DOCKET NO.: LLI-CV18-5010773-S	:	SUPERIOR COURT
In the matter of a Petition for a Common Law Writ of Habeas Corpus,	:	JUDICIAL DISTRICT OF LITCHFIELD
NONHUMAN RIGHTS PROJECT, INC., on behalf of BEULAH, MINNIE, and KAREN, Petitioner,	:	AT TORRINGTON
v.	:	
R.W. COMMERFORD & SONS, INC. a/k/a COMMERFORD ZOO, and WILLIAM R. COMMERFORD, as President of R.W. COMMERFORD & SONS, INC., Respondents.	:	January 4, 2019

MOTION FOR COURT TO RULE PROMPTLY ON PETITION FOR HABEAS CORPUS

On June 7, 2018, Petitioner, the Nonhuman Rights Project, Inc. ("NhRP"), filed a Verified Petition for a Common Law Writ of Habeas Corpus ("Petition") in the Superior Court for the Judicial District of Tolland at Rockland seeking a good faith extension or modification of the Connecticut common law of habeas corpus on behalf of three autonomous beings, Beulah, Minnie, and Karen, elephants who are being illegally detained by Respondents, R.W. Commerford & Sons, Inc. (a/k/a Commerford Zoo), a Connecticut corporation, and its President. The NhRP seeks recognition of the elephants' personhood for the sole purpose of according them the common law right to bodily liberty protected by habeas corpus and immediate release from their illegal detention. On June 15, 2018, the case was transferred to the Judicial District of Litchfield.

On November 27, 2018, Petitioner provided to the Court the Petitioner's Status Conference Memorandum (*see* Exhibit A attached hereto), which it now incorporates into this Motion to Rule by reference. At the November 27, 2018 status conference, this Court stated that it was considering whether to stay the case pending the decision of either the Appellate Court or the Supreme Court on the appeal of Judge Bentivegna's December 27, 2018 decision on the issue of standing in the case entitled *Nonhuman Rights Project, Inc., on behalf of Beulah, Minnie and Karen v. R.W. Commerford & Sons, Inc. a/k/a Commerford Zoo, et al.,* AC 41464. Petitioner there suggested that, as the Petition in the case at bar alleges the additional habeas corpus standing requirements that were set forth by Judge Bentivegna in the case now on appeal (which Petitioner is contending on appeal were incorrect), there is no reason to stay this case as, even if Petitioner loses on appeal, this Court would still be required to rule on the sufficiency of the additional standing allegations, and, moreover, that habeas corpus cases are summary proceedings that should move forward expeditiously. This Court then scheduled a second status conference for January 24, 2019. Other than granting Steven M. Wise's Motion to Appear *pro hac vice* and scheduling two status conferences, no action has been taken by this Court in the case at bar.

Therefore, in accordance with both the language of Connecticut Practice Book § 23-24,[1] which requires this Court to "promptly review" the Petition, and the exigent and summary nature of habeas corpus itself, the NhRP respectfully asks

[1] Connecticut Practice Book §§ 23-21 through 23-42 govern the procedure applicable to common law writs of habeas corpus. *See* Conn. Practice Book § 23-21 ("the procedures set forth [herein] shall apply to any petition for a writ of habeas corpus which sets forth a claim of illegal confinement").

this Court to immediately rule on whether it will issue the Writ of Habeas Corpus ("Writ") so that Beulah, Minnie, and Karen's ongoing illegal detention may be addressed at last.

I. Brief History

The NhRP is a nonprofit civil rights organization with a mission "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." Karen is a female African elephant in her mid-thirties who was captured from the wild around 1983. Respondents have owned Karen since 1984. Beulah is a female Asian elephant in her mid-forties who was captured from the wild in 1967 in Myanmar. Respondents have owned her since 1973. Minnie is a female Asian elephant who Respondents have owned since at least 1989.

II. Argument

A. Connecticut Practice Book § 23-24 requires this Court to rule on the NhRP's request for a Writ of Habeas Corpus "promptly."

