiring instructions and execution of the Quitclaim Deed.
8. Opposing Counsel refused to accept payment unless Appellant simultaneously paid the disputed \$20,000 equitable-distribution award, which is under appellate review.
9. On October 10, 2025, Appellant personally visited Opposing Counsel's office to tender the equity funds and execute the Quitclaim Deed. Counsel was absent, and her legal assistant presented a legally incorrect deed, making execution impossible.
10. Appellant arranged a meeting with his estate attorney for a proper simultaneous transaction. but Opposing Counsel refused to attend or participate.
11. These facts establish non-willfulness as a matter of law. Any noncompliance resulted from Appellee's obstruction, not Appellant's refusal.

#### **IV. THE CIRCUIT COURT FAILED TO MAKE REQUIRED FINDINGS BEFORE ISSUING AN ENFORCEMENT ORDER**

12. Under Virginia law and *Turner v. Rogers*, 564 U.S. 431 (2011), a court must make explicit findings of (1) willfulness and (2) present ability to pay before issuing an enforcement order that carries coercive consequences, including future contempt exposure.
13. The December 1 Enforcement Order imposed obligations, deadlines, and the threat of contempt without any findings regarding Appellant's ability to comply.
14. The mere continuation of the matter to January 5, 2026 does not cure the due-process defect. Findings must exist at the time an enforcement order enters.

15. The lack of findings renders the Enforcement Order facially invalid and warrants an immediate stay.

#### **V. LIMITS OF VIRGINIA CODE § 20-115 (SUPPORT-ONLY INCARCERATION)**

16. Although § 20-115 authorizes enforcement of § 20-107.3 orders, Virginia appellate precedent holds that **incarceration is permissible only for support obligations**, not for equitable-distribution, property-based debts, military-retirement arrears, or attorney's fees. *Alexander v. Alexander*, 12 Va. App. 691 (1991); *Street v. Street*, 24 Va. App. 14 (1997); *Wright v. Wright*, 61 Va. App. 432 (2013).
17. The December 1 order does not distinguish between enforceable and non-enforceable categories and therefore threatens unlawful incarceration.

#### **VI. FEDERAL PREEMPTION — 38 U.S.C. § 5301 AND HOWELL v. HOWELL**

18. Appellant's only available income includes VA disability compensation, expressly protected from attachment or legal process under 38 U.S.C. § 5301(a).
19. The U.S. Supreme Court held that states may not indirectly compel the use of protected VA disability benefits through coercive enforcement mechanisms. *Howell v. Howell*, 581 U.S. Fairfax v. Martinez (f/k/a Fairfax)  
Emergency Motion to Stay Enforcement Pending Appeal  
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214 (2017).

20. Enforcement of the December 1 order would leave Appellant no way to comply except by violating federal law.

21. Federal preemption alone requires issuance of an immediate stay.

## **VII. THE ARREARS FIGURE IS LEGALLY DEFECTIVE BECAUSE IT FAILS TO CREDIT THE \$25,000 PURGE BOND AND MISALLOCATES FUNDS**

22. The December 1 order lists spousal support arrears as a basis for potential contempt; however, the arrearage figure is legally inaccurate because it fails to credit the \$25,000 purge bond paid by Appellant in the earlier contempt proceeding.

23. Under Virginia law, a purge bond may be applied only to the obligation supporting incarceration — here, spousal support arrears, as property-based obligations cannot support contempt. Alexander; Street, *supra*.

24. Opposing Counsel improperly allocated portions of the purge bond to military-retirement arrears and attorney's fees, neither of which can legally support contempt incarceration.

25. The arrears figure used in the Enforcement Order is therefore inflated, unreliable, and legally defective. Enforcement based on an incorrect arrearage calculation violates due process and must be stayed pending appeal.

## **VIII. STANDARD FOR EMERGENCY STAY UNDER RULE 5A:7 IS SATISFIED**

### **A. Likelihood of success on the merits**

- Enforcement based on defective arrears is reversible error.
- Lack of required findings violates Turner and Virginia law.
- Federal preemption under § 5301 bars enforcement.

## **B. Irreparable harm**

- Imminent incarceration (Jan. 5).
- Forced violation of federal law through compelled use of disability income.
- Garnishment and coercive actions cannot be undone.

## **C. No prejudice to Appellee**

- Appellee has refused all attempts at payment.
- A stay preserves the status quo.

