

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

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 TOMMY,

Petitioner,

-against-

PATRICK C. LAVERY, individually and as an officer
of Circle L Trailer Sales, Inc., DIANE LAVERY, and
CIRCLE L TRAILER SALES, INC.,

Respondents.

VERIFIED PETITION

**ORAL ARGUMENT
REQUESTED**

Index No.

PETITIONER, THE NONHUMAN RIGHTS PROJECT, INC. (“NhRP”), by its
attorneys ELIZABETH STEIN, ESQ. and STEVEN M. WISE, ESQ. (subject to *pro hac vice*
admission), allege as follows:

PRELIMINARY STATEMENT

1. This Verified Petition is for a common law writ of habeas corpus and order to show
cause (“Habeas Petition”) pursuant to New York Civil Practice Law and Rules (“CPLR”) Article
70, and requests that this Court: a) require Respondents to justify their detention of a chimpanzee
named Tommy, b) order Tommy’s immediate discharge, and c) order Tommy’s transfer to an
appropriate primate sanctuary, which the NhRP suggests is Save the Chimps.

2. The Court need not make an initial judicial determination that Tommy is a “person” within the meaning of the common law of habeas corpus or of CPLR Article 70 in order to issue the writ and show cause order. Common law courts whose decisions are a part of New York common law, and a New York County Supreme Court Justice, have issued writs of habeas corpus or orders to show cause pursuant to a habeas corpus statute, for petitioners not hitherto recognized as legal persons without making the initial determination of personhood, so that the issue of their common law personhood for the purpose of habeas corpus and the legality of their confinement could be justly resolved. The New York County Supreme Court Justice issued an order to show cause in a near-identical case filed by the NhRP on behalf of two chimpanzees named Hercules and Leo without initially deciding the issue of personhood. *See The Nonhuman Rights Project, Inc. v. Stanley Jr., M.D.*, 2015 WL 1804007 (N.Y. Sup. 2015) *amended in part*, *The Nonhuman Rights Project, Inc. v. Stanley*, 2015 WL 1812988 (N.Y. Sup. 2015); *see also The Nonhuman Rights Project, Inc. ex rel. Hercules & Leo v. Stanley*, 16 N.Y.S.3d 898, 900 (Sup. Ct. 2015) (“Given the important questions raised here, I signed petitioner’s order to show cause, and was mindful of petitioner’s assertion that ‘the court need not make an initial determination that Hercules and Leo are persons in order to issue the writ and show cause order.’”). Although the Court in *Stanley* ruled against the NhRP on the issue of personhood because it believed itself bound by the decision of the New York State Supreme Court Appellate Division, Third Judicial Department (“Third Department”) in *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 150-53 (3d Dept. 2014), *leave to appeal den.*, 26 N.Y.3d 902 (2015) that required that a “person” have the capacity to shoulder duties and responsibilities and improperly took judicial notice of the erroneous fact that chimpanzees lack this capacity, the Court nevertheless suggested that the NhRP may ultimately prevail on the issue. *See Stanley*, 16

N.Y.S.3d at 903, 912-13, 917-18. As set forth below and in the accompanying Memorandum of Law, the Court should recognize that Tommy is a “person” within the meaning of the New York common law of habeas corpus, and thus CPLR Article 70, either initially or after Respondents have had the opportunity to reply.

3. The term legal “person” has never been a synonym for “human being” and may designate an entity broader or qualitatively different. The New York Court of Appeals has stated that the determination of legal personhood is a policy question and not a biological one. *Byrn v. New York City Health & Hosps. Corp.*, 31 N.Y.2d 194 (1972). “Person” merely identifies those entities capable of possessing one or more legal rights. Contrary to the Third Department’s ruling in *Lavery, supra*, the ability of such entities to shoulder duties and responsibilities is irrelevant to the determination of personhood for the purpose of demanding a common law writ of habeas corpus. However, assuming *arguendo*, that it is relevant, the NhRP has attached the affidavit of Dr. Jane Goodall and five supplemental affidavits (“Supplemental Affidavits”) from some of the leading primatologists in the world not previously filed in any of the NhRP’s related cases, attesting to the fact that chimpanzees can shoulder duties and responsibilities in their own societies and in human/chimpanzee societies. The question of who is a common law “person” for the purpose of the common law writ of habeas corpus is uniquely a question for the courts of New York. The expert affidavits (“Expert Affidavits”) and certain of the Supplemental Affidavits attached to this Habeas Petition also demonstrate that chimpanzees such as Tommy are autonomous and self-determining beings who possess those complex cognitive abilities sufficient for common law personhood and the common law right to bodily liberty, as a matter of common law liberty, equality, or both. These include, but are not limited to, their autonomy, self-determination, self-consciousness, awareness of the past, anticipation of the future, ability to

