

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORLEANS

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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,

**Index No.: 18-45164**

Petitioner,

**NOTICE OF MOTION  
FOR PRELIMINARY  
INJUNCTION**

-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,

Respondents.

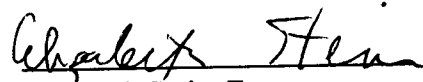
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PLEASE TAKE NOTICE, that upon the annexed affirmation of Elizabeth Stein, Esq., an attorney of record for Petitioner the Nonhuman Rights Project, Inc. ("NhRP"), dated December 12, 2018, and the annexed Memorandum of Law in Support of Motion for Preliminary Injunction dated December 12, 2018, and the Verified Petition for a Common Law Writ of Habeas Corpus and Order to Show Cause ("Petition") filed with this Court on or about October 2, 2018, together with the Memorandum of Law in Support thereof and all other affidavits, exhibits, and attachments filed therewith, and the Reply Affirmation of Elizabeth Stein, Esq. and accompanying Reply Memorandum filed with this Court on or about December 12, 2018 together and all other affidavits, exhibits, and attachments filed therewith, the NhRP moves this Court for a preliminary injunction pursuant to CPLR 6301.

PLEASE TAKE FURTHER NOTICE, that the motion is returnable on Friday, December 14, 2018, at the Courthouse located at Courthouse Square, 1 South Main Street, Suite

3, Albion, NY 14411, or as soon thereafter as it can be heard. Respondents are hereby given notice that the motion will be submitted on the papers and their personal appearance in opposition is neither required nor permitted. Pursuant to CPLR § 2214(b), opposition papers, if any, are to be served by no later than December 13, 2018.

Dated: December 12, 2018



Elizabeth Stein, Esq.  
Attorney for Petitioner  
5 Dunhill Road  
New Hyde Park, New York 11040  
516-747-4726  
lizsteinlaw@gmail.com

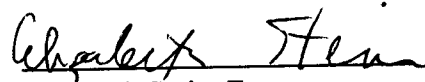
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Karen Lake-Maynard  
County Clerk, Orleans County  
3 South Main St.  
Albion, NY 14411  
*By Mail and Email to Karen.Lake-Maynard@orleanscountyny.gov*

PHILLIPS LYTLE LLP  
Kenneth A. Manning, Esq.  
Joanna J. Chen, Esq.  
Attorneys for Respondents *James J. Breheny* and *Wildlife Conservation Society*  
One Canalside  
125 Main Street  
Buffalo, New York 14203-2887  
Tel: (716) 847-8400  
*By Email to: kmanning@phillipslytle.com, jchen@phillipslytle.com*

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SUPREME COURT OF THE STATE OF NEW YORK  
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JAMES J. BREHENY, in his official capacity as Executive  
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of the Wildlife Conservation Society and Director of the  
Bronx Zoo, and WILDLIFE CONSERVATION SOCIETY,

Respondents.

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**ATTORNEY  
AFFIRMATION IN  
SUPPORT OF  
PETITIONER'S MOTION  
FOR PRELIMINARY  
INJUNCTION**

I, ELIZABETH STEIN, an attorney duly admitted to practice law in the State of New York,  
hereby affirm the following under penalty of perjury:

1. I am an attorney of record for Petitioner, the Nonhuman Rights Project, Inc. ("NhRP"), in the above-captioned matter and am not a party in this action.
2. On or about October 2, 2018, the NhRP filed a Verified Petition for a Common Law Writ of Habeas Corpus and Order to Show Cause ("Petition") and accompanying Memorandum of Law in Support of Petition ("Supporting Memorandum") on behalf of a 47-year old Asian elephant named Happy who the NhRP asserts is illegally imprisoned at the Bronx Zoo.
3. The Bronx Zoo has indicated its likely desire and ability to remove Happy to another zoo accredited by Association of Zoos & Aquariums ("AZA").
4. To the best of the NhRP's knowledge and belief, there is only one other AZA accredited zoo in the State of New York that keeps Asian elephants, the Rosamond Gifford Zoo. It is therefore

likely that if the Bronx Zoo is able to determine where Happy will be moved, she will be moved outside of New York.

5. This could cause this Court to lose subject matter jurisdiction over Happy and thereby cause her immediate and irreparable injury.
6. A *New York Times* article dated February 7, 2006, a true and accurate copy of which is attached hereto as **Exhibit 1**, states: “The Bronx Zoo, the only zoo left in the city that keeps elephants, said yesterday that it planned to shut down its exhibit after the death of two of its three elephants, or even one.”
7. From early 2006 and until November 20, 2018, the remaining elephants imprisoned at the Bronx Zoo were three Asian elephants: Patty, Maxine, and Happy.
8. A *New York Times* article dated June 26, 2015, a true and accurate copy of which is attached herein as **Exhibit 2**, states: “Mr. Breheny says that if the zoo were to move [Happy], it would probably choose another accredited zoo, rather than a sanctuary.”
9. On November 20, 2018, the Bronx Zoo euthanized one of its three remaining elephants, Maxine. Two elephants now remain at the Zoo: Patty and Happy.
10. A *New York Times* article dated November 21, 2018, a true and accurate copy of which is attached herein as **Exhibit 3**, quotes Respondent Breheny stating: “With the death of Maxine, we will assess our elephant program.”
11. As indicated by the Bronx Zoo’s prior statement in the 2006 *New York Times* article, stating that it “planned to shut down its exhibit after the death of two of its three elephants, or even one,” Respondent Breheny’s prior statement in the 2015 *New York Times* article, stating that “if the [Bronx] zoo were to move [Happy], it would probably choose another accredited zoo, rather than a sanctuary,” and Respondent Breheny’s most recent statement in the 2018 *New*

*York Times* article, stating “[w]ith the death of Maxine, we will assess our elephant program,” the recent death of Maxine reasonably caused the NhRP to be concerned that the Bronx Zoo might attempt to move Happy during the pendency of this habeas corpus case and thereby deprive this court of subject matter jurisdiction over it.

12. On November 26, 2018, Steven M. Wise, Esq (“Attorney Wise”), President of the NhRP and *pro hac vice* counsel in the above-captioned action, sent Respondents’ attorney Kenneth Manning (“Attorney Manning”) a letter via email (“Nov. 26 Letter”) (attached to Affidavit of Steven M. Wise as Exhibit 2). The Nov. 26 Letter, which notes and references the Bronx Zoo’s prior statement indicating its plan to close the elephant exhibit after the death of two or even one of its elephants, and the death of Maxine, states in relevant part: [...]

Finally, the NhRP requests immediate written assurances that Happy will not be moved from the Zoo until the habeas corpus litigation has concluded, including all appeals, without the consent of the Nonhuman Rights Project.

Because of the urgency of these matters, we request a written response by Monday, December 3, 2018. If we do not receive a response by that date, we will seek an appropriate preliminary injunction. As you may be aware, we successfully obtained a preliminary injunction against the habeas corpus respondent in a previous New York case involving a chimpanzee when it appeared that the chimpanzee might be moved.

13. On November 28, 2018, via email, Attorney Manning sent Attorney Wise a reply letter dated November 28, 2018 (“Nov. 28 Reply”) (attached to Wise Affidavit as Exhibit 3). It states:

We received your letter dated November 20, 2018 offering to voluntarily dismiss the proceeding referenced above in exchange for an agreement to transfer Happy to the Performing Animal Welfare Society Sanctuary in California. Respectfully, we do not accept your offer.

Furthermore, your letter dated November 26, 2018 requesting TB testing results from Patty and Happy improperly seeks disclosure without leave of court. *See* CPLR 408. Our opposition papers to be served on December 3, 2018 will address the remaining issues raised in your November 26, 2018 correspondence.

14. The Bronx Zoo has not provided any assurances that it will not move Happy during the pendency of this litigation.

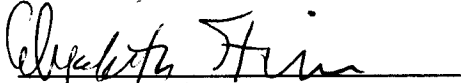
15. As set forth more fully in the accompanying Memorandum of Law, the NhRP is entitled to a preliminary injunction enjoining Respondents from removing Happy from the State of New York pending final disposition of this proceeding because the NhRP has demonstrated: (1) a likelihood of ultimate success on the merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) that a balancing of the equities is in their favor.

