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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX : CIVIL TERM : IA-5

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In the Matter of a Proceeding under Article 70

Of the CPLR for a Writ of Habeas Corpus,  
THE NONHUMAN RIGHTS PROJECT, INC., on behalf of HAPPY,

Petitioner(s)

-against-

JAMES J. BREHENY, in his official capacity as Executive Vice  
President and General Director of Zoos and Aquariums of the  
Wildlife Conservation Society and Director of the Bronx Zoo and  
WILDLIFE CONSERVATION SOCIETY,

Defendant(s)

-----x  
851 Grand Concourse  
Bronx, New York 10451  
January 31, 2020

B E F O R E:

HONORABLE ALISON Y. TUITT,  
Presiding Justice.

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ALSO PRESENT:  
WILDLIFE CONSERVATION SOCIETY  
PATRICK R. THOMAS, PhD

SHONELL N. MABRY  
Senior Court Reporter

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COURT OFFICER: All rise, come to order. The Honorable Alison Y. Tuitt is presiding.

THE COURT: Okay, counsel, let's put our appearances on the record.

MR. WISE: Steven Wise, Nonhuman Rights Project.

MS. STEIN: Elizabeth Stein, Law Office of Elizabeth Stein, 5 Dunhill Road, New Hyde Park 11040.

MR. SCHNEIDER: Kevin Schneider, for the Nonhuman Rights Project.

MR. LO: Spencer Lo, Nonhuman Rights Project.

MR. MANNING: Phillips Lytle, by Kenneth Manning.

MS. CHEN: JoAnna Chen, Phillips Lytle.

MR. McKENZIE: Christopher McKenzie, Wildlife Conservation Society.

MR. THOMAS: Patrick Thomas, Wildlife Conservation Society.

MR. WILSON: Joseph Wilson, Kelley Drye.

THE COURT: Mr. Wise, are you ready to proceed?

MR. WISE: I am, your Honor. Thank you.

THE COURT: Okay.

And the last time -- this is not the same reporter

1 so please bear with her. She has to catch up on our  
2 arguments and our terminology.

3 But I remember the last time that we were here,  
4 the last thing I have is that you were submitting was an  
5 equality argument with respect to a Roma vs Evans?

6 MR. WISE: Yes, your Honor.

7 THE COURT: And then you were going to go into  
8 another point; am I correct?

9 MR. WISE: Yes, I am, your Honor.

10 THE COURT: Okay.

11 So now we're going to start with a new point?

12 MR. WISE: Yes, your Honor.

13 THE COURT: That was the end of that argument?

14 MR. WISE: Yes. And I have invited the  
15 stenographer that when I start speaking too fast, please  
16 tell me to slow down.

17 THE COURT: Oh, she will.

18 MR. WISE: She promised.

19 THE COURT: Oh, she will.

20 MR. WISE: Okay.

21 So if I may begin, your Honor, handing up the  
22 exhibit. It's the Petitioner's Exhibit 1, which is a  
23 courtesy copy of the affidavits I'll be referring to in my  
24 argument.

25 THE COURT: Okay, thank you so much.

1 (Whereupon, the referred to exhibit was handed to  
2 the Court.)

3 THE COURT: All right, counsel, whenever you're  
4 ready.

5 MR. WISE: Thank you, your Honor.

6 THE COURT: You may proceed.

7 MR. WISE: Your Honor, for the last two days I have  
8 been addressing legal arguments and I think the Court has  
9 heard just about all the legal arguments it needs, almost.

10 What I'd like to do now is to discuss the issue of  
11 the facts that are undermining the legal arguments.

12 THE COURT: Okay.

13 MR. WISE: Now, in this case, all of the facts have  
14 been -- are in front of the Court through affidavits. And  
15 the courtesy copy has -- I think -- seven affidavits,  
16 your Honor.

17 THE COURT: Okay.

18 MR. WISE: And here's what they are: One is the  
19 affidavit of James Breheny, which we have as Number 1.

20 THE COURT: Correct.

21 MR. WISE: The second is the supplemental affidavit  
22 of James Breheny, that's Number 2.

23 THE COURT: Correct.

24 MR. WISE: The third is the affidavit of  
25 Paul Calle. That's the third.

1 THE COURT: And who is Paul Calle?

2 MR. WISE: Paul Calle is -- I believe is the  
3 veterinarian at the Bronx Zoo.

4 Am I correct?

5 MR. THOMAS: Chief veterinarian.

6 MR. WISE: Chief veterinarian at the Bronx Zoo.  
7 James Breheny is the Director of the Bronx Zoo. So that's  
8 one, two, three -- actually, just to keep everything in  
9 order or actually in some way, if you look at Number 9.

10 THE COURT: Yes.

11 MR. WISE: That's Patrick Thomas, who is also an  
12 affiant that was submitted by the Bronx Zoo. So those are  
13 the --

14 THE COURT: And he is what at the Bronx Zoo,  
15 Mr. Wise?

16 MR. WISE: He's the vice-president in charge of  
17 something or other at the Bronx Zoo.

18 MR. MCKENZIE: He can say so himself.

19 MR. THOMAS: I am the Vice President and  
20 General Curator for all of our parks and the  
21 Associate Director of the Bronx Zoo.

22 THE COURT: All right. Thank you, sir.

23 MR. WISE: I believe those are the one, two, three,  
24 four affidavits.

25 THE COURT: Okay.

1 MR. WISE: The affidavits now that were submitted  
2 by the Petitioner are Number 4, which is the affidavit of  
3 Joyce Poole, P-O-L-L-E. She is an expert in elephant  
4 cognition and other elephant behavior. Number 5 is the  
5 supplemental affidavit of Joyce Poole. Number 6 is the  
6 second supplemental affidavit of Joyce Poole. And then  
7 Number 8 is a case -- it's a superior court case from  
8 California.

9 THE COURT: One second.

10 Seven is what?

11 MR. WISE: Seven is a preliminary injunction  
12 motion.

13 THE COURT: Okay.

14 It's a copy of the motion papers?

15 MR. WISE: I actually don't know what's in there.

16 MR. LO: Yes, it's a copy of the entire motion.

17 MR. WISE: Of the entire motion, yes, because  
18 that's not part of my argument right now.

19 THE COURT: It's not?

20 MR. WISE: Not right now.

21 THE COURT: Okay.

22 MR. WISE: It may be a preliminary injunction when  
23 it comes up it will be but it is not now.

24 THE COURT: All right, now this case was before  
25 whom? Counsel?

1 MR. LO: Justice Tracy Bannister.

2 THE COURT: And was that New York County?

3 MR. LO: Orleans County.

4 THE COURT: Orleans?

5 MR. WISE: That's where we began the case,  
6 your Honor.

7 THE COURT: And is that in New York?

8 MR. LO: Yes.

9 THE COURT: Orleans County.

10 And what department? Do you know where it is?

11 MR. LO: That was in the Fourth Department.

12 MR. WISE: Fourth Department.

13 MR. MANNING: Fourth Department.

14 THE COURT: Okay.

15 MR. WISE: Number 8 is *Leider versus Lewis*, which  
16 is a superior court case from Los Angeles County.

17 THE COURT: Okay.

18 MR. WISE: And I think -- did we hand in all of  
19 those?

20 THE COURT: Yes.

21 MR. WISE: Judge, would you like me to now simply  
22 refer to them as 1, 2, 3, 4, 5 or would you like me each  
23 time I refer to them, to state who's whose?

24 THE COURT: You can just state who the affiant is.

25 MR. WISE: I think I'll do that.



1 THE COURT: Yes.

2 MR. WISE: So I don't -- in case I make a mistake.

3 THE COURT: Okay.

4 MR. WISE: Okay. Thank you very much, your Honor.

5 So with all of the facts --

6 THE COURT: I'm listening.

7 (Pause.)

8 MR. MANNING: If I may make one clarification,  
9 these are all affidavits that were previously filed with the  
10 Court?

11 MR. WISE: Yes.

12 THE COURT: Okay, yes. Thank you.

13 MR. WISE: Yes, they are.

14 THE COURT: Okay, you may continue.

15 MR. WISE: Now, your Honor, I want to have -- to  
16 take a close look at the affidavits. The -- you know, we're  
17 going to argue that the Respondent's affidavits should be  
18 essentially disregarded for several reasons.

19 One of them is that none of the affidavits which  
20 would be both affidavits of James Breheny, the affidavit of  
21 Paul Calle and the affidavit of Patrick Thomas, none of them  
22 are made on personal knowledge. And it's not -- I'm not  
23 talking about leaving out the formal part saying I hereby  
24 make this affidavit out of personal knowledge. Instead if  
25 you look within the affidavits themselves, it's clear that

1 they're not made on personal knowledge.

2 What knowledge they are made on is not clear. And  
3 that's going to be one of the issues that I raised that  
4 whenever a fact is setforth or an opinion is setforth,  
5 there's no predicate for it. All of a sudden it happens.  
6 There's not even a predicate of saying I know this, I saw  
7 it. We have no idea of where this information came from.

8 The second thing is to the extent and -- it's not  
9 clear to me that these affidavits are made -- are supposed  
10 to be expert affidavits but to the extent that they are  
11 intended to be expert affidavits, we'll argue that none of  
12 the three are actually experts.

13 So let me begin with James Breheny.

14 THE COURT: Breheny?

15 MR. WISE: Breheny, yes. I want to look at the  
16 comparative expert qualifications of the three affiants that  
17 my brother submitted and then Dr. Poole.

18 Now, James Breheny and I -- that would be the  
19 affidavit of James Breheny, which is -- which are -- is our  
20 Number 1. So in Paragraph Number 1, he sets out his  
21 qualifications. He says he's the director of the Bronx Zoo  
22 though he doesn't say what he does as director of the  
23 Bronx Zoo. He said he has a B.S. in Biology, from  
24 Manhattan College and an M.S. in Biology, from Fordham.

25 (Pause.)

1 THE COURT: Go ahead, I'm sorry.

2 MR. WISE: So he says he has a B.S. in Biology and  
3 an M.S. in Biology but he doesn't say what he studied. We  
4 have no idea what it means.

5 It's like your Honor I have a B.S. in Chemistry  
6 but I would never think of holding myself out as an expert  
7 in every aspect of chemistry. Then he says he's a staff  
8 member of the World Conservation Society for 37 years but he  
9 never tells us in what capacity he was a staff member, he  
10 doesn't tell us what he did, he doesn't say what position he  
11 held. We have no idea.

12 And then he says he taught as an adjunct professor  
13 at Manhattan College for 17 years. I don't know, did he  
14 teach calculus? Did he teach ballroom dancing? Did he  
15 teach -- we have no idea what he taught as an adjunct  
16 professor at Manhattan College.

17 But I think one of the most important things is  
18 that he has nothing whatsoever to do with elephants. There's  
19 no evidence at all that James Breheny knows anything about  
20 elephants.

21 And in fact, in the substance of when he sometimes  
22 offers an opinion, it becomes clear that he actually doesn't  
23 know anything about elephants.

24 In paragraph -- in his second exhibit which is the  
25 supplemental affidavit of James Breheny, which is your

1 Number 2.

2 THE COURT: Okay.

3 MR. WISE: He then adds that he's Chairman of the  
4 Board of Directors of the AZA and he serves as the Board  
5 liaison to the AZA Accreditation Commission. He doesn't say  
6 what that means to be chair of the board of directors or as  
7 being the board liaison.

8 And, again, he doesn't say anything about he will  
9 fronts. In fact, if you -- not only does he never say that  
10 he's ever seen an elephant in his entire life, he never even  
11 says that he's ever seen Happy, that he has any personal  
12 evidence of Happy at all. None. He knows nothing about  
13 elephants, he knows nothing about Happy.

14 And as I then point out, sometimes he'll mention  
15 Happy but we have no idea how he knows what he knows or what  
16 he says he knows.

17 Now, let's then move to the second affidavit,  
18 which is the affidavit of Paul Calle. Now, Paul Calle,  
19 that's our exhibit -- let's see, that's your Number 3. He  
20 says that he joined the Wild Life Conservation Society in  
21 1989 and serves as it's Vice President for Health Programs,  
22 chief veterinarian and Director of Zoological Health Program  
23 based at the Bronx Zoo. His responsibilities include  
24 managing the Clinical, Pathology and Aquatic  
25 Health Departments for WCS, Bronx Central Park, Queens and

1 Prospect Park Zoo and the New York Aquarium. And he has a  
 2 shared oversight of the Wildlife Conservation Society of  
 3 Wildlife Health Program and he's chair of a  
 4 Wildlife Conservation Society Institutional Animal Care and  
 5 Use Committee.

6 Note there is no mention that he knows anything  
 7 about elephants. He seems to be the chief veterinarian for  
 8 what James Breheny later says are thousands of animals at  
 9 the Bronx Zoo. He also says in addition to his  
 10 administrative responsibilities and medical surgical care,  
 11 he's participated in various other projects. And the only  
 12 time elephant is ever mentioned is he says he participated  
 13 in the Management and Research Priorities of Tuberculosis  
 14 for Elephants in Human Care.

15 He says that he's worked with both African and  
 16 Asian elephants. That's the only thing he says he does. We  
 17 have no idea in what capacity he's worked for them. He  
 18 appears to be, I think the most fair conclusion that you  
 19 could draw is that he is a veterinarian and he's involved in  
 20 medical and surgical care of the animals. Now, whether he's  
 21 actually done medical and surgical care of elephants, I  
 22 don't know but it actually doesn't matter because the  
 23 medical and surgical care of Happy is not part of this case.

24 So that is buttressed by his Paragraph 3 where he  
 25 says he's got a Bachelor of Arts from the University of

1 Pennsylvania School of Arts. He's a veterinarian medical  
 2 degree from the Pennsylvania School of Veterinary Medicine,  
 3 he has an internship in small animal medicine and surgery,  
 4 which I think we can say unless we are talking about a  
 5 newborn elephant it's very unlikely that a small animal  
 6 internship had anything whatsoever to do with elephants and  
 7 in zoological medicine and surgery at the San Diego Zoo. We  
 8 have no idea whether he's ever saw elephants. And he's been  
 9 and adjunct professor of Wildlife and Conservation Medicine  
 10 at Cornell University.

11 So it does not -- there is no specific -- no  
 12 specific statement he's ever made to his qualifications that  
 13 shows that he knows anything about elephants except perhaps,  
 14 perhaps how to treat them medically or how to operate on  
 15 them, neither of which have anything whatsoever to do with  
 16 this case.

