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Pro bono work revived two lives

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Free legal work by partners at big law firms in Chicago helped give two immigrants new chances this month after they got in trouble with U.S. authorities far from the city.

One of the immigrants is scheduled to be freed with an ankle bracelet monitoring device Wednesday afternoon after five years in immigration detention.

Wendy Netter Epstein of Kirkland & Ellis LLP and Linda T. Coberly of Winston & Strawn LLP, the law partners who came to the aid of the two immigrants in separate cases, were recruited by the National Immigrant Justice Center in Chicago.

They said they do pro bono legal work for immigrants in conjunction with the NIJC because it is "very fulfilling."

"You get an opportunity to really make a difference in the lives of people, and there are just amazing stories that we're able to be involved in," Coberly said.

Epstein said, "In immigration cases, aliens are generally not entitled to be appointed free representation. It's only through pro bono organizations that a lot of these people ... those not able to pay for representation ... are able to get representation."

Epstein, with help from Jeffrey J. Freeman, a second-year associate at Kirkland, won a victory for her client on June 24 in the 5th U.S. Circuit Court of Appeals.

Coberly, with aid from Krista M. Enns, an associate in the San Francisco office of Winston & Strawn, wrote an amicus brief in a case that was decided by the U.S. Supreme Court on behalf of the immigrant on June 14.

Epstein's client is scheduled to be released with an ankle bracelet Wednesday afternoon from the Federal Detention Center in Oakdale, La. He has been in federal custody since 2005.

Epstein said her client, Carlyle Leslie Owen Dale, 61, originally from Jamaica, suffers from diabetes, asthma, liver disease, arthritis and high blood pressure. Dale has a son, daughter and two grandchildren, who are U.S. citizens living in the U.S.

Dale was a longtime lawful resident of the U.S. who ran a halfway house for recovering alcoholics and drug addicts in New York, Epstein said.

In 1998, Dale was trying to collect rent from a resident of the halfway house who had fallen back under the influence of drugs and alcohol,

but the man became enraged and came at Dale with a knife, Epstein said. Dale shot and wounded the resident with an unregistered gun.

Dale pleaded guilty to a reduced charge of attempted assault and served three and a half years in prison. Then the government tried to deport him for allegedly being convicted of an aggravated felony that was a crime of violence.

Dale argued that the New York state law under which he pleaded guilty is not necessarily a "crime of violence" that would make him deportable under the law. He argued that the government had never demonstrated that he pleaded guilty to a "crime of violence."

"We took this case in late 2008," Epstein said. She said Kirkland & Ellis has a long relationship with the NIJC, and she has handled many cases for them.

"So I actually just called them and asked what sort of interesting appellate work they had, and they directed me to this case," she said.

Epstein is a partner in Kirkland's litigation practice group. She said in looking for pro bono work since she joined Kirkland in 2004, she decided immigration work "would be very fulfilling." She had previous experience in immigration work as a law clerk for a judge on the U.S. Court of Appeals.

On June 24, the 5th U.S. Circuit Court of Appeals ruled that the U.S. Board of Immigration Appeals had erred in deciding that Epstein's client, Dale, should be deported. That decision remanded Dale's case back to the BIA for further action.

This week after many requests, the U.S. Immigration and Customs Enforcement agency agreed to allow Dale to be released under supervision, said Epstein and Freeman.

"To me, the most important part of this story is that the gentleman has been detained for over five years, and now the court is finding he's not even removable," Epstein said. "The story would be common to many immigrants held for long periods of time, often in deplorable conditions."

Coberly, of Winston & Strawn, said her law firm is also a regular pro bono partner of the NIJC and she has represented the center and immigrant clients in previous cases.

Coberly is a partner in Winston's litigation practice and a board member of the Heartland Alliance for Human Needs and Human Rights, the parent group of NIJC.

She said NIJC asked her to represent it in filing an amicus brief on behalf of immigrant Jose Angel Carachuri-Rosendo in his case before the U.S. Supreme Court.

Carachuri-Rosendo was deported to Mexico, in effect, for possession without a prescription of "one tablet of a common anti-anxiety medication, known generically as alprazolam, and known commercially as Xanax, according to the U.S. Supreme Court decision that came down June 14.

The case is Carachuri-Rosendo v. Eric Holder, No. 09-60.

Carachuri-Rosendo was born in Mexico in 1978. He came to the U.S. with his parents in 1983 and was a lawful resident of Texas. His common-law wife and four children are U.S. citizens, as are his mother and two sisters, according to the opinion.

A carpet installer, he pleaded guilty to possession of less than two ounces of marijuana in 2004

In 2005, he pleaded guilty to possession of the Xanax tablet. For that state misdemeanor, he was sentenced to 10 days in jail.

Subsequently, U.S. authorities held that this state misdemeanor conviction could have been prosecuted as a felony under federal law because of his previous marijuana conviction. For that reason, U.S. authorities said his state misdemeanor conviction should be considered an aggravated felony conviction and, on that basis, he was deported.

In her amicus brief, Coberly argued that a ruling of the 5th U.S. Circuit Court of Appeals that had upheld the government's position in the Carachuri-Rosendo case "stretches the English language too far." She argued that a misdemeanor conviction for possession of a minor quantity of a drug could not amount to an aggravated felony for drug trafficking.

The Supreme Court agreed.

Carachuri-Rosendo now can apply to a U.S. court to be readmitted to the United States, Coberly said.

Regarding that case, Charles G. Roth, director of litigation for NIJC, said, "The Supreme Court's decision is a common-sense interpretation of the law that protects fundamental fairness for immigrants."

Regarding the Dale case, Roth said, "Our immigration laws ought to give immigration judges more discretion to factor a person's contributions to society before ordering removal."