

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Supplemental Decision
PART 12

BARBARA JAFFE
J.S.C.

PRESENT: Justice

Nonhuman Rights Project

Presli, Carmen

INDEX NO. 150149/2016

MOTION DATE

MOTION SEQ. NO. Seq 001

The following papers, numbered 1 to , were read on this motion to/for Habeas Corpus

Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s).

Answering Affidavits - Exhibits No(s).

Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

In response to Petitioner's request, the Declined Order to show cause and annexed memorandum (NYSCEF #48) constitute the court's Decision

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: MAY 20 2016

BARBARA JAFFE J.S.C.

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE



Nonhuman Rights Project

By Hand

May 20, 2016

Supreme Court of the State of New York
New York County
Barbara Jaffe, JSC
80 Centre Street
Room 279
New York, New York 10013

Re: *Nonhuman Rights Project, Inc., on behalf of Kiko v. Carmen Presti et al.*,
(150149/2016)

Dear Justice Jaffe,

I am a counsel of record for Petitioner-Appellant, the Nonhuman Rights Project, Inc. (“NhRP”) in the above-captioned matter. The NhRP filed in the Supreme Court, New York County a verified petition for a writ of habeas corpus and order to show cause on behalf of a chimpanzee named Kiko. On January 29, 2016, you entered with the Clerk of the Court a copy of the proposed writ of habeas corpus and order to show cause which was stamped “DECLINED TO SIGN” and an annexed memorandum of law. The NhRP then filed and served a timely notice of appeal on February 9, 2016.

The NhRP seeks to perfect its appeal. This week it filed the record on appeal and brief in the New York State Supreme Court Appellate Division, First Judicial Department. I was contacted by Don Ramos of the Clerk’s Office and informed that we did not have a proper order from which an appeal may be taken. I am therefore writing to request that you enter an actual Order with the New York County Clerk denying the NhRP’s petition for a writ of habeas corpus and order to show cause. I will submit this Order to the First Department along with a memorandum of law explaining why the NhRP has an appeal as of right from the

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www.nonhumanrights.org · info@nonhumanrights.org

RECEIVED

MAY 20 2016

PART 12

denial of an order to show cause in the context of a habeas corpus petition pursuant to Article 70 of the CPLR.

Thank you for your kind consideration of this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Elizabeth Stein', written in black ink.

Elizabeth Stein

CC: Carmen Presti
Christie E. Presti
The Primate Sanctuary, Inc.

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

PRESENT: HON. _____
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

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 KIKO,

Petitioner,

-against-

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

Respondents.

-----X

**ORDER TO SHOW CAUSE &
WRIT OF HABEAS CORPUS**

Index No.: **150149/2016**

DECLINED TO SIGN
see annexed memorandum

TO THE ABOVE NAMED RESPONDENTS:

PLEASE TAKE NOTICE, That upon the annexed Verified Petition of Elizabeth Stein,
Esq. and Steven M. Wise, Esq. (subject to *pro hac vice* admission), with Exhibits and
Memorandum of Law, dated January 6, 2016, and upon all pleadings and proceedings herein, let
the Respondents CARMEN PRESTI, individually and as an officer and director of The Primate

Sanctuary, Inc., CHRISTIE E. PRESTI, individually and as an officer and director of The Primate Sanctuary, Inc. and THE PRIMATE SANCTUARY, INC., or their attorneys, SHOW CAUSE at I.A.S. Part _____, Room _____, of this Court to be held at the Courthouse located at 80 Centre Street, New York, New York 10013, on the _____ day of _____, 2016 at _____ o'clock in the _____ of that day, or as soon thereafter as counsel can be heard, why an Order should not be entered granting Petitioner, The Nonhuman Rights Project, Inc. ("NhRP"), the following relief:

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

It is THEREFORE:

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

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

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

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

Index No. 150149/16

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

MEMORANDUM

Mot. seq. no. 001

Petitioner,

- against -

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

Respondents.

-----X
JAFFE, BARBARA, J.:

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

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

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

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

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

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

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


BARBARA JAFFE
J.S.C.