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E-FILED  
8/22/2022 7:33 PM  
Superior Court of California  
County of Fresno  
By: Louana Peterson, Deputy

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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF FRESNO

19 NONHUMAN RIGHTS PROJECT, INC., on  
20 behalf of Amahle, Nolwazi, and Vusmusi,  
21 individuals,

22 *Petitioner,*

23 vs.

24 FRESNO'S CHAFFEE ZOO  
25 CORPORATION, and JON FORREST  
26 DOHLIN, in his official capacity as Chief  
27 Executive Officer & Zoo Director of the  
28 Fresno Chaffee Zoo,

*Respondents.*

Case No.: 22CECG02471

**PETITIONER'S NOTICE OF MOTION  
AND MOTION FOR AN ORDER  
RETURNING MATTER TO SAN  
FRANCISCO COUNTY SUPERIOR  
COURT**

Hearing Date: Sept. 14, 2022

Time: 8:30 a.m.

Location: B.F. Sisk Court, 1130 "O" Street,  
Fresno, CA 93724-0002

Courtroom: Dept. 402

Date Action Filed: May 3, 2022

Trial Date: unknown

**LIST OF EXHIBITS**

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<b>EXHIBIT A</b>	ORDER TRANSFERRING MATTER TO FRESNO COUNTY SUPERIOR COURT, FILED JULY 11, 2022
<b>EXHIBIT B</b>	RESPONDENTS' NOTICE OF MOTION AND MOTION FOR AN ORDER TRANSFERRING MATTER TO FRESNO COUNTY SUPERIOR COURT, FILED ON JUNE 14, 2022
<b>EXHIBIT C</b>	PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION FOR AN ORDER TRANSFERRING MATTER TO FRESNO COUNTY SUPERIOR COURT, FILED ON JUNE 27, 2022
<b>EXHIBIT D</b>	RESPONDENTS' REPLY IN SUPPORT OF MOTION FOR AN ORDER TRANSFERRING MATTER TO FRESNO COUNTY SUPERIOR COURT, FILED ON JULY 1, 2022

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on Sept. 14, 2022, at 8:30 a.m. in Dept. 402 of the  
3 above-referenced court, located at 1130 “O” Street, Fresno, California, Petitioner, the  
4 Nonhuman Rights Project, Inc. (hereafter NhRP), will, and hereby does, move this Court for  
5 an order returning the matter to the San Francisco County Superior Court (hereafter San  
6 Francisco Superior Court), which had ordered the matter transferred to this Court. This  
7 motion is made on the ground that the San Francisco Superior Court’s “reason for transfer is  
8 inapplicable,” and therefore this Court “must, within 30 days of receipt of the case, order the  
9 case returned” to San Francisco Superior Court. Cal. Rules of Court 4.552(b)(4).  
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12 This motion is based on the instant notice of motion, the supporting memorandum of  
13 points and authorities, the documents and pleadings on file in this action, any argument made  
14 at the hearing on this motion, and any other matters that are more properly before this Court.  
15

16 DATED August 22, 2022

17 Nonhuman Rights Project, Inc.  
By:           /s/ Monica L. Miller          

18 MONICA L. MILLER

19 STEVEN M. WISE

JAKE DAVIS

Attorneys for Petitioner

20 Nonhuman Rights Project, Inc. on behalf of Amahle, Nolwazi, and Vusmusi, individuals  
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 On May 3, 2022, the NhRP filed a Petition for a Common Law Writ of Habeas Corpus  
4 (hereafter Petition) in San Francisco Superior Court on behalf of Amahle, Nolwazi, and  
5 Vusmusi, three African elephants unlawfully imprisoned at the Fresno Chaffee Zoo. On July  
6 11, 2022, upon the motion of Respondents Fresno’s Chaffee Zoo Corporation and Jon Forrest  
7 Dohlin (hereafter Respondents) to transfer the matter, that court issued an Order Transferring  
8 Matter to Fresno County Superior Court (hereafter Order) (Exhibit A), which was based on  
9 a fundamental misunderstanding of the Petition as challenging the elephants’ conditions of  
10 confinement. The NhRP has consistently argued that the Petition does *not* challenge the  
11 conditions of the elephants’ confinement, but rather the legality of their imprisonment itself.  
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15 In a habeas corpus proceeding, there is a difference between a challenge to the  
16 “conditions of confinement” and a challenge to the legality of the imprisonment itself, for  
17 purposes of determining whether a petition should be transferred from one superior court to  
18 another pursuant to Cal. Rules of Court 4.552(b)(2)(B). The San Francisco Superior Court  
19 misunderstood this difference when it issued its Order. Accordingly, “the reason for transfer  
20 is inapplicable,” and therefore this Court “must, within 30 days of receipt of the case, order  
21 the case returned” to San Francisco Superior Court. Cal. Rules of Court 4.552(b)(4).<sup>1</sup>  
22

23 **II. ARGUMENT**

24  
25 The basis for the Order is Cal. Rules of Court 4.552(b)(2)(B), which provides in  
26 relevant part:

27 \_\_\_\_\_  
28 <sup>1</sup> On August 15, 2022, this Court noticed receipt of this matter’s papers and pleadings, and filed the case.

1 (2) If the superior court in which the petition is filed determines that the  
2 matter may be more properly heard by the superior court of another county,  
3 it may nonetheless retain jurisdiction in the matter or, without first  
4 determining whether a prima facie case for relief exists, order the matter  
5 transferred to the other county. Transfer may be ordered in the following  
6 circumstances:

7 . . . (B) If the petition challenges the conditions of an inmate's confinement,  
8 it may be transferred to the county in which the petitioner is confined.

9 According to Respondents, the Petition challenges the conditions of Amahle, Nolwazi,  
10 and Vusmusi's confinement at the Fresno Zoo and therefore Cal. Rules of Court  
11 4.552(b)(2)(B) authorizes transfer of the matter. (Exhibit B, pp. 5-6). However, the NhRP  
12 has consistently argued that the "Petition does not challenge . . . the conditions of Amahle,  
13 Nolwazi, and Vusmusi's imprisonment. Rather, it challenges the legality of the elephants'  
14 imprisonment itself and seeks their discharge from the Fresno Zoo." (Pet. ¶ 17); (Exhibit C,  
15 pp. 3-4). Agreeing with Respondents, the San Francisco Superior Court erroneously ruled:

16 Respondents argue, however, that the petition "devotes a considerable amount  
17 of time to explain the elephants' conditions of confinement, arguing why they  
18 are . . . unacceptable." (Mot., 6:5-7; Pet., ¶¶ 87-92.) The Court agrees and  
19 finds little distinction between "conditions" of confinement and "legality" of  
20 confinement in this case. Petitioner alleges that any condition of confinement  
21 in a zoo is improper for elephants and argues that an elephant sanctuary is the  
22 only acceptable location for elephants. (Pet., sec. IV(b) ["Zoo captivity is  
23 physically and psychologically harmful to elephants"], ¶¶ 80-86; sec. IV(d),  
24 ¶¶ 93-95.)

