

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

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

Petitioner-Appellant,

-against-

Index No. 150149/16
(New York County)

Notice of Motion

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-Respondents.

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PLEASE TAKE NOTICE that, upon Petitioner-Appellant, the Nonhuman Rights Project, Inc's. ("NhRP"), annexed Memorandum of Law in support of its Motion to Reargue or, in the alternative, for Leave to Appeal to the Court of Appeals, the annexed affirmation of Elizabeth Stein, Esq. dated August 17, 2016, the Exhibits 1-5 annexed thereto, and upon all pleadings and proceedings heretofore had herein, the undersigned will move this Court at the Appellate Division, First Department Courthouse, 27 Madison Avenue, New York, New York, for an Order:

- (1) To reargue this Court's order construing the NhRP's motion to appeal as of right under CPLR 7011 as a motion for leave to appeal under CPLR

5701(c) and then denying the NhRP's absolute right to appeal (Exhibit 1, attached to Stein Affirmation), or, in the alternative,

(2) Granting leave to appeal to the Court of Appeals.

PLEASE TAKE FURTHER NOTICE, that the motion is returnable at 10 o'clock in the forenoon on Monday, August 29, 2016, which is at least 9 days from the date of service of these papers. The Respondents are hereby given notice that the motion will be submitted on the papers and their personal appearance in opposition is neither required nor permitted.

Dated:

Respectfully submitted,

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**PETITIONER-APPELLANT'S MEMORANDUM OF LAW IN SUPPORT
OF ITS MOTION TO REARGUE OR, IN THE ALTERNATIVE, FOR
LEAVE TO APPEAL TO THE COURT OF APPEALS**

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INTRODUCTION

Petitioner-Appellant, Nonhuman Rights Project, Inc. (“NhRP”), respectfully submits this memorandum of law in support of its Motion to Reargue or, in the alternative, for Leave to Appeal (“Motion to Reargue”) the order of The Honorable Associate Justice Troy K. Webber (“Justice Webber”), entered July 28, 2016, construing the NhRP’s motion to appeal as of right under New York Civil Practice Law and Rules (“CPLR”) 7011 as a motion for leave to appeal under CPLR 5701(c)—which the NhRP intentionally did not seek—and then denying the NhRP its absolute right to appeal, without specifying why the NhRP was not entitled to its absolute right to appeal pursuant to CPLR 7011.¹

QUESTIONS OF LAW TO REARGUE OR TO PRESENT UPON APPEAL

The NhRP raises the following questions to reargue or, alternatively, to present upon appeal to the Court of Appeals:

1. Does a habeas corpus petitioner have an absolute right to appeal to the Appellate Division pursuant to CPLR 7011 from a judgment refusing to issue a writ of habeas corpus or an order to show cause under CPLR 7003(a)?
2. Did Justice Webber err in denying the NhRP the ability to appeal to this Court as a matter of right under CPLR 7011?

¹ Submitted herewith in support of its Motion to Reargue is the Affirmation of Elizabeth Stein, Esq. (“Stein Aff.”)

PRELIMINARY STATEMENT AND PROCEDURAL HISTORY

This memorandum of law is submitted in support of the NhRP's Motion to Reargue pursuant to 22A NYCRR § 600.14 and CPLR 2221(d). The NhRP respectfully submits that Justice Webber erred in denying its motion to appeal as of right the lower court's refusal to issue a writ of habeas corpus or order to show cause pursuant to CPLR 7003(a) to the New York State Supreme Court Appellate Division, First Judicial Department ("First Department") under CPLR 7011. (Exhibit 1, attached to Stein Aff.).