16. No previous application has been made for the relief sought herein.

17. Pursuant to 22 N.Y.C.R.R. §1301.1, I affirm that this action is not frivolous.

WHEREFORE, I respectfully request that the Court grant the NhRP's preliminary injunction pursuant to CPLR § 6301, and enjoin Respondents from removing Happy from the State of New York, pending the completion of this action or further order of the Court, and such other and further relief which the Court may seem just and proper.

Dated: December 12, 2018

  
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Attorney for Petitioner  
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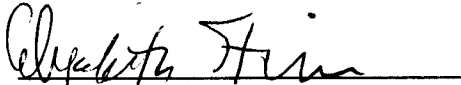
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N.Y. / REGION

# ***Bronx Zoo Plans to EndElephant Exhibit***

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By **JOSEPH BERGER** FEB. 7, 2006

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Elephants have never lost the capacity to astonish and delight. But in New York City in the not-so-distant future, they will not be doing their astonishing and delighting at a zoo.

The Bronx Zoo, the only zoo left in the city that keeps elephants, said yesterday that it planned to shut down its exhibit after the death of two of its three elephants, or even one.

The current generation of children need not despair: The zoo's three elephants -- Patty, Maxine and Happy -- are in their mid-30's and could live for decades more. But if one elephant dies, the remaining two may not get along. And if two die, officials say it would be inhumane to sustain an exhibit with a single elephant.

In either case, the zoo will not replenish the group. And then, except for the occasional circus visit, the five boroughs will be without a resident elephant for the first time in more than 100 years.

"I'm happy for the elephants. I'm sad for me," said Peter Rhall of Valley Stream, N.Y., as he clutched his 2-year-old daughter Sophie in yesterday's frigid wind at one of the zoo's entrances.

It's a shift occurring around the country. While once every zoo worthy of the title would boast an elephant, facilities in San Francisco, Detroit, Santa Barbara, Calif., and Lincoln Park in Chicago have either closed their elephant exhibits or decided to phase them out. The Philadelphia Zoo's

board, citing financial reasons, has abandoned plans to build a \$22 million, 2.5-acre savanna for its four elephants, and is mulling what it will do about a current corral that critics have called cramped, said Andrew Baker, senior vice president for animal programs. In New York, the Central Park and Prospect Park Zoos stopped exhibiting elephants in the 1980's.

The reasons behind the shift are complex and involve both the distinctive personality traits of pachyderms and America's changing standards when it comes to confining animals.

Keeping elephants happy in captivity can be a delicate balancing act, said Steven Sanderson, president and chief executive of the Wildlife Conservation Society, which operates the Bronx, Central Park, Prospect Park and Queens Zoos as well as the New York Aquarium. Elephants prefer living in herds at least a half-dozen strong, need a lot of space to roam, are prone to arthritis and foot diseases, and can become distressed when new elephants are introduced into their enclosures.

The Bronx Zoo, Mr. Sanderson said, has a two-acre corral in which the elephants can move about, and its zookeepers monitor the stumpy feet of its elephants daily, but he would prefer to give them more company. Elephants may show their discomfort with a new arrival by the equivalent of a hunger strike.

"These are really social animals built around a matriarchy," he said. "The senior females have a lot to say about the size of the group, reproduction, etc. They do a lot of communication and are not open to newcomers."

The zoo has kept elephants for more than a hundred years. In 2002, Tuss, the matriarch and pot-stirrer of its Asian elephant group, died in her 50's, leaving the other elephants without a leader and an institutional memory. Last week a fourth female elephant, Samuel R., who had been named after a benefactor's father, died at 14 of kidney failure. Rather than replenish the herd, the zoo decided to close the exhibit.

Breeding elephants in captivity has proved difficult; not even artificial insemination or the introduction of a bull has been helpful. The Bronx Zoo has not had a live birth in more than 20 years. Laws intended to clamp down on the illegal trade in animals have also made it more cumbersome for zoos to import elephants from the wild. Given those factors, Mr. Sanderson said, the society would rather steer its money toward preserving elephants in the wild in Africa and Asia, where it already spends \$2 million a year.

Animal-rights groups like People for the Ethical Treatment of Animals have

been trying for years to close down zoos. "PETA opposes captivity in zoos for all wild animals. However, there can be no doubt that some species are less suited for captivity," said Lisa Wathne, a specialist in captive exotic animals for PETA. "Elephants are suffering horribly."

She said that half of the 45 elephants that have died since 2000 in the 210 accredited American zoos did not live to reach 40.

But Mr. Sanderson denied that animal activists played a role in the decision. "We were on this issue 20 years ago," he said.

Yesterday morning, Patty and Maxine (yes, they and a third elephant who died, LaVerne, were named after the Andrews Sisters, though Maxine's name does not quite match her namesake's, Maxene) lumbered around their dirt pen. Patty, roughly 10,000 pounds and identifiable by her smaller head, scratched the hide of her skull against a tree trunk while Maxine, at 11,000 pounds, sprayed dirt on her back. Both swallowed apples and bananas that Joseph Mahoney, the zoo's supervisor of mammals, lobbed at them.

Mr. Mahoney, who has worked with elephants for 25 years, has gotten to know their personalities. "Patty is more of a planner, and Maxine carries out the plan," Mr. Mahoney said, looking sad. "Patty will lead Maxine to a log, and Maxine will push it around."

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# ***The Bronx Zoo's Loneliest Elephant***



Happy, age 44, lives alone at the Bronx Zoo, separated from the zoo's two other elephants for her protection. The zoo is phasing out its elephants but has resisted calls from animal rights groups to put Happy in a private sanctuary. Julie Larsen Maher/Wildlife Conservation Society

**By Tracy Tullis**

June 26, 2015

On a gray day in mid-June, at the edge of a leafy enclosure in the Bronx Zoo's



Wild Asia habitat, an elephant named Happy stood very still, gazing over the fence. There were a few logs scattered around, some grass and shrubs, and a concrete-lined pool. A green ball was marooned at the water's edge.

Visitors snapped photos from the monorail that circles the exhibit, while a guide cheerfully reported Happy's age (44) and her weight (8,500 pounds). A recorded voice noted the plight of elephants in the wild. Then the monorail swept past, and the visitors turned their attention to the rhinos in the next yard, unaware of an increasingly heated dispute over Happy's fate.

For close to a decade Happy has lived alone, separated from the zoo's two other elephants. Her solitary existence is quite unlike the life of a wild elephant. In nature, elephants live in closely bonded matriarchal families, which cooperate to raise their young. Females never leave the herd, forming lifelong attachments with siblings, cousins and aunts as well as with their mothers.

Happy's predicament has caught the attention of wildlife rescue organizations and animal advocacy groups, including [In Defense of Animals](#), which has named the Bronx Zoo one of the "[10 worst zoos for elephants](#)" for three years in a row, largely based on Happy's isolation. There is a petition making the rounds on the Internet calling on Mayor Bill de Blasio to order a study on her health and well-being, and another (which has collected nearly 87,000 signatures) asking the zoo to release Happy from "solitary confinement."

The feud over Happy is awkward for the Bronx Zoo — and really for every zoo — because it opens up a larger and more volatile debate: Is it right to keep intelligent and behaviorally complex animals like elephants in captivity?

Indeed, nearly a decade ago, the Bronx Zoo made a conscious [decision to end its elephant program](#), opting to shift its resources to help endangered elephants in the wild. It would not bring in any more elephants to replace the ones that had died, and would eventually move some other animal into the elephant habitat. But what to do with the zoo's last three resident elephants — particularly Happy, who had no partner — became a vexing problem.

Happy was captured as a baby, probably from Thailand, in the early 1970s, along with six other calves, possibly from the same herd. The seven elephants, named for Snow White's seven dwarfs, were shipped to the United States and dispersed among various zoos and circuses. Happy and Grumpy landed in the Bronx in 1977.