25 Furthermore, Rule 4.552(b)(2)(B) requires the Court to make this  
26 determination "based on the allegations in the petition," not based on the relief  
27 sought (i.e., release from custody or alteration of conditions of confinement).  
28 The allegations in the petition certainly challenge the elephants' confinement  
and the matter should therefore be heard by the Fresno County Superior Court.

1 (Exhibit A). Since this is not a conditions of confinement case, the San Francisco Superior  
2 Court’s “reason for transfer is inapplicable” under Cal. Rules of Court 4.552(b)(4). Cal. Rules  
3 of Court 4.552(b)(4).<sup>2</sup>  
4

5 A superior court’s determination on whether to transfer a habeas corpus petition must  
6 be “based on the allegations of the petition.” Cal. Rules of Court 4.552(b)(1). In this case, the  
7 Petition’s core allegation states: “Respondents’ imprisonment of Amahle, Nolwazi, and  
8 Vusmusi violates their common law right to bodily liberty protected by habeas corpus and is  
9 therefore unlawful because it deprives the elephants of their ability to meaningfully exercise  
10 their autonomy and extraordinary cognitive complexity, including the freedom to choose  
11 where to go, what to do, and with whom to be.” (Pet. ¶ 5). This allegation forms the basis of  
12 the NhRP’s entire prima facie case. (Pet. ¶¶ 96-104). As Respondents previously conceded,  
13 this allegation does *not* challenge the conditions of the elephants’ confinement.<sup>3</sup>  
14  
15

16 The Order claims there is “little distinction between ‘conditions’ of confinement and  
17 ‘legality’ of confinement in this case,” yet cites various paragraphs in the Petition that support  
18 the distinction. (Exhibit A) (citing Pet. ¶¶ 87-92). Those paragraphs explain that the Fresno  
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21 <sup>2</sup> It is well-settled that habeas corpus petitions should generally be resolved in the court in  
22 which the petition is filed. See *In re Roberts* (2005) 36 Cal.4th 575, 583 (hereafter *Roberts*)  
23 (“[W]hen a petitioner has complied with pertinent rules, the superior court in which the  
24 petition is presented should file and review the allegations of the petition in order to determine  
25 whether it states a prima facie case for relief.”); Cal. Rules of Court 4.552(a) (“Except as set  
26 forth in subdivision (b)(2), the petition should be heard and resolved in the court in which it  
is filed.”). The only exception to the general rule is when “a substantial reason exists for such  
transfer.” *Roberts*, 36 Cal.4th at 583. No such reason exists here.

27 <sup>3</sup> Respondents stated in their Reply: “Petitioner points to a single allegation that Petitioner  
28 does not challenge the conditions of confinement.” (Exhibit D, p. 4).

1 Zoo is an unacceptable place for elephants because it deprives the elephants of their ability  
2 to meaningfully exercise their autonomy and extraordinary cognitive complexity, and  
3 therefore violates their common law right to bodily liberty protected by habeas corpus. In  
4 other words, those paragraphs establish the core allegation in the Petition (contained in ¶ 5)  
5 on which the NhRP’s prima facie case rests.  
6

7 In a similar habeas corpus case the NhRP brought on behalf of an Asian elephant  
8 named Happy, who is currently imprisoned at the Bronx Zoo, the Hon. Jenny Rivera of the  
9 New York Court of Appeals understood the NhRP’s “core argument” was that “Happy’s  
10 confinement at the Zoo was a violation of her right to bodily liberty as an autonomous being,  
11 regardless of the care she was receiving.” *Matter of Nonhuman Rights Project, Inc. v.*  
12 *Breheny* (2022) 2022 NY Slip Op 03859, \*1, \*39 (Rivera, J., dissenting),  
13 <https://bit.ly/3IPMmdL>. In other words, “[a] gilded cage is still a cage. Happy may be a  
14 dignified creature, but there is nothing dignified about her captivity.” *Id.* at \*36. Thus, as in  
15 the instant case, the NhRP did not challenge the conditions of Happy’s imprisonment but the  
16 legality of the imprisonment itself:  
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20 Captivity is anathema to Happy because of her cognitive abilities and  
21 behavioral modalities—because she is an autonomous being. Confinement at  
22 the Zoo is harmful, not because it violates any particular regulation or statute  
23 relating to the care of elephants, but because an autonomous creature such as  
24 Happy suffers harm by the mere fact that her bodily liberty has been  
25 severely—and unjustifiably—curtailed.

26 *Id.* at \*41. The same is true here.

27 The Order also erroneously suggests that determining whether a transfer is warranted  
28 under Cal. Rules of Court 4.552(b)(2)(B) cannot “be based on the relief sought (i.e., release

1 from custody or alteration of conditions of confinement).” (Exhibit A). This ignores the fact  
2 that the relief sought here is directly related to the allegations in the Petition, specifically the  
3 core allegation that Amahle, Nolwazi, and Vusmusi’s imprisonment at the Fresno Zoo  
4 violates their common law right to bodily liberty protected by habeas corpus. Only discharge  
5 and release to an appropriate sanctuary can remedy the violation of the elephants’ right to  
6 bodily liberty.  
7

8           Generally, the nature of the challenge in habeas corpus proceedings is directly related  
9 to the relief. In cases challenging the conditions of confinement, the remedy is improvements  
10 to the conditions, while in cases challenging the legality of confinement itself, the remedy is  
11 discharge from particular custody. See *People v. Romero* (1994) 8 Cal.4th 728, 743 (“[I]n  
12 habeas corpus proceedings, relief is granted . . . by an order or judgment directing the  
13 petitioner’s release from custody or alteration of the conditions of the petitioner’s  
14 confinement.”) (emphasis added). For example, in *Inmates of the Riverside County Jail v.*  
15 *Clark* (1983) 144 Cal.App.3d 850, a petition alleged that “the petitioners’ detention was  
16 illegal in that the conditions of confinement violated [constitutional] standards.” The  
17 challenged conditions were described as follows:  
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20           [O]vercrowding [that] made it necessary for inmates to sleep on mattresses  
21 on the floors of the dayrooms and in the shower areas, that clean clothing and  
22 linen were difficult if not impossible to obtain for many inmates, that  
23 plumbing and fixtures were in a severe state of disrepair, that garbage built  
24 up on the floor of dayrooms, that fungus and mildew persisted in the shower  
25 areas, that the air conditioning units had broken down for extended periods,  
26 that there were insect infestations, and that requests for medical attention  
27 went unanswered.  
28



1 *Id.* at 854-55. In finding for petitioners, the superior court issued a remedial order directing  
2 the correction of the illegal conditions, not discharge from the jail. *Id.* at 863-67. By  
3 comparison, the petitioner in *Ex parte McGuire* (1902) 135 Cal. 339, who was duly sentenced  
4 to serve his term in state prison, successfully challenged the legality of his confinement in  
5 county jail. The court made no mention of the county jail’s conditions since they were not at  
6 issue, and concluded that the petitioner’s illegal confinement warranted discharge from the  
7 county jail, so he could be placed in the proper custody of the state prison: “his sentence for  
8 the misdemeanor is unwarranted and illegal, but it does not follow . . . that he should be set  
9 at liberty. . . . It is therefore ordered that he be remanded to the custody of the sheriff for the  
10 purpose of delivery forthwith to the warden of the state prison.” *Id.* at 343.