Connecticut Practice Book § 23-24 provides in relevant part that the Court "shall *promptly* review any petition for a writ of habeas corpus to determine whether the writ should issue." (Emphasis added). Although the phrase "promptly" is not defined in this rule, the Connecticut Supreme Court has stated that "principles of statutory construction apply with equal force to Practice Book rules" [internal quotation marks omitted], *State v. Pares*, 253 Conn. 611, 622 (2000)), and "[w]hen a term is not statutorily defined, we look to the commonly approved meaning of the

word as defined in the dictionary." *State v, Tutson,* 278 Conn. 715, 732 (2006). *See also*, *Henry E.S., Sr. v. Hamilton*, 2008 WL 1001969 at *5, 2008 Conn. Super. LEXIS 717, at *14-15 (Conn. Super. Ct. Feb. 28, 2008) (quoting *Tutson)* (as the term "meritorious" is undefined in the context of the habeas corpus child custody statute, Connecticut Practice Book § 25-41, the court looks to the dictionary definition thereof.) At 12 *Oxford English Dictionary* 620 (2nd ed. 1989), the sole definition of "promptly" is ""In a prompt manner; readily; readily, quickly; directly, at once, without a moment's delay."

In defining the term "promptly," this Court should also look to "its relationship to existing legislation and *common law principles* governing the same general matter." *State v, Ehler,* 252 Conn. 579, 589 (2000) (emphasis added). Given the exigent nature of habeas corpus and the wrong it is meant to summarily remedy (*see infra* Part II.B.), the meaning of "promptly" is clear. *Cf. State v. Phidd*, 42 Conn. App. 17, 31 (1996) (noting that a habeas corpus civil proceeding under General Statutes § 52-470 is "summary in the sense that it should be heard promptly") (internal quotations and citation omitted).

Connecticut courts interpreting similar language in other laws unsurprisingly uniformly agree that "promptly" means quickly. *See, e.g.*, *Helmedach v. Commissioner of Correction*, 168 Conn. App. 439, 460-61 (2016) (relying on "commonly approved" dictionary definitions to interpret "promptly" in the context of the Rules of Professional Conduct under the Practice Book, and holding that "promptly" "references . . . immediacy or lack of delay"); *Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Com'n*, 240 Conn. 1, 7–8

(1997) (ruling that "promptly" means "within a 'reasonable time" in the context of requested public records, and that three months was not prompt). Other states interpreting similar language in habeas corpus laws also interpret "promptly" to convey a sense of urgency and immediacy. *See, e.g.*, *Ex parte Twombly*, 251 N.W. 538, 538 (Mich. 1933) ("Habeas corpus, to be at all effective, commands speedy determination[.]"); *State ex rel. Oklahoma Bar Ass'n v. Pearson*, 767 P.2d 420, 425-26 (Okla. 1989) (in interpreting federal habeas corpus statute that requires judge to examine petition "promptly," describing the process as "swift and summary").

Thus, because Connecticut Practice Book § 23-24 requires that this Court act "promptly" in deciding whether to issue the Writ, the NhRP requests that this be accomplished immediately. [2]

B. In keeping with the nature of common law habeas corpus, this Court should decide promptly whether it will issue the Writ.

Habeas corpus is the ""Great Writ" that protects "persons" from all unlawful detentions, whether public or private. *Lozada v. Warden*, 223 Conn. 834, 840 (1992); *Little v. Commissioner of Correction*, 177 Conn. App. 337, 362 (2017) (quoting with approval that habeas corpus "has played a great role in the history of . . . freedom [and] has been the judicial method of lifting undue restraints upon personal liberty") (citation omitted). "Indeed, there is nothing more critical than the denial of liberty, even if the liberty interest is one day in jail." *Gonzalez v. Commissioner of Correction*, 308 Conn. 463, 482-83 (2013); *Miller v. Warden*, No.

[2] This Court need not determine that Beulah, Minnie, and Karen are "persons" for purposes of issuing the Writ. Rather, this Court must issue the Writ if there is any possibility that they could be "persons" under Connecticut common law solely for the purpose of obtaining the right to bodily liberty secured by common law habeas corpus. Petition at ¶¶ 20-25; Memorandum at 4-7.

