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FRESNO'S CHAFFEE ZOO
13 CORPORATION and JON FORREST DOHLIN

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN FRANCISCO**
17

18 NONHUMAN RIGHTS PROJECT, INC.,
19 on behalf of Amahle, Nolwazi, and Vusmusi,
20 individuals,

21 Petitioner,

22 v.

23 FRESNO'S CHAFFEE ZOO
CORPORATION, and JON FORREST
DOHLIN, in his official capacity as Chief
24 Executive Officer & Zoo Director of the
Fresno Chaffee Zoo,
25

26 Respondents.
27
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Case No. CPF-22-517751

**RESPONDENTS' EX PARTE
APPLICATION FOR AN ORDER
TRANSFERRING MATTER TO FRESNO
COUNTY SUPERIOR COURT**

(Cal Rules of Court, Rule 4.552(b))

Date: June 14, 2022
Time: 11:00 a.m.
Dept.: 302

1 **EX PARTE APPLICATION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE that on Tuesday, June 14, 2022 at 11:00 a.m. in Department 302
4 of the above referenced court, located at 400 McAllister Street, San Francisco, California,
5 Respondents Fresno’s Chaffee Zoo Corporation and Jon Forrest Dohlin, in his official capacity as
6 Chief Executive Officer & Zoo Director of the Fresno Chaffee Zoo, will, and hereby do, apply ex
7 parte for an order transferring Petitioner’s May 3, 2022 Petition for A Common Law Writ of
8 Habeas Corpus to the Fresno County Superior Court. (Cal. Rules of Court, rule 4.552(b).) In the
9 alternative, if the Court believes that proceeding ex parte is not appropriate for this particular
10 application, Respondents request that the Court accept this application as a motion and set a
11 briefing schedule and hearing on the transfer application at the Court’s earliest convenience.

12 This transfer application is made on the ground that the elephants that are the subject of the
13 petition live at the Fresno Chaffee Zoo, which is located in Fresno County. (See Cal. Rules of
14 Court, rule 4.552(b)(2)(B) [“Transfer may be ordered . . . If the petition challenges the conditions
15 of an inmate’s confinement, it may be transferred to the county in which the petitioner is
16 confined.”].) Writs of habeas corpus, and the related Rules of Court, have no application to
17 elephants residing in a zoo. Nonetheless, attempting to connect the most relevant principles to this
18 case, the petition generally challenges the conditions of three elephants’ nominal confinement in
19 Fresno County. The petition should therefore be transferred to the Fresno County Superior Court.

20 Alternatively, this transfer application is made on the ground that the petition would be
21 more properly heard in the Fresno County Superior Court. That court has jurisdiction over the
22 county in which the elephants, the zoo, and the Respondents are located, and it presides in the
23 community served by the Respondents, the community that most stands to lose from the petition.
24 (*Id.* rule 4.552(b)(2) [“If the superior court in which the petition is filed determines that the matter
25 may be more properly heard by the superior court of another county, it may . . . without first
26 determining whether a prima facie case for relief exists, order the matter transferred to the other
27 county.”]; accord *Griggs v. Superior Court* (1976) 16 Cal.3d 341, 347 [noting that courts are
28 vested with discretion to transfer a petition where there is substantial reason to do so].)

1 This application is based on the instant application, the attached memorandum of points
2 and authorities, the Declaration of David C. Casarrubias (“Casarrubias Dec.”) filed herewith, the
3 documents and pleadings on file in this action, any argument made at the hearing on this
4 application, and any other matters that are properly before this Court.

5 Pursuant to California Rules of Court, rule 3.1203(a), Respondents provided notice of this
6 application to Petitioner by 10 a.m. on Monday, June 13, 2022. (Casarrubias Dec. at p. 2 ¶ 2, Ex.
7 A.) By the time of the filing of this application, counsel for Petitioner indicated that they opposed
8 the transfer request, and that they would prefer that the matter be set on a noticed motion schedule,
9 or after June 28, 2022. (*Id.* at p. 2 ¶ 3; Cal. Rules of Court, rule 3.1204(a)(2).)