13 Had the NhRP intended to challenge the conditions of Amahle, Nolwazi, and  
14 Vusmusi’s confinement, rather than the legality of their imprisonment itself, the Petition  
15 would have sought to improve the conditions at the Fresno Zoo—such as those relating to  
16 the elephant enclosure’s size, cleanliness, plumbing, odor, temperature, pest control, or  
17 medical care.<sup>4</sup> But the Petition does no such thing. Instead, the Petition seeks the elephants’  
18 “discharge from the Fresno Zoo and placement in an appropriate elephant sanctuary where  
19 they can exercise their autonomy and extraordinary cognitive complexity to the greatest  
20 extent possible.” (Pet. ¶ 17) (emphasis added). Accordingly, this is not a “conditions of  
21 confinement” case and the reason provided for transferring the Petition is therefore  
22 “inapplicable” under Cal. Rules of Court 4.552(b)(4).  
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27 <sup>4</sup> Respondents falsely stated in their Reply: “The petition describes the elephants’ conditions  
28 of confinement at the zoo in order to convince the Court that the conditions should be improved.” (Exhibit D, p. 4) (emphasis added).

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**III. Conclusion**

As the reason provided for transferring the Petition is “inapplicable” under Cal. Rules of Court 4.552(b)(4), the NhRP respectfully submits that this matter must be returned to the San Francisco Superior Court.

DATED: August 22, 2022

Nonhuman Rights Project, Inc.  
By:           /s/ Monica L. Miller          

MONICA L. MILLER  
STEVEN M. WISE  
JAKE DAVIS

Attorneys for Petitioner

Nonhuman Rights Project, Inc. on behalf of Amahle, Nolwazi, and Vusmusi, individuals

1 **PROOF OF SERVICE**

2  
3 STATE OF CALIFORNIA )  
4 COUNTY OF LOS ANGELES )

5 I am employed by Ace Attorney Service, Inc. in the County of Los Angeles, State of  
6 California. I am over the age of eighteen (18) years and not a party to the within action; my  
7 business address is: 811 Wilshire Boulevard, Suite 900, Los Angeles, California 90017.

8 On **August 22, 2022**, I personally served the document(s) as described below:

9 **1. PETITIONER’S NOTICE OF MOTION AND MOTION FOR AN**  
10 **ORDER RETURNING MATTER TO SAN FRANCISCO COUNTY**  
11 **SUPERIOR COURT**

12 on the interested parties in this action by delivering a copy of said document(s) to the party  
13 listed below:

14 Paul B. Mello: [pmello@hansonbridgett.com](mailto:pmello@hansonbridgett.com)  
15 Adam W. Hofman: [ahofmann@hansonbridgett.com](mailto:ahofmann@hansonbridgett.com)  
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18 425 Market Street, 26th Floor  
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20 Attorneys for Respondents, Fresno’s  
21 Chaffee Zoo Corporation and Jon Forrest Dohlin

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23 7112 North Fresno Street, Suite 450  
24 Fresno, CA 93720  
25 Attorney for Respondents, Fresno’s  
26 Chaffee Zoo Corporation and Jon Forrest Dohlin

27 [ ] (BY MAIL) I am readily familiar with the firm’s practice of collection and  
28 processing correspondence by mailing. Under that practice it would be deposited with  
U.S. postal service on that same day with postage fully prepaid at Los Angeles,  
California in the ordinary course of business. I am aware that on motion of the party  
served, service is presumed invalid if postal cancellation date or postage meter date is  
more than one day after date of deposit for mailing in affidavit.

[X] **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** I caused the documents to  
be sent on the date shown above to the email address(es) of the person(s) listed above.

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I did not receive within a reasonable time after the transmission any electronic message or other indication that the transaction was unsuccessful.

(BY PERSONAL DELIVERY) I delivered such documents by hand to the office of the addressee.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on August 22, 2022 at Los Angeles, California.

Fernando Mercado \_\_\_\_\_  
PRINT NAME

/s/ Fernando Mercado \_\_\_\_\_  
SIGNATURE

# **EXHIBIT A**

**FILED**  
San Francisco County Superior Court

JUL 11 2022

CLERK OF THE COURT  
BY: Will [Signature]  
Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

NONHUMAN RIGHTS PROJECT, INC.,  
on behalf of Amahle, Nolwazi, and Vusmusi,  
individuals,

Petitioner,

v.

FRESNO'S CHAFFEE ZOO  
CORPORATION, and JON FORREST  
DOHLIN, in his official capacity as Chief  
Executive Officer & Zoo Director of the  
Fresno Chaffee Zoo,

Respondents.

Case No. CPF-22-517751

**[PROPOSED] ORDER TRANSFERRING  
MATTER TO FRESNO COUNTY  
SUPERIOR COURT - *Granted***

Date: July 11, 2012  
Time: 9:30 a.m.  
Dept.: 302

Respondents Fresno's Chaffee Zoo Corporation and Jon Forrest Dohlin's "motion for an order transferring matter to Fresno County Superior Court" is granted. Respondents are responsible for the transfer fee.

Respondents bring this motion pursuant to California Rules of Court, Rule 4.552, subdivision (b), which provides:

(1) The superior court in which the petition is filed must determine, based on the allegations of the petition, whether the matter should be heard by it or in the superior court of another county.

(2) If the superior court in which the petition is filed determines that the matter may be more properly heard by the superior court of another county, it may ... without first determining whether a prima facie case for relief exists, order the matter transferred to the other county. Transfer may be ordered in the following circumstances:

... (B) If the petition challenges the conditions of an inmate's confinement, it may be transferred to the county in which the petitioner is confined.

Petitioner argues that this is not a "conditions of confinement" case. To be sure, the petition states that it "does not challenge ... the conditions of Amahle, Nolwazi, and Vusmusi's imprisonment. Rather, it challenges the legality of the elephants' imprisonment itself and seeks their discharge from the Fresno Zoo." (Pet., ¶ 17; see also Prayer for Relief, ¶¶ 3-4.) Petitioner also cites to *People v. Romero* (1994) 8 Cal. 4th 728, 743 for the contention that "in habeas corpus proceedings, relief is granted ... by an order or judgment directing the petitioner's release from custody or alteration of the conditions of the petitioner's confinement." Petitioner asserts that it seeks the elephants' release from custody and does not seek to alter the conditions of their confinement.

