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**Via Overnight Delivery**

July 20, 2021

Clerk of the Court  
John P. Asiello  
New York State Court of Appeals  
20 Eagle Street  
Albany, New York 12207

Re: *Matter of Nonhuman Rights Project v. Breheny* (APL-2021-00087)

Dear Clerk Asiello:

I am an attorney of record for Petitioner-Appellant, the Nonhuman Rights Project, Inc. (“NhRP”), in the above-captioned appeal. Pursuant to Rule 500.17(b) of the Rules of Practice of the Court of Appeals, the NhRP respectfully seeks a calendar preference and requests that oral argument be scheduled for the November 2021 session for the following two reasons.

First, common law habeas corpus actions must be heard quickly. The NhRP filed Happy’s petition for a common law writ of habeas corpus almost three years ago in order to secure her release from unlawful imprisonment at the Bronx Zoo and to have her sent to a renowned elephant sanctuary. At the Bronx Supreme Court hearing on the petition, the NhRP demonstrated through uncontroverted expert affidavits that Happy is an autonomous and extraordinarily cognitively complex nonhuman animal who suffers terribly every day of her imprisonment. This Court should therefore hear Happy’s case expeditiously so that she can be released and sent to one such sanctuary where she will be able to exercise her autonomy to the greatest extent possible.

Second, every day of Happy’s unlawful imprisonment at the Bronx Zoo increases the chances she might die there or be relocated outside of New York State.

Either would likely render Happy's case moot. Should this happen, it could take many years before similar issues of law come before this Court again. It would also leave unresolved issues potentially impacting the reach of habeas corpus for human beings in New York.

At fifty years of age Happy is already older than all seven of the elephants who have died at the Bronx Zoo since she has been imprisoned there.<sup>1</sup> Because the time she has left to live is uncertain, Happy should swiftly be given the opportunity to have her common law right to bodily liberty recognized and to live in a renowned elephant sanctuary.

Finally, Respondents-Respondents' actions raise legitimate concerns that they could relocate Happy outside of the state, which would likely improperly end her habeas corpus case. During the hearing in Bronx Supreme Court, Respondents-Respondents were asked twice in open court to agree not to relocate Happy during the pendency of this case. Based on their refusals to agree the court twice ordered that they could not relocate Happy.

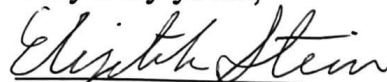
An alternative remedy such as review pursuant to Rule 500.11 or submission without argument is not appropriate as this case involves highly complex and novel issues of law, ethics, and policy that will invariably require further clarification and explanation from both parties.

Counsel for Respondents-Respondents informed the NhRP that they will not join this request for a calendar preference and are prepared to proceed under this Court's schedule.

Time is of the essence for Happy. Accordingly, the NhRP respectfully requests that oral argument in her case be scheduled for November.

Thank you for your kind consideration of this matter.

Very truly yours,



Elizabeth Stein, Esq.

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<sup>1</sup> *Deceased elephants at Bronx Zoo in United States*, THE ELEPHANT DATABASE (July 20, 2021, 11:31 AM), [https://www.elephant.se/location2.php?location\\_id=441&show=4](https://www.elephant.se/location2.php?location_id=441&show=4).

**Cc via Overnight Delivery**

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