

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 HERCULES and LEO,

Petitioner,
-against-

SAMUEL L. STANLEY JR., M.D., as President of
State University of New York at Stony Brook a/k/a
Stony Brook University and STATE UNIVERSITY
OF NEW YORK AT STONY BROOK a/k/a STONY
BROOK UNIVERSITY,

Respondents.

VERIFIED PETITION

**ORAL ARGUMENT
REQUESTED**

Index No.

THE NONHUMAN RIGHTS PROJECT, INC. (“Petitioner”), by its attorneys
ELIZABETH STEIN, ESQ. and STEVEN M. WISE, FSQ. (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 Hercules and Leo, two imprisoned chimpanzees, and b) order Hercules and Leo’s immediate release.

2. The Court need not make an initial judicial determination that Hercules and Leo are “persons” in order to issue the writ and show cause order. Common law courts whose decisions are a part of New York common law have issued writs of habeas corpus for petitioners not

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 resolved. Nevertheless, as set forth in the accompanying Memorandum of Law, the Court should recognize that Hercules and Leo are “persons” 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 & Hospitals Corporation*, 31 N.Y.2d 194 (1972). “Person” merely identifies those entities capable of possessing one or more legal rights. The ability of such entities to bear corresponding duties and responsibilities is irrelevant to the determination of personhood for the purpose of demanding a common law writ of habeas corpus. The expert affidavits (“Expert Affidavits”) attached to this Verified Petition demonstrate that chimpanzees 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, empathy, ability to engage in mental time travel, and capacity to suffer the pain of imprisonment. The argument for Hercules and Leo’s personhood is strongly supported by law, science, history, and modern standards of justice, as established by the Expert 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. Hercules and Leo are "persons" within the meaning of the New York common law of habeas corpus, and thus Article 70, and are entitled to the New York 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 Hercules and Leo is lawful. If Respondents fail to meet this burden, the Court must find the detention of Hercules and Leo to be unlawful and order them released immediately. That Respondents may not be in violation of any federal, state or local animal welfare laws in their detention of Hercules and Leo is irrelevant to whether or not it is lawful. This Verified Petition does not seek improved welfare for Hercules or Leo, but rather demands the common law right to bodily liberty protected by the common law of habeas corpus. It is the fact they are detained at all, rather than the conditions of said detention, that Petitioner claims is unlawful. The relevant fact is that Respondents' detention of Hercules and Leo constitutes an unlawful deprivation of their fundamental common law right to bodily liberty and bodily integrity.

6. In the last twenty-two months, Reba, Charlie and Merlin, three of the seven chimpanzees Petitioner believes were imprisoned in New York, have died. In December 2013, Petitioner filed near-identical petitions for common law writs of habeas corpus in the New York State Supreme Court in each of the three counties (Suffolk, Fulton, and Niagara) in which a survivor remained.

7. This Habeas Petition does not seek the immediate production of Hercules and Leo to this Court or their placement in a temporary home, as there are no adequate facilities to house

them 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 Hercules and Leo should not be released, and thereafter, make a determination that Hercules and Leo's detention is unlawful and order their immediate release to Save the Chimps ("STC"), a premier chimpanzee sanctuary located in South Florida, where they will live on a two to three acre island in an artificial lake along with numerous other chimpanzees, be provided with the specialized care necessary to satisfy their complex social, emotional, and physical needs for the duration of their life, and live lives that allow for them to exercise their autonomy and self-determination to the greatest degree possible in North America. Attached hereto is an affidavit from Molly Polidoroff, Executive Director of STC.

8. That Petitioner seeks the discharge of Hercules and Leo to a chimpanzee sanctuary rather than into the wild or onto the streets of New York does not preclude them from habeas corpus relief. New York habeas corpus law 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. Petitioner however does not challenge the conditions of Hercules and Leo's confinement nor does it seek their transfer from one facility to another. Rather, Petitioner demands their immediate discharge to STC, where they will be able to exercise their rights to bodily liberty to the fullest extent possible in North America, and as protected by the common law of habeas corpus.

9. 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.

10. Hercules and Leo are beneficiaries of an *inter vivos* trust created by Petitioner pursuant to Section 7-8.1 of the Estates, Powers and Trusts Law (“EPTL”) for the purpose of their care and maintenance once they are transferred to STC. A true and correct copy of the trust is attached herein as **Exhibit 5**.

PARTIES

11. Petitioner 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.” Petitioner does not seek to reform animal welfare legislation.

12. Petitioner brings this action on behalf of Hercules and Leo, two young adult male chimpanzees who, upon information and belief, are being detained by Respondents for locomotion research at the State University of New York at Stony Brook (“Stony Brook University”) in Stony Brook, New York.

13. Respondents are Samuel L. Stanley Jr., M.D., in his official capacity as President of Stony Brook University, and Stony Brook University, a university in the State University of New York system located in Stony Brook, New York.