make choices and plan, set desires and goals, intentionally act towards goals and understand whether they are satisfied, empathy, ability to engage in mental time travel, directing behavior based on internal cognitive processes and capacity to suffer the pain of imprisonment. The argument for Tommy's personhood is strongly supported by law, science, history, and modern standards of justice, as established by the Expert Affidavits, certain Supplemental Affidavits and accompanying Memorandum of Law.

4. CPLR Article 70 permits a common law person unlawfully detained, or any person acting on his or her behalf, to seek a common law writ of habeas corpus to require the detainer to demonstrate a legal basis for that person's detention and denial of liberty.

5. Once a petitioner satisfies the requirements of CPLR 7002(c) (requiring petitioner to state that the person is "detained" and the "nature of the illegality"), the court must issue the writ, or show cause order, without delay. CPLR 7003(a). *See Stanley*, 16 N.Y.S.3d at 908 ("And the legislature was concerned that judges issue valid writs that it enacted a provision, unique in all respects, that a judge or group of judges who refuse to issue a valid writ must forfeit \$1,000 to the person detained."). The burden then shifts to the respondents to present facts that show the detention is lawful. CPLR 7006(a), 7008(b).

6. Tommy is a "person" within the meaning of the New York common law of habeas corpus, and thus Article 70, and is therefore entitled to the common law right to bodily liberty protected by the New York common law of habeas corpus. Pursuant to Article 70 and the common law of habeas corpus, Respondents have the burden of proving that their detention of Tommy is lawful. If Respondents fail to meet their burden, this Court must find that Tommy's detention is unlawful and order him discharged immediately. That Respondents are not in violation of any federal, state or local animal welfare laws in their detention of Tommy is

irrelevant to whether or not the detention is lawful. This Habeas Petition does not seek improved welfare for Tommy, but rather demands the common law right to bodily liberty protected by the common law of habeas corpus. It is the fact he is detained at all, rather than the conditions of said detention, that the NhRP claims is unlawful. *See Stanley*, 16 N.Y.S.3d at 901 (“The conditions under which Hercules and Leo are confined are not challenged by petitioner . . . and it advances no allegation that respondents are violating any federal, state or local laws by holding Hercules and Leo”). The relevant fact is that Respondents’ detention of Tommy constitutes an unlawful deprivation of his fundamental common law right to bodily liberty and bodily integrity.

7. In the last three years, Reba, Charlie and Merlin, three of the seven chimpanzees the NhRP believes were imprisoned in New York, have died. In December 2013, the NhRP filed near-identical petitions for common law writs of habeas corpus and orders to show cause in the lower court of the county in which a survivor remained. Specifically, a petition was filed in the New York State Supreme Court: a) Fulton County on behalf of Tommy on December 2, 2013; b) Niagara County on behalf of Kiko on December 3, 2015; and c) Suffolk County on behalf of Hercules and Leo on December 5, 2013. Each Supreme Court refused to issue the requested order to show cause. Appeals were filed for each case, but denied, each on a different ground and all without citing any of the previous decisions. The Third Department affirmed the decision of the Supreme Court, Fulton County, and found that chimpanzees are incapable of shouldering duties and responsibilities and therefore are not “persons” for purposes of demanding a common law writ of habeas corpus. *Lavery*, 124 A.D.3d at 150-53. The New York State Supreme Court Appellate Division, Fourth Judicial Department (“Fourth Department”) affirmed the Niagara County Supreme Court’s dismissal of the petition, finding, without reaching the issue of legal personhood, that the petition should have been dismissed on the ground that the NhRP did not

seek Kiko's immediate release but sought to have him placed in an appropriate primate sanctuary. *Nonhuman Rights Project, Inc., ex rel. Kiko v Presti*, 124 A.D.3d 1334 (4th Dept. 2015), *leave to appeal den.*, 126 A.D. 3d 1430 (4th Dept. 2015), *leave to appeal den.*, 2015 WL 5125507 (N.Y. Sept. 1, 2015). The NhRP filed motions to appeal both *Lavery* and *Stanley* directly to the Court of Appeals, which were denied. The New York State Supreme Court Appellate Division, Second Judicial Department (“Second Department”) dismissed the NhRP’s timely appeal from the order of the Supreme Court, Suffolk County on procedural grounds. A true and correct copy of the Second Department’s order is attached herein as **Exhibit 8**. On March 19, 2015, the NhRP filed a near-identical second petition for a common law writ of habeas corpus and order to show cause on behalf of Hercules and Leo with this Court and on April 21, 2015, an amended order to show cause was issued requiring the Respondents to appear before the Court to justify the imprisonment of Hercules and Leo.

