

Former President Trump commuted sentence of woman in 5-hour Energy counterfeit scheme

A woman convicted in 2016 in a scheme involving the sale of counterfeit bottles of 5-hour Energy was released early from prison, thanks to former President Donald Trump.

by Josh Long | Feb 01, 2021

New York attorney Geoffrey Potter was astonished to read that former President Donald Trump had [commuted](#) the prison sentence of Adriana Shayota, who was convicted in 2016 by a jury of a conspiracy to distribute counterfeit bottles of 5-hour Energy, the liquid dietary supplement.

Potter was intricately familiar with the nationwide scheme because he had sued Shayota and dozens of other people in U.S. District Court for infringing on 5-hour Energy trademarks—ultimately obtaining judgments exceeding \$20 million, while also settling with the majority of the defendants for undisclosed amounts.

“It was quite flabbergasting to read that of the millions of people in prison in the United States, former President Trump chose to commute her sentence,” Potter said in an interview. “It’s OK to commute a sentence when there’s been an injustice that needs to be corrected, but it’s quite clear there was no justice here that needs to be corrected.”

Shayota had served more than half of her 24-month sentence, according to a Jan. 20 [statement](#) from the Trump White House. Shayota was released from prison that same day, according to the Federal Bureau of Prisons, and she was among the 143 individuals whose sentences were either commuted (70) or pardoned (73) before Trump left office.

On Nov. 28, 2016, a jury in San Jose, California, [convicted](#) Adriana Shayota—then 45 years old—and her husband Joseph Shayota, of conspiracy to traffic in counterfeit goods, as well as conspiracy to commit criminal copyright infringement and to introduce misbranded food into interstate commerce. According to the U.S. Attorney’s Office for the Northern District of California, nearly 4 million bottles of counterfeit 5-hour Energy were placed into

interstate commerce as part of a years-long scheme that commenced in late 2009 and endured through October 2012.

Several community leaders, including the deputy mayor of Chula Vista, California, John McCann, supported commuting the sentence of Adriana Shayota, the Trump White House said.

“Ms. Shayota is a mother and a deeply religious woman who had no prior convictions,” according to the Trump administration’s statement. “During her time in prison, Ms. Shayota mentored those who wanted to improve their lives and demonstrated an extraordinary commitment to rehabilitation.”

In an email, McCann said he is a businessman who supports copyright laws and opposes counterfeiting of goods and products like 5-hour Energy.

“I supported the commutation of Adriana Shayota because she had no prior convictions, she served half of her sentence, the prosecutor acknowledged that her part was less significant than her husband and the judge cited her minor role during sentencing,” he added. “Her now ex-husband was the ring leader, and I believe she got caught up in something she did not fully know about. She is a mother, a woman of faith that mentored others and demonstrated an extraordinary commitment to rehabilitation. I believe she will be a law-abiding and productive member of society in the future.”

Ricardo Arias, an attorney in San Diego who represented Joseph Shayota, did not immediately respond to a request for comment.

Adriana Shayota grew up in Chula Vista, said McCann, who explained her brother with whom he attended the same high school asked him to support her commutation.

Adriana Shayota could not be reached for comment, but an attorney in San Diego who represented her in the criminal case, Joseph McMullen, described his client as “a very deserving recipient of the former president’s discretion to commute her sentence.”

“The outpouring of support on her behalf is a reflection of her service to her community over the years,” McMullen said in an email.

It’s unclear what specific factors drove Trump to grant Adriana Shayota clemency. A [manual](#) from the U.S. Department of Justice (DOJ) describes commutation of a sentence as “an extraordinary remedy.”

“Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action,” the manual states. “A combination of these and/or other equitable factors (such as demonstrated rehabilitation while in custody or exigent circumstances unforeseen by the court at the time of sentencing) may also provide a basis for recommending commutation in the context of a particular case.”

DOJ did not release any records in response to a request for documents related to Adriana Shayota’s clemency file.

“Clemency petitions, reports, memoranda and communications submitted or furnished in connection with the consideration of executive clemency will generally only be available to the officials concerned with the consideration of the petition and therefore are not subject to the FOIA [Freedom of Information Act] or Privacy Act,” Nicole Navas Oxman, a DOJ spokeswoman, said.