APPLICABILITY OF CPLR ARTICLE 70

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

15. Petitioner does not demand that Respondents produce the bodies of Hercules and Leo, but rather asks the Court to order Respondents to show cause why Hercules and Leo 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). See *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 Hercules and Leo within the meaning of CPLR 7003(a).

VENUE

16. 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). This Habeas Petition is therefore properly brought before this Court.

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 Verified Petition and make it returnable to this Court. 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. Because Stony Brook University is not a “state institution” within the meaning of the statute for the reasons set

forth in the accompanying Memorandum of Law, the Court should make the writ returnable to New York County.

STANDING

17. Petitioner has standing to file this Verified Petition on behalf of Hercules and Leo. 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.”

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

19. Petitioner filed a near identical petition for a common law writ of habeas corpus and order to show cause on behalf of a chimpanzee named Tommy in the Supreme Court, Fulton County and a chimpanzee named Kiko in the Supreme Court, Niagara County. A hearing was granted in both cases after which the petitions were denied. At no point in any case has Petitioner’s standing been questioned.

20. Petitioner appealed both decisions. Oral argument was heard on October 8, 2014 in the Supreme Court of the State of New York Appellate Division, Third Judicial Department (“Third Department”). The Third Department affirmed the ruling of the lower court denying the petition and held “that a chimpanzee is not a ‘person’ entitled to the rights and protections afforded by the writ of habeas corpus.” *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 2014 NY Slip Op 08531, 2014 N.Y. App. Div. LEXIS 8451, *2-4 (3rd Dept. Dec. 4, 2014) (“*Nonhuman Rights Project v. Lavery*”). On December 16, 2014, Petitioner filed a motion for leave to appeal to the Court of Appeals with the Third Department arguing that the appeal should

be granted because it raises novel, important and complex legal issues that are of great public importance and interest in New York, throughout the United States and internationally and because the Third Department committed serious errors of law and fact. For a more thorough analysis of *Nonhuman Rights Project v. Lavery*, see Section F of the accompanying Memorandum of Law. Oral argument was heard on December 2, 2014 in the Supreme Court of the State of New York Appellate Division, Fourth Judicial Department (“Fourth Department”). On January 2, 2015, the Fourth Department entered its memorandum and order affirming the lower court’s dismissal of the petition concluding that Kiko’s transfer to a sanctuary is not an appropriate remedy in an action for habeas corpus relief. *Matter of The Nonhuman Rights Project, Inc. v Presti*, 2015 N.Y. App. Div. LEXIS 148, No. CA 14-00357, 2015 WL 25923 (4th Dept. Jan. 2, 2015) (“*Nonhuman Rights Project v. Presti*”). On January 15, 2015, Petitioner timely filed a motion for leave to appeal to the Court of Appeals with the Fourth Department arguing that the appeal should be granted because it raises novel, important and complex legal issues that are of great public importance and interest in New York, throughout the United States and internationally and because the Fourth Department committed serious errors of law and fact. For a more thorough analysis of *Nonhuman Rights Project v. Presti*, see Section G of the accompanying Memorandum of Law.

21. On July 9, 2014, the Third Department granted Petitioner’s motion for a preliminary injunction to prevent the respondent in that case from removing Tommy from the State of New York during the pendency of the appeal or further order of the court. A true and correct copy of the order is attached herein as **Exhibit 4**.

JURISDICTIONAL STATEMENT PURSUANT TO CPLR 7002(c)

22. Upon Petitioner's best knowledge and belief, the cause or pretense of Hercules and Leo's detention is that they are being used in locomotion research experiments conducted by the Department of Anatomical Sciences at Respondent Stony Brook University.

23. Hercules and Leo are "persons" entitled to the New York common law right to bodily liberty protected by New York common law habeas corpus. Respondents have the burden of proving their detention of Hercules and Leo is lawful. If they are unable to do so, their detention of Hercules and Leo is unlawful, and the chimpanzees must be immediately released.

24. No court or judge of the United States has exclusive jurisdiction to order Hercules and/or Leo's release.

25. No appeal has been taken from any order by virtue of which Hercules and Leo are detained.

26. One previous application for a writ of habeas corpus and order to show cause was filed on behalf of Hercules and Leo in the Supreme Court Suffolk County. (Index No. 13-32098). An appeal was taken but dismissed before Petitioner was able to perfect its appeal (See Paragraphs 22-23). This dismissal was not on the merits.

27. On December 5, 2013, Petitioner filed in the Supreme Court, Suffolk County a petition for a writ of habeas corpus and order to show cause on behalf of Hercules and Leo compelling Respondents to explain the legality of their detention. The court (Asher, J.) summarily refused to sign the writ and stated thereon: "The Court finds that pursuant to § 2214(d) of the CPLR there is no reason [for] this matter to be brought by means of an OTC [order to show cause]." A true and correct copy of the unsigned proposed order to show cause and writ of habeas corpus is attached herein as **Exhibit 1**.

