

Ballard Spahr Attorneys Secure Presidential Commutation for Pro Bono Client

A man once sentenced to life in prison is now free and with his family

JESSICA FOLKER
LAW WEEK COLORADO

Attorneys from Ballard Spahr's Denver office helped win freedom for a pro bono client whose life sentence for non-violent drug crimes was commuted by former President Donald Trump.

Matthew Morr and Mudasar Khan represented Robert Francis, one of 70 people whose sentence was commuted in the last hours of Trump's presidency. In 2002, Francis was charged with conspiracy to distribute cocaine and possession with intent to distribute. He was offered a plea bargain of 25 to

30 years in prison, but he chose to go to trial instead. Prosecutors added two sentence enhancers and held Francis accountable for greater amounts of the drug, according to the National Association of Criminal Defense Lawyers, and he was sentenced to life in prison.

Morr and Khan prepared a supplementary petition on behalf of Francis, who had previously submitted his own clemency petition in 2018. In the petition, Khan said, they argued Francis received a "trial penalty" — a sentence disproportionately greater than the likely sentence on a guilty plea — and was unjustly punished for exercising

his Sixth Amendment right to trial.

Francis' case was referred to Ballard Spahr by the NACDL's Trial Penalty Clemency Project, which was launched in 2020 to submit federal clemency petitions for inmates who had been subject to excessive sentences due to a trial penalty. A 2018 report from the NACDL declared the constitutional right to trial "on the verge of extinction," with more than 97% of federal and state criminal defendants opting to concede guilt rather than going to trial. According to the report, the average post-trial sentence for someone convicted of drug trafficking, manufacturing or importing was 14.5 years, while those who took plea deals received an average sentence of 5.2 years for the same offense.

Morr and Khan started working on Francis' case in late August, and they submitted the petition in October. The first step in preparing the petition was reviewing Francis' 2018 clemency petition, Khan said, and the next was digging through his court records for evidence that he had received a trial penalty.

The biggest piece of evidence they found, according to Khan, was an opinion from the 8th Circuit Court of Appeals where the court had attached a copy of Francis' pre-trial offer. The offer indicated the prosecution was willing to stipulate to a lower drug quantity in exchange for a guilty plea, resulting in a sentence of about 25 years, Khan said, adding that the offer "explicitly threatened a harsher sentence" if Francis didn't take the plea.

When it came to drafting the petition, Morr said, an NACDL memo on trial penalties offered a framework for getting started. "And then from there, it was really trying to put together a persuasive piece of writing," he said. "Part of that is trying to identify points that will resonate with your audience."

One point they thought might persuade the president was the fact that he had previously pardoned people in similar situations. In particular, Khan said, Trump in 2018 had pardoned Alice Johnson, now a criminal justice reform advocate, who had also been serving a life sentence for a cocaine trafficking conviction.

"We just felt a strong connection with Mr. Francis. And I think that has

to be there for it to pour through in your advocacy ... I think that has to be there to draft a good clemency petition in general," Khan said.

The attorneys got to know Francis through email and communicated with his sister by phone while preparing the petition. They describe Francis as smart with a positive outlook, despite his circumstances. Francis also had a spotless disciplinary record and had been active in rehabilitation efforts, which the White House noted in its announcement about the commutation.

In the wee hours of Jan. 20, Trump's final day in office, Khan was refreshing the news section of the White House website when an item appeared announcing the president had pardoned 74 and commuted the sentences of 70 others — including Francis. Morr said he had already gone to bed when the news broke, but he woke up to a "very excited series of text messages" from Khan when he got up to take his puppies outside at 3 a.m.

Francis was released Jan. 21 and will live with his sister in Houston. The father of three "has a very strong family support system in place," Khan said. "It was great ... to be able to finally talk to him over the phone, and he told us he got to hold his grandson for the first time."

"It's just hard for me to even process that he's out of prison now and he gets to spend time with his family," Khan added. "I can't even put into words how it makes me feel."

"When we did speak to him, he expressed pure joy," Morr said. "His attitude was that he wanted to do something positive with his life going forward."

According to Morr, Francis asked what he could do to thank him and Khan. "We want you to pay it forward and live a good life, be a good family man," Morr told his client.

"And [we] strongly suggested he switch his allegiance from California sports teams to the Nuggets and the Broncos," Morr added. "He did not take up our request."