Patty and Maxine, the Bronx Zoo's two other elephants, seen from the monorail.  
Sam Hodgson for The New York Times

For the next 25 years, Happy and Grumpy lived together. The zoo had other elephants, all kept not in one group but as in Noah's ark, two by two. In July 2002, however, Happy and Grumpy were placed in an enclosure with another pair, Maxine and Patty. Patty and Maxine charged at Grumpy, who stumbled and fell. Her injuries didn't heal, and that October, when she could no longer get up, she was euthanized.

Happy, with her lifelong friend now gone, was paired with a younger female named Sammy (whose companion had also died a few months earlier). The two seemed to bond, according to a zookeeper at the time, who insisted on

anonymity to avoid alienating former colleagues. “Happy had been subordinate and shy,” she said. “But she stepped into a mother role with Sammy, so it worked out really well.”

But Sammy developed severe liver disease, and she, too, was euthanized, in early 2006 — the third Bronx Zoo elephant to die in just four years. A week later, James J. Breheny, the zoo director, announced that the zoo would phase out its elephant program.

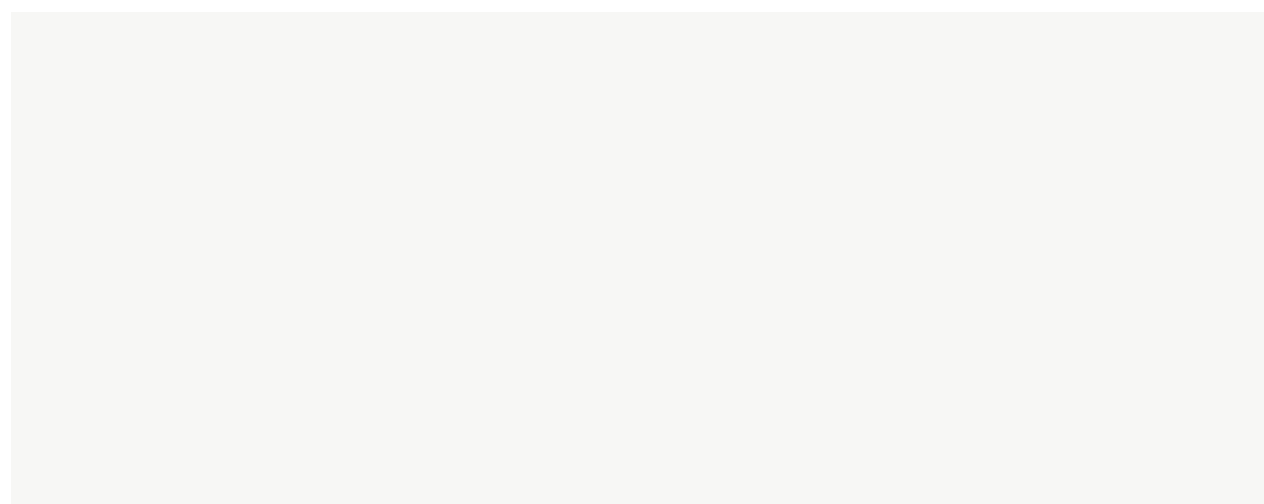
“Certainly Sammy’s death made us re-examine what we were doing with the elephants,” Mr. Breheny, who is also executive vice president of the Wildlife Conservation Society, the zoo’s parent organization, said in an interview this month. At the time, the [Association of Zoos and Aquariums](#), the industry’s trade group, was encouraging zoos to create a “breeding group,” with at least one male and several reproductive females (a more natural social world for the animals, and one that might keep zoos supplied with adorable baby elephants).

But that would have required a new elephant habitat and barn, at a cost of \$80 million or more, Mr. Breheny recalled. It seemed too much to spend on an exhibit that is open only from May through October. “For us as a conservation organization,” Mr. Breheny added, “it was better to put these resources into protecting elephants in the wild.”

The zoo would keep its three remaining elephants; it would reconsider if one of them died. But in the aftermath of Sammy’s death, it seemed too risky to place Happy with the others, who had charged her companion. So in her 30th year at the zoo, as she entered middle age, Happy was alone.

Most visitors to the Bronx Zoo’s well-tended compound would be alarmed to hear that it is being accused of substandard care. This is no dusty roadside tourist trap: The Wildlife Conservation Society was a favorite charity of Brooke Astor’s, and last year had an operating budget of \$235 million. The society is a leader in elephant conservation efforts through its [96 Elephants campaign](#) and employs some of the top wildlife researchers working in the field.

And yet critics contend that with all its expertise and resources, the conservation society could do better for its own elephants. Later this summer, [People for the Ethical Treatment of Animals](#) plans to file a complaint with the Association of Zoos and Aquariums on behalf of Happy and 15 other elephants housed alone or in pairs. Delcianna Winders, a lawyer for the PETA Foundation, argues that keeping just one or two elephants is not only cruel, it also violates the trade group's own professional standards. "These zoos should be stripped of their accreditation," she said. "Otherwise accreditation is meaningless."



Happy in a 2005 experiment, seemed to recognize her mirror image, a form of cognition, the scientists wrote, that "is thought to correlate with higher forms of empathy and altruistic behavior." Joshua Plotnik, Frans de Waal and Diana Reiss

The association requires zoos to keep at least three female elephants (or two males) and to have a certain amount of space in which they can roam. PETA is arguing that while the Bronx Zoo meets the letter of those regulations, it violates their intent by keeping Happy separate.

PETA and other advocates, as well as the former zookeeper, would like to see Happy released to a wildlife sanctuary, where she could live among other elephants in an environment closer to their natural habitat. There are two such facilities in the United States — [the Elephant Sanctuary](#) in Hohenwald, Tenn., and the [Performing Animal Welfare Society](#) (PAWS) in San Andreas, Calif. Each occupies more than 2,000 acres of woods and pasture, with lakes and ponds for

bathing. Both sanctuaries have taken in elephants that once lived in zoos — including the zoos in Detroit, San Francisco, Anchorage, Toronto and Madison, Wis.

Mr. Breheny isn't interested in following that path. Happy, he said, is "very well adjusted and, I would say, has deep bonds for the people who care for her." During the day, Happy stays in a separate yard; at night in the barn, she has a separate stall. But the three elephants are able to see one another over the fence, and sometimes the barn door between them is kept ajar. "The keepers report that she's totally content," Mr. Breheny said. "Their reading of her is that she's happy."

Though Happy spends much of her time alone today, she was briefly a celebrity in the scientific world, the star of a study in animal cognition. Most animals show no interest in their own image, but when three [scientists placed a mirror](#) in the holding yard at the Bronx Zoo in the summer of 2005, Happy looked in the mirror and noticed a mark that had been painted on her head, and touched it repeatedly with her trunk. She seemed to understand that she was looking at herself.

Until then, only the great apes, dolphins and humans (starting around 18 to 24 months) had passed the test, which, the authors of the study wrote, "is thought to correlate with higher forms of empathy and altruistic behavior." (More recently, magpies have joined the club.)

