Bronx County Clerk's Index No. 260441/19
Appellate Division–First Department Docket No. 2020-02581

# Court of Appeals

*of the*

# State of New York

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

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

*Petitioner-Appellant,*

– against –

JAMES J. BREHENY, in his official capacity as Executive Vice President and General Director of Zoos and Aquariums of the Wildlife Conservation Society and Director of the Bronx Zoo and WILDLIFE CONSERVATION SOCIETY,

*Respondents-Respondents.*

## BRIEF FOR *AMICI CURIAE* CATHOLIC THEOLOGIANS IN SUPPORT OF PETITIONER-APPELLANT'S MOTION FOR PERMISSION TO APPEAL

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## I. Interest of *Amici Curiae*

We the undersigned submit this brief as Catholic academic theologians with expertise in Catholic moral theology, ethics, animal ethics, ecological theology, theology and science, bioethics, and more. We have a longstanding interest in and history of pushing academic theology, the Catholic Church more broadly, and the cultures in which we live and work to take animals seriously as subjects of moral concern.[1] We believe this legal moment for Happy represents a key cultural crossroads for thinking more openly and honestly—and less selfishly—about what it would mean to treat the particularity of non-human animals with the moral seriousness it deserves.[2] We urge this Court to accept Happy's appeal.

[1] *Amici Curiae* have authored significant books and articles in the field of theological ethics and non-human animals, including: John Berkman, "Must We Love Non-Human Animals? A Post-Laudato Si' Thomistic Perspective" (New Blackfriars, November 9, 2020); Celia Deane-Drummond, "Theological Ethics Through a Multispecies Lens" (Oxford University Press, 2020); Allison Covey, "With Every Living Creature that is with You: Exploring Relational Ontology and Non-Human Animals" PhD diss. (University of Toronto, 2020); Christopher Steck, SJ, "All God's Animals: A Catholic Theological Framework for Animal Ethics" (Georgetown University Press, 2019); and Charles Camosy, "For Love of Animals: Christian Ethics, Consistent Action" (Franciscan Press, 2013).

[2] Christian theologians from the Protestant tradition have also written on theological ethics and non-human animals, including: David Clough, "On Animals: Volume 2: Theological Ethics" (Bloomsbury T&T Clark, 2019); Kris Hiuser, "Animals, Theology and the Incarnation" (SCM Press 2017); Ian Jones, "Dominion and Communion: Patristic Theology and Ethics of Humanity's Relationship with Animal Creation" PhD diss. (Fordham University, 2016); David Clough, "On Animals: Volume 1: Systematic Theology" (Bloomsbury T&T Clark, 2012); and Andrew Linzey, "Animal Theology" (University of Illinois Press 1995).

## II. Summary of the Argument

Our central argument as Catholic theologians is that Happy is not a thing for us to confine, use, and put on display in a zoo (even in an attempt to produce a good outcome), but rather a particular kind of creature who God made to flourish in a particular way—a way some academics refer to as a *telos*. As we explain below, we believe Happy cannot flourish as this kind of creature while captive in the Bronx Zoo and that she would be significantly better able become the kind of creature God made her to be in a sanctuary. Nearly all theologians now agree that the Biblical dominion God has given human beings over creation is not a license to use and dominate, but rather a command to be caretakers and stewards. Non-human animals like Happy have been created to fit into a particular place within the order of God's creation, an order which human beings are bound to respect. Non-human animals belong to God, not to us. They are God's creatures, not ours.

## III. Argument

### 1. Non-human animals belong to God, not to us.

Especially in the Biblical tradition shared both by Jews and Christians, God's creation is not made for human beings. On the contrary, in the first chapter of Genesis God pronounces multiple aspects of creation "good" in themselves before human beings are even created. The dominion God eventually gives to human beings is that of a caretaker or steward. We are akin to viceroys ruling on

behalf of a sovereign and according to that sovereign's wishes. God, who is sovereign of the universe, reveals through Scripture a design for what theologians call a "Peaceable Kingdom", one which includes non-violent relationships between human beings and non-human animals.