Respondents argue, however, that the petition "devotes a considerable amount of time to explain the elephants' conditions of confinement, arguing why they are ... unacceptable." (Mot., 6:5-7; Pet., ¶¶ 87-92.) The Court agrees and finds little distinction between "conditions" of confinement and "legality" of confinement in this case. Petitioner alleges that any condition of confinement in a zoo is improper for elephants and argues that an elephant sanctuary is the only acceptable location for elephants. (Pet., sec. IV(b) ["Zoo captivity is physically and psychologically harmful to elephants"], ¶¶ 80-86; sec. IV(d), ¶¶ 93-95.)

Furthermore, Rule 4.552(b)(2)(B) requires the Court to make this determination "based on the allegations in the petition," not based on the relief sought (i.e., release from custody or alteration of conditions of confinement). The allegations in the petition certainly challenge the

elephants' confinement and the matter should therefore be heard by the Fresno County Superior Court.

DATED: July 11, 2022

*LG*

---

The Hon. Richard B. Ulmer Jr.  
JUDGE OF THE SUPERIOR COURT



## **EXHIBIT B**

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12 Attorneys for Respondents  
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13 CORPORATION and JON FORREST DOHLIN

14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN FRANCISCO**  
17

18 NONHUMAN RIGHTS PROJECT, INC.,  
19 on behalf of Amahle, Nolwazi, and Vusmusi,  
20 individuals,

21 Petitioner,

22 v.

23 FRESNO'S CHAFFEE ZOO  
CORPORATION, and JON FORREST  
DOHLIN, in his official capacity as Chief  
24 Executive Officer & Zoo Director of the  
Fresno Chaffee Zoo,

25 Respondents.  
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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**06/14/2022**  
Clerk of the Court  
BY: BOWMAN LIU  
Deputy Clerk

Case No. CPF-22-517751

**RESPONDENTS' NOTICE OF MOTION  
AND MOTION FOR AN ORDER  
TRANSFERRING MATTER TO FRESNO  
COUNTY SUPERIOR COURT**

**(Cal Rules of Court, Rule 4.552(b))**

Date: July 11, 2022  
Time: 9:30 a.m.  
Dept.: 302

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on Monday, July 11, 2022 at 9:30 a.m. in Department 302  
3 of the above referenced court, located at 400 McAllister Street, San Francisco, California,  
4 Respondents Fresno’s Chaffee Zoo Corporation and Jon Forrest Dohlin, in his official capacity as  
5 Chief Executive Officer & Zoo Director of the Fresno Chaffee Zoo, will, and hereby do, move this  
6 Court for an order transferring Petitioner’s May 3, 2022 Petition for A Common Law Writ of  
7 Habeas Corpus to the Fresno County Superior Court. (Cal. Rules of Court, rule 4.552(b).)

8 This motion is made on the ground that the elephants that are the subject of the petition  
9 live at the Fresno Chaffee Zoo, which is located in Fresno County. (See Cal. Rules of Court, rule  
10 4.552(b)(2)(B) [“Transfer may be ordered . . . If the petition challenges the conditions of an  
11 inmate’s confinement, it may be transferred to the county in which the petitioner is confined.”].)  
12 Writs of habeas corpus, and the related Rules of Court, have no application to elephants residing  
13 in a zoo. Nonetheless, attempting to connect the most relevant principles to this case, the petition  
14 generally challenges the conditions of three elephants’ nominal confinement in Fresno County.  
15 The petition should therefore be transferred to the Fresno County Superior Court.

16 Alternatively, this motion is made on the ground that the petition would be more properly  
17 heard in the Fresno County Superior Court. That court has jurisdiction over the county in which  
18 the elephants, the zoo, and the Respondents are located, and it presides in the community served  
19 by the Respondents, the community that most stands to lose from the petition. (*Id.* rule 4.552(b)(2)  
20 [“If the superior court in which the petition is filed determines that the matter may be more  
21 properly heard by the superior court of another county, it may . . . without first determining  
22 whether a prima facie case for relief exists, order the matter transferred to the other county.”];  
23 accord *Griggs v. Superior Court* (1976) 16 Cal.3d 341, 347 [noting that courts are vested with  
24 discretion to transfer a petition where there is substantial reason to do so].)

25 This motion is based on the instant notice of motion, the attached memorandum of points  
26 and authorities, the documents and pleadings on file in this action, any argument made at the  
27 hearing on this motion, and any other matters that are properly before this Court.

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DATED: June 14, 2022

HANSON BRIDGETT LLP

By:                   s/ David C. Casarrubias

PAUL B. MELLO  
ADAM W. HOFMANN  
SAMANTHA D. WOLFF  
DAVID C. CASARRUBIAS  
Attorneys for Respondents  
FRESNO'S CHAFFEE ZOO  
CORPORATION and JON FORREST DOHLIN

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Over 180 miles away from San Francisco, there are three elephants in Fresno County that  
4 live at the Fresno Chaffee Zoo. The elephants have no ties to San Francisco, nor does the zoo, the  
5 Petitioner Nonhuman Rights Project, Inc., or the Respondents. Yet, Nonhuman Rights seeks to  
6 burden this Court with a specious petition for writ of habeas corpus, purportedly on the elephants’  
7 behalf, seeking their discharge from their alleged unlawful imprisonment at the zoo. Petitioner’s  
8 blatant forum shopping should be rebuffed. (*Appalachian Ins. Company v. Superior Court* (1984)  
9 162 Cal.App.3d 427, 438 [“California Courts do not throw their doors wide open to forum  
10 shopping.”].) That is particularly true where, as here, it is apparent that the matter may be more  
11 properly heard by the Fresno County Superior Court because the petition generally challenges the  
12 conditions of the elephants’ nominal confinement in Fresno County, and Fresno County is also  
13 where the zoo, the Respondents, and the community they serve are located. Consistently, all of the  
14 persons who will participate in the matter are more efficiently available to the Fresno Court which  
15 is better situated to conduct a hearing on the petition.

16 The Court should grant this motion and order the matter transferred to the court where this  
17 petition should be resolved: the Fresno County Superior Court.

18 **II. LEGAL STANDARD**

19 Attempting to connect the most relevant procedural principles to this case, the superior  
20 court in which a habeas corpus petition is filed must determine, based on the allegations of the  
21 petition, whether the matter should be heard there or in the superior court of another county. (Cal.  
22 Rules of Court, rule 4.552(b)(1).) Based on that determination, the court then decides whether to  
23 retain jurisdiction in the matter or order the matter transferred to the proper county. (*Id.* rule  
24 4.552(b)(2).)