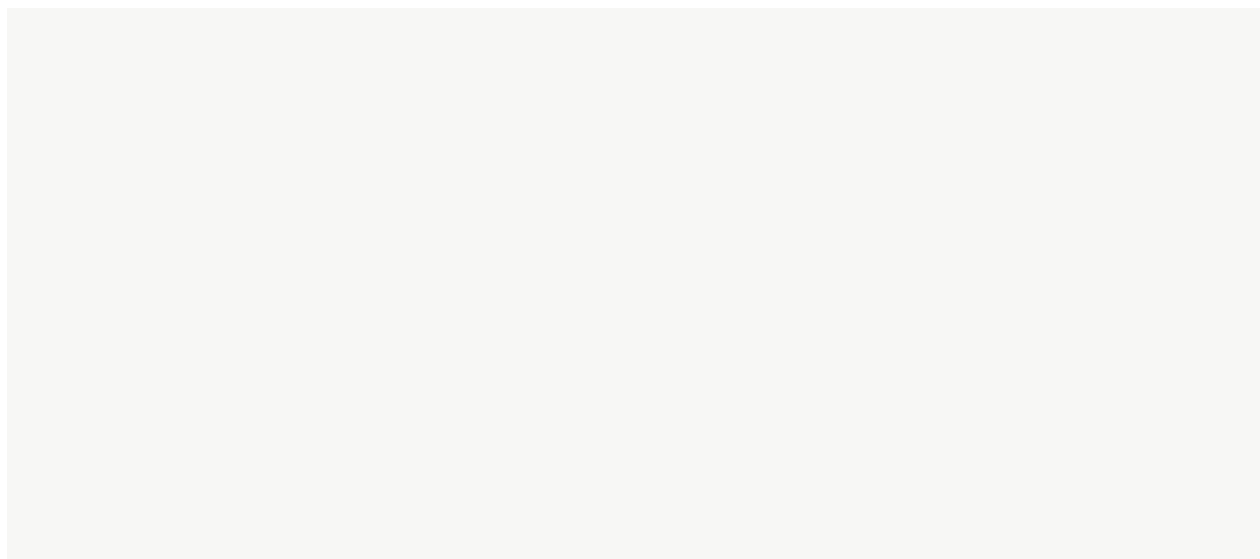
Diana Reiss, a professor of psychology at Hunter College and one of the authors of the study, said that all these species, from human babies to elephants, go through the same stages as they explore the mirror, and all show an interest in looking at parts of their bodies they cannot otherwise see, like their eyes. "To me, it links us all in a fundamental way," Dr. Reiss said.

For Toni Frohof, a wildlife behavioral biologist who has studied elephants and dolphins for more than 20 years and works with In Defense of Animals, the study makes Happy's story especially poignant. "She exhibits self-awareness, yet one of the most important aspects of her psychological and physical life, the



ability to be around other elephants, she's been deprived of," Dr. Frohof said.

Standards of care at the Bronx Zoo have changed over the years, as awareness of animal abuse has increased. In the 1980s, the elephants were sometimes dressed in costumes and were trained to perform tricks — practices that would be frowned on today. And while “aversion training” with pointed bullhooks was once the norm, today the zoo uses the sort of positive reinforcement methods you might use with your dog: Lift a foot for the vet, get a treat.



The Zoo Center, at the Bronx Zoo, used to be the elephant house.

Sam Hodgson for The New York Times

But while certain practices can be changed, some experts argue that elephants simply cannot thrive in zoos. The celebrated primatologist Jane Goodall has said as much, and last year *Scientific American* published an editorial calling for the end of captivity for elephants.

Elephants, of course, are not the only sentient creatures confined in zoos. But their intelligence and sociability make them a particularly troubling case. As any child knows, elephants have remarkable memories. They also use tools, cooperate to solve problems and communicate in a language of more than 70 distinct sounds. If an elephant is ill, family members may try to lift him with their trunks and tusks. And when one elephant dies, the others mourn — researchers have observed a whole herd gather around a dead comrade,

touching her with their trunks, and brushing soil and placing branches over her body.

The intense kinship of a large, multigenerational pachyderm family is not easily replicated in a zoo, and has never existed in the Bronx, at least not since the time when mastodons roamed the region. And compared with a natural range that can extend for hundreds of square miles, the Bronx Zoo's habitat seems woefully cramped. The New York City climate is not ideal for elephants either.

With limited space and no infants to care for, captive elephants can become catatonically bored. A great majority of elephants in American zoos — as much as 85 percent, according to a 2013 study by the Honolulu Zoo — develop disturbing neurotic behaviors, such as repetitive swaying and head-bobbing. The Bronx Zoo denies that any of its elephants manifest these behaviors, but according to the former zookeeper, she and other keepers have observed Happy, Patty and Maxine swaying and bobbing, both in their enclosures and on recorded monitors.

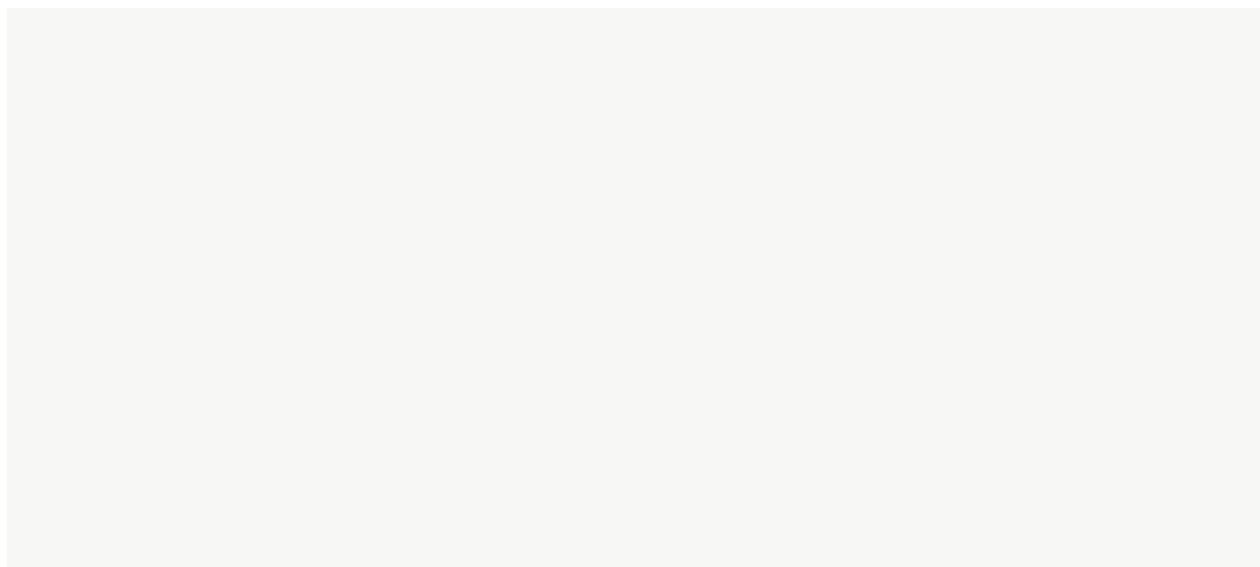
In spite of the clamor for moving Happy, the zoo is confident that she is better off staying. Mr. Breheny has been at the zoo even longer than Happy: He started working there part-time as a teenager in 1973 and never left (though he took time from his duties to earn bachelor's and master's degrees). "To take her from everything that she knows, and bring her to a strange place and expose her to other individuals — there's no guarantee she's going to get along with the other elephants," Mr. Breheny said. "She could, but she might not."

In any case, Mr. Breheny says that if the zoo were to move her, it would probably choose another accredited zoo, rather than a sanctuary. "A lot of these places are built by a couple of passionate, dedicated individuals," he said. But he suggested that a sanctuary might lack long-term financial stability. "We know we have the facility and the resources to manage them, and to manage whatever we may encounter as we shepherd them into old age," he said.

The association likewise prefers elephants to stay in its network, rather than go to sanctuaries, which by definition are not eligible for membership in the group.

“When they go to an A.Z.A.-accredited zoo, we know exactly what kind of care they’re going to get,” Robert Vernon, a spokesman for the association, said. “At sanctuaries, there’s a lot that we don’t know and frankly can’t control.” The association in the past has used its power to compel compliance: Three years ago, as the Toronto Zoo prepared to send its two elephants to PAWS (a move that was affirmed only after a rancorous court battle), the association revoked the zoo’s accreditation.

Such custody disputes have left both zoos and sanctuaries feeling bitter. Margaret Whittaker, director of elephant care at the Elephant Sanctuary in Tennessee, says she would like to mend fences. “We very much want to partner with zoos,” she said, “and work together toward elephant welfare.”



James J. Breheny, the zoo director, called Happy “very well adjusted.”

Robert Stolarik for The New York Times

Several animal advocates interviewed for this article proposed a way to reconcile. In PETA’s perfect world, “accredited zoos would shift to a sanctuary model,” Ms. Winders suggested, explaining that they would “take in the tens of thousands of animals that are in roadside zoos, or living as pets in people’s living rooms and backyards.”