CV921566S, 1996 WL 222404, at *1 (Conn. Super. Ct. Apr. 12, 1996) ("The great purpose of the writ of habeas corpus is the immediate delivery of the party deprived of personal liberty.") (citations omitted). It is intended to be a quick and summary proceeding. *See, e.g.*, *Buster v. Bonzagni*, Nos. 293014, 292954 & 292300, 1990 WL 272742, at *3 (Conn. Super. Ct. Apr. 5, 1990) (quoting, with approval, that "a writ of habeas corpus affords a swift and imperative remedy in all cases of illegal restraint or confinement" and "its function has been to provide a prompt and efficacious remedy") (internal quotations and citation omitted); *see also Petition of Pitt*, 541 A.2d 554, 556 (Del. 1988) ("Habeas corpus is intended as a quick and summary procedure for relief from illegal imprisonment."); *People ex rel. Robertson v. New York State Division of Parole*, 492 N.E.2d 762, 67 N.Y. 2d 197, 201 (1986) ("The writ of habeas corpus, as its history shows, is a summary proceeding to secure personal liberty. . . . *It tolerates no delay except of necessity*, and is hindered by no obstacle except the limits set by the law of its creation.") (citation omitted). The *Buster* court further quoted, with approval, that "if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to *immediate* release." 1990 WL 272742, at *3 (emphasis added) (internal quotations and citation omitted).

Accordingly, this Court should rule on the NhRP's request for a Writ promptly so that the significant issues raised by the NhRP – recognition of the elephants' personhood for the sole purpose of according them the common law right to bodily liberty protected by habeas corpus and immediate release from their illegal detention – are fully and properly addressed.

III. Conclusion

This Court must decide "promptly" whether it will issue the Writ of Habeas Corpus on behalf of Beulah, Minnie, and Karen in this summary and exigent proceeding and should not stay the case.

THE PETITIONER,
THE NONHUMAN RIGHTS PROJECT, INC.

By: _____

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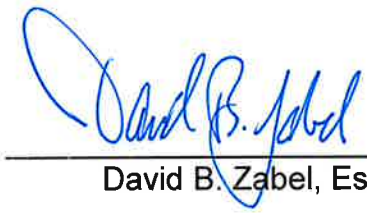
CERTIFICATION OF SERVICE

I hereby certify that a copy of the above Motion to Rule Promptly on Petition for Habeas Corpus (the "Motion to Rule") was mailed or delivered on January 4, 2019, to all counsel and self-represented parties of record as follows:

There are no counsel or self-represented parties of record to whom the Motion to Rule may be mailed or delivered.



David B. Zabel, Esq.

EXHIBIT A

DOCKET NO.: LLI-CV18-5010773-S	:	SUPERIOR COURT
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NONHUMAN RIGHTS PROJECT, INC., on behalf of BEULAH, MINNIE, and KAREN, Petitioner,	:	JUDICIAL DISTRICT OF LITCHFIELD
v.	:	AT TORRINGTON
R.W. COMMERFORD & SONS, INC. a/k/a COMMERFORD ZOO, and WILLIAM R. COMMERFORD, as President of R.W. COMMERFORD & SONS, INC., Respondents.	:	November 27, 2018

PETITIONER'S STATUS CONFERENCE MEMORANDUM

I. BACKGROUND

On November 13, 2017, Petitioner, the Nonhuman Rights Project, Inc., filed a Petition for a Common Law Writ of Habeas Corpus ("Petition #1") seeking a good faith extension or modification of the Connecticut common law of habeas corpus on behalf of three elephants, Beulah, Minnie, and Karen, who are being illegally detained by Respondents, R.W. Commerford & Sons, Inc., a Connecticut corporation, and its President. On December 26, 2017, the Trial Court refused to issue the writ under Connecticut Practice Book ("Practice Book") § 23-24 (a)(1) on the ground that Petitioner lacked standing and that Petition #1 was "wholly frivolous on its face as a matter of law" within the meaning of § 23-24 (a)(2). On January 16, 2018, Petitioner filed a Motion to Reargue or, in the Alternative, to Amend the Petition, which was denied on February 27, 2018 on the ground that since Petition #1 was "wholly

frivolous," allowing an amendment to cure a standing deficiency would be futile. Petitioner filed a timely Notice of Appeal.