8. This Habeas Petition does not seek the immediate production of Tommy to this Court or his placement in a temporary home, as there are no adequate facilities to house him in proximity to the Court. Rather, this Habeas Petition asks the Court to order Respondents to show cause (within the meaning of CPLR 7003(a)) why Tommy should not be discharged, and thereafter, make a determination that Tommy’s detention is unlawful and order his immediate release to an appropriate primate sanctuary. The NhRP strongly suggests that the Court select Save the Chimps, a premier chimpanzee sanctuary located on 190 acres in Fort Pierce, Florida, where he will live on one of twelve two to three acre islands in an artificial lake along with numerous other chimpanzees, be provided with the specialized care necessary to satisfy his complex social, emotional, and physical needs for the duration of his life, and live a life that allows for him to exercise his autonomy and self-determination to the greatest degree possible in

North America. A true and correct copy of an affidavit from Molly Polidoroff, Executive Director of Save the Chimps filed in this Court in *Stanley* is attached herein as Affidavit of Molly Polidoroff.

9. That the NhRP seeks the discharge of Tommy to a primate sanctuary (preferably Save the Chimps) rather than into the wild or onto the streets of New York does not preclude him from habeas corpus relief. New York habeas corpus law and specifically the precedent of the Court of Appeals and the New York State Supreme Court Appellate Division, First Judicial Department (“First Department”) allows for a detainee to challenge the conditions of his or her confinement and recognizes the transfer of custody to a different facility as a proper remedy. *See Stanley*, 16 N.Y.S.3d at 917 n.2 (citing *McGraw v. Wack*, 220 A.D.2d 291, 292 (1st Dept. 1995); *Matter of MHLS v. Wack*, 75 N.Y.2d 751 (1989)). In *Stanley*, this Court rejected the respondents’ argument that, because the NhRP sought Hercules and Leo’s “transfer to a chimpanzee sanctuary, it has no legal recourse to habeas corpus.” as habeas corpus has been used to “secure [the] transfer of [a] mentally ill individual to another institution.” *Id.* The NhRP however does not challenge the conditions of Tommy’s confinement nor does it seek his transfer from one facility to another. Rather, the NhRP demands his immediate discharge to an appropriate primate sanctuary such as Save the Chimps in Ft. Pierce, Florida, where he will be able to exercise his autonomy and right to bodily liberty to the fullest extent possible in North America.

10. The legislative and judicial curtailment of the common law writ of habeas corpus beyond the limitations of the common law itself violates the Suspension Clause of the New York Constitution, Art. 1 § 4.

11. Tommy is the beneficiary of an *inter vivos* trust created by the NhRP pursuant to section 7-8.1 of the Estates, Powers and Trusts Law (“EPTL”) for the purpose of his care and

maintenance once he is transferred to an appropriate primate sanctuary. A true and correct copy of the trust is attached herein as **Exhibit 9**.

PARTIES

12. The NhRP is a tax-exempt 501(c)(3) non-profit corporation organized under the laws of the State of Massachusetts, with its primary place of business located in Coral Springs, Florida. Its mission is “to change the common law status of at least some nonhuman animals from mere ‘things,’ which lack the capacity to possess any legal rights, to ‘persons,’ who possess such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them.” The NhRP does not seek to reform animal welfare legislation. *Stanley*, 16 N.Y.S.3d at 900-01 (“In accordance with its mission, petitioner commenced this litigation and has filed similar cases in several other New York courts with the goal of obtaining legal rights for chimpanzees, and ultimately for other animals.”)

13. The NhRP brings this action on behalf of Tommy, an adult male chimpanzee who, upon information and belief, is being imprisoned by Respondents in a cage in a warehouse located at 3032 State Highway 30, Gloversville, New York.