17 And one of the reasons we're taking about this is  
 18 my brother has gone -- has come to the Court and several  
 19 times says Happy is happy. Well, this entire talk is going  
 20 to show that Happy is brutally unhappy and that there's no  
 21 evidence, there's no evidence whatsoever that Happy is a  
 22 Happy elephant or is being cared for with respect to her  
 23 social, her mental, her emotional, her autonomy. All the  
 24 things that a writ of habeas corpus would apply to as  
 25 opposed to medical or surgical care.

1           The next affidavit is by Patrick Thomas and that  
2           is the affidavit of Patrick Thomas which is Number 9 on the  
3           courtesy list that we gave you.

4           Now, Patrick Thomas says that he served as  
5           Vice President and General Curator of the  
6           Wildlife Conservation Society and he's Associate Director of  
7           the Bronx Zoo. His responsibilities include overseeing the  
8           management of the animals in all of the zoos, all of the  
9           zoos. And that's -- that I assume is the same thing that  
10          Dr. Calle was talking about. He's not only the chief  
11          veterinarian for the Bronx Zoo, he's chief veterinarian for  
12          all the zoos and all the -- apparently all of the aquariums  
13          in New York.

14          The idea that somehow he would have any idea about  
15          one -- the one particular non-human animal that is the  
16          subject of this case, Happy, seems rather farfetched. He  
17          treats thousands and thousands of animals or we don't know  
18          if he treats them, he supervises the treatment. In fact, he  
19          never actually says that he treats any animals at any of the  
20          zoos.

21          He's the suit, he's the administrator who has  
22          every -- who supervises the treatment apparently of other  
23          veterinarians.

24          And he also says -- now we're back to  
25          Patrick Thomas and here's the affidavit of Patrick Thomas.

1 He says he currently serves as a member of the AZA Safety  
 2 Committee, whatever that is. A member of the AZA Wildlife  
 3 Conservation and Management Committee, whatever that is. And  
 4 he's the institutional representative for the AZA Elephant  
 5 Taxon Advisory Group and Species Survival Plan, whatever  
 6 that is. He doesn't say what he does. He doesn't say what  
 7 his duties are. And he's a board member of the  
 8 International Union for Conservation of Nature's  
 9 Conservation Planning Specialist Group Global Conservation  
 10 Network, whatever that is.

11 Now, in Paragraph 3 he says he received a  
 12 Bachelor of Science Degree in Ecology from Ramapo College,  
 13 Masters of Art Degree in Animal Behavior from  
 14 Goddard College and Ph.D. in Biology from  
 15 Fordham University.

16 Again, biology is just the study of living beings.  
 17 You can get a degree of biology and just study plants or you  
 18 can study mice. There's absolutely no evidence in  
 19 Patrick Thomas's affidavit, certainly not in his  
 20 qualifications and you'll see in his entire affidavit, that  
 21 he knows anything whatsoever about elephants much less that  
 22 he knows anything about Happy or is ever even met Happy.

23 THE COURT: But doesn't he also state that the zoo,  
 24 the Bronx Zoo has complied with all of the standards from  
 25 the AZA and as such that Happy meets all of the -- their



1 compliance with all of the standards?

2 MR. WISE: Oh, which paragraph are we talking  
3 about, your Honor?

4 THE COURT: Six.

5 MR. WISE: Well, it actually doesn't say that they  
6 complied with it.

7 First of all, it wouldn't matter if they complied  
8 with it because as I am about to show you that Dr. Poole has  
9 spent many, many years studying the AZA requirements and she  
10 says -- in fact and some of her written articles on that  
11 show that they're completely substandard, they don't  
12 actually protect non-human animals. And the AZA standards  
13 themselves, which the court can look at, don't have anything  
14 to do with how you are supposed to recognize the emotional,  
15 the social aspects of it, the mental aspect, protect the  
16 autonomy, it's elf determination. The AZA, the zoos don't  
17 care about this. That's not their province.

18 THE COURT: Well, let me ask this: Is there  
19 another standard by which Dr. Poole says that we should  
20 analyze animal behavior?

21 MR. WISE: Yes.

22 THE COURT: Is that an accredited standard?

23 MR. WISE: No, it's -- there is no accreditation  
24 standard with respect to the issue that we are talking  
25 about.

1 THE COURT: There is none?

2 MR. WISE: There's no standard for that. There  
3 might be some vague thing in the AZA standard about you're  
4 supposed to treat them in some nice way. But I'm sure my  
5 brother can point out the exact words but no. And as  
6 Dr. Poole will -- does point out, there's nothing in the AZA  
7 standard that says you can't keep an elephant for 40 years  
8 on one acre of land, which is as Dr. Poole as I will show  
9 you, which is terribly detrimental to non-human animal,  
10 imprisoning an animal like an elephant on one acre is simply  
11 terrible.

12 THE COURT: Well, let me just say this, is there --  
13 you said there's no other standard by which the animals are  
14 assessed or the zoos are assessed to be in compliance with,  
15 with respect to the treatment of the animals?

16 MR. WISE: Well, if we're talking about and which  
17 they do -- which, you know, we don't have any reason to  
18 rebut that, she says -- they say for example that the  
19 elephants, their trunk is washed, they get medical care,  
20 they take their blood, they make sure they give them their  
21 three square meals. That's not -- that doesn't have anything  
22 to do with the habeas corpus. That's what happens like when  
23 you're running a prison hospital, you don't want your  
24 prisoner to die. They don't want the elephant to die. They  
25 make sure that if they have a disease they treat them. They

1 make sure if they have a medical problem, if they need  
2 surgery they treat them.

3 But what they don't do is deal with the issues  
4 that are the subject of a writ of habeas corpus. And  
5 that's -- the issue of that is how do you allow them to live  
6 their autonomous lives, how do you deal with the fact that  
7 they're self determined, how do you deal with the fact that  
8 elephant if she's in the wild is going to constantly move.  
9 In fact, I think one of the things that Dr. Poole says is  
10 that -- I think it's in Dr. Poole's supplemental affidavit  
11 which is at Paragraph 4, I sure hope I have my paragraphs  
12 right but I think I do.

13 THE COURT: Okay.

14 MR. WISE: Let me see.

15 So Dr. Poole's supplemental affidavit,  
16 Paragraph 4 -- I do have it right -- so she says over  
17 millions of years elephants have roamed the earth as  
18 intelligent and social animals capable of planning,  
19 negotiating and engaging in collective decision making.  
20 Active more than 20 hours a day, elephants may move many  
21 miles across landscapes to locate resources to maintain  
22 their large bodies, to connect with friends and to search  
23 for mates.

24 Elephants have evolved to move. Holding them  
25 captive and confined prevents them from engaging in normal

1 autonomous behavior and can result in the development of  
2 arthritis, osteoarthritis, osteomyelitis, boredom and  
3 stereotypical behavior. Which by the way Dr. Poole  
4 recognizes and has diagnosed stereotypical behavior in the  
5 videos which I'll get to that she's seen Happy. Held in  
6 isolation, which is exactly what Happy is. Happy is held by  
7 herself, she can smell another elephant, she can hear  
8 another elephant. She might sometimes be able to stick her  
9 trunk near another elephant but she needs to live with an  
10 elephant. Plus living with one elephant, that's like me  
11 having have to live just with my wife. What a nightmare.

12 THE COURT: Well, I don't want to say anything but  
13 I -- perhaps maybe you might get in trouble but not me  
14 because I never said that living with your wife --

15 MR. WISE: Let me say just living with one elephant  
16 is not how elephants live. And she says held in isolation --  
17 and Happy is in isolation -- elephants become bored,  
18 depressed, aggressive, catatonic and fail to thrive. And  
19 that human care givers are no substitute for the numerous  
20 complex social relationships and the rich, gestural and  
21 vocal communication exchanges that occur between free living  
22 elephants.

23 THE COURT: Well, isn't this a recent phenomenon  
24 that she's living by herself? She had the company of other  
25 elephants before.

1 MR. WISE: Happy, as you'll see in the affidavits,  
2 at the most Happy has lived with one other elephant.

3 THE COURT: Yeah.

4 MR. WISE: And she lived with that twice --

5 THE COURT: The other elephant that got killed,  
6 right?

7 MR. WISE: Right. The other two, Maxine and Patty  
8 killed her companion. And ever since that happened, that  
9 was some years ago, she has then lived by herself.

10 THE COURT: And that's how long she's been by  
11 herself?

12 MR. WISE: How many?

13 MR. LO: Fourteen years.

14 MR. WISE: Fourteen years.

15 THE COURT: Fourteen out of the 30?

16 MR. WISE: Out of the 40.

17 THE COURT: Forty.

18 MR. WISE: And even when she was not living by  
19 herself, she was living with one elephant. Elephants are  
20 like human beings -- I just joking about my wife -- just  
21 elephants are made to live in herds of elephants with  
22 mothers, with aunts, uncles, with children. That's how  
23 elephants live. They -- they -- and Dr. Poole will have more  
24 to say about that.

25 THE COURT: But Happy has never lived that life.

1 MR. WISE: She's never lived that life.

2 THE COURT: She's never.

3 MR. WISE: She was kidnapped from I believe  
4 Thailand when she was small.

5 THE COURT: Right, four, I believe.

6 MR. WISE: Say again?

7 THE COURT: Four, I believe.

8 MR. WISE: No, no, she was less than four years  
9 old, I believe. She was younger than four years old and if  
10 I'm wrong then I'm wrong.

11 THE COURT: So she's never lived in the environment  
12 that Dr. Poole is talking about.

13 MR. WISE: She never has and we'll get to that.  
14 And Dr. Poole addresses that and the meaning of that. And  
15 you will see that she says no matter how awful the  
16 elephant -- how terrible their life has been and she sets  
17 out that the history when those elephants are moved to a  
18 sanctuary they just blossom. They blossom into normal  
19 elephants. And Dr. Poole will explain that in detail.

20 So now let's look at Dr. Poole's affidavit.

21 THE COURT: Okay.

22 MR. WISE: So her affidavit, let's look at her  
23 exhibit number which is.

24 THE COURT: Four.

25 MR. WISE: Dr. Poole. Dr. Poole.

1 THE COURT: Four.

2 MR. WISE: Number 4, thank you, your honor.

3 So if you look at Dr. Poole --

4 THE COURT: She's from --

5 MR. WISE: We have like three numbering systems  
6 going on here and I have to make sure that I have it all  
7 correct. Here we are -- here we go almost.

8 (Whereupon, a brief pause was held in the  
9 proceedings.)

10 MR. WISE: Okay, Dr. Poole.

11 Dr. Poole graduated with a Bachelor of Arts with  
12 high honors Biological Science from Smith College. She  
13 received a Ph.D. from the university of --  
14 Cambridge University in England, in 1982 in -- from the  
15 Subdepartment For Animal Behavior. She completed a post  
16 doctoral research fellowship at Princeton University. And  
17 she runs an elephant behavior and conservation projects in  
18 Kenya and in Mozambique, that's Number 1.

19 Number 3, she says, I've studied wild elephants in  
20 Africa and worked toward their conservation and welfare for  
21 more than 40 years.

22 She doesn't deal with thousands of different  
23 species of animal. She focused 40 years of her life just on  
24 elephants. And her research interests are focused on social  
25 and reproductive behavior and acoustic and gestural

1 communication, cognitive science, decision making and  
2 conservation.

3 She's co-chair of an organization called  
4 Elephants, which aims to aspire wonder and intelligence,  
5 complexity and voices of elephants. And they advanced the  
6 study of elephant cognition, communication, of social  
7 behavior. They promote the ethical sound and ethical  
8 management and care of elephants through research,  
9 conservation ethicacy and the sharing of knowledge.

10 And then Paragraph 4, she says in addition to  
11 co-directing Elephant Voices she's worked conducting  
12 research for a number of organizations. She was the  
13 research director of the Amboseli Elephant Research Project  
14 from 2002 to 2007 where she oversaw the monitoring of  
15 elephants and the research. I won't read -- she lists all of  
16 the research projects that she's been involved with. She  
17 says that she's conducted field work, so she's not sitting  
18 in an office like James Breheny. She's out doing field work  
19 with the elephant. She's actually working with the elephants  
20 day after day, year after year, decade after decade.

21 As part of her scientific research in multiple  
22 sites in multiple countries including in Mozambique, in  
23 Kenya, in Sri Lanka where she specifically studied Asian  
24 elephants. She's involved in the study of elephant  
25 communication, cognition and social behavior. She studies



1 elephant vocal and olfactory communication. And, again, I  
2 won't -- she's been in Uganda and I won't -- the Court can  
3 read all of the rest of the research that she's done.

4 THE COURT: Yes, I can.

5 MR. WISE: She's also -- on Paragraph 6, she talks  
6 about the awards that she's gotten specifically for her  
7 research on elephants.

8 In eight, she says that she has written two  
9 books -- Paragraph 8 -- she's written two books about her  
10 work with elephants. Not neither James Breheny or Dr. Calle  
11 or Dr. Thomas, none of them have written any books. None of  
12 them as in at least none that they bothered to tell us  
13 about.

14 In Paragraph 9, she says that she's published 28  
15 peer reviewed scientific articles -- these are peer reviewed  
16 ones -- about her work with elephants. She also -- and they  
17 deal with, you know, do elephants show empathy, cognition,  
18 leadership in elephants. You can see there's a wide variety  
19 of characteristics of elephants that she has written about.  
20 She's also published chapters in several peer related books  
21 about elephants, based upon her work. That's Number 10.

22 Number 11, that her scientific research has been  
23 in publishing in several peer review symposiums of which she  
24 gave papers. Paragraph 12, she talks about technical reports  
25 about elephants that she has publish.

1 THE COURT: But most of these are African  
2 elephants, right?

3 MR. WISE: Most are African but also --

4 THE COURT: She did that one with Sri Lanka.

5 MR. WISE: She did work in Sri Lanka with  
6 elephants, yes. And also in her affidavit she notes that  
7 generally what she says about African elephants also will  
8 hold for Asian elephants.

9 THE COURT: Okay.

10 MR. WISE: In Paragraph 14, she talks about being,  
11 you know, where she's been a speaker.

12 THE COURT: I can read the affidavit. You don't  
13 have to go on.

14 MR. WISE: Okay.

15 As much as I would enjoy going through each word  
16 of her -- of her -- I won't bore the court. I think it's --  
17 if I can also point to the Los Angeles case.

18 THE COURT: Yes.

19 MR. WISE: I just wanted to point to page 17.

20 THE COURT: Affidavit number -- that's  
21 Leider versus Lewis, which is a California superior court  
22 case.

23 THE COURT: Right.

24 MR. WISE: I have the whole case in so you can see  
25 it. It's a claim that the elephants are not being treated

1 properly at the Los Angeles Zoo.