On June 7, 2018, Petitioner filed a second Petition for a Common Law Writ of Habeas Corpus ("Petition #2") in the Superior Court for the Judicial District of Tolland at Rockland on behalf of Beulah, Minnie, and Karen. On June 15, 2018, that case was transferred to this Court.

As set forth below, this Court should rule on Petition #2, notwithstanding the fact that Petition #1 is currently under appeal, because: (1) neither issue preclusion nor claim preclusion apply, and (2) Petition #2, at paras. ~~#48 and #52~~ 85, 86 and 87, provides numerous new facts and proffers new evidence that were self-evidently not in existence at the time of the decision on Petition #1 within the meaning of Practice Book § 23-29(3). These new facts and new evidence substantially bolster Petitioner's claim that its allegations are not "wholly frivolous" within the meaning of Practice Book § 23-24(a)(2). *See infra* at 4-8.

II. ARGUMENT

A. Neither issue preclusion nor claim preclusion apply to Petition #2

The dismissal of Petition #1 has no preclusive effect on Petition #2, as Petition #1 was dismissed without the issuance of the writ, without service of process, and without a hearing. Petitioner therefore never had the required full and fair opportunity to actually litigate the merits of its claims. *Thorpe v. Commissioner of Correction*, 73 Conn. App.773, 777 (2002) ("[W]here a party has fully and fairly litigated his claims, he may be barred from future actions on matters not raised in the prior proceeding." [citations omitted]). *See Id.* at 779 n. 7 (in the context of habeas corpus, "we limit the

application of the doctrine of res judicata . . . to claims that actually have been raised and litigated in an earlier proceeding."); *Kearney v. Commissioner of Correction*, 113 Conn. App. 223, 233 (2009).

> In considering a defense of res judicata, our Supreme Court has stated that "[t]he appropriate inquiry ... is whether the party had an *adequate opportunity to litigate the matter in the earlier proceeding* ...." (Emphasis in original; internal quotation marks omitted.) *Connecticut National Bank v. Rytman*, 241 Conn. 24, 43–44, 694 A.2d 1246 (1997). If not, res judicata is inappropriate. See *P.X. Restaurant, Inc. v. Windsor*, 189 Conn. 153, 161–62, 454 A.2d 1258 (1983). In the present case, the prior judgment was a dismissal merely for lack of standing. That is not a judgment on the merits.

Cayer Enterprises v. DiMasi, 84 Conn. App. 190, 194 (2004).[1]

In general, where a first habeas corpus petition is summarily dismissed *without a hearing*, a second petition asserting even the same grounds cannot be dismissed as successive. *See Palmenta v. Warden*, 2006 WL 3833865, at *1 n.1 (Conn. Super. Ct. Dec. 14, 2006) (because "there was no hearing on the merits of that motion . . . petitioner's claim was not actually litigated, [and] res judicata does not apply").[2] "Given the narrowed application of the doctrine of res judicata in the habeas context,

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[1] The issue of Petitioner's standing to bring Petition #1 is not barred by res judicata both because it was not fully and fairly litigated and because the dismissal of the petition on that ground is not a judgment on the merits.