25 **III. ARGUMENT**

26 Nonhuman Rights brings its writ of habeas corpus for three elephants pursuant to Penal  
27 Code sections 1473 *et seq.*, and California Rules of Court, rules 4.550 *et seq.* “Although any  
28 superior court has jurisdiction to entertain and adjudicate a petition for the writ of habeas corpus, it

1 does not follow that it should do so in all instances.” (*Griggs v. Superior Court* (1976) 16 Cal.3d  
2 341, 347 (*Griggs*)). Generally, a petition should be heard and resolved in the court in which it is  
3 filed, but there are exceptions that may warrant the transfer of the petition to another court. (Cal.  
4 Rules of Court, rule 4.552.) First, “[i]f the petition challenges the conditions of an inmate’s  
5 confinement, it may be transferred to the county in which the petitioner is confined.” (*Id.* rule  
6 4.552(b)(2)(B).) Second, alternatively, “[i]f the superior court in which the petition is filed  
7 determines that the matter may be more properly heard by the superior court of another county” it  
8 may be transferred to that county. (*Id.*, rule 4.552(b)(2).)

9 As explained below, either of these exceptions apply to this proceeding. To the extent the  
10 principles of habeas corpus can be applied to this case at all, the conditions of the elephants’  
11 nominal confinement, the elephants, the zoo, the Respondents, and the community they serve are  
12 all located in Fresno County. Accordingly, Respondents’ transfer motion should be granted.

13 **A. The Court should transfer the petition to the Fresno County Superior Court because**  
14 **the petition generally challenges the conditions of the nominal confinement of the**  
**elephants in the Fresno Chaffee Zoo located within Fresno County.**

15 “If the challenge is to conditions of the inmate’s confinement, then the petition should be  
16 transferred to the superior court of the county wherein the inmate is confined if that court is a  
17 different court from the court where the petition was filed.” (*Griggs, supra*, 16 Cal.3d at p. 347;  
18 accord, California Rules of Court, rule 4.552(b)(2)(B).) Here, of course, there are no “inmates”  
19 and no confinement in the sense used by the Penal Code or Rules of Court. Still, accepting  
20 Petitioner’s theory for the sake of procedural analysis, the petition can best be understood as  
21 challenging the condition of the elephants’ nominal confinement. As stated in the petition:

22 The elephants’ imprisonment at the Fresno Zoo deprives them of their physical and  
23 psychological needs, including the need to exercise autonomy. “Their lives are  
24 nothing but a succession of boring and frustrating days, damaging to their bodies and  
25 minds, and punctuated only by interaction with their keepers.” There is no  
26 opportunity for the elephants to use their extraordinary complex cognitive capacities  
27 to explore, appropriately forage, problem solve, communicate over distance, or  
employ their wide-ranging vocalizations. The elephants spend at least half of each  
day (if not more) in a barn standing on concrete, and when allowed outside they are  
unable to walk more than 100 yards in any direction. Their acute hearing is  
bombarded by continuous auditory disturbances “from major transportation arteries  
on all four sides of their enclosure.”

28 (Pet., pp. 115:11-116:3, footnotes omitted.) These allegations confirm that the case belongs in

1 Fresno County because the petition generally challenges conditions of confinement.

2         Preemptively, Nonhuman Rights contends that rule 4.552(b)(2)(B) does not apply because  
3 it is not challenging the conditions of the elephants’ confinement, but rather the legality of the  
4 imprisonment itself, and seeks the discharge of the elephants from the zoo. (Pet., p. 19:6-10.) This  
5 argument is belied by the over 100-page petition that devotes a considerable amount time to  
6 explain the elephants’ conditions of confinement, and arguing why they are, in Nonhuman Rights’  
7 view, unacceptable. (E.g. Pet, pp. 55-59 [alleging that zoo captivity is physically and  
8 psychologically harmful to elephants], 59-62 [alleging that the Fresno Zoo is an unacceptable  
9 place for elephants], 62-64, 112-116 [suggesting a different place to confine the elephants with  
10 allegedly better conditions, i.e. an elephant sanctuary].)

11         Because the petition invariably challenges the conditions of the elephants’ nominal  
12 confinement in Fresno County (see Pet., p. 15:3-11 [alleging that the elephants are unlawfully  
13 imprisoned at the Fresno Chaffee Zoo in the City of Fresno, which is in Fresno County]), rule  
14 4.552(b)(2)(B) applies and the Court has discretion to rely on it. Thus, the petition can and should  
15 be transferred to the Fresno County Superior Court.

16 **B.         Alternatively, the Court should transfer the petition to the Fresno County Superior**  
17 **Court because the petition would be more properly heard in Fresno County.**

18         In the alternative, the Court should grant Respondents’ transfer motion because the petition  
19 would be more properly heard in the Fresno County Superior Court which has jurisdiction over the  
20 county in which the elephants, the zoo, and the Respondents are located. (*Id.* rule 4.552(b)(2) [“If  
21 the superior court in which the petition is filed determines that the matter may be more properly  
22 heard by the superior court of another county, it may . . . without first determining whether a  
23 prima facie case for relief exists, order the matter transferred to the other county.”]; accord *Griggs*,  
24 *supra*, 16 Cal.3d at p. 347 [noting that courts are vested with discretion to transfer a petition where  
25 there is substantial reason to do so].) In *Griggs*, the Court gave some examples of when there  
26 might be a substantial reason to transfer a petition: A trial court “should nevertheless not be  
27 precluded from transferring the petition should it appear, inter alia, that an evidentiary hearing is  
28 necessary and that the persons who will participate therein are more efficiently available to

1 another court or that such other court is better situated to conduct a hearing.” (*Griggs, supra*, 16  
2 Cal.3d at p. 347.)

3         It remains to be seen if an evidentiary hearing will be necessary because neither the return  
4 nor traverse have been filed. (E.g. *People v. Romero* (1994) 8 Cal.4th 728, 739-740 [“(If) the  
5 return and traverse reveal that petitioner’s entitlement to relief hinges on the resolution of factual  
6 disputes, then the court should order an evidentiary hearing.”].) However, if the petition proceeds  
7 on the merits, and it is determined that an evidentiary hearing is necessary, the key witnesses,  
8 elephants, evidence, and the zoo itself—should a site visit to the zoo to observe the elephants be  
9 desired—are all in Fresno County. The Fresno County Superior Court is 2.8 miles away from the  
10 Fresno Chaffee Zoo, while the San Francisco Superior Court is 184 miles away. As is apparent, it  
11 would be more convenient for the matter to proceed in the county in which the elephants and the  
12 zoo are located.

13         Finally, the Court should observe that the Fresno County Superior Court presides over the  
14 community served by Respondents; the community that most stands to lose from the petition. The  
15 people of Fresno have a strong interest in their zoo. Just last week, Fresno voters overwhelmingly  
16 supported passage of Measure Z, extending a 2004 sales tax that funds improvements at the  
17 Fresno Chaffee Zoo. (Montalvo, *Fresno votes to ‘Keep Our Zoo,’ as Measure Z cruises with more*  
18 *than 80% approval*, The Fresno Bee, (June 8, 2022) [https://www.fresnobee.com/news/politics-](https://www.fresnobee.com/news/politics-government/election/local-election/article262278632.html)  
19 [government/election/local-election/article262278632.html](https://www.fresnobee.com/news/politics-government/election/local-election/article262278632.html) (last accessed June 13, 2022); see also,  
20 *Measure Z: 84% vote ‘Yes’ on extending sales tax for Fresno zoo improvements*, abc30-KFSN  
21 (June 8, 2022) <https://abc30.com/fresno-chaffee-zoo-measure-z-taxes-sales-tax/11937559/> (last  
22 accessed June 13, 2022).) The people of Fresno sent a clear message that the zoo is a popular, well  
23 respected, local institution worthy of further investment. Consistently, it should be the Fresno  
24 Court, and not a distant San Francisco Court, that should preside over a petition that so closely  
25 affects this community asset.