2 THE COURT: Well, no, let me just give her how they  
3 have it listed as PC375234. I guess that's how they refer  
4 to it and I have the whole case here.

5 (Pause.)

6 THE COURT: This was a motion also, correct?

7 MR. WISE: It was, your Honor? Say it again.

8 THE COURT: A motion.

9 MR. WISE: This case here was --

10 THE COURT: No, the California case.

11 MR. WISE: It was a trial.

12 THE COURT: Okay, rulings on submitted court file.

13 MR. WISE: Yes.

14 And the reason I point to page 17 is that everyone  
15 who testified at the trial, as the judge notes, the most  
16 credible testimony was the testimony of Dr. Joyce Poole, who  
17 has advanced degrees in elephant behavior from  
18 University of Cambridge and Princeton. And who has become  
19 one of the world's leading experts in elephant behavior.  
20 Dr. Poole has studied elephants since 1975, essentially  
21 pioneered the study of the Social Organization of African  
22 Elephants.

23 And also mentions on the following page -- well,  
24 she mentions that she spent over a hundred thousand hours in  
25 the while observing elephants and their behavior.

1 THE COURT: Slow down, counsel.

2 MR. WISE: Say again, your Honor.

3 THE COURT: Slow down for my Reporter.

4 MR. WISE: I'm sorry, yes, I will.

5 So she spent over a hundred thousand hours in the  
6 wild observing and analyzing elephants and their behavior.  
7 Although most of her experience has been with African  
8 elephants rather than Asian elephants, she did initiate an  
9 elephant -- an Asian elephant conservation project and  
10 behavior study in Sri Lanka, in 2008.

11 THE COURT: Yes, yes.

12 MR. WISE: So she is -- this judge believed based  
13 on the same things you're looking at that she's one of the  
14 world's leading experts in elephant behavior and a pioneer  
15 on the social organization at least of African elephants.

16 THE COURT: Yes.

17 MR. WISE: Dr. Poole is a true expert. When you  
18 compare Dr. Poole's qualifications to James Breheny, to  
19 Dr. Calle, to Dr. Thomas who never even mentioned ever  
20 seeing an elephant or much less Happy, you can understand  
21 that when there is an opinion to be made Dr. Poole's  
22 opinions are worth something as an expert.

23 Mr. Breheny, Dr. Calle and Dr. Thomas to the  
24 extent that they're talking about elephants, they're just  
25 simply not qualified ever to give an opinion about either

1 elephants or about Happy.

2 THE COURT: Well, I don't know if their  
3 qualifications are the same as Dr. Poole's but I don't know  
4 if you can just say that I need to disregard the whole  
5 affidavit just based on what you believe that their  
6 qualifications show.

7 But you can tell me that Dr. Poole's  
8 qualifications trump those of Dr. Breheny.

9 MR. WISE: Oh, well I actually think I'm arguing  
10 more than that. I am arguing that everything -- everything I  
11 know about James Breheny or Dr. Calle or Dr. Thomas comes  
12 from their affidavits.

13 THE COURT: Correct.

14 MR. WISE: None of them give any reason for  
15 thinking that they know anything about elephants. None of  
16 them give any reason for thinking that they know anything  
17 about Happy or have even met Happy or know Happy or even met  
18 an elephant or know an elephant.

19 THE COURT: Well, Happy is in their custody and has  
20 been in their custody for many, many, many years.

21 MR. WISE: Well, it's been in the custody of the  
22 world conservation -- of the Wildlife Conservation Society.

23 THE COURT: And that's what -- they are their  
24 representative, correct?

25 MR. WISE: Yes, but that doesn't mean that they

1 know anything about elephants or know anything about Happy.

2 And Mr. Breheny notes that there are thousands of  
3 animals, even in the Bronx Zoo.

4 THE COURT: Yes.

5 MR. WISE: Dr. Calle is also working with the  
6 aquatic animals, he's working with four other zoos as well.  
7 There's nothing that -- it would seem to me, logical at  
8 least, that if any of them had actually met Happy they  
9 might've wanted to say I've met Happy.

10 Or if any of them ever said we've worked with  
11 these elephants or we've worked with elephants, they  
12 would've said we've worked with elephants, we've worked with  
13 Happy. They did not say that.

14 Now this raises another issue, which Dr. Poole  
15 notes at her -- at Paragraph 4 of her affidavit, I  
16 believe -- yes, I'm sorry, Paragraph 4 of her second  
17 supplemental affidavit which is Number 6 for you.

18 THE COURT: Correct. Okay.

19 MR. WISE: So she says, she notes that the wildlife  
20 conservation society is recognized for its outstanding  
21 conservation and research in wild elephants in Africa and  
22 Asia. And it is.

23 And she says quote it's worth noting that none of  
24 these elephant scientists have contributed affidavits in  
25 support of the Bronx Zoo's desire to continue to hold Happy

1 captive rather than to release her to an elephant sanctuary  
2 where she would have a much larger space to roam and  
3 companions.

4 In other words, the Wildlife Conservation Society,  
5 they have elephant experts on their staff. These elephants  
6 experts are highly -- they're reputable, they're respected.  
7 Not a single one -- there's not a single person who actually  
8 knows anything about elephants -- and they have them on  
9 their staff -- has submitted an affidavit that says anything  
10 about elephants, that says anything about Happy or that  
11 would dare to venture the opinion that it would be better  
12 for Happy, to keep her imprisoned on a one acre piece of  
13 land in New York, rather than to send her to a 2600 acre  
14 sanctuary.

15 I think the Court can fairly imply that the reason  
16 that happened is that none of them would want to do that  
17 because they don't think it's true.

18 THE COURT: Well, I'm just looking at the affidavit  
19 and this time this is my first glance at it but perhaps you  
20 can tell me if Dr. Poole had the opportunity to examine  
21 Happy personally.

22 MR. WISE: Dr. Poole has never examined Happy but  
23 she's seen videos of Happy and she talks about what she sees  
24 on the videos.

25 THE COURT: Okay.

1 So she's only had a video presentation of Happy?

2 MR. WISE: Yes, which puts her one up on the -- on  
3 the others who never even said they have seen her.

4 THE COURT: Who have not stated that they have even  
5 seen Happy before.

6 MR. WISE: Right, thank you.

7 THE COURT: Right, continue.

8 MR. WISE: Thank you, your Honor.

9 Now, despite that fact of never saying that  
10 they've seen Happy or know anything about elephants,  
11 Mr. Breheny at his supplemental affidavit which is number --  
12 which is your Number 2 at Paragraph 7 says that elephants --  
13 and obviously he's talking -- he's trying to rebut what  
14 Joyce Poole says who is so far more qualified than he is to  
15 speak about elephants -- he says elephants who've lived in  
16 zoos for long periods of time are significantly different  
17 from elephants in the wild and the characteristics of one  
18 cannot be attributed to the other.

19 He doesn't give us any -- he doesn't cite any kind  
20 of -- any article, any source for that. He's not educated  
21 in it. He's not an expert but that's his totally untutored  
22 opinion.

23 Dr. Poole says quote and this is at her second  
24 supplemental affidavit which is --

25 THE COURT: Well, let me just say that --



1 MR. WISE: -- Paragraph 7.

2 THE COURT: Wait one second.

3 MR. WISE: Yes, your Honor.

4 THE COURT: Reading further --

5 MR. WISE: Yes.

6 THE COURT: -- and like I said this is the first  
7 time these affidavits have been submitted to the Court but  
8 it says, in contrast the Bronx Zoo employees including  
9 myself -- that's talking about Dr. Breheny -- have been  
10 protecting Happy's interest and caring for her well-being  
11 knowing her as an individual for over 40 years.

12 MR. WISE: Well, I'm not sure -- what does that  
13 mean? It's just simply boiler plate language.

14 THE COURT: Well, you said he never had any contact  
15 with Happy or knowing Happy individually but I guess that  
16 paragraph says that he has. I mean it may be it was  
17 inartfully drafted, the affidavit, but I think the --

18 MR. WISE: Oh, no I think it was artfully drafted  
19 because it's somehow made -- look, if he had actually  
20 personally met Happy he would say, I have met Happy on a  
21 thousand occasions, one occasion, three occasions. He never  
22 said that. It's a boiler plate thing saying -- it's not just  
23 him, it's -- wait, I have to find it again here.

24 (Pause.)

25 MR. WISE: The Bronx Zoo employees. What, the

1 person in the accounting office, the public relations  
2 person, the person who takes my ticket? All of them? All of  
3 the Bronx Zoo employees?

4 THE COURT: Well, I think he says in further detail  
5 of Patrick R. Thomas and Paul Calle.

6 MR. WISE: Yes.

7 THE COURT: The vets.

8 MR. WISE: Have done what? They haven't done  
9 anything.

10 THE COURT: Well, they said they guarantee the  
11 well-being of Happy and they care for her.

12 MR. WISE: Well, they say they -- they say -- well,  
13 he's saying -- he's not giving his own opinion, he's saying  
14 it's detailed in their affidavit.

15 THE COURT: Correct.

16 MR. WISE: So we'll get to their affidavits to see  
17 what they say.

18 THE COURT: Well, he's the head of a large  
19 institution. He can't -- he has to rely on his employees to  
20 a certain extent to do the daily activities of individual  
21 animals.

22 MR. WISE: Well, that's one of the problems I have  
23 with this affidavit is that an affidavit is supposed to be  
24 made on his personal knowledge. He doesn't have any  
25 personal knowledge.

1 And I think here he's agreeing. Well, he's  
2 saying -- he's not saying I have any personal knowledge,  
3 he's saying as detailed in the other affidavits.

4 THE COURT: Correct.

5 MR. WISE: And I would say the other affidavits  
6 don't really help him much as we go over those affidavits,  
7 too.

8 THE COURT: We went over those.

9 MR. WISE: Oh, just their qualifications but --

10 THE COURT: But I think we've looked at --  
11 sufficiently looked at those on the record. I can take a  
12 further review of them because I have them in my possession  
13 now.

14 MR. WISE: Okay.

15 So when -- so the way that Dr. Poole then would  
16 respond to what James Breheny said at Paragraph 7 of the  
17 supplemental affidavit, she says coming from the director  
18 and that's -- that's paragraph -- I think at Paragraph 7 and  
19 Paragraph 11. Let me make sure that I have that right.

20 (Pause.)

21 THE COURT: Paragraph 7 of Dr. Poole's affidavit?

22 MR. WISE: Of Dr. Poole's second supplemental  
23 affidavit.

24 THE COURT: And that is which --

25 MR. WISE: That's Paragraph 7.

1 THE COURT: Of five or of four?

2 MR. WISE: Number 6.

3 THE COURT: Of 6.

4 MR. WISE: Yes, and this is 7 and Paragraph 11.

5 THE COURT: Okay.

6 MR. WISE: So she then says -- I'm referring to  
7 them both -- so she says coming from the director of the  
8 Bronx Zoo, this is a shocking acknowledgment of the profound  
9 problems that stem from keeping large, social, intelligent  
10 autonomous animals like Happy in a space that cannot meet  
11 their social and physical needs. It's likely that any  
12 differences between an elephant who's been confined for a  
13 long time in a zoo and a wild elephant --

14 THE COURT: Okay.

15 MR. WISE: -- are due solely and entirely to the  
16 nature of their captivity, of being kept without normal  
17 social groups and of lacking the ability to enact normal  
18 freewill. This will likely be remedied by releasing Happy to  
19 a sanctuary that can offer her both companionship and space  
20 to roam.

21 While an elephant sanctuary is not the same as the  
22 wild, it offers elephants more autonomy and the possibility  
23 to choose where to go, what to eat and with whom and when to  
24 socialize. There is no scientific basis for arguing that  
25 captive and wild elephants are fundamentally different.

1 They have the same biology and needs but the failure of  
2 captivity to meet these needs result in physical and  
3 psychological problems in calf development unquote.

4 So if Mr. Breheny in his zoo thinks that Happy  
5 isn't acting like a wild elephant she's saying, well, that's  
6 because of what you've done to her.

7 THE COURT: I got it.

8 MR. WISE: Now, then doctor -- is it Dr. Thomas?  
9 Dr. Thomas.

10 So Dr. Thomas is here to talk about the management  
11 and care standard of the AZA.

12 THE COURT: Wait one second. Let me get the  
13 affidavit.

14 (Pause.)

15 MR. WISE: We talked about the fact that Dr. Thomas  
16 had said here is the AZA standards which --

17 THE COURT: Yes.

18 MR. WISE: Your Honor, they may be part of one of  
19 the thick books.

20 THE COURT: Yes, it's 9 for the record.

21 MR. WISE: It's almost all AZA standards.

22 THE COURT: Correct.

23 MR. WISE: Most of which have nothing to do with  
24 elephants.

25 Dr. Poole said in paragraph --

1 THE COURT: Wait, wait, wait.

2 You've made the statement that it has nothing to  
3 do with elephants but what are they?

4 MR. WISE: They're AZA standards for how zoos  
5 operate and how you keep every single animal you can think  
6 of. There's only a few pages that talk about elephants at  
7 all.

8 THE COURT: Well, I guess that that's what they  
9 were referring to as it says AZA Standards for Elephant  
10 Management and Care.

11 MR. WISE: That's what they are referring to.

12 THE COURT: And the Animal Welfare Act.

13 MR. WISE: That's what they are referring to.

14 THE COURT: Are the two primary sets of standards  
15 for the care and management of elephants in AZA accredited  
16 institutions in the United States.

17 So there is something that they're referring to.  
18 You say it has nothing to do with elephants.

19 MR. WISE: No, no, most of it doesn't.

20 THE COURT: Okay.

21 MR. WISE: There's a few pages on.

22 THE COURT: Yeah, but that's what you said first.

23 MR. WISE: If I did, then I take that back. I did  
24 not mean to. I did not mean to.

25 THE COURT: Okay, I just wanted to make sure, to

1 clarify that you're not saying there's none, there's only a  
2 few pages.

3 MR. WISE: A few of the pages, yes, your Honor.

4 THE COURT: Okay.

5 MR. WISE: The AZA is nothing special, it's a trade  
6 organization for zoos.

7 THE COURT: But there's nothing else to compare  
8 them with.

9 MR. WISE: I'm just about to tell you that there  
10 is.

11 THE COURT: Okay.

12 And how about this Animal Welfare Act.

13 MR. WISE: The Animal Welfare Act is a Federal  
14 statute that requires regs -- that certain Federal regs  
15 be -- they're very broad regs -- regulations and if you --  
16 if you're said not to obey then them the USDA may or may not  
17 come and sanction you for it.