The NhRP's Motion to Reargue arises from an order of the Supreme Court New York County, dated January 29, 2016, denying its Verified Petition for a common law writ of habeas corpus and order to show cause ("Petition"), filed on behalf of a chimpanzee named Kiko pursuant to CPLR Article 70. On February 9, 2016, the NhRP filed with the Clerk of this Court the following papers: Notice of Appeal (Exhibit 2, attached to Stein Aff.), completed Request for Appellate Intervention, Order of the Supreme Court New York County, and affidavit of service. The NhRP then sought to perfect its appeal. On May 18, 2016, it filed with this Court the Record on Appeal, which included the order of the lower court and brief. NhRP's counsel was then contacted by the First Department Clerk's Office and informed that the NhRP did not have a proper order from which an appeal could be taken and that the NhRP did not have an appeal as of right from the lower

court's refusal to issue an order or show cause or writ of habeas corpus. The NhRP also filed the following documents with this Court: Appendix, Motion to File an Oversize Brief (which was denied); a second Motion to File an Oversize Brief (which was granted); Motion for Steven M. Wise to appear and argue *Pro Hac Vice* (which was granted); Motion to Amend the Record on Appeal, and; Motion to Appeal as of Right, from which this Motion to Reargue is taken (Exhibit 3, attached to Stein Aff.).

In response to the Clerk's statement regarding the sufficiency of the order and appropriateness of the appeal, on May 20, 2016, the NhRP submitted a letter to the lower court requesting that it enter an appropriate order with the New York County Clerk from which an appeal may be taken, which the court issued on the same date (Exhibit 4, attached to Stein Aff.) and which the NhRP seeks to file as a supplemental record on appeal (the NhRP's Motion to Amend the Record on Appeal is pending before this Court). Because this judgment post-dated all of the filings in this appeal, on July 6, 2016, the lower court then granted the NhRP's motion for an order that the judgment of May 20, 2016 be issued *nunc pro tunc* to the date of the lower court's original final order of January 29, 2016 (Exhibit 5 attached to Stein Aff.).

On July 28, 2016, Justice Webber entered an order denying the appeal, asserting:

Petitioner-Appellant moved to appeal the matter as of right pursuant to CPLR 7011.

I, Troy K. Webber, a Justice of the Appellate Division, deem this a motion brought pursuant to CPLR 5701(c), for leave to appeal to the Appellate Division, First Department, from the order of Supreme Court Justice Barbara Jaffe of the Supreme Court, New York County, entered on or about January 29, 2016,

Now, upon reading the papers with respect to the motion, and due deliberation having been had thereon, it is Ordered that the application for leave to appeal is denied.

(Exhibit 1 attached to Stein Aff.).

ARGUMENT

I. THE NhRP'S MOTION TO REARGUE SHOULD BE GRANTED.

A motion to reargue should be granted upon a showing that the Court “overlooked or misapprehended” relevant facts or law. CPLR 2221(d)(2); *see also*, 22 NYCRR § 600.14. *Accord People v. McCoy*, 974 N.Y.S.2d 6, 7 (1st Dept. 2013) (granting motion to reargue under § 600.14); *Martin v. Portexit Corp.*, 98 A.D.3d 63, 65 (1st Dept. 2012) (“The motion for reargument was properly granted because the court overlooked the arguments plaintiff initially set forth in opposition to defendant’s motion . . .”).

A motion to reargue is “designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law.” *Foley v. Roche*, 418 N.Y.S.2d 588, 593 (1st Dept. 1979). *See C. Sav. Bank in City of New York v. City of New York*, 19 N.E.2d 659

(N.Y. 1939). Its purpose “is to offer the unsuccessful party an opportunity to persuade the court to change its decision.” *People v. Alamo*, 961 N.Y.S.2d 359 (Sup. Ct. 2012). In this case, Justice Webber’s denial of the NhRP’s motion to appeal as of right pursuant to CPLR 7011 from a judgment issued under CPLR 7003(a) deprived the NhRP of its statutorily granted absolute right to appeal.

It is an abuse of discretion to deny a motion to reargue where the movant clearly demonstrates, as does the NhRP here, that the court misapplied controlling law. *See, e.g., Highgate Pictures, Inc. v. De Paul*, 549 N.Y.S.2d 386, 388-89 (1st Dept. 1990); *Denihan v. Denihan*, 468 N.Y.S.2d 614, 618 (1st Dept. 1983). *See also Scarito v. St. Joseph Hill Acad.*, 878 N.Y.S.2d 460, 462 (2d Dept. 2009).² A motion to reargue should especially be granted in situations, such as the one at bar, where there is a “strong public policy in favor of resolving cases on the merits” *Id.*

The lack of opposition, as in this case, also weighs in favor of granting such a motion. *E.g., HSBC Bank USA, Nat. Ass’n v. Community Parking Inc.*, 970 N.Y.S.2d 508, 509 (1st Dept. 2013) (granting motion for reargument in part because of the “the lack of opposition to Pena’s motion for reargument of this Court’s prior decision and order”).