Ms. Whittaker described what a sanctuary zoo might look like: “Huge space, the opportunity for natural foraging, and an environment that supports the social



structure that elephants need.”

Adam Roberts, head of the advocacy group [Born Free U.S.A.](#), adds one more requirement: no more imports of elephants from the wild. “Born Free envisions a future in which the only zoo is a rescue zoo,” he said. “It’s essentially turning these facilities into sanctuaries for animals that are in need of lifetime care, rather than animals that have been bred or imported for a lifetime of captivity.”

So where does this leave Happy? Her former keeper says she still hopes that the zoo will relent and send her to a sanctuary. Introducing a new elephant to a group, even gradually, can be tricky. But Ed Stewart, co-founder and president of the PAWS sanctuary in California, said he had never had a new elephant that couldn’t be integrated into the group. “Just give her the option,” he said.

Ms. Whittaker says that if Happy came to Tennessee, she could spend her last years living a little closer to how an elephant is meant to live. “Maybe Happy could find a friend in somebody here,” she said.

Late in the afternoon on the same gray day in mid-June, in the hidden back entrance to the elephant exhibit, two zookeepers emerged from a barn, carrying large plastic buckets of fruits and vegetables. From this vantage of the exhibit, on the opposite side of the monorail, there were no shouting children, nobody taking pictures.

Happy was standing some distance away, in a grove of trees. A zookeeper called her name, and she came strolling over, remarkably graceful. The keeper handed her lettuce leaves and apple slices from the bucket. She took each piece in her velvety trunk, which she curled daintily toward her mouth.

The keeper demonstrated how Happy responded to voice commands. “Get over,” he said gently, and she moved to the side. “Foot,” he said, and she obligingly put her foot on the fence rail. “Speak,” he said, and after a pause she made a soft rumbling sound.

But on the subject of where she would like to live, and if she often feels lonely,

she was silent.

***Editors' Note:***

*An article last Sunday described the debate over the treatment of Happy, an elephant at the Bronx Zoo who lives separately from the zoo's two other elephants, which animal-rights groups claim is cruel. After the article was published, editors learned that the writer had signed a petition on the website [change.org](http://change.org) that called upon the zoo to release Happy to an elephant sanctuary. Such involvement in a cause related to news coverage is at odds with The Times's journalistic standards; if editors had known that the writer had signed the petition, they would not have assigned the article to her.*

***Correction:***

*An earlier version of this article misstated the reason the Toronto Zoo lost its accreditation from the Association of Zoos and Aquariums. It was because the Toronto City Council, rather than zoo professionals, made the decision to transfer its elephants to a sanctuary; it was not because the elephants were moved. The article also erroneously included Cleveland in a list of cities whose zoos had sent elephants to sanctuaries.*

A version of this article appears in print on , on Page MB1 of the New York edition with the headline: The Loneliest Elephant. [Order Reprints](#) | [Today's Paper](#) | [Subscribe](#)

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**NEW YORK TODAY**

## ***How to Best Enjoy the Thanksgiving Day Parade: New York Today***



Vincent Tullo for The New York Times

**By Azi Paybarah**

Nov. 21, 2018

*(Want to get New York Today by email? Here's [the sign-up.](#))*

*Updated, 11:08 a.m.*

## **It's Wednesday.**

Smoke from the California wildfires [is visible in New York](#).

**Weather:** Frozen turkey alert: [sunny and 42](#) this afternoon, but plunging into the teens tonight and frigid and windy tomorrow.

## **1. How to enjoy the Thanksgiving Day Parade, and balloons, according to one expert**

Gale Brewer knows Manhattan the way LeBron James knows a basketball court: both have spent so much time on it that they have a [photographic memory](#) of every step.

Ms. Brewer, the Manhattan borough president, was on her way to a meeting Tuesday night — what else is new? — when she recalled her Thanksgiving Day parade routine.

“I like the 77th Street area,” because you can see the balloons, she said, but there’s a dilemma: “You don’t see the bands and the music.”

Watching the balloons the night before used to be an only-insiders-know sort of thing. “There used to be six of us,” Ms. Brewer recalled. “Now, there are 100,000.” Expect a crowd, she said.

And for the love of turkey — bundle up! The National Weather Service is predicting the [coldest Thanksgiving since 1871](#).

Winds of 15 to 20 miles an hour are expected during the parade, with gusts up to 30 miles an hour.

If the winds hit 23 miles an hour or the gusts reach 34 miles an hour, [the police may ground the balloons](#), to avoid repeats of [past mishaps](#) that [caused serious injuries](#).

Despite all that, Ms. Brewer warned, the parade itself marches on. “There is no question they start at 9 a.m., not 9:05.”

For more information about the balloon inflation on Wednesday evening, or the parade Thursday morning, read [this guide from the organizers](#).

Key points for Wednesday night: don’t bring backpacks, e-cigarettes or alcohol. On Thursday, bundle up!!

### **Balloon info, for Wednesday:**

**Time:** 1 p.m. to 8 p.m.

**The Entrance:** West 73rd Street and Columbus Avenue.

**Balloons on West 77th Street:** Paw Patrol, Charlie Brown, and Goku, to name a few.

**Balloons on West 81st:** The Grinch, Spongebob and Pikachu.

### **Parade info, for Thursday:**

**Time:** 9 a.m. to noon.

**Starts here / limited view:** West 77th Street & Central Park West.

**First leg / early view:** West side of Central Park West, from West 75th to West 59th Streets.

**Big stretch:** South along Sixth Avenue, from 59th Street to 34th Street, where the Macy’s store is located.

**Less parade, more TV:** National television outlets have risers and stages, limiting parade views on Sixth Avenue between West 34th and West 38th Streets.

**Weather warning:** The temperature when the parade kicks off at 9 a.m. will be [around 18 degrees](#), with biting winds making it feel more like 3 degrees.

## 2. Amazon critics decline invitation to join advisory board

**New:** Two Long Island City lawmakers said they declined an invitation from state officials to join a not-yet-announced advisory committee that would negotiate, but ultimately not be allowed to alter, the basic agreement Gov. Andrew Cuomo and Mayor Bill de Blasio announced last week.

State Senator Michael Gianaris called the advisory committee “a charade,” [reports The Times’s J. David Goodman](#). Councilman Jimmy van Bramer said tweaks are not the objective; “what we want is to stop this bad deal.”

**Catch up:** Mr. Cuomo and Mr. de Blasio expected a victory lap when they, along with officials in a Washington D.C. suburb, won a nationwide bidding war to land one of Amazon’s headquarters. Instead, they are facing a revolt from many local residents and politicians.

**Related:** The Wall Street Journal’s [Josh Barbanel reports](#) some Amazon employees appeared to have purchased real estate in Long Island City before the deal to move jobs there was announced publicly. Citing real estate experts, Mr. Barbanel notes this maneuver appears perfectly legal.

**Hot take:** The Times’s reporter [Liam Stack described it](#) on Twitter as “insider gentrification!”

## 3. Elephant’s death prompts a reckoning at Bronx Zoo





With the death of Maxine, left, zookeepers must figure out what to do with her longtime companion, Patty, right. Sam Hodgson for The New York Times

The Times's Andy Newman emails:

**New:** Maxine the elephant was euthanized on Monday at the Bronx Zoo. She was 48 — old for an Asian elephant in captivity. The zoo said she could no longer eat.

Her death leaves the zoo with only two elephants, and a looming question.

**Catch up:** One of the elephants, Happy, has been fenced off for years because of her temperament, prompting complaints and [a recent lawsuit](#) from animal advocates. (The zoo notes that the elephants can touch through the fence.)

The other elephant, Patty, was Maxine's longtime companion. Now Patty is alone on her side of the fence.

The zoo [decided years ago](#) to phase out its elephants, so Maxine will not be replaced.