Ballard Spahr first started working with the NACDL in 2014 when the organization was seeking pro bono as-

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LOWDOWN

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applications, consular processing, naturalization and DACA applications. She spent six years working with F-1/J-1 students and scholars at the internationalization office at DU. Romero Quezada served as a law clerk for Denver's Juvenile Court and volunteered with several local organizations that provide free legal resources and representation to Colorado's underserved and underrepresented communities.

Romero Quezada is a member of the American Immigration Lawyers Association. She received a bachelor's degree from the University of Denver and a law degree from the University of Denver Sturm College of Law.

Collins represents clients in business and family immigration law. She gained experience in immigration working as a student attorney with the Immigration Law and Policy Clinic and as an intern with the Executive Office for Immigration Review. She also clerked with Curray York & Associates during law school. She received a bachelor's degree from Colorado State University and a law degree from the University of Denver Sturm College of Law.

LATERAL WATCH

Ireland Stapleton announced Jan. 25 that **Sarah Abbott** joined the firm's Grand Junction office. Abbott has previously served as in-house and outside gen-

eral counsel. She has experience advising on legal issues facing businesses, including drafting and negotiating commercial contracts, advising on employment matters, intellectual property, real estate, corporate governance, acquisitions, due diligence, risk management, regulatory issues and managing litigation.

Abbott also serves on the boards of directors for Montrose Memorial Hospital, the Montrose Community Foundation and the San Juan Healthcare Foundation. Abbott also serves on the Planned Giving Council for HopeWest Hospice.

Prior to joining Ireland Stapleton, Abbott served as in-house general counsel for a hemp company, and she previously worked in private practice in Montrose.

Denver-based Fastaff Travel Nursing and U.S. Nursing Corporation announced Jan. 25 the addition of **Marc Bonora** as general counsel.

Bonora has experience in healthcare staffing and labor law, and previously had positions with Envision Healthcare, Vail Resorts and the U.S. Department of Justice. At Fastaff, Bonora will be responsible for guiding the company's legal efforts, including developing policies and procedures, as well as regulatory compliance and audit processes.

Bonora earned his law degree at New York University School of Law.

BakerHostetler announced Jan. 22 that **Timothy Worrall** has joined the firm as a partner in both its Denver and San Francisco offices. Worrall joins the firm's intellec-

tual property practice group.

Worrall is a national and international patent prosecutor with an emphasis on the energy, pharmaceutical and medical device sectors. Worrall's background consists of helping innovators protect and maximize the life cycle of products, assays and devices.

He also develops risk assessment strategies for biosimilar platforms, including analysis of inter partes reexams and prelitigation strategies. Worrall also works with licensing and transactional attorneys to leverage intellectual property assets, specifically on out-license and in-license agreements, private equity and venture capital transactions, and mergers and acquisitions.

Worrall previously worked as a patent examiner at the U.S. Patent and Trademark Office. He received a Ph.D. in biophysics and biophysical chemistry from the Johns Hopkins University School of Medicine, a law degree and certificate in intellectual property from the University of California, Berkeley, and a bachelor's degree from the University of the South.

Spencer Fane announced Friday that **Jonathon Watson** has joined the firm's labor and employment practice group. He will be a partner in the Denver office.

Watson represents businesses ranging from startups to Fortune 100 companies in local and national employment claims arising under Title VII, the ADA, and the ADEA, as well as wage-and-hour class and collective actions in all stages of litigation. He also represents clients and

represents clients on unfair labor practice claims, the National Labor Relations Act and arbitrating labor disputes, and in handling complex litigation matters related to claims made against employers.

Watson received a bachelor's degree from Truman State University and received a law degree from the University of Denver's Sturm College of Law.

ASSOCIATE WATCH

Caplan & Earnest announced that it has added attorney **Ashlyn Kahler-Rios** to the Boulder-based law firm. Kahler-Rios is a member of Caplan & Earnest's immigration law section, where she represents clients on a range of employment and family-based immigration matters, including I-9 audits and compliance for employers and removal defense for individuals. She also supports the firm's education law and employment law clients.