² “[E]ven in situations where the criteria for granting a reconsideration motion are not technically met, courts retain flexibility to grant such a motion when it is deemed appropriate.” *Loris v. S & W Realty Corp.*, 790 N.Y.S.2d 579, 580-81 (3d Dept. 2005).

When, as in the case at bar, a party demonstrates that a court clearly misapplied controlling law, the court should vacate its prior decision.³ As discussed, *infra*, Justice Webber misapprehended the nature of the NhRP's appeal and misapplied the controlling law governing it. Therefore this Court should grant NhRP's Motion to Reargue.

II. THE COURT ERRED AS A MATTER OF LAW IN RELYING UPON CPLR 5701(c) TO DISMISS THE NhRP'S MOTION TO APPEAL AS OF RIGHT RATHER THAN CORRECTLY APPLYING CPLR 7011 WHICH GRANTS THE NhRP AN ABSOLUTE APPEAL AS OF RIGHT.

Justice Webber's reliance on CPLR 5701(c) in dismissing NhRP's motion to appeal as of right misapprehended the applicable law. The NhRP filed its Petition pursuant to CPLR 70, which exclusively governs the procedure for common law writs of habeas corpus. See CPLR 7001 ("the provisions of this article are applicable to common law or statutory writs of habeas corpus and common law writs of certiorari to inquire into detention.").

It was necessary, under CPLR 7003(a), for the NhRP to style its Petition as an order to show cause with the verified petition for a writ of habeas corpus as it was not demanding Kiko's production to the court. CPLR 7003(a) provides that

³ *E.g.*, *K2 Inv. Group, LLC v. American Guarantee & Liability Ins. Co.*, 22 N.Y.3d 578 (2014); *Auqui v. Seven Thirty One Ltd. Partn.*, 22 N.Y. 3d 226 (2013); *People v. Boyland*, 17 N.Y. 3d 852 (2011); *Weissblum v. Mostafzafan Found. of New York*, 60 N.Y. 2d 637, 639 (1983); *Porcelli v. N. Westchester Hosp. Ctr.*, 977 N.Y.S.2d 32, 33 (2d Dept. 2013); *People v. Springer*, 970 N.Y.S.2d 462 (2d Dept. 2013); *People v. Morales*, 930 N.Y.S.2d 884 (2d Dept. 2011); *Kennedy v. Bennett*, 818 N.Y.S.2d 776 (2d Dept. 2006)

“[t]he court to whom the petition is made shall issue the writ without delay on any day, or where the petitioner does not demand production of the person detained . . . order the respondent to *show cause* why the person detained should not be released” (emphasis added).⁴ Justice Webber clearly misapprehended the nature of the order to show cause and controlling law in applying CPLR 5701(c), which requires permission for leave to appeal when there is no right to appeal. But CPLR 7011 expressly grants the NhRP the absolute right to appeal the lower court’s refusal to issue the order to show cause. Article 70, like its predecessors, “contains elaborate provisions regulating the exercise of the common-law power to issue and adjudge it . . . including those relating to rights of appealing.” *People ex rel. Curtis v. Kidney*, 225 N.Y. 299, 303 (1919). “The writ existed at common law, but the proceedings of the court with respect to it are regulated by statute, and the courts