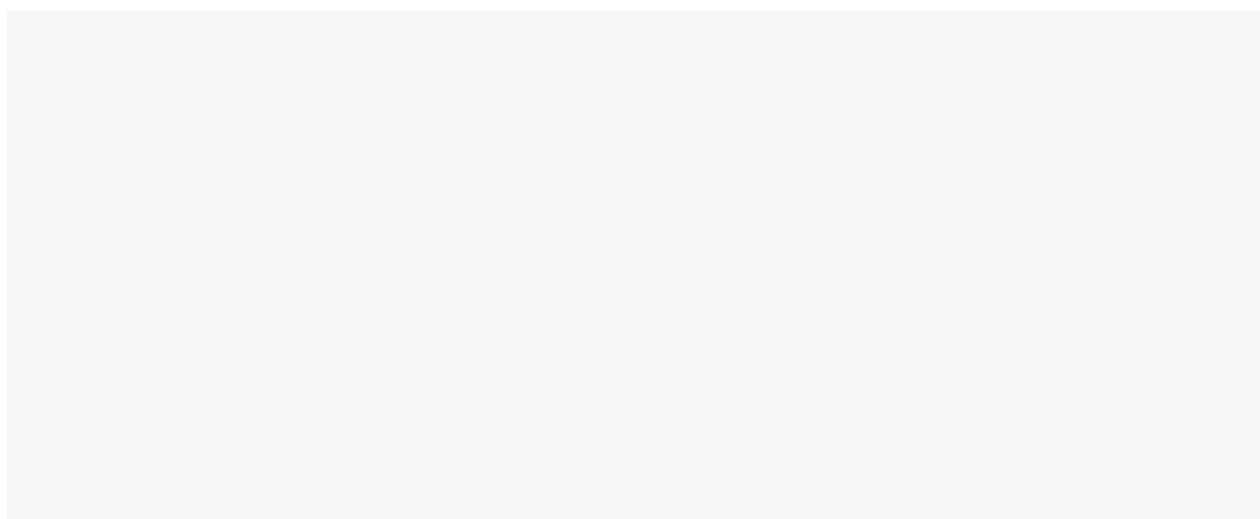


**Look ahead:** What, then, is to become of these highly-social herd animals? The Association of Zoos and Aquariums says that female elephants should typically be kept in groups of at least three.

The zoo has not decided what to do.

“With the death of Maxine, we will assess our elephant program,” said James Breheny, the zoo’s director.

## 4. The Tyranny of Turkey: A Times photography retrospective



Two 4-year-olds enjoying the grand American tradition of coercive turkey enjoyment, Nov. 20, 1951. Patrick A. Burns/The New York Times

The Times’s [Brian Thomas Gallagher](#) writes:

“If you really want to cause a stir at the family table this Thanksgiving, don’t bother with gun control, reproductive rights, kneeling during the national anthem or her emails. Just say you don’t like turkey. ...

“To wit, in the vast New York Times photo archive, there are very few pictures of Americans turning their noses up at turkey. But, as evidenced by the photos here, there are legions of tryptophan try-hards mugging it up with their table fowl.”

## 5. What else is happening

**Big law vs. Trump:** One of the city's biggest corporate law firms has become a fierce opponent of the Trump administration's immigration policy. [[NYT](#)]

**Cab fare increase:** Starting New Year's Day, it will cost "\$5.80 just to sit inside a cab." [[NY1](#)]

**Mistrial in jogger case:** A Queens jury could not agree on whether to convict a Brooklyn man accused of murdering a woman from Howard Beach in 2016. [[NYT](#)]

**Taxpayers cover de Blasio's legal bills:** The mayor overrode an objection from the city comptroller and is using more than \$2 million in city funds to pay his legal bills. The bills stem from an earlier investigation into his political activity. [[NY1](#)]

**Cuomo's future:** Governor Cuomo, who made opposition to President Trump a cornerstone of his re-election campaign, denied a report by The Associated Press that he reached out to Democrats in Des Moines, Iowa, which holds the first-in-the-nation presidential contests. He blamed "dark forces" for spreading a "conspiracy theory." [[NYPost](#)]

**Rape in Prospect Park:** The New York Police Department released video and a description of the suspect they say assaulted and robbed a woman at 4 a.m. Sunday near Parkside Avenue and Parade Place. [[Bklyner](#)]

**Toughest job in New York is available:** The Metropolitan Transportation Authority spokesman Jon Weinstein is leaving. In an email, he wrote "After two years in the middle of what I consider New York's biggest challenge, it's time for a new endeavor." [h/t Emma Fitzsimmons]

## 6. Coming up today

Grab the kiddies and make your way to the [Swedish Cottage Marionette Theater](#) in Central Park for an original production of “Yeti, Set, Snow!” 10:30 a.m. [\$8 - \$12]

For seniors interested in art, [El Museo del Barrio](#) is offering a museum tour and the opportunity to create your own masterpiece. 3-4 p.m. [Free]

Hit the dance floor for an [Israeli folk dancing marathon](#) at the 92 Street Y. 8:30 p.m. [\$20]

Consider visiting the South Pole today. No, really. Explore the city and state’s southernmost tip at [Ward’s Point on Staten Island](#) for a day of nature. [Free]

For more ideas, check out [the going-out guides](#) from The Times’s culture pages

— *Iman Stevenson*

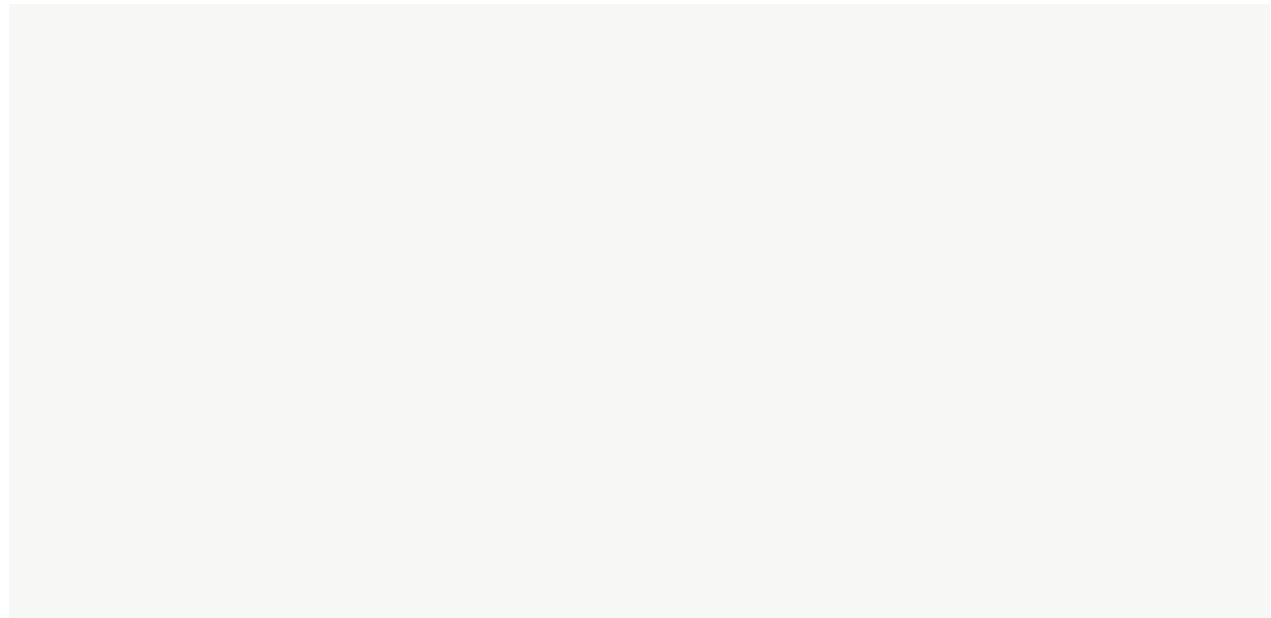
## 7. Metropolitan Diary: Here Comes a Regular

Dear Diary:

You know you’re a bona fide New Yorker when the waitress at Veselka and the waiter at Barney Greengrass both remember what you ordered the last time you were there.

— *Amy Goldman*

## 8. And Finally: Yes, there really is a U.F.O. statue in Battery Park City



Spanish tourists posed for a photograph with Joe Reginella's statue on display in Battery Park.