18 THE COURT: They're broad regulations?

19 MR. WISE: For all kinds of animals; dogs, monkeys,  
20 you know elephants. Every kind of animal except farm  
21 animals, usually except farm animals or certain other kinds.

22 THE COURT: And the purpose of that Act is to?

23 MR. WISE: The purpose of the Act is to set some  
24 kind of a minimum level to have the USDA set some kind of  
25 minimal level for how you care for a non-human animal. It

1 does not --

2 THE COURT: Care and the welfare of the animal  
3 also, right?

4 MR. WISE: But we're not -- the Animal Welfare Act  
5 does not address the issue of an animal's mind, their  
6 psychology, certainly not their -- the only non-human animal  
7 whose mind the Animal Welfare Act addresses are primates.

8 Specifically in 1985, the Animal Welfare Act was  
9 amended to say you have to -- you have to take measures that  
10 will protect the psychological well-being of primates only,  
11 not of elephants or any other animal.

12 THE COURT: Not of any other animal?

13 MR. WISE: No, just primates.

14 THE COURT: That the amendment only dealt with  
15 primates?

16 MR. WISE: That's right.

17 THE COURT: So the other --

18 MR. WISE: All the other animals in the world you  
19 don't have to protect their psychological well-being.

20 THE COURT: Well, not in the world only in the  
21 United States.

22 MR. WISE: Actually, yes, the world. Only primates  
23 you have to. Any other non-human animal you're not required  
24 by the Animal Welfare Act to protect the psychological  
25 well-being of them, just primates.



1 THE COURT: But the Federal statute only deals with  
2 the United States, correct?

3 MR. WISE: Well, within the United States.

4 THE COURT: Yes.

5 MR. WISE: Yes. Pardon me, yes.

6 THE COURT: Okay, I was just wondering if there was  
7 some global --

8 MR. WISE: There's no worldwide animal protection  
9 act.

10 THE COURT: There is none?

11 MR. WISE: There's not much of one in the  
12 United States either but that's a whole other case that  
13 we're not litigating.

14 THE COURT: Okay.

15 So beyond this AZA standard and the Animal Welfare  
16 Act, there are no other guidelines?

17 MR. WISE: Well, there are no -- well, the Animal  
18 Welfare Act and the Federal guidelines done by the USDA.  
19 The AZA simply is a private organization.

20 THE COURT: Okay.

21 But there are no other promulgated group of  
22 standards that -- so say that Dr. Poole had relied on when  
23 she made her checklist of her examination of Happy.

24 MR. WISE: Well, there are.

25 THE COURT: Okay.

1 MR. WISE: There are, for example -- I didn't know  
2 you were going to ask this question. There are --

3 THE COURT: I can't imagine that's a question that  
4 you didn't anticipate.

5 MR. WISE: You got me on this one, your Honor.

6 There are other private organizations that  
7 specifically certify sanctuaries and they have other  
8 standards for sanctuaries.

9 THE COURT: Oh, so --

10 MR. WISE: I did not know you would be interested  
11 in that. We'll be happy to give them to you.

12 MR. MANNING: If I may, your Honor, you know we've  
13 been silent and not objecting to much of the argument today  
14 as a courtesy of counsel. But I mean it really begs me to  
15 say that the whole discussion we are having today is as if  
16 there's an element in this case that this all relates to.  
17 And the petition which has never been amended in this case,  
18 specifically says and I'm quoting from the petition, "This  
19 petition does not allege that Happy is illegally confined  
20 because she is kept in unsuitable conditions."

21 THE COURT: Correct.

22 MR. MANNING: "Nor does it seek improved welfare  
23 for Happy. All of this goes to Petitioner's new contentions  
24 that there should be improved welfare for Happy."

25 We've got affidavits -- I'll wait my turn to talk

1 about our affidavit and what they say or don't say.

2 THE COURT: Sure.

3 MR. MANNING: But to talk now about other standards  
4 not even in the papers -- all of the affidavits have been on  
5 file with the court for more than a year without objection.  
6 And now on the third day of argument on the legal petition,  
7 we are basically going through an evidentiary analysis with  
8 opinions of counsel sprinkled throughout.

9 We'll deal with that on or argument but this isn't  
10 relevant to what we are doing and I have to bring that to  
11 the Court's attention.

12 THE COURT: Okay.

13 MR. WISE: Well, we have been arguing that this is  
14 not a welfare case, which he just read. This is not a  
15 welfare case, it's a rights case.

16 THE COURT: But in terms of --

17 MR. WISE: It's a rights case.

18 THE COURT: Wait, wait, wait. Based upon the  
19 habeas corpus petition --

20 MR. WISE: Yes.

21 THE COURT: When you deal with the confinement, it  
22 deals with the general welfare of the person who is bringing  
23 the petition, correct?

24 MR. WISE: Yes.

25 THE COURT: And so in that extent we are dealing

1 with the welfare of the animal or the person because you're  
2 saying that the mind has something to do with the welfare.

3 MR. WISE: This is a bit tricky sometimes.

4 THE COURT: Because I mean doesn't the well-being  
5 or social connotation of the person come into play in a  
6 habeas corpus standard?

7 MR. WISE: Well, with respect -- I think to some  
8 degree, yes, in that --

9 THE COURT: Because that's what you are arguing,  
10 right?

11 MR. WISE: Oh, yes, absolutely.

12 THE COURT: Okay.

13 MR. WISE: If you are -- I mean, for example, it's  
14 likely that we are going -- we are not going to bring a  
15 secret writ of habeas corpus on behalf a nonhuman animal who  
16 is unconscious. We'd have to prove they are conscious.

17 There's only certain nonhuman animals we have been  
18 bringing our cases for, chimpanzees and elephants because of  
19 the fact that they can self determine because they are  
20 autonomous and the reason is is that that's the purpose of a  
21 habeas corpus.

22 THE COURT: Well, let me ask, the animal welfare  
23 act deals with chimpanzees?

24 MR. WISE: Yes, it does.

25 THE COURT: And it has a primate exception for it?

1 MR. WISE: No, it just says that you're suppose to  
2 take into account -- you're supposed to protect the  
3 psychological well-being of chimpanzees. That's what the  
4 Animal Welfare Act says.

5 The reason we're going into the Animal Welfare Act  
6 and the AZA not because we think it's important because what  
7 we're doing is we're arguing -- we've been arguing from the  
8 very beginning two entirely different cases here. And of  
9 cures we believe that my brother is arguing the wrong kind  
10 of case. He's not defending himself against the argument  
11 that we're actually making. And the argument that we're  
12 actually making is because an elephant is an autonomous,  
13 self-determining, self-conscious being that she can be  
14 imprisoned against -- she has the will to be -- she can be  
15 imprisoned against her will and that that then -- then she  
16 should then be able to be free pursuant to a writ of habeas  
17 corpus and is sent to a place where she will be able to  
18 exercise her autonomy, her ability to self-determine and  
19 herself consciousness to the greatest extent that you can,  
20 considering the fact that we can't send them to Africa or we  
21 can't send them to Thailand. That's the case.

22 The case that my brother has been arguing, which  
23 we believe from the beginning is actually irrelevant but  
24 that causes us to have to look at this AZA stuff and the  
25 Animal Welfare Act. We're not arguing that they're violating

1 the Animal Welfare Act. We're not arguing that they're  
 2 violating the AZA. It's not hard to, you've got to work  
 3 really hard to violate the Animal Welfare Act. You have to  
 4 work really hard to violate the AZA.

5 But as Dr. Poole notes and that was just about  
 6 what I was going to say which is that neither the AZA nor  
 7 the Thomas affidavit mention the real problem, which is the  
 8 very small space in which Happy is held captive and that's  
 9 Paragraph 7 and then 28 -- I'm sorry, Paragraph 28 to 29 in  
 10 Dr. Poole's second supplemental affidavit. She says they  
 11 don't talk about the fact that they're putting this animal  
 12 who's evolved to move, who would walk, you know, miles and  
 13 miles everyday, they don't -- the AZA standard Animal  
 14 Welfare Act, nobody mentions the fact that she's put in what  
 15 would be for me it would be like if I had to spend my entire  
 16 life in my livingroom. Basically, an elephant sitting in  
 17 one acre of land by herself, that's not even elephant.  
 18 It's -- you have not -- you have completely undermined her  
 19 autonomy, completely undermined her self-determination,  
 20 completely undermined her self-consciousness and that is the  
 21 crux of the habeas corpus argument that that has destroyed  
 22 her the autonomy and self-determination. That is the  
 23 purpose of habeas corpus, that's why over the last 600 years  
 24 habeas corpus became the writ because we acknowledged that  
 25 in human beings one of the worse things we can do -- and by

1 the way that's why we put people in jail but one of the  
 2 worse things we can do is that we would strip them of their  
 3 autonomy and self-determination by putting them in jail and  
 4 making them do whatever -- whatever we want to do.

5 The life that Happy lives is the -- in her one  
 6 acre of land in the Bronx Zoo is the exact same life that a  
 7 human prisoner lives with the exception that the Bronx Zoo  
 8 makes you pay \$30 to watch this animal suffer while the  
 9 prisoners at least are allowed not -- to live their lives  
 10 without people paying to gawk at them.

11 And so what they see when they go over in the  
 12 tram, they look down and they see an elephant standing  
 13 there. Just standing there. And I -- elephants in the  
 14 wild, I've seen elephants. I've been to Kenya, I've seen  
 15 elephants in the wild. They don't just stand there. They  
 16 don't just stand there by themselves. They're always on the  
 17 move. They're always on the move. As Dr. Poole said,  
 18 they've evolved to move.

19 And that's part of their ability to  
 20 self-determine. In fact, what they -- they've also evolved  
 21 to have a social organization to live with aunts, to live  
 22 with children, to live with nieces, to live with  
 23 grandmothers. And by keeping them, keeping an elephant in  
 24 solitary confinement then that completely undermines their  
 25 autonomy, their self-determination, their self

1 self-consciousness. They might take blood from her and make  
2 sure that she gets medicine, make sure she gets surgery but  
3 other than that, she's basically like a prisoner who's in  
4 like a never-ending prison hospital. And that's -- that's  
5 the crux of it.

6 We don't care about the AZA standards, we don't  
7 care about the Animal Welfare Act because as Dr. Poole says,  
8 they don't talk about -- they don't talk about space, they  
9 don't talk about the fact that -- and apparently, the AZA  
10 for apparently 40 years has thought it's just fine for the  
11 Bronx Zoo to keep an elephant, a full grown elephant by  
12 herself on an acre of land. That is crazy and that's why I'm  
13 saying it's just a trade organization that rubber stamps  
14 what zoos do. And when you read the Leider case, you'll see  
15 similar such defenses.

16 THE COURT: But Happy does have an acre to roam  
17 around in, at least?

18 MR. WISE: Elephants can't roam around in an acre.

19 THE COURT: Okay.

20 MR. WISE: An acre for an elephant -- I think  
21 Dr. Poole says it's like putting a human in a house. You  
22 know, so I would be like I would have my -- for 40 years I  
23 would never be able to leave my house and I wouldn't even  
24 have my wife. It would just be by myself. And she says  
25 that you're not an elephant, you're essentially in solitary



1 confinement in what for you is a very small space.

2 So they are evolved to move. They move miles and  
3 miles everyday. And they socialize. She has none of that.  
4 She just sits there with people taking her blood and washing  
5 her trunk and making sure that she's not about to die or  
6 something or she had surgery doing that. But other than  
7 that, they utterly ignore her. The things that are at the  
8 crux of habeas corpus which is autonomy, self-determination,  
9 the ability to choose what to do when you want to, the  
10 ability to choose your friends.

11 And later on, in fact, Dr. Poole talks about the  
12 problem. And I'll just give a little coming attraction of  
13 it but what Dr. Poole says is that -- for example, if Happy  
14 has ever shown any aggression of any kind, she says she  
15 would expect it. If Happy doesn't -- you know, has problems  
16 moving from one part of the zoo to the other, she would  
17 expect it. And she talks about that is one of the -- these  
18 are things that happen not because of who Happy is but  
19 who -- because of what the Bronx Zoo has turned her into.

20 THE COURT: Well, has she shown any aggression?

21 MR. WISE: There's no evidence of that.

22 THE COURT: There's no evidence that she is  
23 depressed or --

24 MR. WISE: That's what I'm saying, is that none of  
25 the affidavits ever say anything about I saw Happy be

1 aggressive, I saw Happy be this, I saw Happy or somebody  
2 told me this or it's in the report. There's nothing.

3 THE COURT: But Dr. Poole never observed her being  
4 aggressive or depressed?

5 MR. WISE: No, she says Happy just basically  
6 actually at one point -- and I have to go look for it -- she  
7 says that she basically has seen her engage in four, just  
8 four behaviors. If I can remember, she likes to eat grass,  
9 she stands there.

10 Oh, she also talks about the facts that Happy is  
11 engaging in something that's one of two things that Happy  
12 moves --

13 THE COURT: Rocks?

14 MR. WISE: Moves back and for the like this on her  
15 feet which means one of two things. Happy has unhealthy  
16 feet and unhealthy feet which eventually is something that  
17 leads to elephants being euthanized or Happy is engaging in  
18 stereotypical behavior, which is what happens.

19 You have zoo animals, any nonhuman animal who is  
20 confined then they start just -- it's like sometimes we see  
21 mentally ill human beings who just repeat the same thing  
22 over and over again and they'll move, they'll go like this.  
23 They'll move their head. Happy is just going like this,  
24 which Dr. Poole says either means her feet are hurting and  
25 she doesn't have healthy feet or it's the kind of

1 stereotypical behavior that happens, which means that she's  
2 bored, which means that she's not -- she's not mentally  
3 healthy, at that point.

4 And that's actually is in the Leider case. She  
5 had the same problem, that the elephant -- Billy the  
6 elephant was constantly -- the other two -- there were four  
7 of them I think but Billy was by himself. They were engaged  
8 in unhealthy stereotypical behavior which Dr. Poole's  
9 opinion as you'll see in there is that they are both  
10 socially and emotionally unhealthy.

11 THE COURT: Okay.

12 MR. WISE: Now, Dr. Poole also says -- and my  
13 co-counsel also reminds me that the one acre that Happy is  
14 in, she's not in there right now. Right now it's cold  
15 outside, so right now they put her into a barn that is way  
16 smaller than one acre. And I think they can let her out  
17 sometimes in the winter into an area that's far smaller than  
18 one acre.