14. Respondents are Patrick C. Lavery, individually and as an officer of Circle L Trailer Sales, Inc., Diane Lavery and Circle L Trailer Sales, Inc.

APPLICABILITY OF CPLR ARTICLE 70

15. Pursuant to CPLR 7001, CPLR Article 70 governs the procedure applicable to common law writs of habeas corpus.

16. The NhRP does not demand that Respondents produce the body of Tommy, but asks the Court to order Respondents to show cause why Tommy should not be released. CPLR

7003(a) provides in relevant part: “[t]he court to whom the petition is made shall issue the writ *without delay on any day, or where the petitioner does not demand production of the person detained . . . order the respondent to show cause why the person detained should not be released.*” (emphasis added). As in the case at bar, the NhRP in *Stanley* did not demand the production of Hercules and Leo and this Court issued the order to show cause requiring the Respondents to appear in court to explain the detention. *See Stanley*, 16 N.Y.S.3d at 904-05 (“Petitioner invokes CPLR 7003(a) . . . That statute provides . . . ‘where the petitioner does not demand production of the person detained . . . order the respondent to show cause why the person detained should not be release.’ This proceeding thus commenced with the signing of an order to show cause.”). *See also State ex rel. Soss v. Vincent*, 49 A.D. 2d 911, 911 (2d Dept. 1975) (“In a habeas corpus proceeding upon an order to show cause (CPLR 7003, subd. (a)), the appeal is from a judgment of the Supreme Court . . . which granted the petition and ordered petitioner released”) (emphasis added). This Habeas Petition does *not* seek an “order to show cause” pursuant to CPLR 403. Instead it seeks to require Respondents to justify their detention of Tommy within the meaning of CPLR 7003(a).

VENUE

17. CPLR 7002(b) provides in relevant part: “a petition for the writ shall be made to: 1. the supreme court in the judicial district in which the person is detained; or . . . 3. *any justice of the supreme court[.]*” (emphasis added). In *Stanley*, this Court ruled that venue was proper in New York County, despite the fact that the chimpanzees were restrained in Suffolk County. 16 N.Y.S.3d at 905-07. This Habeas Petition is therefore properly brought before this Court even though Tommy is imprisoned outside of New York County.

12. This Court should issue the writ of habeas corpus and order to show cause within the meaning of CPLR 7003(a) sought by the Habeas Petition and make it returnable to New York County. Pursuant to CPLR 7004(c), a writ *must* be returnable to the county in which it is issued except: a) where the writ is to secure the release of a prisoner from a state institution, it must be made returnable to the county of detention; or b) where the petition was made to a court outside of the county of detention, the court *may* make the writ returnable to such county. As Respondents in the present case are individuals and a private entity and clearly not a “state institution,” the Court should make the writ returnable to New York County. *See Stanley*, 16 N.Y.S.3d at 907. In *Stanley*, the Court found that Hercules and Leo were not being detained in a state institution within the meaning of CPLR 7004(c) even though they were imprisoned in a state educational facility. *Id.*

STANDING

18. The NhRP has standing to pursue habeas corpus relief on behalf of Tommy. Pursuant to CPLR 7002(a), a petition for a writ of habeas corpus may be brought by “one acting on . . . behalf” of “[a] person illegally imprisoned or otherwise restrained in his liberty within the state.” This Court correctly ruled that the NhRP had standing in *Stanley*, explaining: “As the statute places no restriction on who may bring a petition for habeas on behalf of the person restrained, . . . petitioner has met its burden of demonstrating that it has standing.” 16 N.Y.S.3d at 905. This ruling is further supported by a long line of New York cases recognizing broad common law next friend representation in habeas corpus cases.

19. For the past twenty years, the NhRP has worked to change the status of such nonhuman animals as chimpanzees from legal “things” to legal “persons.”

20. At no time was the NhRP's standing at issue in any of the related cases filed or taken on appeal by the NhRP.

JURISDICTIONAL STATEMENT PURSUANT TO CPLR 7002(c)

21. Upon the NhRP's best knowledge and belief, the cause or pretense of Tommy's detention is that he is owned by Respondents.

22. Tommy is entitled to the New York common law right to bodily liberty protected by New York's common law of habeas corpus. Respondents have the burden of proving Tommy's detention is lawful. Otherwise he must be ordered released.