10 DATED: June 13, 2022 HANSON BRIDGETT LLP

11
12 By: s/ David C. Casarrubias
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Over 180 miles away from San Francisco, there are three elephants in Fresno County that
4 live at the Fresno Chaffee Zoo. The elephants have no ties to San Francisco, nor does the zoo, the
5 Petitioner Nonhuman Rights Project, Inc., or the Respondents. Yet, Nonhuman Rights seeks to
6 burden this Court with a specious petition for writ of habeas corpus, purportedly on the elephants’
7 behalf, seeking their discharge from their alleged unlawful imprisonment at the zoo. Petitioner’s
8 blatant forum shopping should be rebuffed. (*Appalachian Ins. Company v. Superior Court* (1984)
9 162 Cal.App.3d 427, 438 [“California Courts do not throw their doors wide open to forum
10 shopping.”].) That is particularly true where, as here, it is apparent that the matter may be more
11 properly heard by the Fresno County Superior Court because the petition generally challenges the
12 conditions of the elephants’ nominal confinement in Fresno County, and Fresno County is also
13 where the zoo, the Respondents, and the community they serve are located. Consistently, all of the
14 persons who will participate in the matter are more efficiently available to the Fresno Court which
15 is better situated to conduct a hearing on the petition.

16 The Court should grant this application and order the matter transferred to the court where
17 this petition should be resolved: the Fresno County Superior Court. In the alternative, if the Court
18 believes that proceeding ex parte is not appropriate for this particular application, Respondents
19 request that the Court accept this application as a motion and set a briefing schedule and hearing
20 for the transfer application at the Court’s earliest convenience.

21 **II. LEGAL STANDARD FOR EX PARTE RELIEF**

22 In requesting ex parte relief, “[a]n applicant must make an affirmative factual showing in a
23 declaration containing competent testimony based on personal knowledge of irreparable harm,
24 immediate danger, or any other statutory basis for granting ex parte relief.” (Cal. Rules of Court,
25 rule 3.1202(c).) Relevant to this application, seeking ex parte relief is permitted where a court may
26 act on its own motion. (6 Witkin, Cal. Proc. 6th, Ch. VII PWT § 65, (2)(a) (2022).)

27 As a threshold matter, the superior court in which a habeas corpus petition is filed must
28 determine, based on the allegations of the petition, whether the matter should be heard there or in

1 the superior court of another county. (Cal. Rules of Court, rule 4.552(b)(1).) Based on that
2 determination, the court then decides whether to retain jurisdiction in the matter or order the
3 matter transferred to the proper county. (*Id.* rule 4.552(b)(2).) Here, because the Court may act on
4 its own motion to transfer the matter to the Fresno County Superior Court, Respondents’ request
5 for ex parte relief is proper.

6 Separately, habeas corpus proceedings require speedy adjudication. (E.g. Cal. Rules of
7 Court, rule 4.551(3)(A) [requiring a ruling on the petition within 60 days after it is filed].) Due to
8 the speedy nature of the proceedings, there is a potential of irreparable harm if the Court proceeds
9 to adjudicate the petition without first considering whether it belongs in this Court or in Fresno
10 County. (Cal. Rules of Court, rule 4.552(b)(1).) Accordingly, the Court should consider
11 Respondents’ transfer application on an ex parte basis.

12 III. ARGUMENT

13 Nonhuman Rights brings its writ of habeas corpus for three elephants pursuant to Penal
14 Code sections 1473 *et seq.*, and California Rules of Court, rules 4.550 *et seq.* “Although any
15 superior court has jurisdiction to entertain and adjudicate a petition for the writ of habeas corpus, it
16 does not follow that it should do so in all instances.” (*Griggs v. Superior Court* (1976) 16 Cal.3d
17 341, 347 (*Griggs*)). Generally, a petition should be heard and resolved in the court in which it is
18 filed, but there are exceptions that may warrant the transfer of the petition to another court. (Cal.
19 Rules of Court, rule 4.552.) First, “[i]f the petition challenges the conditions of an inmate’s
20 confinement, it may be transferred to the county in which the petitioner is confined.” (*Id.* rule
21 4.552(b)(2)(B).) Second, alternatively, “[i]f the superior court in which the petition is filed
22 determines that the matter may be more properly heard by the superior court of another county” it
23 may be transferred to that county. (*Id.*, rule 4.552(b)(2).)