[2] *See also State v. Joyner*, 255 Conn. 477, 496 (2001) ("Although an inadequate cross-examination of the victim was consistent with the habeas court's findings, it was not cited by the habeas court explicitly. Furthermore, to read such a conclusion into the habeas court's decision would be contrary to the requirement that issues be actually litigated and determined for collateral estoppel to apply."); *Lorthe v. Comm'r of Correction*, 2013 WL 1849280, at *4 (Conn. Super. Ct. Apr. 10, 2013) ("the prior dismissal of a petition for writ of habeas corpus based solely on the granting of an *Anders* motion is not a determination on the merits of the claims within that petition such as would subject them to dismissal on grounds of res judicata when raised in a subsequent petition for writ of habeas corpus").

it would only seem logical that this line of reasoning [regarding an 'adequate opportunity to litigate' in the prior proceeding] would apply with even greater strength here." *Taylor v. Warden*, 2013 WL 3970244, at *5 (Conn. Super. Ct. July 16, 2013) (refusing to dismiss second habeas corpus petition on res judicata grounds where inmate had no "prior opportunity to litigate the claim of ineffective assistance" as the first was "dismissed pursuant to a pretrial motion.").[3]

Moreover, not only was Petition #1 summarily dismissed without a "full and fair opportunity" to be litigated, it was dismissed on standing grounds specifically. It is well settled "that the dismissal of an earlier action for lack of standing is not a judgment on the merits and does not have a res judicata effect." *United States Bank, N.A. v. Foote*, 151 Conn. App. 620, 626 (2014). Because the judge dismissed Petition #1 on standing grounds, anything said concerning the merits of the petition, and specifically the frivolousness of the action, was mere *dictum*. *See Pierce v. Warden*, 2013 Conn. Super. LEXIS 2550, at *21-22 (Conn. Super. Ct. Nov. 6, 2013) ("Although the petitioner attempted to litigate his claim regarding the inclusion in the 1999 PSI report of the treatment information contained in the 1996 PSI report, Judge Espinosa's dismissal on lack of subject matter grounds is not a decision on the merits and the alternative ground that the claim must fail on the merits is *dictum*."); *see also Johnson v. Commissioner of Correction*, 258 Conn. 804, 813 (2002) ("Whenever a court finds that it has no jurisdiction, it must dismiss the case")

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[3] It is of no consequence that the appeal of the dismissal of Petition #1 is pending. Because claim preclusion does not apply, Petitioner could have decided not to appeal and simply brought Petition #2. To refuse to rule on Petition #2 because Petitioner's discretionary appeal of Petition #1 is pending would improperly penalize Petitioner for exercising its right to appeal.

(internal quotation marks omitted); *cf. Ajadi v. Comm'r of Corr.*, 280 Conn. 514, 535-36 (2006) ("a judgment rendered without subject matter jurisdiction is void.").

B. Petition #2 may not be dismissed under Practice Book § 23-29(3) as it states numerous new facts and proffers new evidence that were self-evidently not in existence on the date Petition #1 was dismissed

Even if the Court's pretrial dismissal of Petition #1 had constituted a full and fair opportunity to litigate, which it did not, "'(u)nique policy considerations must be taken into account'" in a habeas corpus case. *In re Ross*, 272 Conn. at 662 (quoting *Thorpe*, 73 Conn. App. at 779 n.7). "'Foremost among those considerations is the interest in making certain that no one is deprived of liberty.'" *Id.* (citation omitted). That is why Practice Book § 23-29(3) provides that a court may dismiss a successive habeas corpus petition only if it "presents the same ground as a prior petition previously denied *and fails to state new facts or proffer new evidence not reasonably available at the time of the prior petition*," which gives it a narrower scope than *res judicata* or claim preclusion. *See Carter v. Commissioner of Correction*, 109 Conn. App. 300, 304 n. 5, *cert. den.* 289 Conn. 915 (2008) (emphasis added).