28. On January 2, 2014, Petitioner served a notice of entry of the order on Respondents and the Office of the New York State Attorney General (“Attorney General”) and filed it with the Office of the Clerk of the Suffolk County Supreme Court. On January 9, 2014, Petitioner served a notice of appeal on Respondents and the Attorney General and filed it with the Office of the Clerk of the Suffolk County Supreme Court.

29. On March 3, 2014, Petitioner filed a notice of motion for admission *pro hac vice* of Steven M. Wise, Esq. and accompanying documents with the Supreme Court of the State of New York Appellate Division, Second Judicial Department (“Second Department”) and served them on the Attorney General.

30. Before Petitioner had the opportunity to perfect its appeal, the Second Department, in an order dated April 3, 2014, improperly dismissed the appeal on the procedural ground that the petition was an *ex parte* order to show cause and therefore non-appealable, and denied the *pro hac vice* motion as academic. A true and correct copy of the order is attached herein as **Exhibit 2**.

31. On April 17, 2014, Petitioner served a notice of motion for reargument and accompanying documents on the Attorney General and filed them with the Office of the Clerk of the Second Department. The motion was denied by the court on May 27, 2014. A true and correct copy of the order is attached herein as **Exhibit 3**.

32. There are no new facts presented in this Habeas Petition that were not presented in any previous application.

RES JUDICATA DOES NOT BAR THE FILING OF THIS HABEAS PETITION

33. Neither issue preclusion nor claim preclusion apply to the common law writ of habeas corpus. *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).

34. *Res judicata* does 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).

35. The legality of Hercules and Leo's detention has never been determined by a court of the State of New York. Petitioner has filed just one other petition for a common law writ of habeas corpus on their behalf, which was denied by the court on procedural grounds and not on the merits. The Second Department improperly dismissed the appeal of the denial on procedural grounds without providing Petitioner the opportunity to brief the merits of the habeas corpus claim. The court then denied Petitioner's motion for reargument without a hearing.

36. Hercules and Leo have consistently been denied the opportunity for a full and fair hearing on the most significant individual issue that may come before any court, whether they may be unlawfully imprisoned for their entire lives.

37. Neither the Third Department nor the Fourth Department has questioned the ability of Petitioner to appeal the denial of its habeas corpus petition.

HERCULES AND LEO POSSESS ATTRIBUTES SUFFICIENT TO ESTABLISH LEGAL PERSONHOOD

38. Attached hereto 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. These affidavits are, with the exception of (a)

(b) and (h) (which are originals), true and correct copies of the affidavits filed in Petitioner's prior habeas corpus proceeding in the Supreme Court Suffolk County. They include:

- (a) Affidavit of Molly Polidoroff
- (b) Affidavit of Steven M. Wise
- (c) Affidavit of James R. Anderson
- (d) Affidavit of Christophe Boesch
- (e) Affidavit of Jennifer Fugate
- (f) Affidavit of Mary Lee Jensvold
- (g) Affidavit of James King
- (h) Affidavit of Tetsuro Matsuzawa
- (i) Affidavit of William C. McGrew
- (j) Affidavit of Mathias Osvath
- (k) Affidavit of Sue Savage-Rumbaugh

Affidavits (c) through (k) demonstrate that chimpanzees possess the complex cognitive abilities sufficient 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.

39. As demonstrated in the accompanying Expert Affidavits and supporting Memorandum of Law, Hercules and Leo are autonomous and self-determining beings who possess the New York common law right to bodily liberty protected by the New York common law of habeas corpus and are entitled to petition this Court for their liberty.

WHEREFORE, Petitioner respectfully demands the following relief:

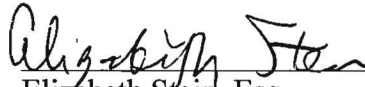
A. Issuance of the attached Order to Show Cause & Writ of Habeas Corpus demanding Respondents to demonstrate forthwith the basis for the detention and denial of liberty of Hercules and Leo;

B. Upon a determination that Hercules and Leo are being unlawfully detained, ordering their immediate release from the Respondents' custody and then transfer forthwith to Save the Chimps;

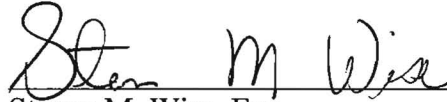
C. Awarding Petitioner the costs and disbursements of this action; and

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

Dated: February 12, 2015
New Hyde Park, New York



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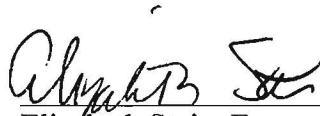
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VERIFICATION

The undersigned is an attorney admitted to practice in the courts of New York State and is the attorney of record for the Nonhuman Rights Project, Inc. ("Petitioner") 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 Petitioner, because the Petitioner 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 Petitioner.

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


Elizabeth Stein, Esq.

Sworn to before me this
12th day of February, 2015


Notary Public

VICTORIA DeGENNARO
Notary Public, State Of New York
No. 01DE6087047
Qualified in Nassau County
Commission Expires February 10, 20 **19**