Ultimately, Adriana Shayota spent just a fraction of the time behind bars that the government requested in a 2017 sentencing memo filed with U.S. District Judge Lucy H. Koh. Prosecutors had recommended a sentence of 78 months. While prosecutors acknowledged Adriana Shayota played a “less significant” role in the scheme than her husband, they maintained “she played an important part of the conspiracy as the owner and bookkeeper of Baja” Exporting, one of the entities involved in the criminal enterprise.

In the sentencing memo, prosecutors cited various evidence that they concluded “demonstrated beyond a reasonable doubt that the defendant knew, or was willfully blind, to the conspiracy to manufacture and sell counterfeit 5-hour Energy.”

McMullen, her attorney, laid blame on a co-conspirator in the case, Walid Jamil, who did not go to trial and pleaded guilty in 2016 to conspiracy to traffic in counterfeit goods, and conspiracy to commit criminal copyright infringement and to introduce misbranded food into interstate commerce.

Jamil was [sentenced](#) to 84 months in prison, but he was released on May 22, 2020, according to the Federal Bureau of Prisons.

Adriana Shayota’s “commutation is also an appropriate repudiation of a conviction premised on the government’s reliance at trial on video-recorded snippets of deposition testimony of a career fraudster who blamed Adriana and others in an effort to save his own neck,” McMullen said, referring to Jamil. “Our Founding Fathers so abhorred the Crown’s use of out-of-court statements in criminal trials that they included the Confrontation Clause of the Sixth Amendment in our great nation’s Bill of Rights, giving all of us the fundamental right to confront and cross-examine our accusers at trial. Adriana was denied that basic right, and any supporter of our

Constitution should applaud the commutation of her sentence. I am thrilled Adriana will be reunited with her children.”

Natural Products Insider emailed Jacob Kahn, an attorney who was listed in court records as having represented Jamil in the criminal case. The email was forwarded to Anthony Paesano, another attorney who, after reaching out to Jamil, said Jamil had no comment.

Potter represented the makers of 5-hour Energy (Innovation Ventures LLC and Living Essentials LLC) in trademark infringement cases against around 70 defendants that were eventually consolidated before the Hon. Kiyo Matsumoto, a federal judge for the Eastern District of New York.

Jamil wasn’t responsible for Adriana Shayota going to prison, maintained Potter, a partner and chair of the Anti-Counterfeiting Practice and Brand Protection team with Patterson Belknap Webb & Tyler LLP.

“Walid Jamil refused to testify against her,” the lawyer said. She was convicted and sent to prison as a result of the evidence obtained by the government “of her firsthand involvement in the counterfeiting scheme.”

In a Dec. 6, 2012 deposition taken in San Diego, parts of which the government admitted in the criminal case, Potter peppered Adriana Shayota with questions. Many of her answers disclosed that between her and her husband, she was more sophisticated in business affairs. For one thing, Joseph had limited proficiency in English, she said.

Adriana Shayota served as president of Baja Exporting—overseeing the company’s finances—and owned 100% of the business. The deposition suggested Baja Exporting generated yearly grossly proceeds of around \$60 million. Adriana Shayota also held ownership interests in

other businesses and was responsible for large transfers of money from her personal and business accounts to various entities and people, the deposition revealed.

“She put up the money,” Potter said. “She ran the business. She kept the books. She kept the spreadsheets. She was there when they divided up the loot, which was mostly in cash.”

He added, “They carried literally shopping bags of cash to her.”

Of the dozen defendants prosecuted for the counterfeiting operation, Adriana and Joseph Shayota were the only ones who took the case to trial, confirmed Gregg Lowder, an assistant U.S. attorney in San Francisco responsible for handling press inquiries.

Joseph Shayota was sentenced to 86 months in prison. The 68-year-old remains incarcerated at a medium-security facility in Florence, Colorado, according to the Federal Bureau of Prisons.

Several other people charged in the case pleaded guilty and were either sentenced to prison or probation, and the government referred two defendants to pretrial diversion, an alternative to prosecution. One of the defendants, Juan Romero, remains a fugitive, Lowder verified.

Lowder declined to comment on Trump commuting Adriana Shayota’s sentence.

“Consistent with long-standing department policy, we do not comment on presidential clemency decisions,” he said.

Jason Brown, a spokesman for 5-hour Energy, also declined to comment for this article.

Releasing Adriana Shayota from prison early, Potter argued, did not serve justice. Instead, he pointed to an injustice.

“She had been, if anything, underpunished for what she had done,” he concluded. “She knowingly sold 4 million putrid counterfeit to unsuspecting consumers.” ✨