## **IX. RELIEF REQUESTED**

WHEREFORE, Appellant respectfully requests that this Court:

1. Stay the December 1, 2025 Enforcement Order pending appeal;
2. Stay all payment, compliance, and interest accrual provisions;
3. Stay the January 5, 2026 compliance hearing and prohibit any contempt proceedings during this appeal;
4. Prohibit any enforcement action requiring use of federally protected VA disability benefits; and
5. Grant any further relief deemed just and proper.

Respectfully submitted,

  
\_\_\_\_\_  
Duane A. Fairfax  
Appellant, Pro Se  
7 Ferrous Ct.  
Stafford, VA 22554  
240-273-4906  
Email: duane.fairfax@gmail.com

December 8, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of December 2025, a true and correct copy of the foregoing Emergency Motion to Stay Enforcement Pending Appeal and Emergency Justification Addendum, was electronically filed via the Virginia Appellate Courts Electronic System (VACES) and first-class U.S. Mail, postage prepaid, addressed as follows:

Yvonne J. Nageotte, VSB #39494  
Counsel for the Appellee  
NAGEOTTE, NAGEOTTE, & NAGEOTTE, P.C.  
385 Garrisonville Road, Suite 201 and 202  
Stafford, VA 22554  
(540) 650-5050  
(540) 659-2166 (facsimile)



Duane A. Fairfax  
Appellant, Pro Se

**IN THE COURT OF APPEALS OF VIRGINIA**

## **EMERGENCY JUSTIFICATION ADDENDUM**

*(Submitted Pursuant to Rule 5A:7 for Immediate Consideration)*

Appellant respectfully submits this Addendum in support of his Emergency Motion for Stay

Pending Appeal. Immediate action is warranted because:

1. The Circuit Court has scheduled a January 5, 2026 compliance hearing, at which Appellant faces potential incarceration.
2. The December 1 Enforcement Order was entered without findings of willfulness or present ability to comply, as required by Virginia law and *Turner v. Rogers*, 564 U.S. 431 (2011).
3. The arrearage figure used by the Circuit Court is legally inaccurate because it fails to credit Appellant's \$25,000 purge bond and improperly allocates funds to military-retirement arrears and attorney's fees—categories that cannot support contempt incarceration under *Alexander v. Alexander*, 12 Va. App. 691 (1991), and *Street v. Street*, 24 Va. App. 14 (1997).

4. Enforcement would violate federal law, as Appellant's only remaining income includes VA disability compensation, which is expressly protected under 38 U.S.C. § 5301. Under *Howell v. Howell*, 581 U.S. 214 (2017), a state may not indirectly compel the use of protected disability benefits through contempt or coercive enforcement mechanisms.
5. Appellant has made multiple good-faith attempts to comply—including visiting opposing counsel's office on October 10, 2025 to tender funds and execute the Quitclaim Deed—but Opposing Counsel refused to participate in a proper closing.
6. Without a stay, Appellant will suffer irreparable harm that cannot be remedied by later appellate review.

Appellant therefore respectfully requests immediate entry of a stay pending appeal.

Respectfully submitted,



Duane A. Fairfax  
Appellant, Pro Se  
7 Ferrous Ct.  
Stafford, VA 22554  
240-273-4906  
Email: duane.fairfax@gmail.com

December 8, 2025

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of December 2025, a true and correct copy of the foregoing Emergency Justification Addendum, was electronically filed via the Virginia Appellate Courts Electronic System (VACES) and first-class U.S. Mail, postage prepaid, addressed as follows:

Yvonne J. Nageotte, VSB #39494  
Counsel for the Appellee  
NAGEOTTE, NAGEOTTE, & NAGEOTTE, P.C.  
385 Garrisonville Road, Suite 201 and 202  
Stafford, VA 22554  
(540) 650-5050  
(540) 659-2166 (facsimile)



Duane A. Fairfax  
Appellant, Pro Se

## **Appendix D**

**CIRCUIT COURT OF STAFFORD COUNTY, VIRGINIA**

**CONTEMPT ORDER AND PURGE CONDITIONS**

**SUSPENDED INCARCERATION & \$25,000 PAYMENT**

*Amended Order*

*JMB*

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE  
COUNTY OF STAFFORD**

DUANE ANTIONNE FAIRFAX, )  
Plaintiff/Counter-Defendant, )  
v. ) CL22-3104-01  
TRACEY NICHOLE MARTINEZ, )  
(formerly known as Tracey Nichole Fairfax) )  
Defendant/Counter-Plaintiff )

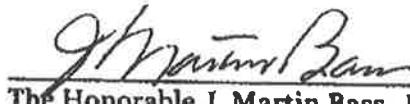
**ORDER COMPELLING PLAINTIFF/COUNTER-DEFENDANT  
TO COMPLY WITH FINAL DECREE OF DIVORCE**

This matter came before the Court on November 6, 2024 at 10:00 a.m., upon the Notice and Motion for Order requiring the Plaintiff/Counter-Defendant's Compliance with and enforcement of the Final Decree of Divorce filed by the Defendant, Notice and Motion to Suspend and Amended Motion to Suspend filed by Counsel for the Plaintiff, Response to Notice and Motion to Suspend and Amended Motion to Suspend filed by Counsel for the Defendant, and Notice and Motion for Sanctions filed by the Defendant; Counsel for the Defendant was present, the Plaintiff and his Counsel were present and the matter was heard.