19 Have you ever seen -- if you've ever seen wild  
20 elephants, it's nothing, nothing like what you would see,  
21 you know, with Happy.

22 Now, Dr. Poole also said that and I quote this is  
23 Paragraph 7 of her second -- I'm sorry, Paragraph 27 of  
24 Dr. Poole's second supplemental affidavit, Paragraph 27, and  
25 she says she has studied on more than four decade long

1 studies, so she's now going back to her study of 40 years,  
2 of free living elephants shows that the AZA specifications  
3 are woefully inadequate for meeting the needs of elephants.  
4 Which if you're not a trade group for keeping elephants in  
5 jail and -- you would know that.

6 And that, by the way, again kinda -- you know,  
7 kinda comes back to the fact that the Wildlife Conservation  
8 Society has a lot of elephant experts on its staff and  
9 nobody, not a single elephant expert will come in and say  
10 this is an okay thing for Happy.

11 But on the other hand, Dr. Poole has -- and  
12 your Honor we also filed affidavit is from one, two, three,  
13 four other experts as well, most of them are similar because  
14 they work on the team but we have five other -- I'm sorry,  
15 six affidavits. We have six of the greatest, you know,  
16 world's greatest elephant experts in the world.

17 Now, they could have had -- I mean they've had  
18 these affidavits since 2000 -- as late as 2018 or early  
19 2019, they've had them for over a year. If they thought  
20 Dr. Poole was wrong, they've had on any single word or  
21 sentence she's said they have had the opportunity to file an  
22 affidavit from one of their many elephant experts to say  
23 Dr. Poole is wrong, Dr. Poole is wrong with this, Dr. Poole  
24 is wrong with that. It's just a fine thing for Happy to be  
25 kept all by herself in one acre of land for year after year

1 and they haven't done that.

2 It's kinda like -- I was thinking of homes, it's  
3 an -- who's the detective?

4 MR. LO: Sherlock Holmes?

5 MR. WISE: Sherlock Holmes. But of Holmes when he  
6 wrote the story of the dog that didn't bark, that's what is  
7 significant about this is that the Wildlife Conservation  
8 Society is filled with dogs who didn't bark. They could have  
9 barked, they could've said Dr. Poole is wrong. No one ever  
10 has. Instead they have these administrators who have no  
11 interaction with the animals, certainly no interaction with  
12 elephants, no interaction with Happy to come in and say  
13 things of which they have no personal knowledge.

14 They needed to have the dogs bark. But the reason  
15 the dogs didn't bark is because they wouldn't bark because  
16 no self respecting elephant scientist would contradict what  
17 Dr. Poole said.

18 Now, Dr. Poole also in her affidavit, her original  
19 affidavit and I'll just refer you to these at Paragraph 22  
20 of her affidavit, 24 to 28, 29 to 54 and then also in her  
21 supplemental affidavit at Paragraph 3, at Paragraph 4, at  
22 Paragraph 6, what she says is that -- she educates the court  
23 on what an elephant is, what kind of brains they have, what  
24 kind of neurons they have, what kind -- you know, what their  
25 behavioral and intellectual capacities are, what their

1 intelligence is, what their needs are as social animals.

2 And, you know, for me one of the things every time  
3 I read it that has an influence on me about who elephants  
4 are is that she talks about the fact that they plan, that  
5 they negotiate with each other and this is through noises  
6 and movements, she says. And that they engage in collective  
7 decision making. This is not my dog, he doesn't care what  
8 other dogs want. These are elephants who are like you and I,  
9 who engage in collective decision making. A herd will make  
10 decisions together. They have the cognitive ability to plan,  
11 to negotiate with each other and to make joint and  
12 collective decisions.

13 THE COURT: When they have to .

14 MR. WISE: I'm assuming when -- because they're a  
15 matriarchal society, your Honor. They have the good sense  
16 to put a female in charge.

17 THE COURT: Yeah, but I'm just that saying if they  
18 don't need to they don't have to, they don't --

19 MR. WISE: They do not make -- they don't negotiate  
20 if they're not in agreement, I do agree with that.

21 THE COURT: If they are in a nice space, they don't  
22 necessarily have to do all of those things.

23 MR. WISE: That's true but I can guarantee you that  
24 an acre of land in the Bronx Zoo is not that space.

25 THE COURT: Okay.

1 I'm going to recess for lunch at this time. Are we  
2 going to finish up with this today?

3 MR. WISE: We are going finish up. I don't have  
4 that much longer.

5 THE COURT: How much longer do you have because I  
6 do have to give defense a chance to respond.

7 MR. WISE: It depends how many questions the court  
8 has me.

9 THE COURT: Well, if you want me to be quiet I  
10 will.

11 MR. WISE: No, I do not.

12 THE COURT: That's not a problem. I don't have to  
13 ask any more questions.

14 MR. WISE: No, actually I'm actually grateful that  
15 the court peppers me with these questions. I would have an  
16 hour tops, tops.

17 THE COURT: Tops?

18 MR. WISE: Tops.

19 THE COURT: An hour more?

20 MR. WISE: Tops.

21 THE COURT: An hour?

22 MR. WISE: I'm assuming that you're going to ask me  
23 more questions.

24 THE COURT: No, I'm not.

25 MR. WISE: Okay.

1 In that case, I guess I don't have an hour.

2 THE COURT: Counsel, how much time you have?

3 MR. MANNING: Well, if we have an equivalent amount  
4 of time, your Honor, it would take several days.

5 THE COURT: No, no, you can do it in an hour also?

6 MR. MANNING: I promise I will do it in an hour  
7 along with any questions that the court may have.

8 THE COURT: Okay, let's come back at two o'clock  
9 and try to finish this up, at least.

10 Have a great lunch. I'm going to ask you to exit  
11 the courtroom as quickly as possible so the staff can may go  
12 to lunch.

13 (Whereupon, the luncheon recess was taken.)

14 A F T E R N O O N S E S S I O N

15 COURT OFFICER: Come to order.

16 THE COURT: Madam Reporter, counsel, members of the  
17 audience please be seated.

18 Okay, Mr. Wise.

19 MR. WISE: Thank you.

20 THE COURT: You have not yet finished your  
21 argument. I'm going to give you one hour, okay?

22 MR. WISE: Yes.

23 THE COURT: As I promised, one hour and we are  
24 going to wrap it up.

25 MR. WISE: Your Honor, I am going to go back to the



1 issue between welfare and rights.

2 THE COURT: Between what? I'm sorry.

3 MR. WISE: Welfare --

4 THE COURT: Welfare, okay.

5 MR. WISE: And rights.

6 What I was trying to say before was that the  
7 petitioner is bringing a habeas corpus case.

8 THE COURT: Yes.

9 MR. WISE: Happy has to be a rights barer and  
10 that's really the issue. And my -- and the defenses that my  
11 brother puts up are such that it appears like it's a welfare  
12 case. And they're trying to say oh, but we're taking care  
13 of him very well. And we are showing that they're not taking  
14 care of him very well but in a larger sense it's irrelevant.  
15 And perhaps the best analogy I can give you would be if  
16 there was someone named Happy but I didn't tell you that she  
17 was an elephant and we thought she was a human being, saying  
18 she's being held against her will in someplace, the sole  
19 issue, which is supposed to be so in the habeas corpus case  
20 is whether there is an illegal defense, improper detention.  
21 And that we would not talk about are their regulations, talk  
22 to how she's being cared for while she's being illegally  
23 detained. We wouldn't talk about that. There's no human  
24 equivalent of the AZA and you wouldn't have the person who  
25 is detaining the human being say but I'm keeping her -- you

1 know, I'm keeping her according to anything that shows how  
2 well you keep humans. Say, for example, I'm feeding her  
3 everyday, I'm giving her medical care everyday and I'm  
4 keeping her very well and we'll say that's not the issue.

5 And, you know, I don't believe in all the  
6 thousands of habeas corpus cases, you know, I've read across  
7 numerous jurisdictions that there's ever been a question of  
8 well, are you caring for the prisoner all right. That's not  
9 the issue in a habeas corpus case. It might be an issue in  
10 another case but not in a habeas corpus case.

11 So that's why when I said the AZA and the Animal  
12 Welfare Act, while we're rebutting what they're saying you  
13 know in a larger sense it's simply not relevant. The issue  
14 is whether or not Happy is a person, which means Happy has  
15 the capacity for any rights and we've argued at length why  
16 she does. And then because she is self-determined, because  
17 she's autonomous, because she's self-conscious, we argue  
18 that those values both as a matter of liberty and equality  
19 then, are sufficient for this court to rule that she ought  
20 to have the right or the liberty because that -- because  
21 those are the things that -- because that is what a habeas  
22 corpus case is for and what habeas corpus is meant to  
23 protect.

24 So I just wanted to clear up in -- you know, we're  
25 arguing a rights case, they want to argue a welfare case.

1 But -- and we'll gladly rebut their welfare case but in a  
2 larger sense it doesn't matter. We're arguing a rights case.

3 Now, one -- and one of the issues has been -- and  
4 this might be somewhat relevant but I'm not sure -- which is  
5 that you see there are -- when you look at the affidavits,  
6 you'll see that Mr. Breheny talks about Happy being familiar  
7 with her surroundings and others are saying oh, she knows  
8 her caregiver, she's familiar with her surroundings, it  
9 would be -- you know, you shouldn't remove her.

10 And Dr. Poole, in her affidavit -- in her  
11 supplemental affidavit which is -- which is -- I have no  
12 idea where it is.

13 THE COURT: It is Number 6.

14 MR. WISE: I have lost my list.

15 THE COURT: Second supplemental is Number 6.

16 MR. WISE: Appreciate that.

17 In her supplemental affidavit, your Honor, in  
18 Paragraph 4, Dr. Poole specifically says you're held in  
19 isolation like Happy is, they become bored, depressed,  
20 aggressive, catatonic and they fail to thrive. Human care  
21 givers are no substitute for the numerous complex social  
22 relationships and the rich gesturing and vocal communication  
23 exchanges that occur between free living elephants.

24 They also say, Mr. Breheny says in one of his  
25 affidavits that Happy has a history of not interacting well.

1 And by his affidavit is -- that was his supplemental  
2 affidavit which is Number 2, Paragraph 13, Mr. Breheny says  
3 that Happy has a history of not interacting well with other  
4 elephants at the Bronx Zoo, which is why she has been housed  
5 separately since her companion died.

6 And Dr. Poole says that -- and that's in her  
7 second supplemental affidavit which is Number 6,  
8 Paragraph 7, 9 and 10, she addresses this. So she says --

9 THE COURT: I'm listening.

10 MR. WISE: She says that Breheny seems to be  
11 suggesting that Happy has a problem getting along with other  
12 elephants. The historical information indicates that Happy  
13 is not anti-social per se but that Maxine and Patty, two of  
14 the elephants, once attacked her and that there's a risk  
15 that they'll do so again. This situation would likely be  
16 resolved by offering Happy the chance to form relationships  
17 with other elephants in the sanctuary.

18 And it's hardly fair to say that Happy has a  
19 history of not getting on with other elephants in 40 years  
20 at the Bronx Zoo. She's only been given a choice of four  
21 companions with whom she's been forced to share a space that  
22 for an elephant is the equivalent of the size of a house.  
23 Two of those companions she liked and lost with one of them  
24 being killed by Maxine and Patty and the other two attacked  
25 her. This is hardly a basis for drawing a conclusion that

1 Happy has a history of not getting along with other  
2 elephants, it's rather a confirmation of the zoo's inability  
3 to meet Happy's basic needs.

4 In her 40 year long history at the Bronx Zoo,  
5 Happy has had the opportunity to socialize only four  
6 elephants and has spent a quarter of that time in solitary  
7 confinement.

8 Now, the folks from the zoo also claim that --  
9 Mr. Breheny in his affidavit at Paragraph 18, he says that  
10 the trip from Happy's current location to Paws which is in  
11 California but then there's also a Tennessee elephant  
12 sanctuary she can go to as I represented they've agreed to  
13 take her as well, in Tennessee, that it could be more  
14 harmful to Happy as experience has shown us that she doesn't  
15 transport well. Although, they've only been transported --  
16 she's been there for 40 years.

17 And then, Mr. Calle, Dr. Calle at his, affidavit  
18 Paragraph 14, also says that she becomes distressed during  
19 short moves from one area of the Bronx Zoo to another.  
20 Dr. Poole said this, that any distress that Happy exhibits  
21 from being moved from one area of the Bronx Zoo to another,  
22 is likely evidence of how traumatic it has been for Happy to  
23 be shuffled about in the zoo from confined space to confined  
24 space. And that's her second supplemental affidavit,  
25 Number 6 at Paragraph 23.

1                   And then at Paragraph 12 of the same affidavit,  
 2 she says the claims and relation to Happy that she does not  
 3 do well with change, that she will not survive the  
 4 transport, that a transport to a sanctuary would be too  
 5 stressful, that she don't know how to socialize, that her  
 6 unique personality is problematic, have been disproven. In  
 7 fact, elephants with serious physical or psychological  
 8 problems in zoos have usually become more normally  
 9 functioning elephants when given more appropriate space in a  
 10 sanctuary such as Paws.

11                   And in her supplemental affidavits Paragraphs 13  
 12 through 18, she actually gives six examples of elephants who  
 13 have been moved long distances, who were miserable at the  
 14 places that they were, including at least one who actually  
 15 killed a human being where she was and that when they were  
 16 brought to a sanctuary and taken out of this -- of a zoo  
 17 environment where they were confined, that they really --  
 18 they blossomed into a normal elephant existence.

19                   So that is on your Exhibit 6 and that's  
 20 Joyce Poole's second supplemental affidavit and that's  
 21 Paragraphs 13 through 18.

22                   And she also says at Paragraph 2 of the same  
 23 affidavit that Paws has been involved in moving more than a  
 24 dozen elephants over the years without incident. These moves  
 25 included older elephants and from places as far away as

1 Alaska and Toronto. Some of these elephants had lived in  
 2 their prior facilities for over 40 years and there is no  
 3 evidence that the inevitable stress of these moves had a  
 4 long term effect on any of the elephants.

5 And they said the elephant in Brazil, the  
 6 sanctuary in Brazil is about to move Ronna, a confiscated  
 7 ex-circus elephant who is in her 50s, 1675 miles from where  
 8 she is to their sanctuary.

