## FILED: NEW YORK COUNTY CLERK 01/29/2016 09:41 AM

NYSCEF DOC. NO. 48

At I.A.S Part \_\_\_\_\_ of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 80 Centre Street, New York, NY, on the \_\_\_\_\_day of \_\_\_\_\_, 2016

PRESENT: HON Justice of the Supreme Court		
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK		(
In the Matter of a Proceeding under Article 70 of the CPLR for a Writ of Habeas Corpus,	Mennsund	Im.
THE NONHUMAN RIGHTS PROJECT, INC., on behalf of KIKO, Petitioner,	RDER TO WRIT OF H	SHOW CAUSE & ABEAS CORPUS
-against-	Index No.:	150149/2016
CARMEN PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc., CHRISTIE E. PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc., and THE PRIMATE		
SANCTUARY, INCRESPONDENTS.		

TO THE ABOVE NAMED RESPONDENTS:

PLEASE TAKE NOTICE, That upon the annexed Verified Petition of Elizabeth Stein, Esq. and Steven M. Wise, Esq. (subject to *pro hac vice* admission), with Exhibits and Memorandum of Law, dated January 6, 2016, and upon all pleadings and proceedings herein, let the Respondents CARMEN PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc., CHRISTIE E. PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc. and THE PRIMATE SANCTUARY, INC., or their attorneys, SHOW CAUSE at I.A.S. Part \_\_\_\_\_, Room \_\_\_\_\_, of this Court to be held at the Courthouse located at 80 Centre Street, New York, New York 10013, on the \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2016 at \_\_\_\_\_\_ o'clock in the \_\_\_\_\_\_ of that day, or as soon thereafter as counsel can be heard, why an Order should not be entered granting Petitioner, The Nonhuman Rights Project, Inc. ("NhRP"), the following relief:

- A. Upon a determination that Kiko is being unlawfully detained, ordering his immediate release and transfer forthwith to an appropriate primate sanctuary;
- B. Awarding the NhRP the costs and disbursements of this action; and
- C. Such other and further relief as this Court deems just and proper.

## It is THEREFORE:

ORDERED THAT, Sufficient cause appearing therefore, let service of a copy of this Order and all other papers upon which it is granted upon CARMEN PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc., CHRISTIE E. PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc. and THE PRIMATE SANCTUARY, INC. by personal delivery, on or before the \_\_\_\_\_\_ of \_\_\_\_\_\_, 2016, be deemed good and sufficient. An affidavit or other proof of service shall be presented to this Court on the return date fixed above.

IT IS FURTHER ORDERED, that answering affidavits, if any, must be received by Elizabeth Stein, Esq., 5 Dunhill Road, New Hyde Park, New York 11040, and electronically filed with the NYSCEF system, no later than the \_\_\_\_\_ of \_\_\_\_\_, 2016.

Dated:

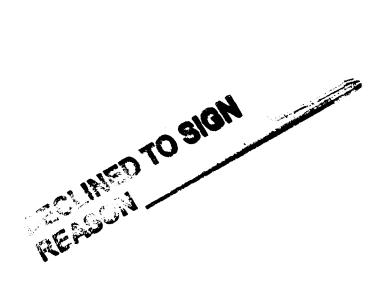
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New York, New York

Honorable

ENTER:



## SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY : IAS PART 12

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In the Matter of a Proceeding under Article 70 of the CPLR for a Writ of Habeas Corpus,

Index No. 150149/16

## MEMORANDUM

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

Mot. seq. no. 001

Petitioner,

- against -

CARMEN PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc., CHRISTIE E. PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc., and THE PRIMATE SANCTUARY INC.,

Respondents.

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JAFFE, BARBARA, J.:

For petitioner: Elizabeth Stein, Esq. 5 Dunhill Rd. New Hyde Park, NY 11040 516-747-4726

Steven M. Wise, Esq., pro hac vice Nonhuman Rights Project 5195 NW 112<sup>th</sup> Terrace Coral Springs, FL 33076

I decline to sign the order to show cause filed by petitioner for the following reasons:

While successive petitions for a writ of habeas corpus based on the same ground are permissible, "orderly administration would require, at least, a showing of changed circumstances." (*People ex rel. Woodard v Berry*, 163 AD2d 759, 760 [3d Dept 1990], *lv denied* 76 NY2d 712; *People ex rel. Glendening v Glendening*, 259 AD 384, 387 [1<sup>st</sup> Dept 1940], *affd* 284 NY 598; *see People ex rel. Leonard HH v Nixon*, 148 AD2d 75, 80-81 [3d Dept 1989]).

Here, between 2013 and 2014, petitioner filed four identical petitions with four state trial courts, each in a different county. With each petition, it offered the same nine affidavits. It then recently filed another two petitions in New York County which are identical to those previously filed, except for the addition of affidavits from five of the nine original affiants, along with a

sixth from a member of its board of directors. All of the new affidavits rely on studies and publications that, with few exceptions, were available before 2015, and petitioner offers no explanation as to why they were withheld from the first four petitions.

In any event, whether evidence of the ability of some chimpanzees to shoulder certain kinds responsibilities is sufficiently distinct from that offered with the first four petitions, and whether that evidence would pass muster in the Third Department, the decision of which remains binding on me (*Nonhuman Rights Project v Stanley*, 49 Misc 3d 746 [Sup Ct, New York County 2015 [Jaffe, J.]), are determinations that are best addressed there.