⁴ See, e.g., *Callan v. Callan*, 494 N.Y.S.2d 32, 33 (2d Dept. 1985) (“Plaintiff obtained a writ of habeas corpus by order to **show cause** when defendant failed to return her infant daughter after her visitation . . .”); *State ex rel. Soss v. Vincent*, 369 N.Y.S.2d 766, 767 (2d Dept. 1975) (“In a habeas corpus proceeding upon an order to **show cause (CPLR 7003, subd. (a))**, the appeal is from a judgment of the Supreme Court . . . which granted the petition and ordered petitioner released”); *People ex rel. Bell v. Santor*, 801 N.Y.S.2d 101 (3d Dept. 2005) (“Petitioner commenced this CPLR article 70 proceeding seeking habeas corpus relief . . . Supreme Court dismissed the petition without issuing an **order to show cause** or writ of habeas corpus. Petitioner now appeals”); *Application of Mitchell*, 421 N.Y.S.2d 443, 444 (4th Dept. 1979) (“This matter originated when petitioner . . . sought, by an order and petition, a *writ of habeas corpus* (Respondents) to **show cause** why Ricky Brandon, an infant . . . should not be released and placed in petitioner’s custody.”); *People ex rel. Smith v. Greiner*, 674 N.Y.S.2d 588 (Sup. Ct. 1998) (“This is a habeas corpus proceeding brought by the petitioner pro se and commenced via Order to **Show Cause**”); *People ex rel. Goldstein on Behalf of Coimbre v. Giordano*, 571 N.Y.S.2d 371 (Sup. Ct. 1991) (“By order to **show cause**, in the nature of a Writ of Habeas Corpus proceeding, the petitioner seeks his release from the custody of the New York State Division for Youth. . . . [T]he Court grants the petition and directs that this petitioner be forthwith released”) (emphasis added in each).

must be governed by *that statute*.” *People ex rel. Billotti v. New York Juvenile Asylum*, 57 A.D. 383, 384, 68 N.Y.S. 279 (1st Dept. 1901) (emphasis added).

“An appeal from a judgment dismissing a habeas corpus petition lies as of right rather than by permission.” *People ex rel. St. Germain v. Walker*, 595 N.Y.S.2d 707 (4th Dept. 1993). CPLR 7011, which “governs the right of appeal in habeas corpus proceedings,” *Wilkes v. Wilkes*, 622 N.Y.S.2d 608 (2d Dept. 1995) (emphasis added), “authorizes an appeal in two situations: (1) from a judgment *refusing, at the outset*, to grant a writ of habeas corpus or to issue an order to *show cause* (CPLR 7003(a)); *or* (2) from a judgment made upon the return of a writ or order to show cause (CPLR 7010).” Vincent Alexander, *Practice Commentaries, Article 70 (Habeas Corpus), CPLR 7011* (West 2014) (emphasis added). *See People ex rel. Tatra v. McNeill*, 244 N.Y.S.2d 463, 464 (2d Dept. 1963) (an appeal “from an order refusing to grant a writ or from a judgment made upon the return of a writ” is “authorized by statute in a habeas corpus proceeding (CPLR § 7011).”).⁵

⁵ *See, e.g., People ex rel. Silbert v. Cohen*, 29 N.Y.2d 12, 14 (1971); *Callan*, 494 N.Y.S.2d at 33; *People ex rel. Bell*, 801 N.Y.S.2d 101 (“Supreme Court dismissed the petition without issuing an order to show cause or writ of habeas corpus. Petitioner now appeals”); *Application of Mitchell*, 421 N.Y.S.2d at 444; *People ex rel. Peoples v. New York State Dept. of Correctional Services*, 967 N.Y.S.2d 848 (4th Dept. 2013) (entertaining appeal from the dismissal of a habeas corpus petition); *People ex rel. Flemming v. Rock*, 972 N.Y.S.2d 901 (1st Dept. 2013) (same); *People ex rel. Jenkins v. Rikers Island Correctional Facility Warden*, 976 N.Y.S.2d 915 (4th Dept. 2013)(entertaining appeal from order dismissing petition for habeas corpus); *People ex rel. Harrington v. Cully*, 958 N.Y.S.2d 633 (4th Dept. 2013) (same); *People ex rel. Aikens v. Brown*, 958 N.Y.S.2d 913 (4th Dept. 2013) (same); *People ex rel. Holmes v. Heath*, 965 N.Y.S.2d 881 (2d Dept. 2013) (entertaining appeal from denial of petition for habeas corpus without hearing); *People ex rel. Allen v. Maribel*, 966 N.Y.S.2d 685 (2d Dept. 2013) (same); *People ex rel. Bazil v. Marshall*, 910 N.Y.S.2d 494, 495 (2d Dept. 2010) (same); *People ex rel. Sailor v. Travis*, 786

