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Via Overnight Delivery

July 26, 2021

Clerk of the Court
John P. Asiello
New York State Court of Appeals
20 Eagle Street
Albany, New York 12207

Re: *Matter of Nonhuman Rights Project v. Breheny* (APL-2021-00087)

Dear Clerk Asiello:

I am an attorney of record for Petitioner-Appellant, the Nonhuman Rights Project, Inc. (“NhRP”), in the above-captioned appeal and beg the Court’s indulgence to briefly respond to the four points raised in Attorney Manning’s July 22, 2021 letter, in which Respondents-Respondents assert that the NhRP’s reasons for a calendar preference are either “false or misleading.”

First, Respondents-Respondents agree that habeas corpus actions must be heard quickly. Contrary to Respondents-Respondents’ contention, however, the reasons for Happy’s protracted three-year litigation are irrelevant to whether this Court should hear this case in the November 2021 session, which is why I did not mention those reasons in my previous letter.

Should this Court wish to better understand the timeline of Happy’s case, it is essential to address Respondents-Respondents’ false and misleading statements in that regard. The NhRP’s decision to file Happy’s habeas corpus petition in Orleans County Supreme Court was in accordance with CPLR article 70, as demonstrated by the fact that the presiding justice issued the requested Order to Show Cause and made it returnable in Orleans County (A-323-25). *See* CPLR 7002(b)(3) and 7004(c). However, rather than have the Orleans County Supreme Court decide the case as

required by article 70, Respondents-Respondents moved to change venue, which was erroneously granted, thereby causing an unnecessary and extended delay. Further, the NhRP's motions to strike before the Bronx County Supreme Court were not denied because Respondents-Respondents' submissions were "lawful and proper" but because the court determined that those motions were "academic or moot" (A-22).

Second, the NhRP's statement that it "demonstrated through uncontroverted expert affidavits that Happy . . . suffers terribly every day of her imprisonment" is true and based upon two expert affidavits provided by world-renowned elephant expert Dr. Joyce Poole, who discussed the psychological harms of holding elephants in captivity as well as Happy's plight specifically. (A-243, para. 4; A-474, para. 6; A-475, paras. 9-10; A-476, para. 11; A-478, paras. 19-20, 22; A-479, paras. 23-24, 28; A-480, paras. 30-31). Respondents-Respondents' affiants cannot controvert Dr. Poole's statements because, not being elephant experts, they are unqualified to opine on Happy's psychological well-being. Moreover, the Bronx County Supreme Court, relying upon the NhRP's expert affidavits, recognized "Happy's plight" and found the NhRP's arguments "extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit at the Bronx Zoo, to an elephant sanctuary on a 2300 acre lot." (A-22).

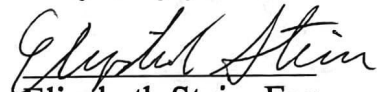
Third, Respondents-Respondents not only concede that Happy may die at any moment, they do not deny that they could relocate Happy outside of New York before this appeal resolves. Further, the notion that the NhRP should have provided this Court with evidence of Happy's medical condition is disingenuous; Respondents-Respondents' claim that Happy is "healthy at present" is not accompanied by any evidence, and they have consistently refused to make her medical records public. In fact, their unsubstantiated claim is the only current information the NhRP has regarding Happy's health.

Fourth, Respondents-Respondents' contention that life for Happy at an elephant sanctuary would be no different than her imprisonment at the Bronx Zoo is demonstrably false. *See* (A-476-77, paras. 11-17, 19; A-479, paras. 27-28).

Lastly, while Respondents-Respondents disagree with the NhRP's reasons for a calendar preference, they do not offer any objections to having Happy's case heard in the November 2021 session. The NhRP respectfully reiterates its request that Happy's case be scheduled for that session.

Thank you for your continued consideration.

Very truly yours,


Elizabeth Stein, Esq.

Cc via Overnight Delivery

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