9 And finally, Paragraph 11 of that second  
 10 supplemental affidavit says specifically addressing  
 11 Mr. Breheny, Breheny appears to be unaware of the extremely  
 12 positive transformations that have taken place when captive  
 13 elephants are given freedom that larger spaces or  
 14 sanctuaries or released back into the wild offer.

15 Now, the zoo has also said that just moving, just  
 16 the transport is -- actually, I just talked about that. Then  
 17 I -- now, all I want to do is on this part is just to look  
 18 at the -- compare the conclusions that the folks draw.

19 Well, Mr. Breheny says that based on my expertise  
 20 of which he has none involving elephants, his decades long  
 21 experience with Happy of which he does not set out even  
 22 meeting Happy a single time or -- and the foregoing which is  
 23 all the other stuff that he says, it's my professional  
 24 opinion Happy's interest would not best be served at this  
 25 time by moving her to an elephant sanctuary.

1 Same thing Dr. Calle says, based on my  
 2 responsibilities in providing veterinary care to the  
 3 animals, to of the Bronx Zoo including Happy, in other words  
 4 the thousands of animals that he provides veterinary care to  
 5 and to the best of my knowledge, Happy is currently healthy  
 6 and well adapted to her present surroundings. Except  
 7 Dr. Calle, he might be able to say what her blood level is,  
 8 he might be able to say whether she is sick but he has no  
 9 qualifications for saying that she is well adapted to her  
 10 present surroundings. And he doesn't say that he's examined  
 11 Happy, it's just to the best of his knowledge and I have no  
 12 idea who he's talking to that says she is currently healthy  
 13 or whether they would be qualified to know whether she's  
 14 healthy.

15 Dr. Poole says almost certainly she's not healthy  
 16 and several times she talks is about the facts that Happy is  
 17 engaging in stereotypical movements which again, either  
 18 shows she has a -- she's mental or she's physical -- she's  
 19 mentally not healthy or she's physically not healthy because  
 20 she's having problems with her feet.

21 (Whereupon, a brief pause was held in the  
 22 proceedings.)

23 MR. WISE: Here's where -- the part that she says  
 24 that in her second supplemental affidavit, she says that --  
 25 which is at Paragraph 22, she says that looking at Happy's



1 feet indicates her feet are not healthy. She says my own  
2 observation from watching a number of videos is that Happy  
3 lifts her feet repeatedly, which indicates she's trying to  
4 take the weight off of them or is engaged in stereotypical  
5 behavior.

6 Also, she says that the quarterly TB test that  
7 Happy gets are more frequent than normally warranted and  
8 suggests that Happy is being monitored closely because she's  
9 housed in the same barn as Patty who has been diagnosed with  
10 TB.

11 Now, Mr. Calle also says that in his professional  
12 opinion and he's not -- that Happy is health and well-being  
13 would not be best served by moving to an animal sanctuary.  
14 Again, he has shown that he has no experience other than  
15 veterinarianian experience with Happy.

16 Now, Dr. Poole, if you look at the basis for her  
17 opinion -- well, we understand, you know, how qualified she  
18 actually is but Dr. Poole kinda wraps up and gives her  
19 opinion. She says at Paragraph 21, she says -- and this is  
20 the basis of her opinions --

21 THE COURT: Wait one second. Paragraph 21 of?

22 MR. WISE: Paragraph 21 of her original affidavit  
23 which is Number 4.

24 THE COURT: Okay.

25 MR. WISE: She says the opinions I state in this

1 affidavit are based on my professional knowledge, which is  
 2 profound. Her education, which is a Ph.D. at Cambridge and  
 3 post doctorate work at Princeton, her training which again  
 4 is at these places and her years of experience observing and  
 5 studying elephants which as you know is moving into it's  
 6 50th year now, as well as her knowledge of peer review  
 7 literature of which is a substantial part of that is her own  
 8 about elephant behavior and intelligence, published in the  
 9 world's most respected journal -- I didn't read to the Court  
 10 all the journals that she's been publish in but she's been  
 11 published in places like you'll see Nature. Nature is one of  
 12 the world's two most prestigious scientific journals along  
 13 with science, periodical and books that are generally  
 14 accepted as authoritative in the field and many of which  
 15 were written by myself or my colleagues with whom I have  
 16 known for several years and with whom research in field work  
 17 I'm personally familiar with. And she says a full reference  
 18 of the peer review literature that she cited, which is about  
 19 70 or 80 -- I think it's 70 or 80 different scientific peer  
 20 reviewed articles is annexed as Exhibit B to her affidavit.  
 21 That's only in the original, I did not give that to you. I  
 22 figured if the Court wished to look at that, you could look  
 23 at the original and not this.

24 THE COURT: What paragraph are you reading from?

25 MR. WISE: I'm reading from Paragraph 21 --

1 THE COURT: Paragraph 21?

2 MR. WISE: -- of number -- let me see of number.

3 THE COURT: Four you said?

4 MR. WISE: I'm sorry your Honor?

5 THE COURT: You said four.

6 MR. WISE: I said 40?

7 THE COURT: Four, the Number 4.

8 MR. WISE: I'm sorry, it's your number index

9 Number 4.

10 THE COURT: Right. And Paragraph 21.

11 MR. WISE: Paragraph 21.

12 THE COURT: Yes.

13 MR. WISE: That's where I was reading from.

14 THE COURT: Yes, I have it.

15 MR. WISE: And she says in Exhibit B, which is in  
16 the original, that she listed all 70 peer reviewed articles.

17 Now, again, none of the -- none of the folks who  
18 filed affidavits are experts. None of them -- and I mean  
19 one of the ways that you can see it is none of them cited to  
20 any research, none of them engaged in any research, none of  
21 them have done any research. They simply don't know  
22 anything about elephants.

23 Now, I saw my brother handed up a -- he handed up  
24 something that I haven't had a chance to read it yet but it  
25 looks like he basically cherry picked some of the arguments

1 that we made and then cherry picks some of the cases, some  
 2 of the arguments in the cases which he has every right to  
 3 do, I will not respond to those because we have spent hours  
 4 and hours, you know, taking -- you know, deconstructing each  
 5 case, showing why what my brother is saying is wrong and I'm  
 6 not going to trouble the Court to do that.

7 THE COURT: Okay.

8 MR. WISE: I just want to take 45 seconds just to  
 9 set out -- just to remind the Court what the major issues  
 10 are.

11 THE COURT: Okay.

12 MR. WISE: So Number 1, the issue is that this  
 13 Court is not bound by any discussion of the merits in what  
 14 we call the labor re two, which is the First Department case  
 15 because Lavery II dismissed the case on the procedural  
 16 ground of filing an improper successive petition under  
 17 CPLR 7003(b).

18 And so once it does that, once it says we're doing  
 19 that and they say we don't even need to get to the merits in  
 20 order to do that, then any opinion on the merits were just  
 21 dictal, which this Court does not have to follow and should  
 22 not follow.

23 The second one is that this Court is not bound by  
 24 the statements in Lavery I, on personhood as they were based  
 25 on -- as we argued on demonstrable misunderstanding the law

1 and so are exceptions to which we set out in great detail  
 2 how they were wrong by, you know, including the fact that  
 3 they were relying on two law review articles by Professor  
 4 Coupe who as she showed has no idea what he's talking about  
 5 or he intentionally misrepresents, you know, what a social  
 6 contract is.

7 And -- actually, I just want to add for 30 seconds  
 8 I will find the case for you, there is a New York Court of  
 9 Appeals case that I've actually found since I last spoke  
 10 with you.

11 THE COURT: Oh, really.

12 MR. WISE: That a New York Court of Appeals case  
 13 that is somewhere, if I don't -- if I don't have it with me  
 14 I will send it to the Court.

15 THE COURT: It's a recent case?

16 MR. WISE: I can't remember the year but what it  
 17 specifically did and it talked about what social contract  
 18 actually was -- I don't know how I missed it the last six  
 19 years but I managed to do that. And what it does is, see it  
 20 makes clear that social contract does not create personhood.  
 21 Social contract creates citizens out of already existing  
 22 persons.

23 And the reason -- and this case, this case  
 24 specifically talks about that under social contract theory  
 25 individuals are born with certain natural writes. And then

1 they might trade them for certain protections but the key is  
2 is that they're born with rights. In other words, they're  
3 born as persons.

4 THE COURT: Right, as opposed to Happy who is an  
5 animal and you want to declare a person.

6 MR. WISE: Say that again.

7 THE COURT: As opposed to Happy who is an animal  
8 that you want to have be declared as a person to -- in order  
9 to get rights.

10 MR. WISE: I'm not -- we definitely are doing that  
11 but they're talking about the fact that -- okay, I'll have  
12 to -- I'll agree with you on that. And but what they're  
13 saying is that individuals -- and up until we start  
14 litigating I don't think they say humans, I think they said  
15 individuals but why would they say anything else? Because  
16 until now no one ever made the argument that a nonhuman,  
17 although there were cases for example where you had slaves,  
18 where you had women, where it was not -- where they were not  
19 seen as persons.

20 THE COURT: Right.

21 MR. WISE: And then they became persons. But anyone  
22 who is a person, you're -- the idea of social compact is  
23 that you're born with rights. In other words, you're born  
24 as a person so that puts the absolute lie to the idea that  
25 somehow social contracts creates person.

1 THE COURT: Okay.

2 MR. WISE: So the third thing is that Judge Fahey  
3 of the Court of Appeals has made it clear, that both  
4 Lavery I in the Third Department and Lavery II with respect  
5 to anything they said about personhood were wrongly decided.

6 And when they're dealing with the chimpanzee and  
7 Judge Fahey noted they were autonomous that they're not  
8 things and they are likely persons with the right to bodily  
9 liberty protected by habeas corpus.

10 Now, it's not a decision of a full Court of  
11 Appeals but it's the decision of the only member of the  
12 Court of Appeals that's ever given an opinion. In fact, it's  
13 the decision of the only high court judge in the  
14 United States who has ever given an opinion on the question  
15 as to whether autonomous being can be a person.

16 And not only did Judge Fahey say that a chimpanzee  
17 was but he also said when he had ruled against us three  
18 years before he had struggled with that and had changed his  
19 mind.

20 Now, the next one is what this Court is bound by  
21 is the Burn case, the Burn versus New York Hospital, and  
22 that case Burn did say that being a person is not a matter  
23 of biology. And so being human -- in fact, being human is  
24 not even sufficient to being a person because that involved  
25 a fetus who they said was human but they said that fetus was

1 not a person.

2 So there are persons who are not humans, there are  
3 humans who are not persons. It's personhood is not a matter  
4 of a biology and they're clear on that. What it is is it's a  
5 matter of public policy. The Court has to make the decision  
6 using public policy not taxonomy as to whether an entity,  
7 whether that entity is human which is years ago when they  
8 were slaves, there were women and children, fetuses even or  
9 whether they're nonhumans now.

10 Now, following that that's why the Nonhuman Rights  
11 Project focused on public policy issues. That's why we  
12 argued to the Court and we showed how the idea of liberty,  
13 of autonomy, of equality, that these are powerful values,  
14 common law values that the courts of New York and the Court  
15 of Appeals has said again and again and again,  
16 *Rivers versus Katz* for example might be the leading example  
17 of liberty, common law liberty that these are common law  
18 fundamental values. And what we are saying is that in order  
19 to -- in order to harmonize and follow consistently the  
20 common law values of the importance of autonomy, of liberty,  
21 of equality, that you have to -- you have to follow those  
22 wherever they go. That when the courts say we really -- we  
23 value autonomy, there's something about autonomy about being  
24 able to choose how to live your lives that the courts have  
25 always found to be important. And there's no non-arbitrary



1 reason for the courts to say by the way, what species is it  
2 as opposed to 200 years ago they would have said, well, what  
3 race is this autonomous person or what gender is this  
4 autonomous person? They don't do that any more and they  
5 shouldn't do it now. If autonomy is autonomy wherever it is  
6 found it needs to be protected.

7 The way that Happy's autonomy would be protected  
8 would be to find that she's being held illegally under -- at  
9 the Bronx Zoo, to order as a matter of habeas corpus that  
10 she be released and then to order that she be sent to the  
11 appropriate place which we argue is either the Tennessee  
12 Elephant Sanctuary or the Performing Animals in -- in  
13 Tennessee or the Performing Animal Welfare Society, in  
14 California.

15 Now, let me make just one more comment about the  
16 folks who filed the affidavits. If you look at Leider versus  
17 Lewis at page 30, now Leider versus Lewis when the court  
18 reads Leider versus Lewis, what you'll see is not only that  
19 the judge says Joyce Poole is head and shoulders the most  
20 competent person but there's a parade of witnesses that the  
21 L.A. Zoo brings including the chief veterinarian, including  
22 the senior elephant keeper of Billy, the elephant keeper  
23 who's being kept alone for the last 16 years. That's in the  
24 L.A., the Los Angeles Zoo.

25 And he, the judge points out that they have no

1 idea what they're talking about. That the veterinarian knows  
2 nothing, does not understand elephant behavior. And to his  
3 chagrin he says even the person who's been the chief  
4 elephant keeper for 16 years does not understand, for  
5 example, what is stereotypic behavior is, that it means that  
6 they're having emotional problems. He finds that they just  
7 simply don't understand what that is.

8 And so one of the -- and so I want to point just  
9 to the two sentences which I think is appropriate here. And  
10 on page -- page 30 then of the Leider case the judge says  
11 that quote captivity is a terrible existence for any  
12 intelligent, self-aware species which the undisputed  
13 evidence shows elephants are. To believe otherwise, as some  
14 high ranking employee appear to believe is delusional,  
15 unquote.

16 Now, today and for the last 40 years Happy has  
17 been imprisoned by similarly delusional people at the higher  
18 ranks of the Bronx Zoo who know nothing about the psychology  
19 or the mental or the emotional states of elephants or social  
20 needs. They know how to take the blood, they know how to do  
21 surgery on her and they have no idea that what they're doing  
22 has no affect whatsoever on her emotional, her social needs.  
23 And when they go in and whatever reasons they give simply  
24 shows that if they give them, those reasons are delusional.

25 Now, this is -- this is a common law habeas corpus

1 case and as it is with all common law habeas corpus cases,  
2 the only issue is whether or not the detention is legal and  
3 not how the captors are treating them. So it's not about  
4 whether the prisoner or anyone who is detained, it's not  
5 about whether that person is receiving adequate care, it's  
6 not whether they are getting meds, whether they're getting  
7 food. It's not about that. Habeas corpus, as the courts  
8 have said for hundreds of years and the Court of Appeals  
9 said many times, it's about one thing. It's about liberty,  
10 it's about freedom.