23. No court or judge of the United States has exclusive jurisdiction to order Tommy's release.

24. No appeal has been taken from any order by virtue of which Tommy is detained.

25. One previous application for a writ of habeas corpus and order to show cause was filed by the NhRP on behalf of Tommy in the Supreme Court, Fulton County on December 2, 2013 (Index No. 02051). An *ex parte* hearing on the record was held on such date before the Honorable Joseph M. Sise, Justice of the Supreme Court, at which time the application was denied. On December 18, 2013, an order was entered incorporating the transcript of the hearing by reference as the order of the court. A true and correct copy of the order and accompanying transcript is attached herein as **Exhibit 1**.

26. On March 24, 2014, the NhRP appealed to the Third Department and Respondents' counsel submitted a letter to the court stating that they would not be submitting a reply brief. A true and correct copy of the letter is attached herein as **Exhibit 2**. Oral argument was heard on October 8, 2014 in the Third Department at which Respondents failed to appear.

27. On July 9, 2014, the Third Department granted the NhRP's motion for a preliminary injunction to restrain Respondents from removing Tommy from the State of New York during the pendency of the proceedings or further order of the court. A true and correct copy of the order is attached herein as **Exhibit 3**.

28. On December 4, 2014, the Third Department affirmed the lower court's dismissal of the NhRP's petition for a writ of habeas corpus and order to show cause, concluding that an individual must be able to shoulder duties and responsibilities to be a "person" for the purpose of demanding a common law writ of habeas corpus, and that a chimpanzee is unable to shoulder such duties and responsibilities. *Lavery*, 124 A.D.3d at 151-53. The Third Department took judicial notice of the fact that a chimpanzee is unable to shoulder duties and responsibilities, relying solely on two law review articles written by Richard L. Cupp, which was improper for the following reasons: a) A court may not take judicial notice of a complex scientific fact; b) No facts on the issue of duties and responsibilities were placed into evidence by either party thus there were no facts in the uncontroverted record to support this statement; and c) the court never advised the parties that it intended to take judicial notice of such a fact. For a more thorough discussion of this issue, see section III-D-3-b in the accompanying Memorandum of Law.

29. On December 16, 2014, the NhRP filed a Motion for Leave to Appeal to the Court of Appeals in the Third Department, which was denied on January 30, 2015. A true and correct copy of the order is attached herein as **Exhibit 4**.

30. The NhRP then filed a timely Motion for Leave to Appeal to the Court of Appeals, which was denied and entered on September 1, 2015. A true and correct copy of the order is attached herein as **Exhibit 5**.

31. New facts are presented in this Habeas Petition that were not presented in any previous application. Although the NhRP asserts that the ability to shoulder duties and responsibilities is irrelevant to a determination of personhood for the purpose of demanding a common law writ of habeas corpus, it now submits the attached Supplemental Affidavits and the affidavit of primatologist Dr. Jane Goodall, demonstrating that chimpanzees such as Tommy in fact shoulder well-defined duties and responsibilities both within their own societies and chimpanzee/human societies and therefore satisfy this claimed yet erroneous standard created by the Third Department. Specifically, among other abilities, chimpanzees understand and carry out duties and responsibilities while knowingly assuming obligations and then honoring them, behave in ways that seem both lawful and rule-governed, have moral inclinations and a level of moral agency, ostracize individuals who violate social norms, respond negatively to inequitable situations, have a social life that is cooperative and represents a purposeful and well-coordinated social system, routinely enter into contractual agreements, keep promises and secrets, prefer fair exchanges, perform death-related duties and show concern for others' welfare.

**NEITHER RES JUDICATA NOR COLLATERAL ESTOPPEL BARS THE
FILING OF THIS HABEAS PETITION**

32. This Court correctly ruled that neither issue preclusion nor claim preclusion apply to the common law writ of habeas corpus. *See Stanley*, 16 N.Y.S.3d at 908-10. *See also People ex rel. Lawrence v. Brady*, 56 N.Y. 182, 192 (1874); *People ex rel. Leonard HH v. Nixon*, 148 A.D. 2d 75, 80-81 (3d Dept. 1989); *Post v. Lyford*, 285 A.D. 101, 103-05 (3d Dept. 1954); *People ex rel. Sabatino v. Jennings*, 221 A.D. 418, 419 (4th Dept. 1927) *aff'd*, 246 N.Y. 624 (1927).