24 As explained below, either of these exceptions apply to this proceeding. To the extent the
25 principles of habeas corpus can be applied to this case at all, the conditions of the elephants’
26 nominal confinement, the elephants, the zoo, the Respondents, and the community they serve are
27 all located in Fresno County. Accordingly, Respondents’ transfer application should be granted.

1 **A. The Court should transfer the petition to the Fresno County Superior Court because**
2 **the petition generally challenges the conditions of the nominal confinement of the**
3 **elephants in the Fresno Chaffee Zoo located within Fresno County.**

4 “If the challenge is to conditions of the inmate’s confinement, then the petition should be
5 transferred to the superior court of the county wherein the inmate is confined if that court is a
6 different court from the court where the petition was filed.” (*Griggs, supra*, 16 Cal.3d at p. 347;
7 accord, California Rules of Court, rule 4.552(b)(2)(B).) Here, of course, there are no “inmates”
8 and no confinement in the sense used by the Penal Code or Rules of Court. Still, accepting
9 Petitioner’s theory for the sake of procedural analysis, the petition can best be understood as
10 challenging the condition of the elephants’ nominal confinement. As stated in the petition:

11 The elephants’ imprisonment at the Fresno Zoo deprives them of their physical and
12 psychological needs, including the need to exercise autonomy. “Their lives are
13 nothing but a succession of boring and frustrating days, damaging to their bodies and
14 minds, and punctuated only by interaction with their keepers.” There is no
15 opportunity for the elephants to use their extraordinary complex cognitive capacities
16 to explore, appropriately forage, problem solve, communicate over distance, or
17 employ their wide-ranging vocalizations. The elephants spend at least half of each
18 day (if not more) in a barn standing on concrete, and when allowed outside they are
19 unable to walk more than 100 yards in any direction. Their acute hearing is
20 bombarded by continuous auditory disturbances “from major transportation arteries
21 on all four sides of their enclosure.”

22 (Pet., pp. 115:11-116:3, footnotes omitted.) These allegations confirm that the case belongs in
23 Fresno County.

24 Preemptively, Nonhuman Rights contends that rule 4.552(b)(2)(B) does not apply because
25 it is not challenging the conditions of the elephants’ confinement, but rather the legality of the
26 imprisonment itself, and seeks the discharge of the elephants from the zoo. (Pet., p. 19:6-10.) This
27 argument is belied by the over 100 page petition that devotes a considerable amount time to
28 explain the elephants’ conditions of confinement, and arguing why they are, in Nonhuman Rights’
view, unacceptable. (E.g. Pet, pp. 55-59 [alleging that zoo captivity is physically and
psychologically harmful to elephants], 59-62 [alleging that the Fresno Zoo is an unacceptable
place for elephants], 62-64, 112-116 [suggesting a different place to confine the elephants with
allegedly better conditions, i.e. an elephant sanctuary].)

Because the petition invariably challenges the conditions of the elephants’ nominal
confinement in Fresno County (see Pet., p. 15:3-11 [alleging that the elephants are unlawfully

1 imprisoned at the Fresno Chaffee Zoo in the City of Fresno, which is in Fresno County]), rule
2 4.552(b)(2)(B) applies and the Court has discretion to rely on it. Thus, the petition can and should
3 be transferred to the Fresno County Superior Court.