11 And as the third-party plaintiff in Happy's case,  
12 that's exactly what the Nonhuman Rights care about. We care  
13 about the liberty of Happy, we care about the freedom of  
14 Happy. That's why -- and I think we cited them -- that's the  
15 reason why like more than -- at the time we filed the suit a  
16 year and a half ago more than a hundred law review articles  
17 and books have been written about the work of the Nonhuman  
18 Rights Project because of the fact that they understand that  
19 what we're doing is we're talking about these big ideas of  
20 liberty and freedom.

21 You might be familiar -- there's a company called  
22 A Teaching Company that puts out so-called great courses.  
23 And they have hundreds of college level courses where they  
24 give like 24 half an hour lectures about art, you know, or  
25 painting or nature or history or anything like that. So

1 last Friday there was a new one went online comprised of 24  
 2 lectures entitled Liberty on Trial in America, Cases That  
 3 Define Freedom by the law professors. And these are  
 4 lectures, for example, about the trials of Anne Hutchinson  
 5 in the 17th century, of John Peter Zinger just down the  
 6 street who was jailed, you know, for telling the truth about  
 7 how New York was being run. About Anthony Burns, the slave  
 8 Anthony Burns under the fugitive slave law in Boston, in  
 9 1850. John Brown, Susan B. Anthony who also was down the  
 10 road in Rochester, about the scopes monkey trial, the  
 11 Korematsu Japanese internment case, the segregation cases in  
 12 the 20th century, Roe v Wade, gay marriage. The final  
 13 lecture, Number 24, is called Liberty For NonHumans. And it  
 14 tells the story of the work of the Nonhuman Rights Project  
 15 in New York in their fight to gain liberty and freedom for  
 16 nonhuman animals.

17 This professor says -- and we agree, we think that  
 18 your decision in this case is every bit as historic as those  
 19 cases. Every bit as important in those cases and the lawyer  
 20 for John Peter Zinger when he was thrown in jail for telling  
 21 the truth about the New York governor, Alexander --  
 22 Andrew Hamilton, who was the leading civil rights attorney  
 23 you may say at the time in the early 18th Century, he argued  
 24 this once in his closing. He said this one thing, he said  
 25 it's not just the cause of one poor printer but it's the

1 cause of liberty.

2 It's the same thing in Happy's case, your Honor.  
3 This case is not just about the cause of one poor elephant,  
4 this is about the cause of liberty. And to further that  
5 cause, we ask that you order that Happy be released from her  
6 40 years of detention, that she -- as through habeas corpus  
7 and that she be sent to the place that you believe is the  
8 most appropriate place to further her autonomy and her  
9 self-determination, which we would urge is either the  
10 Tennessee Elephant Sanctuary of Tennessee or the  
11 Performing Animal Welfare Society of California.

12 THE COURT: Okay.

13 MR. WISE: Thank you, your Honor.

14 THE COURT: Thank you so much, counsel.

15 I promise not to ask questions but I do have some  
16 perhaps maybe at the end.

17 MR. WISE: I'm sorry did you ask me --

18 THE COURT: No, I said I promised I wouldn't ask  
19 any.

20 MR. WISE: No, no, please. I beg of you ask any  
21 questions that you want.

22 THE COURT: No, I'm going to give the respondent an  
23 opportunity to speak, to state his argument.

24 MR. MANNING: Thank you, your Honor.

25 Your Honor, may I approach?

1 (Whereupon, the referred to exhibit was handed to  
2 the Court.)

3 THE COURT: Thank you so much.

4 Okay, this is A, B, and C; am I correct?

5 MR. MANNING: Yes, your Honor.

6 THE COURT: Okay.

7 MR. MANNING: If I might, your Honor, what I'd like  
8 to do is turn our attention to this case rather than cases  
9 in California, cases in Argentina, cases in Great Britain.  
10 First let me note though so that we're not dealing with  
11 inaccurate information, the case that was relied upon and  
12 submitted to the Court in the California case involving  
13 Los Angeles was the 19 -- excuse me, the 2012 trial court  
14 proceedings. If the court is interested in reading further  
15 about the case, we would invite your attention to  
16 394 Pacific 3d.

17 THE COURT: Wait one second, I'm sorry.

18 MR. MANNING: I'll sorry, 394 Pacific 3d 1055, the  
19 2017 decision that reversed the trial court decision in that  
20 case. I think that's where the reading should start,  
21 your Honor, not on the trial court level.

22 In any event --

23 THE COURT: And that was what year, 2012?

24 MR. MANNING: 2012, 2017 reversal by California  
25 supreme court.

1 THE COURT: Right.

2 MR. MANNING: So I think the analysis should start  
3 there, taking a look at abuse of animals in California none  
4 of which it seems to be suggested here.

5 If I may your Honor and I'll go back to it, the  
6 petitioner in much of this morning and early this afternoon  
7 has been devoted to matters outside the petition. But the  
8 petition itself says -- and I mentioned it earlier, this  
9 petition does not allege that Happy is illegally confined  
10 because she is kept in unsuitable conditions nor does it  
11 seek improved welfare for Happy.

12 We just heard hours of argument dealing with  
13 improved welfare for Happy. We suggest it's not improved  
14 welfare but that's the target and goal of the petitioner in  
15 raising all these issues. It's well outside the scope of  
16 the habeas corpus proceedings for openers.

17 But let me turn my attention to the court  
18 exhibits, your Honor. When this case was started, the  
19 petitioner had been involved in four series of cases in this  
20 state. And I'm looking at Respondent's Exhibit A for the  
21 moment. The first case was in the Second Department 2014  
22 before Judge Asher and that application for a writ of habeas  
23 corpus was unsuccessful. It was the -- the petition was  
24 denied and there was no appeal as of rights and the case  
25 ended there and there was no appeals to the state's Court of

1 Appeals.

2 The same year in the Third Department decided  
3 Lavery I from the Third Department holding that a  
4 chimpanzees lack capacity for social responsibility and  
5 legal accountability and thus cannot invoke the fundamental  
6 right to liberty protected by the writ of habeas corpus  
7 afforded human beings, a rather clear holding. There was --  
8 came up from a denial of a petition from writ of habeas  
9 corpus by Judge Size and the Court of Appeals simply denied  
10 Lavery to appeal the case.

11 A year later, undaunted, petitioner brought a case  
12 in the Fourth Department and the holding in the  
13 Fourth Department was that habeas corpus does not lie where  
14 a petitioner seeks only to change conditions of confinement  
15 rather than the confinement itself.

16 In that case, they were trying to move a  
17 chimpanzee to a sanctuary much like they're trying to do  
18 here with an elephant. And as I recall, the Court took an  
19 interest in the argument two sessions ago, when the Court  
20 had asked a question -- see if I can find it, your Honor.  
21 In response to the issue dealing with the sanctuary the  
22 Court asked and I quote from the transcript, would that not  
23 be a sort of imprisonment also just a bigger prison to use  
24 the -- to borrow the phrase used by the Court, at that time.  
25 And the point of the matter is moving an animal to a



1 sanctuary is simply a change in confinement or conditions  
 2 and under the fourth department decision in the Nonhuman  
 3 Rights Project versus Presti, P-R-E-S-T-I, the habeas corpus  
 4 ruling simply doesn't lie as a matter of law.

5 Lastly, and most recently in 2017 is the  
 6 Lavery II, L-A-V-E-R-Y, roman numeral II is decided in this  
 7 department, the First Department and the holding of that  
 8 case in our view, your Honor, is that no applicable  
 9 precedent supports habeas corpus release for chimpanzees or  
 10 quoting the court now, any animal end quote even the most  
 11 complex of which lack capacity for social or legal duties or  
 12 for legal accountability. Again, a denial of writ of habeas  
 13 corpus. That case went up again, the Court of Appeals denied  
 14 leave.

15 So the Court of Appeals has not taken on any of  
 16 these cases. The Appellate Division's 1, 2, 3 and 4 have  
 17 spoken and the most clear guidance comes to us from the  
 18 First Department, at least at this point.

19 Now, in response to these decisions, 23 state  
 20 supreme court justices have now heard habeas corpus cases  
 21 brought by petitioner in this case for animals whether it be  
 22 a chimpanzee or an elephant. This court is now the 24th  
 23 state supreme court justice who's the 24th judge to hear  
 24 these cases. At some point, we should guess the petitioner  
 25 ought be bound by the prior precedent.

1                   Now, what's their response to these holdings?  
 2                   Well, you've had several days of argument at this point as  
 3                   to the Appellate Division Second Department case, my brother  
 4                   at bar has suggested that they made a mistake. As to  
 5                   Lavery I in the Third Department, there were three things  
 6                   that were said. The habeas corpus is limited to humans as  
 7                   obviously and demonstratively false, that the Third  
 8                   Department simply misunderstood what John Chapman Gray had  
 9                   been saying and that the Third Department ruling was a  
 10                  demonstrably misunderstanding of the law.

11                  We move to the Fourth Department. Counsel  
 12                  suggested the decision was just as wrong as the  
 13                  Second Department, and they simply misunderstood what the  
 14                  case law was.

15                  Now, finally we move to the Appellate Division  
 16                  First Department which provides guidance to this Court, the  
 17                  suggestion was made that the decision derives in part from a  
 18                  gross misunderstanding of social contract theory. The First  
 19                  Department decision derives from a misunderstanding of  
 20                  habeas corpus and the rest of what the court talks about and  
 21                  it talks about a lot of things and it's all dictum.

22                  So there's an explanation for why 23 judges got it  
 23                  wrong and that they're not bound by those precedents. And  
 24                  that's a procedural context we walk into at the beginning of  
 25                  this case.

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Now, how do they handle these arguments that have been brought before this court? Well, we've picked the top six, in our judgement and we've lined them up against the decision from the First Department in Lavery II, that's Exhibit C, your Honor, for the Court's review. And we argue as they have today that Happy is an entity who is extraordinarily cognitive, complex and in a way that's human, very human like. That's the argument before this Court. What the First Department had to say in rejecting that argument was that the gravamen of petitioner's argument that chimpanzees are entitled to habeas release is that the human like characteristics of chimpanzees renders them persons for purposes of CPLR Article 70, the courts specifically rejected that argument in dismissing the habeas corpus petition.

The second major argument here deals with the red dot mirror test, self recognition shows elephants can self-determine, in other words they're extraordinarily cognitively complex, that's the argument here, your Honor. In Lavery II what the court has to say is the assertive cognitive and linguistic capabilities of chimpanzees do not translate to a chimpanzee's capacity or ability like humans to bear legal duties or to be held legally accountable for their actions. Again, rejecting the contention raised here by the petitioner.

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Third item, all New Yorkers have a very large number of writes even though they have no capacity whatsoever for duties. And the Appellate Division said squarely this argument ignores the fact that these are still human beings, members of the human community which is a point this Court raised on a prior day of argument.

Fourth item, the petitioner, we are asking that Happy be moved from the Bronx Zoo to an entirely different kind of facility, to a sanctuary that's just for elephants, the Tennessee Elephants Sanctuary. The Court will recall the first choice is California, the second choice is Tennessee. It really doesn't make any difference. There are obviously accredited places to take elephants, your Honor. That's not the point, the point is there has to be a demonstrable showing of an illegal confinement in order for the court to grant a writ of habeas corpus. And the Appellate Division has already ruled against these on each and every time on these issues. The court went on to say seeking a release to an appropriate primary sanctuary more suited to chimpanzees as opposed to challenging the illegal detainment of Kinko, that was the chimpanzee autonomy does not state a habeas claim. They squarely address this point, your Honor.

Next comes the Pet Trust Law and the Court will recall you had asked some questions of counsel on this

1 your Honor dealing with the Pet Trust Law. That the  
2 argument --

3 THE COURT: Pet?

4 MR. MANNING: The Pet Trust Law, I'm sorry my  
5 diction is poor your Honor, this afternoon.

6 THE COURT: That's fine.

7 MR. MANNING: Thank you.

8 But the Court you may recall your Honor asking a  
9 question, wasn't petitioner's argument somewhat circular on  
10 this issue and we contend that it is circular.

11 The argument here is made that the basis for  
12 creating the right to be a beneficiary to the corpus of a  
13 trust was the legislature. So in giving G that they make  
14 Happy a person under New York law, the beneficiary of a  
15 trust is a person. And I guess the argument goes,  
16 your Honor, if the legislature confers beneficiary status to  
17 a pet, there must be some form of right if they have a right  
18 that equals a person and if it's a person they can get  
19 otherwise. Again, it goes completely in a circle as the  
20 Court had noted.

21 In any event, the Appellate Division, First  
22 Department said clearly petitioner does not cite any sources  
23 indicating that the United States or New York Constitution  
24 were intended to protect nonhuman animals, right to liberty  
25 or that the legislature intended the term person in

1 CPLR Article 70, to expand the availability of habeas  
 2 protection beyond humans. In fact, habeas relief has never  
 3 been found applicable to any animal. That comes directly  
 4 from the First Department, your Honor.

5 The last argument that we selected, is the  
 6 question as to whether or not Happy should have the right to  
 7 liberty protected by a writ of habeas corpus, that is the  
 8 question before you and should depend on the Court's  
 9 assessment, the intrinsic nature of elephants as a species.  
 10 And the Appellate Division had to say to that argument the  
 11 according of any fundamental legal writes to animals  
 12 including entitlement to habeas relief is an issue better  
 13 suited to the legislative process.

14 So, your Honor, it seems clear to us that the  
 15 decisions from the various Appellate Divisions that we've  
 16 briefed the Court on fully, require dismissal of petition on  
 17 the face of the petition. But if the Court were to consider  
 18 the merits of the petition, those decisions provide an  
 19 equally strong basis for dismissing the petition on the  
 20 merits.

21 If I could turn, in fact if I may your Honor some  
 22 of the statements made today, and I'll try to deal with some  
 23 of the more egregious statements or we suggest  
 24 misstatements.

25 We have affidavits from Jim Breheny, we have one

1 from is Patrick Thomas, Dr. Thomas who is here today. We've  
2 pulled him away from his duties at the Bronx Zoo, the  
3 Wild Life Conservation Society and appearances on  
4 Animal Planet they had to do. He has a six page affidavit  
5 that was presented and also we have the affidavit from  
6 the -- from Paul Calle, the veterinarian at the Bronx Zoo,  
7 as well.

