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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,
individuals,

20 Petitioner,

21 v.

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

25 Respondents.
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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

06/14/2022

Clerk of the Court

BY: BOWMAN LIU

Deputy Clerk

Case No. CPF-22-517751 **22CECG 02471**

**RESPONDENTS' NOTICE OF MOTION
AND MOTION FOR AN ORDER
TRANSFERRING MATTER TO FRESNO
COUNTY SUPERIOR COURT**

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

Date: July 11, 2022

Time: 9:30 a.m.

Dept.: 302

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

2 PLEASE TAKE NOTICE that on Monday, July 11, 2022 at 9:30 a.m. in Department 302
3 of the above referenced court, located at 400 McAllister Street, San Francisco, California,
4 Respondents Fresno's Chaffee Zoo Corporation and Jon Forrest Dohlin, in his official capacity as
5 Chief Executive Officer & Zoo Director of the Fresno Chaffee Zoo, will, and hereby do, move this
6 Court for an order transferring Petitioner's May 3, 2022 Petition for A Common Law Writ of
7 Habeas Corpus to the Fresno County Superior Court. (Cal. Rules of Court, rule 4.552(b).)

8 This motion is made on the ground that the elephants that are the subject of the petition
9 live at the Fresno Chaffee Zoo, which is located in Fresno County. (See Cal. Rules of Court, rule
10 4.552(b)(2)(B) ["Transfer may be ordered . . . If the petition challenges the conditions of an
11 inmate's confinement, it may be transferred to the county in which the petitioner is confined."].)
12 Writs of habeas corpus, and the related Rules of Court, have no application to elephants residing
13 in a zoo. Nonetheless, attempting to connect the most relevant principles to this case, the petition
14 generally challenges the conditions of three elephants' nominal confinement in Fresno County.
15 The petition should therefore be transferred to the Fresno County Superior Court.

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

25 This motion is based on the instant notice of motion, the attached memorandum of points
26 and authorities, the documents and pleadings on file in this action, any argument made at the
27 hearing on this motion, and any other matters that are properly before this Court.

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1 DATED: June 14, 2022

HANSON BRIDGETT LLP

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By: s/ David C. Casarrubias

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CORPORATION and JON FORREST DOHLIN

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 motion and order the matter transferred to the court where this
17 petition should be resolved: the Fresno County Superior Court.

18 **II. LEGAL STANDARD**

19 Attempting to connect the most relevant procedural principles to this case, the superior
20 court in which a habeas corpus petition is filed must determine, based on the allegations of the
21 petition, whether the matter should be heard there or in the superior court of another county. (Cal.
22 Rules of Court, rule 4.552(b)(1).) Based on that determination, the court then decides whether to
23 retain jurisdiction in the matter or order the matter transferred to the proper county. (*Id.* rule
24 4.552(b)(2).)

25 **III. ARGUMENT**

26 Nonhuman Rights brings its writ of habeas corpus for three elephants pursuant to Penal
27 Code sections 1473 *et seq.*, and California Rules of Court, rules 4.550 *et seq.* "Although any
28 superior court has jurisdiction to entertain and adjudicate a petition for the writ of habeas corpus, it

1 does not follow that it should do so in all instances.” (*Griggs v. Superior Court* (1976) 16 Cal.3d
2 341, 347 (*Griggs*)). Generally, a petition should be heard and resolved in the court in which it is
3 filed, but there are exceptions that may warrant the transfer of the petition to another court. (Cal.
4 Rules of Court, rule 4.552.) First, “[i]f the petition challenges the conditions of an inmate’s
5 confinement, it may be transferred to the county in which the petitioner is confined.” (*Id.* rule
6 4.552(b)(2)(B).) Second, alternatively, “[i]f the superior court in which the petition is filed
7 determines that the matter may be more properly heard by the superior court of another county” it
8 may be transferred to that county. (*Id.*, rule 4.552(b)(2).)

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

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

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

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

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

1 Fresno County because the petition generally challenges conditions of confinement.

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

11 Because the petition invariably challenges the conditions of the elephants' nominal
12 confinement in Fresno County (see Pet., p. 15:3-11 [alleging that the elephants are unlawfully
13 imprisoned at the Fresno Chaffee Zoo in the City of Fresno, which is in Fresno County]), rule
14 4.552(b)(2)(B) applies and the Court has discretion to rely on it. Thus, the petition can and should
15 be transferred to the Fresno County Superior Court.

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

18 In the alternative, the Court should grant Respondents' transfer motion because the petition
19 would be more properly heard in the Fresno County Superior Court which has jurisdiction over the
20 county in which the elephants, the zoo, and the Respondents are located. (*Id.* rule 4.552(b)(2) ["If
21 the superior court in which the petition is filed determines that the matter may be more properly
22 heard by the superior court of another county, it may . . . without first determining whether a
23 prima facie case for relief exists, order the matter transferred to the other county."]; accord *Griggs*,
24 *supra*, 16 Cal.3d at p. 347 [noting that courts are vested with discretion to transfer a petition where
25 there is substantial reason to do so].) In *Griggs*, the Court gave some examples of when there
26 might be a substantial reason to transfer a petition: A trial court "should nevertheless not be
27 precluded from transferring the petition should it appear, inter alia, that an evidentiary hearing is
28 necessary and that the persons who will participate therein are more efficiently available to

1 another court or that such other court is better situated to conduct a hearing.” (*Griggs, supra*, 16
2 Cal.3d at p. 347.)

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

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

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

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IV. CONCLUSION

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

This matter belongs in Fresno County. Accordingly, Respondents respectfully request that the Court grant this motion and issue an order transferring the matter to the Fresno County Superior Court.

DATED: June 14, 2022

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PROOF OF SERVICE

NonHuman Rights Project, Inc., on behalf of Amahle, Nolwazi, and Vusmusi, individuals,

v.

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

San Francisco Superior Court, Case No. CPF-22-517751

STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1676 N. California Blvd., Suite 620, Walnut Creek, CA 94596.


On June 14, 2022, I served true copies of the following documents described as:
**RESPONDENTS' NOTICE OF MOTION AND MOTION FOR AN ORDER
TRANSFERRING MATTER TO FRESNO COUNTY SUPERIOR COURT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I served a copy of the documents to be sent from e-mail address destebanez@hansonbridgett.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 14, 2022, at San Bruno, California.


Debbie Estebanez

SERVICE LIST

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