33. *Res judicata* and collateral estoppel do not bar the filing of successive petitions for writs of habeas corpus and a court is always competent to issue a new habeas corpus writ

even on the same grounds as a prior dismissed writ. CPLR 7002(c)(6) and 7003(b); *People ex rel. Anderson v. Warden, New York City Correctional Instn. for Men*, 325 N.Y.S.2d 829, 833 (Sup. Ct. 1971). *See Stanley*, 16 N.Y.S.3d at 909 (“the governing statute itself poses no obstacle to this litigation.”).

34. *Res judicata* and collateral estoppel do not bar the filing of this successive writ as the legality of Tommy’s detention has never been litigated in or determined by a court of the State of New York. The NhRP has filed just one other petition for a common law writ of habeas corpus and order to show cause on Tommy’s behalf. The lower court refused to issue the requested order to show cause, which denied Tommy the opportunity for a full and fair hearing on the most significant individual issue that may come before any court, whether he may be unlawfully imprisoned for the rest of his life. The Third Department then failed to reach the legality of the issue of Tommy’s detention, but erroneously concluded that chimpanzees do not have the capacity to shoulder duties and responsibilities and therefore cannot be “persons” for purposes of demanding a common law writ of habeas corpus.

35. As this Court noted in *Stanley*, “[r]espondents cite no authority for the proposition that a declined order to show cause constitutes a determination on the merits, that it has any precedential value, or that a justice in one county is precluded from signing an order to show cause for relief previously sought from and denied by virtue of a justice in another county refusing to sign the order to show cause.” 16 N.Y.S.3d at 909.

36. The Third Department’s decision in *Lavery* that chimpanzees are not “persons” for purposes of common law writs of habeas corpus and Article 70 because they cannot shoulder duties and responsibilities is not binding on this Court because: a) it is erroneous as a matter of law and fact; b) it remains unsettled law insofar as it was not relied upon by the Fourth

Department in *Presti* which was decided one month after *Lavery*; and c) it directly conflicts with the decision of the New York Court of Appeals in *Byrn*. Harvard Law Professor Laurence H. Tribe and Professor Justin Marceau, habeas corpus scholar, submitted letter briefs to the Court of Appeals in support of the NhRP's motion for leave to appeal to the Court of Appeals and its assertion that the definition of "person" for purposes of a common law writ of habeas corpus is not dependent upon the individual's capacity to shoulder duties and responsibilities. A true and correct copy of the Letter Brief of Amicus Curiae Laurence H. Tribe is attached herein as **Exhibit 6** and the Letter Brief of Amicus Curiae Justin Marceau as **Exhibit 7**.

TOMMY POSSESSES ATTRIBUTES SUFFICIENT TO ESTABLISH LEGAL PERSONHOOD AS A MATTER OF POLICY

37. Attached herein are affidavits setting out necessary facts and opinions for the Court to consider, nine of which are Expert Affidavits from some of the world's most renowned experts on the cognitive abilities of chimpanzees. Affidavits (c) through (l) are true and correct copies of the affidavits filed in the NhRP's prior habeas corpus proceeding in the Supreme Court, Fulton County. Affidavit (a) and (b) are true and correct copies of the affidavits filed in this Court in *Stanley*. They include:

- (a) Affidavit of Molly Polidoroff
- (b) Affidavit of Steven M. Wise (*Stanley*)
- (c) Affidavit of Steven M. Wise (Fulton County)
- (d) Affidavit of James R. Anderson
- (e) Affidavit of Christophe Boesch
- (f) Affidavit of Jennifer Fugate
- (g) Affidavit of Mary Lee Jensvold
- (h) Affidavit of James King

- (i) Affidavit of Tetsuro Matsuzawa
- (j) Affidavit of William C. McGrew
- (k) Affidavit of Mathias Osvath
- (l) Affidavit of Emily Sue Savage-Rumbaugh

Affidavits (c) through (k) demonstrate that chimpanzees such as Tommy possess the complex cognitive abilities sufficient as a matter of policy for New York common law personhood and the common law right to bodily liberty, as a matter of liberty, as a matter of equality, or both, as set forth in the attached Memorandum of Law. These include, but are not limited to, the possession of autonomy and self-determination, as well as numerous advanced cognitive abilities related to autonomy and self-determination, including an autobiographical self, episodic memory, self-consciousness, self-knowing, self-agency, referential and intentional communication, language planning, mental time-travel, numerosity, sequential learning, meditational learning, mental state modeling, visual perspective-taking, understanding the experiences of others, intentional action, planning, imagination, empathy, metacognition, working memory, decision-making, imitation, deferred imitation, emulation, innovation, material, social, and symbolic culture, cross-modal perception, tool-use, tool-making, cause-and-effect.