Both the decisions dismissing Petition #1 and refusing to allow Petitioner to amend Petition #1 to add the Court-required standing allegations turned on the single finding that Petition #1 was "wholly frivolous on its face" within the meaning of Practice Book § 23-24(a)(2). However, the disjunctive three-criteria test derived from *Lozada v. Deeds*, 498 U.S. 430, 432 (1991) (the "*Lozada* criteria") is used in Connecticut to determine whether claims are frivolous for purposes of a habeas court's denial of certification to appeal. *See Fernandez v. Comm'r of Corr.*, 125 Conn. App. 220, 223-24 (2010). Under *Lozada*, a habeas case is not "frivolous" if: (i) "the issues are

debatable among jurists of reason," (ii) "a court could resolve the issues [in a different manner]," *or* (iii) "the questions are adequate to deserve encouragement to proceed further." *Id.* Satisfying any one of these criteria is sufficient to demonstrate that a claim is not frivolous. *Id.*[4]

While Petitioner asserts that Petition #1 was already plainly not "wholly frivolous on its face" and satisfied all three disjunctive *Lozada* criteria, this argument is powerfully bolstered in Petition #2 by the following facts and evidence that were, on their face, not in existence at the time the Court dismissed Petition #1.

First, the only opinion from an American high court judge on the issue of whether any nonhuman animal can be a "person" for the purpose of habeas corpus issued on May 8, 2018. This was the concurrence of Judge Eugene M. Fahey in the habeas corpus case of *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y. 3d 1054 (2018) (Fahey, J., concurring) brought on behalf of two chimpanzees. Petition #2, at para. #48. There Judge Fahey noted that, in 2015, he had voted not to hear Petitioner's appeal of a habeas corpus decision involving a chimpanzee, but now agreed with Petitioner's arguments that nonhuman animals, such as chimpanzees, should no longer be deemed mere "things." *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring).

> In the interval since we first denied leave to the Nonhuman Rights Project . . . I have struggled with whether this was the right decision. Although I concur in the Court's decision to deny leave to appeal now [on a procedural issue], I continue to question whether the Court was

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[4]*See also Simms v. Warden*, 230 Conn. 608, 616 (1994) ("A habeas appeal that satisfies one of the *Lozada* criteria is not frivolous."); *Vanwhy v. Comm'r of Corr*, 121 Conn. App. 1, 8 (2010) ("we review the petitioner's substantive claims for the purpose of ascertaining whether those claims satisfy one or more of the three criteria identified in [*Lozada*]").

> right to deny leave in the first instance. The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a "person," there is no doubt *that it is not merely a thing*.

Id. at 1059 (emphasis added).

Second, Judge Fahey relied in his opinion in part upon the *amicus* brief that was filed in the Court of Appeals by the distinguished Harvard Law Professor Laurence H. Tribe on March 2, 2018.[5] *Tommy*, 31 N.Y.3d at 1058 (Fahey, J., concurring). Petition #2, at para. #52.

Third, Judge Fahey relied in his opinion in part upon the *amicus* brief that was filed in the Court of Appeals by noted habeas corpus scholars, University of Denver Law Professor Justin Marceau, and Florida State University Law Professor Samuel Wiseman on March 2, 2018.[6] *Tommy*, 31 N.Y.3d at 1058 (Fahey, J., concurring). Petition #2, at para. #52.

Fourth, Judge Fahey relied in his opinion in part upon the *amicus* brief that was filed in the Court of Appeals by seventeen distinguished philosophers on February 23, 2018.[7] *Tommy*, 31 N.Y.3d at 1058 (Fahey, J., concurring). Petition #2, at para. #53.

Fifth, on February 22, 2018, the Center for Constitutional Rights submitted an *amicus* brief in the New York Court of Appeals in support of Petitioner's argument

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[5] https://www.nonhumanrights.org/content/uploads/NhRP-v.-Lavery-Tribe-Proposed-Brief-2018.pdf.
[6] https://www.nonhumanrights.org/content/uploads/NhRP-v.-Lavery-Marceau-Wiseman-Proposed-Brief-2018.pdf.
[7] https://www.nonhumanrights.org/content/uploads/In-re-Nonhuman-Rights-v.-Lavery-Proposed-Brief-by-PHILOSOPHERS-74435.pdf.

that legal rights should be extended to nonhuman animals in the context of common law habeas corpus.[8]

Sixth, accompanying the filing of Petition #2 in the case at bar was an expert affidavit by Mark Dubois, Esq, Connecticut's first Chief Disciplinary Counsel, stating that Petition #2 was not frivolous, but was meritorious. Petitioner had no way of knowing this was Attorney Dubois's opinion or even that Attorney Dubois existed until he publicly criticized the judge's dismissal of Petition #1.