Kahler-Rios first joined Caplan & Earnest as a summer law clerk, where she conducted legal research, writing and analyses on behalf of the firm's attorneys. Prior to joining Caplan & Earnest, she drafted appellate briefs and internal agency memorandum on matters of federal-state law conflict as a legal intern at the Department of Homeland Security's U.S. Citizenship & Immigration Services. She also served as a legal intern with the U.S. Department of Justice's Executive Office for Immigration Review, where she worked on complex legal issues within the federal immigration, administrative and state criminal law context. •

COMMUTATION

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sistance for its Clemency Project 2014, which aimed to secure commutations for non-violent offenders who had been sentenced under harsher sentencing guidelines that are no longer

in place. "We had 100 lawyers working on the petitions, including our firm chairman, and received 29 petitions that were granted, which was the most of any large law firm," said Morr, who was among those working on Clemency Project 2014.

"What I think is unique about our

firm is that our pro bono hours count toward our billable hour requirement," Morr said. The policy allowed Khan, an associate at the firm, to dedicate a lot of time to Francis' case, according to Morr, who added that the firm's associate evaluation committee looks "very positively on our associates that are

putting in time on pro bono matters."

"I had the firm's full support to spend as much time as I needed, just because the stakes are so high," Khan said. "It's a man's life. So I was really appreciative of my firm for allowing me to dedicate that amount of time." •

—Jessica Folker, JFolker@CircuitMedia.com

IMMIGRANT LEGAL DEFENSE

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that, about 70% of people in Colorado go before immigration judges unrepresented in high complex immigration proceedings.

"I don't know two cases in any legal proceedings that are the same," Piper said. "But that's much more true in immigration law than in other cases. Finding the right legal pathway for staying in the U.S. is difficult, and if an immigrant is able to pick the right pathway, then argue their case in court and win "is almost unheard of."

For individuals, such as those immigrants in deportation proceedings,

proposed ideas include providing a list of grants and organizations for the detainee to contact for a screening to meet requirements, she said.

Also, some people who find themselves in immigration proceedings are lawful permanent residents who hold temporary work visas, Piper said. She added that not every person in the Aurora facility is seeking asylum or undocumented immigrants. As a person makes their way down the path to citizenship, Piper added there were "pitfalls" where a person can slide off that path and then be detained.

"I think the other thing we're hoping that'll be achieved through this fund is ... ensuring that people from all countries have access to this pro bono lawyer, when

they can't afford an attorney. And for asylum seekers, that's a lot of folks," Piper said.

The discretionary aspect of immigration law is a "huge" barrier for people being able to access legal pathways for staying in the U.S., Piper said. About 85% of people with lawyers involved in their cases gain release in their case. That is not necessarily a win, but it makes a difference.

Piper said that only about 15% of people without a lawyer gain release in a case. Often those detained are the main breadwinners in their household and don't have \$20,000 saved away for legal defense.

But challenges to selecting cases go beyond simply legal challenges. Some challenges to obtaining representation

include language barriers and national diversity, Piper said. And, when a fund exists at either only a city level or only via private funds, obtaining representation can be very challenging.

The proposed fund, according to the CIRC website, would replicate a public defender model for immigration court, and in return "no one" will be turned away because of the likelihood of winning their case.

"Everyone means everyone," according to the CIRC webpage. "If passed, Colorado would join other states like Oregon, New York, Illinois, New Jersey and California in standing up for due process and dignity for all." •

—Avery Martinez, AMartinez@circuitmedia.com

BUMP STOCKS

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jurisdiction of the court, as no final judgment sat before the court, only an appeal of denial of preliminary injunction interlocking in nature.

Judge Joel Carson asked Kruckenberg about how the firearm worked with a bump stock. He asked how many times a firearm with a bump stock

would fire if someone simply pulled the trigger. Kruckenberg responded "once."

Judge Mary Briscoe asked Hinshelwood if the rule was published in the Code of Federal Regulations and if it affected individual rights and legislative law. He responded that it was in the CFR in the definitional sections at various ATF regulations, and not "every jot and tittle" of the CFR has legal effect, and Chevron wasn't necessary

to interpret the rule.

She next asked if the statute was ambiguous, and if not, why was a rule passed. Hinshelwood responded that ATF explained it undertook this rule to notify the public of revocation of past classification letter which were "erroneous" and make those in possession aware of that change.

Judge Gregory Phillips asked if the final rule is enforced, would criminal

liability expanded, could someone face going to prison for possessing a bump stock? "You are, but not because of the rule," Hinshelwood said.

Kruckenberg told Law Week later that he was pleased with the court's work during the rehearing, and that no matter the outcome of the 10th Circuit's decision the NCLA wouldn't give up the case. •

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