26         Under the unique facts of this case, there is a substantial reason to transfer the petition to  
27 the Fresno County Superior Court where the matter may be more properly heard.

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**IV. CONCLUSION**

This petition should have originally been filed in the Fresno County Superior Court where all they key players are located, human and non-human alike. Petitioner knows that, but apparently believed it could secure a more favorable outcome for the elephants in San Francisco. That calculus reflects poorly on the already dubious merits of Petitioner’s case, but also highlights the import of the trial courts’ discretion to transfer jurisdiction in this instance.

This matter belongs in Fresno County. Accordingly, Respondents respectfully request that the Court grant this motion and issue an order transferring the matter to the Fresno County Superior Court.

DATED: June 14, 2022

HANSON BRIDGETT LLP

By:           s/ David C. Casarrubias            
PAUL B. MELLO  
ADAM W. HOFMANN  
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**PROOF OF SERVICE**

NonHuman Rights Project, Inc., on behalf of Amahle, Nolwazi, and Vusmusi, individuals,  
v.  
FRESNO'S CHAFFEE ZOO  
CORPORATION, and JON FORREST  
DOHLIN, in his official capacity as Chief Executive Officer & Zoo Director of the  
Fresno Chaffee Zoo

San Francisco Superior Court, Case No. CPF-22-517751

**STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1676 N. California Blvd., Suite 620, Walnut Creek, CA 94596.

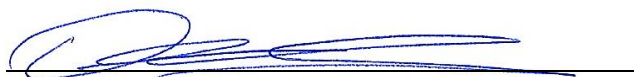
On June 14, 2022, I served true copies of the following documents described as:  
**RESPONDENTS' NOTICE OF MOTION AND MOTION FOR AN ORDER TRANSFERRING MATTER TO FRESNO COUNTY SUPERIOR COURT** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I served a copy of the documents to be sent from e-mail address destebanez@hansonbridgett.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 14, 2022, at San Bruno, California.



Debbie Estebanez

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# **EXHIBIT C**

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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**06/27/2022**  
Clerk of the Court  
BY: EDNALEEN ALEGRE  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

NONHUMAN RIGHTS PROJECT, INC., on  
behalf of Amahle, Nolwazi, and Vusmusi,  
individuals,

*Petitioner,*

vs.

FRESNO'S CHAFFEE ZOO CORPORATION,  
and JON FORREST DOHLIN, in his official  
capacity as Chief Executive Officer & Zoo  
Director of the Fresno Chaffee Zoo,

*Respondents.*

Case No.: CPF-22-517751

**PETITIONER'S OPPOSITION TO  
RESPONDENTS' MOTION FOR AN  
ORDER TRANSFERRING MATTER TO  
FRESNO COUNTY SUPERIOR COURT**

Date: July 11, 2022

Time: 9:30 a.m. PST

Location: 400 McAllister St., San Francisco,  
CA, 94102

Courtroom: Department 302 (Law & Motions  
Hearings)

Date Action Filed: May 3, 2022

Trial Date: unknown

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Respondents’ motion to transfer venue should be denied. A transfer can only be ordered for a  
4 substantial reason, and no substantial reason exists in this case.

5 As a preliminary matter, Nonhuman Rights Project, Inc (hereafter “NhRP”) notes that, as this  
6 Court has not yet issued an order to show cause pursuant to Cal. Rules of Court 4.551(c)(1),  
7 Respondents are not yet parties to this case. Respondents therefore have no basis for making any  
8 motions at this stage in the litigation. *See People v. Martinez* (2009) 47 Cal.4th 399, 419 n. 2 (“We  
9 observe that persons who are not parties to litigation ordinarily cannot be heard in the litigation.  
10 In civil litigation a nonparty who has not formally intervened ordinarily  
11 cannot make a motion (*Difani v. Riverside County Oil Co.* (1927) 201 Cal. 210, 214, 256 P.  
12 210; *Marshank v. Superior Court* (1960) 180 Cal.App.2d 602, 605, 4 Cal.Rptr. 593; see generally  
13 6 Witkin, *Cal. Procedure* (5th ed. 2008) Proceedings Without Trial, § 4, p. 430.)”).

14 **II. ARGUMENT**

15 “In general, a habeas corpus petition should be heard and resolved by the court in which the  
16 petition is filed.” *In re Roberts* (2005) 36 Cal.4th 575, 585 (hereafter *Roberts*); *see also* Cal. Rules  
17 of Court 4.552(a) (“Except as set forth in subdivision (b)(2), the petition should be heard and  
18 resolved in the court in which it is filed.”). “[W]hen a petitioner has complied with pertinent rules,  
19 the superior court in which the petition is presented should file and review the allegations of the  
20 petition in order to determine whether it states a prima facie case for relief.” *Roberts*, 36 Cal.4th  
21 at 583.

1 “[A] petition for writ of habeas corpus should not be transferred to another court unless a  
2 substantial reason exists for such transfer.” *Id.* Substantial reasons include those mentioned in Cal.  
3 Rules of Court 4.552(b)(2), which provides:

4 (A) If the petition challenges the terms of a judgment, the matter may be  
5 transferred to the county in which judgment was rendered. (B) If the  
6 petition challenges the conditions of an inmate’s confinement, it may be  
7 transferred to the county in which the petitioner is confined. . . . (C) If the  
8 petition challenges the denial of parole or the petitioner’s suitability for  
9 parole and is filed in a superior court other than the court that rendered the  
10 underlying judgment, the court in which the petition is filed should  
11 transfer the petition to the superior court in which the underlying judgment  
12 was rendered.  
13

14 No “substantial reason” exists in this case. According to Respondents, there are two reasons  
15 for transferring venue: (1) because the NhRP challenges the conditions of the elephants’  
16 confinement; and (2) because the NhRP’s petition would be more properly heard in Fresno County.  
17 As shown below, both arguments fail.

18 **A. This is not a “conditions of confinement” case**  
19

20 Respondents misrepresent the NhRP’s petition by asserting that it is “challenging the condition  
21 of the elephants’ nominal confinement.” Resp’t Mot. 5. This is false. The Petition explicitly states:  
22 “The Petition does not challenge . . . the conditions of Amahle, Nolwazi, and Vusmusi’s  
23 imprisonment. Rather, it challenges the legality of the elephants’ imprisonment itself and seeks  
24 their discharge from the Fresno Zoo.” NhRP Pet. ¶ 17.