8 Let's just take for a moment the veterinarian's  
9 affidavit. Portions is of this affidavit were read to the  
10 Court suggesting clearly that either these folks didn't know  
11 anything about elephants or didn't know anything about  
12 Happy, in particular. I know the Court will read the  
13 affidavits in their entirety before making a decision but if  
14 I could suggest there's a few paragraphs that were  
15 overlooked in the --

16 THE COURT: On which one?

17 MR. MANNING: Okay, take a look, your Honor, if I  
18 would on affidavit of Paul Kelly.

19 THE COURT: And that one is --

20 MR. MANNING: That would be Number 3, your Honor.

21 THE COURT: Yes.

22 MR. MANNING: And it's suggested that he doesn't  
23 know something about elephants or that he's not given any  
24 care in particular to Happy. But if all you have to do is  
25 just take a look at Paragraph 13 where it says based upon my

1 responsibilities in providing veterinarian care for almost  
2 30 years to the around animals at the Bronx Zoo including  
3 Happy and to the best of my knowledge Happy is currently  
4 healthy and well adapted to her present surroundings.

5 Well, obviously, Dr. Calle has been attending to  
6 Happy and it says so under oath in his affidavit. Similarly,  
7 if you look at Paragraph 14 it says during my experience  
8 with Happy, she has become very distressed during short  
9 moves from one area of the Bronx Zoo to the other. Well of  
10 course he's got experience with Happy, it says so in his  
11 affidavit in clear terms if it isn't apparent from the rest  
12 of the affidavit.

13 Secondly, let me turn to Dr. Thomas's affidavit  
14 and the Court has some questions about the standards  
15 relating to the AZA standards or the Animal Welfare Act, the  
16 Federal Animal Welfare Statute. In Dr. Thomas's affidavit,  
17 he goes on to describe with great specificity the AZA  
18 standards including Standard 1.4 related facilities. He  
19 attached those standards to his affidavit and they are there  
20 for the Court's review. He goes in great detail to outline  
21 how the Bronx Zoo and the Wild Life Conservation Society  
22 meet those standards. And in oral argument today, counsel  
23 really acknowledged that there's been no finding that any of  
24 those standards have been not met by the zoo and there's  
25 absolutely no illegality whatsoever in the zoo having Happy



1 within the zoo. There's been no violation of the standards,  
2 none has been suggested.

3 And the affidavit from Professor Poole, Dr. Poole  
4 was quoted at great length when you get all done with it  
5 she's not seen Happy. These are people who work with Happy  
6 on a regular basis and it's apparent in the affidavit that  
7 they were work with Happy on a regular basis. For example,  
8 Paragraph 30 on Patrick Thomas's affidavit. Patrick  
9 Thomas's affidavit is Exhibit Number 9, your Honor.

10 THE COURT: Yes.

11 MR. MANNING: Courtesy copies have been provided by  
12 counsel.

13 THE COURT: Yes.

14 MR. MANNING: Paragraph 30, based upon my 40 years  
15 of experience and responsibilities in supervising the care  
16 of animals at the Bronx Zoo including Happy and to the best  
17 of my knowledge Happy is currently healthy and well adapted  
18 to her surroundings at the Bronx Zoo.

19 So it's obvious from Dr. Thomas's affidavit that  
20 he's had personal experience with Happy, the elephant.

21 Similar, if you take a look at the supplemental  
22 affidavit of Mr. Breheny, which is --

23 THE COURT: Two.

24 MR. MANNING: Item 2, thank you.

25 If you take a look at Paragraph 18 on page four,

1 he outlines his observations relating to Happy, the  
 2 elephant, based upon his past experiences with Happy. And  
 3 I'll finish the sentence, the Bronx Zoo knows that she  
 4 becomes particularly distressed by even short moves within  
 5 the zoo.

6 And Paragraph 29 of Jim Breheny's affidavit, he  
 7 goes on to say based upon my expertise, decades long  
 8 experience with Happy and the foregoing, it is my  
 9 professional opinion that Happy's interest would not be best  
 10 served at this time by moving her to an animal sanctuary.

11 Well, of course he's got experience. He's got  
 12 decades long experience and it's outlined under oath in his  
 13 affidavit. So to suggest that the people of the Bronx Zoo  
 14 know anything about elephants or they don't have any  
 15 experience with Happy means that someone hasn't read  
 16 completely the affidavits. And I suggest the affidavits are  
 17 very clear on their face, that he they both understand how  
 18 to care for the elephants and that they're caring very well  
 19 for the elephant and there's been no criticism of the care  
 20 of the elephant by anybody, at this point, save observations  
 21 based on a video someone watched and never took a look at  
 22 the animal itself.

23 So that's as far as I want to spend time reading  
 24 the Court affidavits because the Court has copies of them.

25 There's been no evidence that Happy is brutally

1 unhappy. And in fact, I suggest based on the record  
 2 developed, Happy is happy where she is and the only  
 3 competent proof this Court has is that Happy is in fact  
 4 happy where she is.

5 If I could turn to a couple other points,  
 6 your Honor and I'm inclined to stick to the major points.  
 7 You know, one of the things that we watched here is kind of  
 8 a bait and switch when it comes to the legal analysis.  
 9 Initially, this Court was presented by a petitioner with the  
 10 argument that this case is only about Happy the elephant. In  
 11 fact, I'm quoting now from the transcript that this specific  
 12 elephant, Happy, is entitled to a writ of habeas corpus,  
 13 that's on page 35 of the transcript. And the repeated  
 14 phrase was that the case in front of the Court is indeed  
 15 solely on behalf of an imprisoned, illegally detained  
 16 elephant named Happy and that's all this case is about.

17 Well, to emphasize that point they've talked about  
 18 Happy being the first elephant in the world to pass the  
 19 mirror self-recognition test and that Happy was the only one  
 20 that passed that test. In response to your Honor's question  
 21 at that time -- and this happened some time ago so I'll lay  
 22 it out, your Honor asked if Happy is the rare elephant in  
 23 the whole population of elephants to recognize its  
 24 reflection in a mirror and counsel admitted that other  
 25 elephants have actually done the same thing. That caused

1 NRP, the petitioner, to reverse course completely and assert  
 2 that the answer to the question of whether Happy has the  
 3 right to liberty protected by habeas corpus will depend on  
 4 our assessment of the intrinsic nature of nonhuman animals  
 5 as a species. So they've gone from Happy the elephant in a  
 6 habeas proceedings now to all of a sudden a species wide  
 7 determination, which doesn't belong in any kind of habeas  
 8 corpus proceedings.

9 The expert affidavit and counsel was kind to quote  
 10 at length from one of them but there are a series of them,  
 11 your Honor, those affidavits, the same affidavits were  
 12 offered in Connecticut, same affidavits except for the  
 13 supplemental affidavit of Professor Poole. And in  
 14 Connecticut, the affidavits also didn't mention Happy, they  
 15 were basically the same affidavit submitted for three  
 16 different elephants. So the same attack was made species  
 17 wide in the Connecticut court.

18 The trial court in Connecticut dismissed the  
 19 petition for habeas corpus as frivolous on its face. On  
 20 appeal, the Connecticut Court of Appeals highlighted the  
 21 same issue as your Honor highlighted in one of the earlier  
 22 proceedings here. And here's what the Connecticut Appellate  
 23 Court said and this is from the Connecticut Court of Appeals  
 24 and I'm quoting now it's a lengthy quote but it goes right  
 25 to the heart of the matter, your Honor.

1 THE COURT: Okay.

2 And what's the name of the case?

3 MR. MANNING: The name of the case, your Honor, is  
4 Nonhuman Rights Project.

5 THE COURT: Right.

6 MR. MANNING: Same petitioner, versus  
7 R.W. Commerford & Sons, and the Connecticut Appeals Court  
8 citation is 192 Conn. App. 36, it's an August 20, 2019  
9 decision and I'm quoting from that decision, petitioner --  
10 and the petitioner there is the same petitioner that appears  
11 in court today, your Honor. Petitioner asserts that this  
12 case turns on whether the elephants are persons solely for  
13 the purpose of the common law right to liberty that is  
14 protected by the common law of habeas corpus, the same  
15 contention made before your Honor. In its view, petitioner's  
16 view, the elephants are entitled to a writ of habeas corpus  
17 as a matter of common law liberty because the writ of habeas  
18 corpus is deeply rooted in our cherished ideas of individual  
19 autonomy and free choice.

20 It essentially invites this court, the Connecticut  
21 court, to expand existing common law. This case, however, is  
22 much more than what petitioner purports it to be. Not only  
23 would this case require us to recognize elephants as persons  
24 for purposes of habeas corpus, this recognition essentially  
25 would require us to upend this state's legal system to allow

1 highly intelligent if not all nonhuman animals the right to  
2 bring suit in a court of law. At this juncture, we decline  
3 to make such sweeping pronouncements when there exists so  
4 little authority for doing so.

5 And in Connecticut, your Honor, Connecticut didn't  
6 have the benefit of four Appellate Division decisions as  
7 this court has laying it out more clearly.

8 THE COURT: And a copy of that decision is in your  
9 papers or no?

10 MR. MANNING: If we did not submit it previously,  
11 your Honor, we'll submit it if I may to the Court.

12 THE COURT: Okay.

13 (Whereupon, a brief pause was held in the  
14 proceedings.)

15 (Whereupon, the referred to exhibit was handed to  
16 the Court.)

17 MR. MANNING: You know, given these  
18 inconsistencies in position, claiming the matter is about  
19 Happy but failing to submit any affidavits actually about  
20 Happy in asserting Happy has a right to liberty and equality  
21 but then indicating that Happy be put in a sanctuary of  
22 petitioner's choosing, you know one must really ask whose  
23 interests our petitioner is pursuing and are those interests  
24 worth upending settled New York law.

25 You know, the petitioner published this 2019

1 annual report online a few days ago, listing its first  
 2 objective as to change the common law status of great apes,  
 3 elephants, dolphins and whales from mere things which lack  
 4 the capacity to possess any legal right to legal persons who  
 5 possess such fundamental rights as bodily liberty and bodily  
 6 integrity. And I suggest to you, based on the Lavery  
 7 decision, your Honor, that's an appropriate legislative  
 8 agenda. It's not an appropriate judicial agenda.

9           Petitioner has previously argued to this Court  
 10 that he believes that it can continue to litigate in courts  
 11 of New York so long as there are animals that petitioner may  
 12 select and draft as their so called clients. They've now  
 13 been up and down the appellate ladder in four departments at  
 14 this point, your Honor, and at some point they need to be  
 15 bound by the ruling as any other citizen would be.

16           In contrast with the petitioner, the Wildlife  
 17 Conservation Society stated mission is to save wildlife in  
 18 wild places worldwide through science, conservation, action  
 19 education and inspiring people to value each. The Wildlife  
 20 Conservation Society and the Bronx Zoo have cared for Happy  
 21 and looked after her best interest for 40 years. At the  
 22 Bronx Zoo, Happy has caregivers familiar with her needs and  
 23 received expert attention and medical care.

24           Now, even though the welfare for Happy should not  
 25 even be an issue in this case, Happy has been provided for

1 at the Bronx Zoo in an excellent fashion and her welfare is  
 2 not in doubt in this case. We went through the affidavits,  
 3 you have them your Honor, they've been challenged by counsel  
 4 admittedly but the Court certainly is free to take a look at  
 5 them but at this point we think it is pretty clear that we  
 6 have demonstrated that there's no illegality in the  
 7 so-called detention of Happy the elephant at the Bronx Zoo,  
 8 that she is well cared for there and that the four  
 9 department decisions that we have presented to the Court, in  
 10 particular the First Department decision favor a dismissal  
 11 of the petition on its face your Honor. And if the Court  
 12 reaches the merits of the petition, it requires a straight  
 13 denial of the petition as a matter of law.

14 Thank you, your Honor.

15 THE COURT: Thank you, counsel.

16 Does anyone else want to speak on behalf of the  
 17 respondent or no, you will rest on the argument?

18 You rest on the argument of counsel?

19 MR. MANNING: Thank you, your Honor.

20 THE COURT: Mr. Wise, you have a brief response or  
 21 not? You rest on --

22 MR. WISE: Very brief. We are not going to  
 23 reargue, obviously we have a response that's much greater  
 24 length to everything my brother said. We've taken good  
 25 notes, we have wonderful notes, minimum most I just wanted



1 to pick up a few things that we didn't talk about.

2 First thing is when I talked about the Leider case  
3 last time --

4 THE COURT: Yes.

5 MR. WISE: -- I noted it had been overturned by the  
6 California supreme court on another ground. It was the  
7 judge in the superior court in L.A. issued an order against  
8 the city, an injunction against the city and the supreme  
9 court overturned it on a procedural ground saying in  
10 California that you could not issue such an order against a  
11 city. It did not overturn it on the merits but on that  
12 procedural ground. I just wanted to say that.

13 The Commerford case that my brother was reading  
14 about the case that came down in August, in Connecticut.

15 THE COURT: Yes.

16 MR. WISE: That is interesting. When we argued that  
17 in the lower court, the lower court dismissed the case  
18 because unlike New York they said we lack standing because  
19 we had not claimed that we had a -- we had a relationship, a  
20 preexisting relationship with the elephant. So we appealed  
21 that on that ground. And then what the Connecticut  
22 Appellate Court did was say we're going to reach the merits  
23 without you having gotten a hearing on the merits below and  
24 without you briefing it with us. And so they ruled against  
25 us.

1                   And it just so happens that on Wednesday, I'm  
2 going back in front of the Connecticut Appellate Court  
3 saying you should not be paying attention to that case  
4 because in Connecticut, at least, the Supreme Court of  
5 Connecticut is very clear that when you're looking at  
6 standing you may not go to the merits which is what they  
7 did. So we're hoping to persuade the second appellate court  
8 that the first appellate court was wrong in not -- in  
9 reaching the merits without giving us the chance to actually  
10 brief and argue that. So we shall see what happens there.

11                   THE COURT: Okay.

12                   MR. WISE: And the -- that's all I have to say.

13                   And I am grateful for your attention these last  
14 three days and I'm very grateful for your questions, thank  
15 you.

16                   THE COURT: Thank you, counsel. The decision will  
17 be reserved, at this time. You will get a copy of the  
18 decision. Thank you so much, counsel.

19                   MR. WISE: Your Honor, if I could just mention one  
20 thing.

21                   Can we keep the orders that they not transfer  
22 Happy out of the state until the court makes a decision?

23                   THE COURT: Oh, I believe it's still in effect.

24                   MR. MANNING: We understand it's in place,  
25 your Honor, pending your decision.

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THE COURT: Right. Thank you so much everyone.

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This is certified to be a true and accurate transcript from my stenographic notes.

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SHONELL N. MABRY  
Senior Court Reporter

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