The NhRP’s right to appeal to the Appellate Division under CPLR 7011 from the Supreme Courts’ refusal to issue a requested CPLR 7003(a) order to show cause has been recognized by the Third and Fourth Judicial Department in litigation brought by the NhRP on behalf of Kiko and another chimpanzee named Tommy. *Nonhuman Rights Project, Inc., ex rel. Kiko v Presti*, 124 A.D.3d 1334 (4th Dept. 2015), *leave to appeal den.*, 126 A.D. 3d 1430 (4th Dept. 2015), *leave to appeal den.*, 2015 WL 5125507 (N.Y. Sept. 1, 2015); *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148 (3d Dept. 2014), *leave to appeal den.*, 26 N.Y.3d 902 (2015). The Appellate Division, Third Judicial Department ruled: “As Supreme Court’s judgment finally determined the matter by refusing to issue an order to show cause to commence a habeas corpus proceeding, it is

N.Y.S.2d 548, 549 (2d Dept. 2004) (same); *People ex rel. Gonzalez v. New York State Div. of Parole*, 682 N.Y.S.2d 602 (2d Dept. 1998) (entertaining an appeal “[i]n a habeas corpus proceeding,” where supreme court “refused an application for an order to show cause”); *People ex rel. Mabery v. Leonardo*, 578 N.Y.S.2d 427 (3d Dept. 1992) (entertaining appeal from supreme court’s denial of “petitioner’s application for a writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing.”); *People ex rel. Deuel v. Campbell*, 572 N.Y.S.2d 879 (3d Dept. 1991) (same); *People ex rel. Johnson v. New York State Bd. of Parole*, 580 N.Y.S.2d 957, 959 (3d Dept. 1992) (entertaining appeal where petitioner “commenced this proceeding for habeas corpus relief by order to show cause and petition” and supreme court “dismissed the petition”); *People ex rel. Cook v. New York State Bd. of Parole*, 505 N.Y.S.2d 383 (2d Dept. 1986) (appeal from dismissal of writ of habeas corpus); *People ex rel. Boyd v. LeFevre*, 461 N.Y.S.2d 667 (3d Dept. 1983) (entertaining appeal from a judgment of the Supreme Court “which denied petitioner’s application for a writ of habeas corpus, without a hearing.”); *People ex rel. Steinberg v. Superintendent, Green Haven Correctional Facility*, 391 N.Y.S.2d 915, 916 (2d Dept. 1977); *People ex rel. Boutelle v. O’Mara*, 390 N.Y.S.2d 19 (3d Dept. 1976) (entertaining an appeal from the supreme court’s denial of “petitioner’s application for a writ of habeas corpus, without a hearing.”); *People ex rel. Edmonds v. Warden, Queens H. of Detention for Men*, 269 N.Y.S.2d 787, 788 (2d Dept. 1966) (“In a habeas corpus proceeding, relator appeals from a judgment of the Supreme Court, . . . which dismissed the writ.”); *People ex rel. Leonard v. Denno*, 219 N.Y.S.2d 955 (2d Dept. 1961).

appealable as of right.” *Id.* at 149 n.1 (citing CPLR 7011; *People ex rel. Seals v New York State Dept. of Correctional Servs.*, 32 A.D.3d 1262, 1263 (4th Dept. 2006); *People ex rel. Tatra v McNeill*, 19 A.D.2d 845, 846 (2d Dept. 1963)).⁶

CPLR Article 70 exclusively governs the procedure for common law habeas corpus proceedings. *See* CPLR 7001; *People ex rel. Delia v. Munsey*, 26 N.Y.3d 124, 127-128 (2015) (“article 70 of the CPLR governs special proceedings for a writ of habeas corpus, the historic common-law writ that protects individuals from unlawful restraint or imprisonment and provides a means for those illegally detained to obtain release”). Because CPLR 7011 authorizes an appeal *as of right* from the refusal to issue the writ or a CPLR 7003 show cause order, this Court erred as a matter of law in relying upon CPLR 5701(c) in dismissing the appeal. The unique procedures in Article 70 are intended not just to give habeas petitioners a speedy initial hearing to determine their liberty, but the right to appeal a refusal to issue a writ of habeas corpus or order to show cause. The NhRP is absolutely entitled to, and must be afforded, this opportunity.