25 Contrary to Respondents, the NhRP’s petition explains why the elephants’ imprisonment at  
26 the Fresno County Zoo itself is unacceptable. For it “violates their common law right to bodily  
27 liberty protected by habeas corpus and is therefore unlawful because it deprives the elephants of  
28 their ability to meaningfully exercise their autonomy and extraordinary cognitive complexity.

1 including the freedom to choose where to go, what to do, and with whom to be.” NhRP Pet. ¶ 5.  
2 As such, the Petition seeks the elephants’ discharge from the Fresno Zoo—not changes to their  
3 conditions at the zoo. See *People v. Romero* (1994) 8 Cal.4th 728, 743, as modified on denial of  
4 reh'g (Jan. 5, 1995) (“in habeas corpus proceedings, relief is granted . . . by an order or judgment  
5 directing the petitioner's release from custody or alteration of the conditions of the petitioner's  
6 confinement.”) (emphasis added).

7 Accordingly, the exception provided in Cal. Rules of Court 4.552(b)(2)(B), permitting a  
8 transfer in cases where the petition “challenges the conditions of an inmate’s confinement,” does  
9 not apply.

10 **B. The Petition would not be more properly heard in Fresno County**

11 Respondents argue, in the alternative, that “the petition would be more properly heard in the  
12 Fresno County Superior Court” based on considerations of convenience and the purported interests  
13 of the Fresno County community. Resp’t Mot. 6. Neither consideration warrants transfer.

14 First, Respondents cite *Griggs v. Superior Court* (1976) 16 Cal.3d 341, 347 (hereafter *Griggs*)  
15 for its language that a trial court should have the option to transfer a case when “an evidentiary  
16 hearing is necessary” and the individuals who would participate in that hearing are “more  
17 efficiently available” to another court. Resp’t Mot. 6-7 (citing *Griggs*, 16 Cal.3d at 347). However,  
18 even Respondents concede that “[i]t remains to be seen if an evidentiary hearing will be necessary”  
19 in this case. Resp’t Mot. 7. The NhRP’s case will likely present a pure question of law, and all the  
20 relevant facts can be introduced and contested via affidavits. If an evidentiary hearing is necessary,  
21 court hearings can now readily be held on Zoom. If an in-person evidentiary hearing occurs,



1 Petitioner’s attorney of record is located just north of San Francisco and Respondents’ attorneys  
2 are based out of San Francisco. Respondents’ convenience argument, therefore, has no basis.

3 Second, Respondents’ assertion that the Fresno County community “stands the most to lose  
4 from the petition” completely ignores that this is a habeas corpus proceeding. *Id.* Whether the  
5 Fresno County community may want to see Amahle, Nolwazi, and Vusmusi kept at the zoo is no  
6 basis for transferring the Petition. When an individual is illegally imprisoned, it is irrelevant  
7 whether members of the community want to see that individual kept in prison.

8 **III. Conclusion**

9 As no substantial reason exists for transferring the Petition, the NhRP respectfully  
10 submits that Respondents’ motion must be denied.

11  
12 DATED: June 27, 2022

Nonhuman Rights Project, Inc.

13 By: \_\_\_\_\_ /S/ Monica Miller

14 MONICA M. MILLER

15 STEVEN M. WISE

16 JAKE DAVIS

17 Attorneys for Petitioner

18 Nonhuman Rights Project, Inc. on behalf of Amahle, Nolwazi, and Vusmusi, individuals  
19

1  
2 **PROOF OF SERVICE**

3 Nonhuman Rights Project, Inc., on behalf of Amahle, Nowazi, and Vusmusi, individuals,

4 v.

5 FRESNO'S CHAFFEE ZOO

6 CORPORATIO, and Jon Forrest

7 Dohlin, in his official capacity as Chief Executive Officer & Zoo Director of the Fresno  
8 Chaffee Zoo

9 San Francisco Superior Court, Case no. CPF-22-517751

10 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

11 At the time of service, I was over 18 years of age and not a party to this action. I am  
12 employed in the County of Los Angeles, State of California. My business address is 811  
13 Wilshire Blvd, Suite 900, Los Angeles, CA 90017.

14 On June 27, 2022, I served true copies of the following documents described as:

15 **PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION FOR AN ORDER**  
16 **TRANSFERRING MATTER TO FRESNO COUNTY SUPERIOR COURT** on the  
17 interested parties in this action as follows:

18 **SEE ATTACHED SERVICE LIST**

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SERVICE LIST

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**By electronic transmission:** I served a copy of the documents to be sent via File&ServeXpress.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 27, 2022, at Los Angeles, California.

/S/ Amber Mariscal  
Amber Mariscal

## **EXHIBIT D**

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13 CORPORATION and JON FORREST DOHLIN

14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN FRANCISCO**

17 NONHUMAN RIGHTS PROJECT, INC.,  
18 on behalf of Amahle, Nolwazi, and Vusmusi,  
19 individuals,

20 Petitioner,

21 v.

22 FRESNO'S CHAFFEE ZOO  
CORPORATION, and JON FORREST  
DOHLIN, in his official capacity as Chief  
23 Executive Officer & Zoo Director of the  
Fresno Chaffee Zoo,

24 Respondents.  
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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**07/01/2022**  
Clerk of the Court  
BY: RONNIE OTERO  
Deputy Clerk

Case No. CPF-22-517751

**RESPONDENTS' REPLY IN SUPPORT  
OF MOTION FOR AN ORDER  
TRANSFERRING MATTER TO FRESNO  
COUNTY SUPERIOR COURT**

Date: July 11, 2012  
Time: 9:30 a.m.  
Dept.: 302

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**I. INTRODUCTION**

Petitioner’s arguments in opposition to Respondents’ motion to transfer venue are belied by the allegations in their petition and by the indisputable facts of this case. The facts alleged in their petition do challenge the conditions in which the elephants are kept, notwithstanding Petitioner’s conclusory allegation to the contrary. And there is no reason for the case to have been filed in this Court, while every potentially relevant factor either favors Fresno County or is venue neutral. The Court should grant Respondents’ motion and order this matter transferred to the Fresno County Superior Court.

**II. ARGUMENT**

As a threshold matter, Petitioner makes a puzzling assertion that Respondents are not parties to this case because the Court has not issued an order to show cause. (Petitioner’s Opposition (“Opp.”), p. 2:5-13.) As a result, they claim, Respondents should not be heard on this motion. However, once Petitioner named Fresno’s Chaffee Zoo Corporation and Jon Forrest Dohlin as the Respondents in their petition, they became party respondents. (E.g. *Meller & Snyder v. R & T Properties, Inc.* (1998) 62 Cal.App.4th 1303, 1310 [holding that the primary way to become a party defendant “is by being named as a defendant”].) Consistently, Respondents moved to protect their interests in having this matter heard in the appropriate venue *before* any order to show cause issued. Under Petitioner’s logic, no respondent could ever challenge venue in a habeas proceeding. That cannot be right in light of California Rules of Court, rule 4.552(b), which expressly allows for the transfer of a petition *before* a court determines whether a prima facie case for relief exists. The Court should reject Petitioner’s attempt to avoid the merits of this motion.