Adrienne Grunwald for The New York Times

“A plaque on the statue claimed it was erected in 1982 by Mayor Edward I. Koch and the longshoreman’s Local 333, to memorialize a little-known harbor tragedy from 1977,” [writes my colleague Corey Kilgannon](#).

The tragedy is little known because the tragedy never occurred.

The statue is a playful hoax, and the creation of Joe Reginella, an artist from Staten Island.

“I made it as a social experiment, to enjoy that moment when people actually believe it — and it just blows my mind that most people do,” Mr. Reginella said.

The statue has regularly been on display weekend days since September, near the Statue of Liberty ferry dock.

After assembling the 300-pound piece of art (it takes 5 minutes, he says), Mr. Reginella stands nearby to watch the reactions of unsuspecting passers-by.

One was a United States Park Police officer, who, Mr. Reginella said, saw the statue, photographed it, and went along his way.

Know what's not a hoax? Enjoying your holiday.

And we're off tomorrow and Friday — see you Monday.



*Azi was raised in Queens, educated in Albany and lives in Manhattan. He worked at The Queens Tribune, The New York Sun, Politico New York and elsewhere before joining The Times. [Email him](#) or [follow him on Twitter](#).*

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STATE OF NEW YORK  
SUPREME COURT COUNTY OF ORLEANS

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In the Matter of a Proceeding under Article 70 of the CPLR  
for a Writ of Habeas Corpus and Order to Show Cause,

THE NONHUMAN RIGHTS PROJECT, INC., on  
behalf of HAPPY,

Petitioner,  
-against-

JAMES J. BREHENY, in his official capacity as the  
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,

Respondents.

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**Index No.: 18-45164**

**MEMORANDUM OF LAW  
IN SUPPORT OF  
PETITIONER'S MOTION  
FOR PRELIMINARY  
INJUNCTION**

**I. The NhRP is entitled to a Preliminary Injunction**

New York Civil Practice Law and Rules ("CPLR") 6301 provides in part:

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

A preliminary injunction prevents "litigants from taking actions that they are otherwise legally entitled to take *in advance of an adjudication on the merits*["]” *Uniformed Firefighters Ass'n v. New York*, 79 N.Y.2d 236, 241 (1992) (emphasis in original). In the present case, Petitioner, the Nonhuman Rights Project, Inc. ("NhRP") seeks to restrain Respondents, James Breheny and the Wildlife Conservation Society (hereinafter collectively referred to as "Bronx Zoo") their agents, employees, servants and all individuals acting on their behalf, from removing Happy from the

State of New York until the completion of this current habeas proceeding or further order of this Court, as there exists a colorable claim that such removal might moot the action, which would cause irreparable injury to Happy.

Courts have “jurisdiction to issue a prohibitory injunction as part of habeas corpus proceedings.” *Y. v. Y.*, 403 N.Y.S.2d 855, 856 (N.Y. Fam. Ct. 1978). In exercising its discretion to issue a preliminary injunction, the Court must balance the following factors: (1) a likelihood of success on the merits of the action; (2) the danger of irreparable injury in the absence of preliminary injunctive relief; and (3) a balance of equities in favor of the moving party. *Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 N.Y.3d 839, 840 (2005).

Injunctive relief is particularly appropriate where, as here, it preserves the status quo pending resolution of the action. *Gambar Enters., Inc. v. Kelly Servs., Inc.*, 418 N.Y.S.2d 818, 824 (4th Dept. 1979) (“purpose of the interlocutory relief is to preserve the status quo until a decision is reached on the merits”); *Heisler v. Gingras*, 656 N.Y.S.2d 70, 71 (3d Dept. 1997).

As shown below, each of these factors weighs in favor of this Court issuing the preliminary injunction.

## **II. Likelihood of Success**

The NhRP demonstrates that it is likely to prevail on the merits of this action by the Verified Petition for a Common Law Writ of Habeas Corpus and Order to Show Cause (“Petition”) and its accompanying Memorandum of Law filed in this Court on or about October 2, 2018, and the Reply Affirmation of Elizabeth Stein, Esq. and accompanying Reply Memorandum filed on or about December 12, 2018, which is hereby incorporated into this Memorandum of Law.



A *prima facie* showing of a right to relief on the merits is all that is required to demonstrate a “[l]ikelihood of success on the merits,” and “that must *not be equated with the showing of a Certainty of Success.*” *Tucker v. Toia*, 388 N.Y.S.2d 475, 478 (4th Dept. 1976) (emphasis added); *Akos Realty Corp v Vandemark*, 550 N.Y.S.2d 650, 652 (1st Dept. 1990). Actual proof should be left to further proceedings. *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co., Inc.*, 498 N.Y.S.2d 146, 152 (2d Dept. 1986). Moreover, courts relax the standard of proof required where the denial of a preliminary injunction would render its judgment ineffectual, and issue them even in the face of “grave doubts regarding the likelihood of plaintiffs’ success on the merits.” *Schlosser v. United Presbyterian Home at Syosset, Inc.*, N.Y.S.2d 880, 881 (2d Dept. 1977). *Accord Hudson River Tel. Co. v. Watervliet T. & R. Co.*, 121 N.Y. 397, 405 (1890) (affirming grant of preliminary injunction though Court had “very grave doubts whether, . . . any cause of action exists in favor of the plaintiff” because “[t]he questions are new and difficult”) (emphasis added); *Wainer v. Village of Ellenville*, 429 N.Y.S.2d 72, 74 (3d Dept. 1980). *See also State v. City of New York*, 713 N.Y.S.2d 360, 361 (2d Dept. 2000); *Republic of Lebanon v. Sotheby's*, 561 N.Y.S.2d 566, 568-69 (1st Dept. 1990); *Bisca v. Bisca*, 108 Misc.2d 227, 233 (Sup. Ct. 1981); *Valdez v. N.E. Brooklyn Hous. Dev. Corp.*, 801 N.Y.S.2d 782 (Sup. Ct. 2005); *DiCostanzo v. Ct. Tower Corp.*, 410 N.Y.S.2d 212, 215 (Sup. Ct. 1978).

As the NhRP has been granted an Order to Show Cause by this Court requiring the Bronx Zoo to appear at a hearing to justify the legality of Happy’s detention and has further demonstrated in all its pleadings and papers that it has stated a *prima facie* case for habeas corpus relief, this factor weighs in favor of the Court granting the preliminary injunction.

### III. Irreparable Injury

Happy is likely to suffer irreparable injury if she is removed from the State of New York until completion of this proceeding or further order of this Court because such removal may moot the action.<sup>1</sup> This Court has both inherent power and power under CPLR 6301 “*to protect its jurisdiction and to prevent devices which will have the purpose alone of frustrating a final determination.*” *Ohrbach v. Kirkeby*, 161 N.Y.S.2d 371, 373 (1st Dept. 1957) (emphasis added). This includes issuing a preliminary injunction when it appears the respondent has threatened to take action “tending to render the judgment ineffectual.” CPLR 6301.

This injury is also irreparable because Happy has no adequate remedy at law. *Olean Medical Group LLP v Leckband*, 821 N.Y.S.2d 335, 336 (4th Dep’t 2006) (“plaintiff established irreparable injury by establishing that money damages could not make it whole and that there was no adequate remedy at law”). *See Poling Transp. Corp. v. A & P Tanker Corp.*, 443 N.Y.S.2d 895, 897 (2d Dept. 1981). Damages cannot compensate for Happy’s loss of bodily liberty. That is why courts issue preliminary injunctions in habeas corpus proceedings to enjoin the removal or transfer of petitioners.<sup>2</sup> *Y. v. Y.*, 403 N.Y.S.2d 855, 856 (N.Y. Fam. Ct. 1978). *See*,

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<sup>1</sup> Although the Court may still determine the merits of whether an elephant is a “person” under the common law of New York by invoking the exception to the mootness doctrine, such ruling will have no direct benefit to Happy, whose personhood may never be decided and who may never be transferred to an appropriate sanctuary where she would be able to exercise her autonomy and bodily liberty to the greatest extent possible. *See, e.g., People ex rel. Dawson v. Smith*, 69 N.Y.2d 689, 690 (1986) (invoking mootness exception in habeas case; even though the petitioner had been released, the case presented a “question of public importance and one which is likely to reoccur and to evade review.”); *People ex rel. Leonard HH v. Nixon*, 543 N.Y.S.2d 998, 1001 (3d Dept. 1989) (same); *People ex rel. Forshey v. John*, 904 N.Y.S.2d 620 (4th Dept. 2010) (invoking mootness exception in habeas case after petitioner was already released on parole). *See also People ex rel. McManus v. Horn*, 18 N.Y.3d 660, 662-663 (2012) (converting moot habeas corpus proceeding into a declaratory judgment action).