Seventh, on June 15, 2018, the New York State Supreme Court Appellate Division, Fourth Judicial Department, in *Graves*, 78 N.Y.S. 3d at 617, became the first appellate court in the United States to acknowledge that legal rights have been extended to nonhuman animals in the United States when it stated that:

> it is *common knowledge that personhood can and sometimes does attach to nonhuman entities like* corporations or *animals* ... (*see also Matter of Nonhuman Rights Project, Inc. v. Presti*, 124 A.D.3d 1334, 1335, 999 N.Y.S.2d 652 [4th Dept. 2015], *lv. denied* 26 N.Y.3d 901, 2015 WL 5126507 [2015]). Indeed, the Court of Appeals has written that personhood is "not a question of biological or 'natural' correspondence" (*Byrn v. New York City Health & Hosps. Corp.*, 31 N.Y.2d 194, 201, 335 N.Y.S.2d 390, 286 N.E.2d 887 [1972]) (citations omitted).

(emphases added).[9]

Eighth, on November 16, 2018, New York's Orleans County Supreme Court issued an order to show cause[10] under New York's common law of habeas corpus

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[8] https://www.nonhumanrights.org/content/uploads/NhRP-v.-Lavery-CCR-Proposed-Brief-2018.pdf.

[9] As *Graves* was decided on June 15, 2018, one week *after* Petition #2 was filed, it was not mentioned there.

[10] In New York, a writ of habeas corpus is used when the petitioner requires the production of the prisoner in court; an order to show cause is used when the petitioner does not require the prisoner's production. CPLR 7003(a).

and its habeas corpus procedural statute, CPLR Article 7003(a), on behalf of an elephant named Happy, and against the Bronx Zoo, where she has long been imprisoned. *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, v. Breheny*, Index No. 1845164 (November 16, 2018).

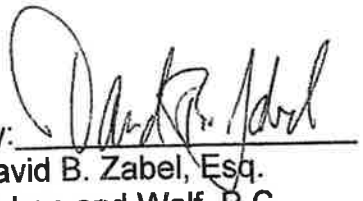
The numerous new facts and new evidence discussed above, all of which were self-evidently not in existence on the date that Petition #1 was dismissed, taken together or separately, make clear that Petition #2 meets not just one, but all three, of the disjunctive *Lozada* requirements for avoiding a finding of frivolousness: (i) "the issues are debatable among jurists of reason," (ii) "a court could resolve the issues [in a different manner]," *or* (iii) "the questions are adequate to deserve encouragement to proceed further." As Petitioner has already made the standing allegations within Petition #2 that were required by the Judge in deciding Petition #1, this case is ready for prompt review by this Court pursuant to Practice Book § 23-24.

III. CONCLUSION

Practice Book § 23-24(a) provides that the court "shall *promptly review* any petition for a writ of habeas corpus to determine whether the writ should issue", and that "(t)he judicial authority *shall issue the writ* unless" the court lacks jurisdiction, the petition is wholly frivolous on its face, or the relief sought is not available. (emphases added). As nothing prevents this Court from hearing the case at this time and bearing in mind that "there is nothing more critical than the denial of liberty, even if the liberty interest is one day in jail." *Gonzalez v. Comm'r of Corr.*, 308 Conn. 463, 483-84 (2013), this Court should now decide "promptly" whether it will issue the Writ of

Habeas Corpus on behalf of Beulah, Minnie, and Karen pursuant to Practice Book § 23-24.

THE PETITIONER,
THE NONHUMAN RIGHTS PROJECT, INC.

By: 

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the above Status Conference Memorandum was mailed or delivered on November 27, 2018, to all counsel and self-represented parties of record as follows:

There are no counsel or self-represented parties of record to whom the Status Conference Memorandum may be mailed or delivered.

David B. Zabel, Esq.