**A. Respondents demonstrated that the petition generally challenges conditions of confinement, thereby justifying a change of venue under California Rules of Court, rule 4.552(b)(2)(B).**

Petitioner first argues that this is not a “conditions of confinement” case, and therefore the transfer of venue exception in California Rules of Court, rule 4.552(b)(2)(B) does not apply. (Opp. pp. 3:18-4:9.) However, as Respondents affirmatively showed in their motion, Petitioner actually does generally challenge the conditions of the elephants’ confinement at Fresno’s Chaffee Zoo, and therefore the Court has discretion to consider whether transfer is appropriate under rule



1 4.552(b)(2)(B). (Respondent’s Motion (“Mot.”), pp. 5:13-6:15.) The petition describes the  
2 elephants’ conditions of confinement at the zoo in order to convince the Court that the conditions  
3 should be improved. (E.g. Petition (“Pet.”), pp. 115:11-116:3, footnotes omitted.) Moreover, the  
4 remedy Petitioner seeks is to transfer the elephants to a different place of confinement with  
5 allegedly better conditions, i.e. an elephant sanctuary. (Pet., pp. 62-64, 112-116.)

6 Attempting to show otherwise, Petitioner points to a single allegation that Petitioner does  
7 not challenge conditions of confinement. This allegation—pretty apparently written in recognition  
8 that Respondents would move to change venue to the correct court— is nothing more than a legal  
9 conclusion, belied by the factual allegations in the Petition, and can be disregarded. (*Wexler v.*  
10 *California Fair Plan Association* (2021) 63 Cal.App.5th 55, 70 [“We disregard legal conclusions  
11 in a complaint; they are just a lawyer’s arguments.”].) Because the petition clearly challenges the  
12 conditions of the elephants’ nominal confinement, rule 4.552(b)(2)(B) applies, and the case can  
13 and should be transferred to the Fresno County Superior Court.

14 **B. Separately, Respondents demonstrated that the petition would be more**  
15 **properly heard in Fresno County, and Petitioner’s arguments in opposition do**  
16 **not show otherwise.**

17 Petitioner also raises a series of arguments in an attempt to show that Fresno County is not  
18 a better venue for this case. None provides a basis for San Francisco County Superior Court to  
19 keep the case—indeed, Respondent studiously avoids explaining its reason for filing here—and  
20 none rebuts Respondents’ affirmative showing that there is substantial reason to transfer the  
21 matter. (Mot. pp. 6:16-7:27, citing Cal. Rules of Court, rule 4.552(b)(2), and *Griggs v. Superior*  
*Court* (1976) 16 Cal.3d 341, 347.)

22 First, Petitioner claims that it would be more convenient for the matter to stay in San  
23 Francisco because the petition presents a pure question of law, all relevant facts can be introduced  
24 and contested via affidavits, and if a hearing is necessary, the Court can hold a hearing via Zoom.  
25 (Opp. p. 4:19-21.) But the same is true for the Fresno County Superior Court. If the matter is  
26 transferred there, and the petition presents a pure question of law as Petitioner claims, then all  
27 relevant facts can be introduced and contested via affidavits, and the Fresno Court can hold a  
28 Zoom hearing if necessary. These factors are neutral, and therefore they do not weigh in favor of

1 retaining jurisdiction.

2 Second, Petitioner claims that if an in-person hearing is needed, San Francisco would be a  
3 superior venue because its local counsel is located just north of San Francisco, and Respondents'  
4 attorneys are also in San Francisco. (Opp. p. 4:21-5:2.) That argument conveniently ignores that  
5 Respondents have counsel based both in Fresno and San Francisco. (See caption, *ante* [listing Mr.  
6 Doug Larsen as counsel based in Fresno].) Petitioner does not account for the burdens on Mr.  
7 Larson who will have to travel over 180 miles each way to appear for any in person hearings in  
8 San Francisco.

9 More importantly, Respondents' point was that the Fresno County Superior Court would  
10 be a superior venue because the key witnesses, elephants, evidence, and the zoo itself—should a  
11 site visit to the zoo to observe the elephants be desired—are all in Fresno County. (Mot. p. 7:3-  
12 12.) Petitioner provides no response to this argument, which should be treated as a tacit concession  
13 of its merit. (See *Aronow v. Lacroix* (1990) 219 Cal.App.3d 1039, 1048, reh'g denied and opinion  
14 modified (May 24, 1990) [holding that a party's failure to address an argument is a tacit  
15 concession of its merit].) Consistently, this factor weighs in favor of transferring jurisdiction.

16 Third, and finally, Petitioner claims that because this matter is a habeas corpus proceeding,  
17 whether the Fresno County community has any interest in what happens with their elephants is  
18 irrelevant. (Opp. p. 5:3-7.) However, this matter is a habeas corpus proceeding only because  
19 Petitioner is taking advantage of a legal process that has nothing to do with zoos or with elephants.  
20 In doing so, they seek to deprive the people of Fresno from having a matter that closely affects  
21 their interests from being adjudicated by their Court, attending hearings if they wish to observe,  
22 etc. No doubt the people of San Francisco would take issue with having a lawsuit concerning the  
23 animals in the San Francisco Zoo adjudicated by a distant court in Fresno County.

24 In ordinary habeas proceedings, the community interest may not be a factor. But in a case  
25 such as this, where ordinary habeas principles have absolutely no relevance, local community  
26 interest should factor in favor of transferring venue to the affected community.

### 27 III. CONCLUSION

28 In this case, all roads lead to Fresno: the elephants are in Fresno; the Respondents who

1 spend their days caring for them are in Fresno; the Zoo is in Fresno. The only thing that isn't in  
2 Fresno is this petition. Accordingly, Respondents respectfully request that the Court grant this  
3 motion and issue an order transferring the matter to the Fresno County Superior Court.

4 DATED: July 1, 2022

HANSON BRIDGETT LLP

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**PROOF OF SERVICE**

NonHuman Rights Project, Inc., on behalf of Amahle, Nolwazi, and Vusmusi, individuals,  
v.  
FRESNO'S CHAFFEE ZOO  
CORPORATION, and JON FORREST  
DOHLIN, in his official capacity as Chief Executive Officer & Zoo Director of the  
Fresno Chaffee Zoo

San Francisco Superior Court, Case No. CPF-22-517751

**STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 500 Capitol Mall, Suite 1500, Sacramento, CA 95814.

On July 1, 2022, I served true copies of the following document described as:  
**RESPONDENTS' REPLY IN SUPPORT OF MOTION FOR AN ORDER TRANSFERRING MATTER TO FRESNO COUNTY SUPERIOR COURT** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I served a copy of the document to be sent from e-mail address egriffing@hansonbridgett.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 1, 2022, at Sacramento, California.

  
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Emily Griffing

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