Upon consideration of the evidence presented and the testimony of the Plaintiff and the argument of Counsel, it is **ORDERED, ADJUDGED AND DECREED** as follows:

1. That the Motion to Comply is granted;
2. That the Motion to Suspend and the Amended Motion to Suspend are denied; and
3. That the Motion for Sanctions against Plaintiff and his Counsel are denied.

*20th*  
ENTERED this 6<sup>th</sup> day of November 2024.

  
The Honorable J. Martin Bass, Judge Designate,  
15 Judicial Circuit of Virginia

SEEN:

  
Yvonne J. Nageotte, Esquire  
VSB No. 39494  
Nageotte, Nageotte & Nageotte, P.C.  
385 Garrisonville Road, Suites 201 & 202  
Stafford, Virginia 22554  
(540) 659-5050  
Facsimile (540) 288-0960  
Counsel for Tracey Nichole Martinez

SEEN:

ENDORSEMENT DISPENSED  
WITH PURSUANT TO RULE 1:13  
OF THE SUPREME COURT  
OF VIRGINIA, WITH NOTICE OF  
SAID PROCEEDING PURSUANT  
TO SERVICE OF PROCESS.

Bruce R. Eells, VSB No. 23009  
Virginia Family Law Center, PC  
3975 University Drive, Suite 325  
Fairfax, Virginia 22030  
Counsel for Plaintiff/Counter-Defendant

PAGE 3  
FARFAX v. FARFAX

The foregoing Order is amended  
for the sole purpose of providing endorsement  
with objections noted by Counsel.

Enter this

J. Martin Barr

12/6/2024

A COPY TESTE:

Kathleen M. Sterne, CLERK  
CIRCUIT COURT OF STAFFORD

Kathleen M. Sterne

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF STAFFORD**

**DUANE ANTIONNE FAIRFAX,**

Plaintiff/Counter-Defendant,

v.

**Case No. CL 22-3104-01**

**TRACEY NICHOLE FAIRFAX,**

Defendant/Counter-Plaintiff

**PLAINTIFF'S OBJECTIONS TO ORDER ENTERED ON NOVEMBER 20, 2024**

**COMES NOW** the Plaintiff/Counter-Defendant (hereinafter "the Plaintiff"), by counsel, and as and for his objections to the final Order entered by this Honorable Court on November 20, 2024, by the Hon. J. Martin Bass, Judge in the above-styled matter, states as follows:

1. Plaintiff objects to the Court's ruling that the evidence presented at the hearings held on this matter on September 3, 2024 and November 6, 2024 regarding his failure to pay the sums alleged to be owed by him to Defendant/Counter-Plaintiff (hereinafter "the Defendant") as set forth in Defendant's Rule to Show Cause filed herein was willful.
2. Plaintiff objects to the Court's ruling that the evidence he presented that his financial situation was due to his due to his physical/psychological condition, making it impossible for him to fulfill the terms of the parties' Final Decree of Divorce entered in the above matter on November 23, 2023 failed to demonstrate that his failure to make the aforesaid payment was not willful.
3. Plaintiff objects to the Court's finding that his evidence that pursuant to the terms of his TSP account he was unable to access the funds necessary to fulfill the requirements of the parties' Final Decree of Divorce entered on November 23, 2023, as such funds were the

only financial source he had available to do so failed to demonstrate that his failure to make the aforesaid payments was not willful.

4. Plaintiff objects to the Court hearing Defendant's Motion to Comply, etc. on November 6, 2024 after counsel for Plaintiff had advised the Court that he had not received a copy of said Motion prior to hearing on that day.
5. Plaintiff objects to the Court ordering him to supply his current address to the Court and to Defendant, while not ordering the Defendant to similarly supply him with Defendant's current address.
6. Plaintiff objects to the Court ordering him to pay opposing counsel's attorney's fees.