**TOMMY HAS THE CAPACITY TO SHOULDER DUTIES AND RESPONSIBILITIES
BOTH WITHIN CHIMPANZEE SOCIETIES AND CHIMPANZEE/HUMAN
SOCIETIES**

38. Attached hereto are original affidavits setting out the necessary facts and opinions for the Court to consider from some of the world's most renowned experts on chimpanzee cognition and behavior both in the wild and in captivity. They include:

- (a) Supplemental Affidavit of James R. Anderson
- (b) Supplemental Affidavit of Christophe Boesch

(c) Affidavit of Jane Goodall

(d) Supplemental Affidavit of Mary Lee Jensvold

(e) Supplemental Affidavit of William C. McGrew

(f) Supplemental Affidavit of Emily Sue Savage-Rumbaugh

All of these affidavits demonstrate that chimpanzees such as Tommy possess the capacity to shoulder duties and responsibilities within chimpanzee societies and chimpanzee/human societies. These include, but are not limited to, the ability to understand and carry out duties and responsibilities while knowingly assuming obligations and then honoring them, behave in ways that seem both lawful and rule-governed, have moral inclinations and a level of moral agency, ostracize individuals who violate social norms, respond negatively to inequitable situations, have a social life that is cooperative and represents a purposeful and well-coordinated social system, routinely enter into contractual agreements, keep promises and secrets, prefer fair exchanges, perform death-related duties and show concern for others' welfare.

39. As demonstrated in the accompanying Expert Affidavits, Supplemental Affidavits, expert affidavit of Dr. Jane Goodall and supporting Memorandum of Law, Tommy is an autonomous and self-determining being who has the capacity to assume duties and responsibilities and possesses the attributes sufficient for the New York common law right to bodily liberty protected by the New York common law of habeas corpus and is therefore entitled to petition this Court for his liberty.

WHEREFORE, the NhRP respectfully demands the following relief:

A. Issuance of the attached Order to Show Cause & Writ of Habeas Corpus demanding Respondents to demonstrate forthwith the basis for the detention and denial of liberty of Tommy;

B. Upon a determination that Tommy is being unlawfully detained, ordering his immediate release from the Respondents' custody and then transfer forthwith to an appropriate primate sanctuary, preferably Save the Chimps;

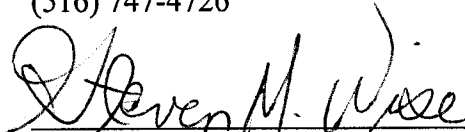
C. Awarding the NhRP the costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

Dated: December 2, 2015



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



Steven M. Wise, Esq.
Subject to *pro hac vice* admission
Attorney for Petitioner
5195 NW 112th Terrace
Coral Springs, Florida 33076
(954) 648-9864

TO:

PATRICK C. LAVERY, individually and as an officer
of Circle L Trailer Sales, Inc.
3032 State Highway 30
Gloversville, New York 12078
(518) 661-5038

DIANE LAVERY
3032 State Highway 30
Gloversville, New York 12078

(518) 661-5038

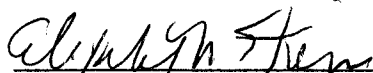
CIRCLE L TRAILER SALES, INC.
3032 State Highway 30
Gloversville, New York 12078
(518) 661-5038

ARTHUR CARL SPRING
Attorney for Respondents
10 South Market Street
Johnstown, New York 12095
(518) 762-4503

VERIFICATION

The undersigned is an attorney admitted to practice in the courts of New York State and is the attorney of record for Petitioner, The Nonhuman Rights Project, Inc. ("NhRP") in this action. Deponent has read the foregoing Verified Petition and is familiar with the contents thereof; the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent and not by the NhRP, because the NhRP does not reside nor maintain its office in the county where your deponent maintains her office. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are based upon a review of the facts, pleadings and proceedings in this matter, as well as conversations with the NhRP.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.


Elizabeth Stein, Esq.

Sworn to before me this
2nd day of December, 2015



Notary Public

PHILIP V. MATHAI
Notary Public, State of New York
Qualified in Nassau County
No. 01MA6206319
My Commission Expires May 18, 2017