⁶ The Appellate Division, Second Judicial Department, “dismissed petitioner’s appeal ‘on the ground that no appeal lies as of right from an order that is not the result of a motion made on notice (see CPLR 5701),’ and declined to grant leave to appeal or reargue. (Aff. in Opp., Exh. G).” *Matter of Nonhuman Rights Project Inc. v. Stanley*, 16 N.Y.S.3d 898, 903 (Sup. Ct. 2015). Although Justice Webber’s order did not specify why the NhRP did not have an appeal as of right under CPLR 7011, to the degree it was based on the notion that orders to show cause are generally not appealable as of right when they are *ex parte*, this reasoning is not apposite to the case at bar, as the NhRP’s request for an order to show cause was made with notice to all Respondents.

Moreover, even if CPLR 5701 applied to this habeas corpus proceeding, the NhRP's would still be entitled to the right to appeal under CPLR 5701(a), rather than by permission under 5701(c). CPLR 5701(a) provides in part: "Appeals as of right. An appeal may be taken to the appellate division as of right in an action, originating in the supreme court or a county court: 1. from any final or interlocutory judgment except one entered subsequent to an order of the appellate division which disposes of all the issues in the action; . . ." In the present case, the case originated in the Supreme Court and the Supreme Court entered a final judgment disposing of all the issues in the action.

Accordingly, this Court should not have deemed the appeal as one seeking permission under 5701(c) and should not have dismissed NhRP's appeal from the Supreme Court's refusal to issue the requested order to show cause as CPLR 7011 or 5701(a) grants it the right to such an appeal.

III. IN THE ALTERNATIVE, THE COURT SHOULD GRANT THE NhRP LEAVE TO APPEAL TO THE COURT OF APPEALS.

In the alternative, the Court should grant leave to appeal to allow the Court of Appeals to resolve the critically important questions presented in this motion. Under CPLR 5602(a)(1), with the permission of the Appellate Division, appeals may be taken to the Court of Appeals from a final order not appealable as of right. Leave to appeal should be granted, as in the case at bar, "when required in the interest of substantial justice[,]" N.Y. Const. art. VI, § 3(b)(6), a standard that is

satisfied when an appeal presents “a question of law important enough to warrant the immediate attention of the Court of Appeals[,]” David D. Siegel, Practice Commentaries, CPLR 5602 (McKinney 1995), such as an issue that is “novel or of public importance, present[s] a conflict with prior decisions of [the Court of Appeals], or involve[s] a conflict among the departments of the Appellate Division.” 22 NYCRR 500.22(b)(4). *E.g.*, *Bd. of Educ. of Monroe-Woodbury Cent. Sch. Dist. v. Wieder*, 72 N.Y.2d 174, 183 (1988) (granting leave to appeal in light of “novel and significant issues tendered for review”); *Mead v. Levitt*, 143 A.D.2d 560, 561 (1st Dept. 1988) (granting leave to appeal where First Department's decision conflicted with Fourth Department authority and another First Department decision).

The question presented here – whether a habeas corpus petitioner has an appeal as of right under CPLR 7011 from the refusal of a court to issue a writ of habeas corpus or order to show cause, is a matter of great public significance, as Justice Webber’s ruling strips petitioners, human and nonhuman, of their absolute statutory right to appeal a refusal of the Supreme Court to issue a requested writ of habeas corpus or an order to show cause pursuant to CPLR 7003. Moreover the ruling from which NhRP appeals places this Court directly in conflict with the correct rulings of the Third and Fourth Judicial Departments.

IV. CONCLUSION

In view of the above, the NhRP respectfully requests that this Court grant the NhRP's Motion to Reargue, vacate its order of dismissal, and allow the appeal to proceed as of right under CPLR 7011. To refuse, where it is has been demonstrated that the Court misapplied the controlling law, would be an abuse of discretion. If this Court does not grant reargument in this case, the NhRP respectfully requests leave to appeal this vitally important habeas corpus issue to the Court of Appeals as a severe injustice has occurred in the lower court and Justice Webber's ruling strips millions of New Yorkers of their absolute statutory right under CPLR 7011 to appeal the refusal of a Supreme Court to issue a writ of habeas corpus or order to show cause under CPLR 7003(a).

Dated:

Respectfully submitted,

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