DUANE ANTIONNE FAIRFAX  
By Counsel

VIRGINIA FAMILY LAW CENTER, P.C.:

By: *BR*

✓ BRUCE R. EELLS (VSB No. 23009)  
FAYE K. CARROLL (VSB No. 40931)  
SHARIE REYES ALBERS (VSB No. 83583)  
STEPHEN D. KLEIN, ESQ. (VSB No. 92343)  
*Counsel for Plaintiff*  
4041 University Dr., Suite 103  
Fairfax, VA 22030  
Telephone: (703)865-5839  
Facsimile: (703)865-5849  
be a virginiafamilylawcenter.com

CERTIFICATE

I HEREBY CERTIFY that a true copy of the foregoing as been mailed, first-class postage prepaid, to Yvonne J. Nageotte, Esquire, Nageotte, Nageotte & Nageotte, P.C., 385 Garrisonville Road, Suite 202, Stafford, Virginia 22554,  
yvonne.nageotte a nageottelawfirm.com this 3<sup>rd</sup> day of December, 2024.

*BR*  
Bruce R. Eells

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF STAFFORD, VIRGINIA

DUANE A. FAIRFAX,  
Petitioner, or Complainant / Counter-Defendant

v.

CASE NUMBER: CL 22003104-01

TRACEY N. FAIRFAX,  
Defendant or Respondent / Counter- Plaintiff

ORDER

This cause came to be heard this 6<sup>th</sup> day of NOVEMBER, 2024 upon pending motion for RULE TO SHOW CAUSE MOTION TO COMPLY,

Whereupon, the Court having considered all testimony and evidence submitted and the arguments of Counsel, it is

ADJUDGED, ORDERED and DECREED as follows:

MOTION TO  
SUSPEND  
MOTION FOR  
SANCTIONS

DUANE A. FAIRFAX HAVING BEEN  
FOUND IN WILLFUL CONTEMPT, IS SENTENCED TO  
180 DAYS IN JAIL WITH 120 DAYS SUSPENDED  
ON THE FOLLOWING CONDITIONS: (1) COMPLIANCE WITH  
TERMS OF THE FINAL DECREE ENTERED NOVEMBER 20 2023,  
(2) PAYMENT WITHIN 90 DAYS OF RELEASE FROM  
CONFINEMENT, ATTORNEY'S FEES IN THE AMOUNT OF  
\$7237.69; (3) PROVIDE CORRECT PHYSICAL ADDRESS  
OF RESIDENCE TO CLERK OF COURT. FAIRFAX MAY  
PURGE HIMSELF OF CONTEMPT BY PAYMENT OF \$25,000  
AGAINST HIS COURT ORDERED OBLIGATIONS \*

ENTERED this 6<sup>th</sup> day of NOVEMBER, 2024

\* MOTION TO COMPLY IS GRANTED, ITS NAGEOTIE TO PREPARE ORDER.  
MOTION TO SUSPEND DENIED.  
MOTION FOR SANCTIONS DENIED.

J. Martin Bass  
Victoria A. B. Willis, Judge  
J. MARTIN BASS

BRUCE R. ELLIS  
Plaintiff (Counsel)

YVONNE J. NAGEOTIE  
Defendant (Counsel)

Endorsements dispensed with Rule 1:13

*RECORDED*  
Kathleen M. Sterne, CLERK  
CIRCUIT COURT OF STAFFORD

# RELEASE ORDER

ACCUSED: FAIRFAX, DUANE ANTIONNE  
NAME (LAST, FIRST, MIDDLE)

**R**

ADDRESS: .....

Jurisdiction: STAFFORD .....

SSN: 000-00-1071 DOB: 08/26/1972

GENERAL DISTRICT (TRAFFIC)  
 GENERAL DISTRICT (CRIMINAL)  
 GENERAL DISTRICT (CIVIL)  
 J&DR DISTRICT COURT  
 CIRCUIT COURT

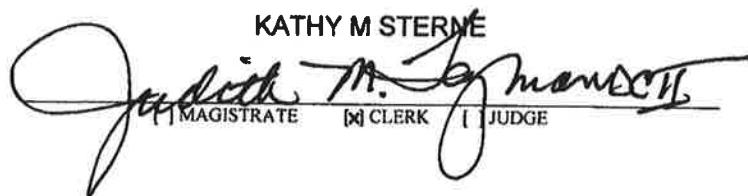
## CHARGE(S):

Offense Tracking Number	Virginia Crime Code (For Administrative Use Only)	Code Section	Case Number
		<u>18.2-456</u>	<u>CL22003104-01</u>
	<b>Description:</b> CIVIL CONTEMPT OF COURT		
	<b>Description:</b>		

Addendum listing additional charges is attached and incorporated.