This basic Biblical teaching has been affirmed by Catholic teaching in several places over the last few decades, most recently in Pope Francis' encyclical *Laudato Si'*.[3] Here the Holy Father says, "We must forcefully reject the notion that our being created in God's image and given dominion over the earth justifies absolute domination over other creatures." (#67) He also notes that creation has "an intrinsic value" which is "independent of [its] usefulness. Each organism, as a creature of God, is good and admirable in itself." (#140)

**2. Non-human animals have a special and particular place within God's creation.**

Keeping the focus on *Laudato Si'*, Pope Francis insists that we fundamentally fail in our essential duty toward God's creation in a particularly serious way when we disrespect God's intention for non-human animals. He even says, "Mary, the Mother who cared for Jesus, now cares with maternal affection and pain for this wounded world"—which includes "the creatures of this world laid waste by human power." (#241) That Mary and the Church would have a particular focus on non-

[3] Encyclical Letter *Laudato Si*' of the Holy Father Francis (May 24, 2015), available at: http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

human animals stands on a good Biblical foundation. They are made by God on Day Six of creation, the same day that human beings are created. Both human and non-human animals have the breath of life. Non-human animals are understood to have a special role in the Garden of Eden: though they are not ultimately found to be a "partner" for human beings, God brings them to Adam—again, not for food, labor, or other use—because it is not good that humanity should be alone. They are brought to us as companions.

Human sin has played a mysterious but serious role in derailing the Peaceable Kingdom of Eden, and so things are not now as God intended them to be, but the whole of creation has been redeemed by Christ's death and resurrection and we are now called to witness to a new Peaceable Kingdom that is already here but not yet fully realized. Significantly, the prophets tell us that non-human animals bear a similarly special and particular place in the "new Eden." Isaiah, for instance, uses the now well-known images of a lamb lying down with a lion, and a human baby hanging out in the lair of a snake, as central ways of thinking about the reconstitution of a Peaceable Kingdom.

### 3. Human beings, as caretakers and stewards of God's creation, have a special and particular duty to non-human animals.

The special and particular place that non-human animals have in God's creation means that human beings, in exercising our dominion in witnessing to the Peaceable Kingdom of God, have a special and particular duty to non-human

animals. At bottom, the *Catechism of the Catholic Church*[4] insists that what we owe animals is of particular concern. Note how the language of justice (what we "owe" to animals) is used:

> Animals are God's creatures. He surrounds them with his providential care. By their mere existence they bless him and give him glory. Thus men owe them kindness. We should recall the gentleness with which saints like St. Francis of Assisi or St. Philip Neri treated animals. God entrusted animals to the stewardship of those whom he created in his own image. (#2416-2417)

The kindness which we owe animals comes from imitation of a particular kind of sovereign rule, that of the servant-King, Jesus Christ. He who washed the feet of his disciples, subverts and even inverts how we are typically taught to think about power. Yes, we have been given power by God over animals, but from a Christian perspective that is to be made manifest in our kindness and looking out for their well-being—to work to help them flourish as the kinds of creatures God made them to be. Indeed, given the fact that God has created us to be caretakers and stewards, our duty to care for and treat non-human animals as the kinds of creatures God created them to be is an essential part of being who we are as well.

**4. Applying the general argument above to Happy's specific case.**

The trial court noted that the experts agree that Happy would be much better able to flourish in a sanctuary because of the kind of creature she is rather than

[4] *Catechism of the Catholic Church* (Libreria Editrice Vaticana, Citta del Vaticano 1993), available at: https://www.vatican.va/archive/ENG0015/_INDEX.HTM.

living in forced captivity in the Bronx Zoo. We argue that we have a moral duty to treat Happy not as a mere object to be used in a zoo, but as the kind of creature God made her to be. Again, Happy belongs to God and not to us. We have power over her, but we have been commanded to use that power on behalf of a God who has suffered and died for us and who also asks us to take on the role of servant leaders. To act with kindness toward each other and to the creation in which we find ourselves. To treat Happy in such a way that she can become her most flourishing self is, in a very real way, what makes us most human.

This is not to say that the Bronx Zoo is necessarily evil or even has evil motives in doing what they are doing to Happy. Indeed, a utilitarian might argue that using Happy this way might actually produce good consequences for elephants overall—perhaps by eliciting more respect and sympathy overall in the culture. But this issue is the issue of justice before the Court in this case. The question before the Court is whether Happy is the kind of creature who may be locked up and used as a mere means to an end. We Catholic theologians argue that doing so fundamentally misunderstands both (1) the kind of creature God created Happy to be and (2) our moral responsibility to act on behalf of the dominion of God's Peaceable Kingdom.

Or, to put it more simply, and invoking the reasoning of *Catechism of the Catholic Church*, forcibly confining Happy this way fundamentally fails in our

duty to demonstrate the kindness owed her as a matter of justice based on the kind of creature she is.

We urge this Court to accept Happy's appeal.

Dated: January 29, 2021

Respectfully submitted,

By: _____

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**NEW YORK STATE COURT OF APPEALS**
**CERTIFICATE OF COMPLIANCE**

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Dated: New York, New York
January 29, 2021