<sup>2</sup> Indeed, the CPLR contemplates irreparable injury from a respondent removing a habeas petitioner out of the State of New York. CPLR 7007 (“A court authorized to issue a writ of habeas corpus, upon satisfactory proof that a person is wrongfully detained and will be removed

*e.g.*, *Nye v. Marcus*, 502 A.2d 869, 870 (Conn. 1985); *Orsi v. Senatore*, 645 A.2d 986, 989 (Conn. 1994); *Bacon v. Bacon*, 351 S.W.2d 313 (Tex. Civ. App.--Waco 1961); *State in Interest of Jennifer W.*, 485 So. 2d 504, 505 (La. 1986); *Fletcher v. Fletcher*, 404 S.W.2d 866, 867 (Tex. Civ. App.--Corpus Christi 1966). *Cf.* *White v. King County*, 748 P.2d 616, 617 (Wash. 1988) (extradition case).

Likewise, courts issue preliminary injunctions to prevent the removal or transfer of a child in a pending action for child custody. *Janecka v. Franklin*, 516 N.Y.S.2d 85 (2d Dept. 1987); *Schwartz v. Schwartz*, 895 N.Y.S.2d 206, 207 (2d Dept. 2010); *Richardson v. Howard*, 523 N.Y.S.2d 272, 273 (4th Dept. 1987); *Scannevin v. Scannevin*, 856 N.Y.S.2d 882 (2d Dept. 2008); *Zaken v. Zaken*, 702 N.Y.S.2d 839 (2d Dept. 2000).<sup>3</sup>

Courts once enjoined masters from selling or removing their slaves from the jurisdiction pending actions that challenged their ownership, when it was merely “rumored” the slave would be removed from the state, *Swindall v. Bradley*, 56 N.C. 353, 355 (1857), or respondent had made “idle threats” of a “purpose to sell them out of the State” without any actual intention to do so. *Wilcox v. Wilcox*, 36 N.C. 36, 42 (1840). *See also* *Mayrant v. Dickerson*, 1832 WL 1588 (S.C. App. L. & Eq. 1832); *Bush v. Groom*, 72 Ky. 675, 677 (1873); *Pearson v. Darrington*, 32 Ala. 227, 266 (1858); *Johns v. Davis' Ex'r*, 41 Va. 729, 732 (1844); *Cross v. Camp*, 42 N.C. 193, 196

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from the state or suffer irreparable injury before he can be relieved by habeas corpus, shall issue a warrant of attachment directed to an appropriate officer requiring him immediately to bring the person detained before the court.”).

<sup>3</sup> A preliminary injunction is proper “so as to preserve the status quo until the issue of ownership is tried and resolved.” *See, e.g., Robjudi Corp. v. Quality Controlled Products, Ltd.*, 488 N.Y.S.2d 787, 788 (2d Dept. 1985) (preliminary injunction to prevent the sale of chattels in an action for replevin); *Poling Transp. Corp. v. A & P Tanker Corp.*, 443 N.Y.S.2d 895 (2d Dept. 1981); *Vincent v. Seaman*, 544 N.Y.S.2d 225, 227 (3d Dept. 1989); *Sure-Fit Plastics L.L.C. v. C & M Plastics Inc.*, 700 N.Y.S.2d 273, 274 (3d Dept. 1999); *Walsh v. St. Mary's Church*, 670 N.Y.S.2d 220 (3d Dept. 1998). Of course, a determination of personhood is much more compelling than a determination of ownership.

(1851); *Steele v. Shirley*, 21 Miss. 196, 197-98 (Miss. Err. & App. 1849); *Dunn v. Amey*, 28 Va. 465, 467-68 (1829). Happy cannot be meaningfully distinguished from the children and slaves in the above-cited cases.

Finally, the evidence before the Court shows that the threatened irreparable injury to Happy is likely to occur. As discussed in detail in the attached Attorney Affirmation of Elizabeth Stein, Esq., the recent death of one of the three remaining elephants at the Bronx Zoo, Maxine—leaving it with two remaining elephants, Patty and Happy—makes likely its previously stated plan to close the elephant exhibit upon the death of two or even one elephant and relocate the remaining elephants to another AZA accredited zoo likely outside of the State of New York, away from this Court’s jurisdiction. The likelihood that the Bronx Zoo will follow through on its previously stated plan is only reinforced by Respondent Breheny’s recent statement that “[w]ith the death of Maxine, we will access our elephant program,” as well as by the refusal of the Bronx Zoo, in response to the NhRP’s reasonable request, to provide any written assurance that they will not relocate Happy without the NhRP’s written consent until the completion of this proceeding.

#### **IV. Balance of Equities**

The balance of the equities tips in favor of the NhRP because “irreparable injury to be sustained...is more burdensome [to the plaintiff] than the injury caused to defendant through imposition of the injunction” *Destiny USA Holdings LLC v Citigroup Global Markets Realty*, 889 N.Y.S.2d 793, 802 (4th Dep’t 2009); *Corp Poling Transp. Corp. v. A & P Tanker Corp.*, 443 N.Y.S.2d 895, 898 (2d Dept. 1981) (citation omitted). *See also McNulty v. Chinlund*, 406 N.Y.S.2d 558, 561 (3d Dept. 1978); *Walsh v. St. Mary's Church*, 670 N.Y.S.2d 220, 222 (3d Dept. 1998). The NhRP seeks to preserve the status quo pending completion of the current

habeas corpus proceeding or further order of this Court. The Bronx Zoo will not be prejudiced from having to wait for a final ruling on the merits and there is no evidence it will be financially injured by such order. *Gandolfo v. White*, 638 N.Y.S.2d 160, 162 (4th Dep’t 1996) (“conclusory assertions that the loss of the towing contracts would cause them injury, which were not supported by financial records, did not establish irreparable injury”). See *In re Est. of Kalichman*, 820 N.Y.S.2d 648, 651 (3d Dept. 2006).

Further, habeas corpus “is a *summary proceeding* to secure personal liberty.” *People ex rel Robertson v New York State Div of Parole*, 67 N.Y.2d 197, 201 (1986) (emphasis added). By design, it “tolerates no delay except of necessity, and is hindered by no obstacle except the limits set by the law of its creation.” *Id.* See *People ex rel. Gittens v. Coughlin*, 143 Misc.2d 748, 749 (Sup. Ct, Sullivan County 1989) (“The Writ of Habeas Corpus is meant to be an *expeditious summary proceeding* that tolerates no delay except of necessity”) (emphasis added). In light of its inherent expeditious nature and the important stake the NhRP has in a final adjudication of the Petition, and the fact that personhood is one of the most important legal issues that a court may be asked to decide, the equities tip in Happy’s favor.

## **V. Conclusion**

Having shown each preliminary injunction factor weighs in Happy’s favor, the NhRP respectfully request that this Court GRANT the motion for a preliminary injunction pending completion of the current proceeding or further order of this Court.

The NhRP further requests that this Court waive the bond requirement or impose a nominal undertaking in light of the fact that the Bronx Zoo will in no way be financially injured from the issuance of this preliminary injunction.

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Elizabeth Stein, Esq.  
Attorney for Petitioner  
5 Dunhill Road  
New Hyde Park, New York 11040  
(516) 747-4726  
lizsteinlaw@gmail.com