TO THE SHERIFF, JAIL OFFICER OR CORRECTIONAL OFFICER:  
You are ordered to RELEASE the accused on the above charge(s).

11/07/2024 11:45AM  
DATE AND TIME

KATHY M STERNE  
  
 MAGISTRATE  CLERK  JUDGE

Released ..... AM/PM By .....  
DATE AND TIME

# RELEASE ORDER

COURT ADDRESS:	
P. O. BOX 69	
STAFFORD, VA 22555	
PHONE # : 540-659-8750	



**OFFICIAL RECEIPT  
STAFFORD COUNTY CIRCUIT COURT  
CIVIL**

**DATE :** 11/07/2024      **TIME :** 11:27:34      **CASE # :** 179CL2200310401  
**RECEIPT # :** 24000011418      **TRANSACTION # :** 24110700018      **FILING TYPE :** CM  
**CASHIER :** JLR      **REGISTER # :** G895      **PAYMENT :** FULL PAYMENT  
**SUIT AMOUNT :** \$0.00  
**ACCOUNT OF :** FAIRFAX, DUANE ANTIONNE  
**PAID BY :** HESTER, JENNIFER BAKER  
**CREDIT/DEBIT CARD :** \$26,000.00  
**DESCRIPTION 1 :** TRY: 11/07/24 CHG:  
2 : OFF: OL#: N/A

ACCOUNT CODE	DESCRIPTION	AMOUNT	DESCRIPTION	AMOUNT
501	COLLECT FOR OTHERS	\$25,000.00	407	CONVENIENCE FEE

**TENDERED :** \$ 26,000.00  
**AMOUNT PAID :** \$ 26,000.00

Page 1 of 1

**COURT ADDRESS:**  
**P. O. BOX 69**  
**STAFFORD, VA 22555**  
**PHONE #:** 540-658-8750



**OFFICIAL RECEIPT  
STAFFORD COUNTY CIRCUIT COURT  
MISCELLANEOUS**

**DATE : 11/07/2024 TIME : 09:46:58**  
**RECEIPT # : 24000011406 TRANSACTION # : 24110700006**  
**CASHIER : JLR REGISTER # : G895**  
**ACCOUNT OF : BAKER HESTER, JENNIFER**  
**RECEIVED OF : BAKER HESTER, JENNIFER**  
**CREDIT/DEBIT CARD : \$26,000.00**

CASE #: 179CGM240002249

**TYPE: FULL PAYMENT**

FILING TYPE: OTH

<b>TENDERED : \$</b>	26,000.00
<b>AMOUNT PAID : \$</b>	26,000.00

ACCOUNT CODE	DESCRIPTION	PAD	ACCOUNT CODE	DESCRIPTION	PAD
236	DOC. REPRO. COSTS		407	CONVENIENCE FEE	\$1,000.00
315	MISCELLANEOUS FEES & COMMISSIONS	\$25,000.00			
415	SECURED REMOTE ACCESS				\$0.00

COMBAT COPY

CLERK OF COURT - RATHY M. STERNE

RECEIPT COPY 2 OF 2

**Appendix E**

**SUPREME COURT OF VIRGINIA**

**ORDER DENYING EMERGENCY STAY**

**SCV RECORD NO. 250845**

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on Thursday, the 4th day of December, 2025.*

DUANE A. FAIRFAX,

APPELLANT,

against      Record No. 250845  
                    Court of Appeals No. 2067-24-4

TRACEY N. FAIRFAX,

APPELLEE.

FROM THE COURT OF APPEALS OF VIRGINIA

On December 1, 2025, came the appellant, who is self-represented, and filed a motion to stay lower tribunal proceedings and a motion for immediate consideration of the motion to stay.

Upon consideration whereof, the Court denies the motions.

A Copy,

Teste:



Muriel H. Poinay  
Clerk

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of January, 2026, a true and correct copy of the foregoing *Emergency Application for Stay* and Appendix was served by first-class mail, postage prepaid, upon the following counsel of record:

Sandra L. Havrilak, Esq., VSB No. 26138

Staci H. Figueroa, Esq., VSB No. 87635

BLANKINGSHIP & KEITH, P.C.

4020 University Drive, Suite 300

Fairfax, Virginia 22030

Telephone: (703) 691-1235

Facsimile: (703) 691-3913

[bkfl@bklawva.com](mailto:bkfl@bklawva.com)

Respectfully submitted,



Duane A. Fairfax

Applicant, Pro Se

7 Ferrous Ct.

Stafford, VA 22554

Email: [duane.fairfax@gmail.com](mailto:duane.fairfax@gmail.com)

January 2, 2026