4 **B. Alternatively, the Court should transfer the petition to the Fresno County Superior**
5 **Court because the petition would be more properly heard in Fresno County.**

6 In the alternative, the Court should grant Respondents’ transfer application because the
7 petition would be more properly heard in the Fresno County Superior Court which has jurisdiction
8 over the county in which the elephants, the zoo, and the Respondents are located. (*Id.* rule
9 4.552(b)(2) [“If the superior court in which the petition is filed determines that the matter may be
10 more properly heard by the superior court of another county, it may . . . without first determining
11 whether a prima facie case for relief exists, order the matter transferred to the other county.”];
12 accord *Griggs, supra*, 16 Cal.3d at p. 347 [noting that courts are vested with discretion to transfer
13 a petition where there is substantial reason to do so].) In *Griggs*, the Court gave some examples of
14 when there might be a substantial reason to transfer a petition: A trial court “should nevertheless
15 not be precluded from transferring the petition should it appear, inter alia, that an evidentiary
16 hearing is necessary and that the persons who will participate therein are more efficiently available
17 to another court or that such other court is better situated to conduct a hearing.” (*Griggs, supra*, 16
18 Cal.3d at p. 347.)

19 It remains to be seen if an evidentiary hearing will be necessary because neither the return
20 nor traverse have been filed. (E.g. *People v. Romero* (1994) 8 Cal.4th 728, 739-740 [“(If) the
21 return and traverse reveal that petitioner’s entitlement to relief hinges on the resolution of factual
22 disputes, then the court should order an evidentiary hearing.”].) However, if the petition proceeds
23 on the merits, and it is determined that an evidentiary hearing is necessary, the key witnesses,
24 elephants, evidence, and the zoo itself—should a site visit to the zoo to observe the elephants be
25 desired—are all in Fresno County. The Fresno County Superior Court is 2.8 miles away from the
26 Fresno Chaffee Zoo, while the San Francisco Superior Court is 184 miles away. As is apparent, it
27 would be more convenient for the matter to proceed in the county in which the elephants and the
28 zoo are located.

1 Finally, the Court should observe that the Fresno County Superior Court presides over the
2 community served by Respondents; the community that most stands to lose from the petition. The
3 people of Fresno have a strong interest in their zoo. Just last week, Fresno voters overwhelmingly
4 supported passage of Measure Z, extending a 2004 sales tax that funds improvements at the
5 Fresno Chaffee Zoo. (Montalvo, *Fresno votes to ‘Keep Our Zoo,’ as Measure Z cruises with more*
6 *than 80% approval*, The Fresno Bee, (June 8, 2022) [https://www.fresnobee.com/news/politics-
8 government/election/local-election/article262278632.html](https://www.fresnobee.com/news/politics-
7 government/election/local-election/article262278632.html) (last accessed June 13, 2022); see also,
9 *Measure Z: 84% vote ‘Yes’ on extending sales tax for Fresno zoo improvements*, abc30-KFSN
10 (June 8, 2022) <https://abc30.com/fresno-chaffee-zoo-measure-z-taxes-sales-tax/11937559/> (last
11 accessed June 13, 2022).) The people of Fresno sent a clear message that the zoo is a popular, well
12 respected, local institution worthy of further investment. Consistently, it should be the Fresno
13 Court, and not a distant San Francisco Court, that should preside over a petition that so closely
14 affects this community asset.

15 Under the unique facts of this case, there is a substantial reason to transfer the petition to
16 the Fresno County Superior Court where the matter may be more properly heard.

17 **IV. CONCLUSION**

18 This petition should have originally been filed in the Fresno County Superior Court where
19 all they key players are located, human and non-human alike. Petitioner knows that, but apparently
20 believed it could secure a more favorable outcome for the elephants in San Francisco. That
21 calculus reflects poorly on the already dubious merits of Petitioner’s case, but also highlights the
22 import of the trial courts’ discretion to transfer jurisdiction in this instance. This matter belongs in
23 Fresno County.

24 Accordingly, Respondents respectfully request that the Court grant this application and
25 issue an order transferring the matter to the Fresno County Superior Court. Alternatively, if the
26 Court believes that proceeding ex parte is not appropriate, Respondents request that the Court set a
27 briefing schedule and hear this transfer application at the Court’s earliest convenience.

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DATED: June 13, 2022

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