

Court of Appeals
of the
State of New York

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

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

Petitioner-Appellant,

– against –

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

Respondents-Respondents.

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

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Dated: April 4, 2022

COURT OF APPEALS OF THE STATE OF NEW YORK

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Director of the Bronx Zoo, and WILDLIFE
CONSERVATION SOCIETY,

Respondents-Respondents.

APL 2021-00087

App. Div. Case No.:
2020-02581

Index No.: 260441/2019
(Bronx County)

**NOTICE OF MOTION
OF JEWISH
SCHOLARS FOR
LEAVE TO FILE
BRIEF AS *AMICI
CURIAE* IN SUPPORT
OF PETITIONER-
APPELLANT**

PLEASE TAKE NOTICE that, upon the annexed affirmation of Amy Trakinski, dated April 4, 2022, and the papers attached thereto, the undersigned will move this Court, on behalf of *Amici Curiae* Jewish Scholars for an order granting their motion for leave to file the attached brief in support of the Petitioner-Appellant Nonhuman Rights Project, Inc. (“NhRP”) in the above-captioned proceedings.

PLEASE TAKE FURTHER NOTICE, that the motion is returnable at 10 o’clock in the forenoon on April 18, 2022, which is at least 9 days from the date of service of these papers. Parties are hereby advised that arguments will be on the papers and no appearance is required or permitted. Parties are further advised that

answering papers, if any, must be served and filed in the Court of Appeals with proof of service on or before the return date of this motion.

Dated: April 4, 2022

Respectfully submitted,

By: Amy Trakinski
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TO:

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– and –
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COURT OF APPEALS OF THE STATE OF NEW YORK

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

THE NONHUMAN RIGHTS PROJECT, INC., on behalf
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JAMES J. BREHENY, in his official capacity as the
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APL-2021-00087

App. Div. Case No.: 2020-
02581

Index No.: 260441/2019
(Bronx County)

**AFFIRMATION OF
AMY TRAKINSKI IN
SUPPORT OF MOTION
OF JEWISH
SCHOLARS FOR
LEAVE TO FILE
BRIEF AS *AMICI
CURIAE* IN SUPPORT
OF PETITIONER-
APPELLANT**

I, Amy Trakinski, hereby affirm under penalty of perjury:

1. I am an attorney duly admitted to practice in the courts of the State of New York. I submit this affirmation on behalf of *Amici Curiae* Jewish Scholars in support of their motion for leave to file the attached brief in support of the Petitioner-Appellant Nonhuman Rights Project, Inc. (“NhRP”) in its appeal before this Court in the above-captioned proceedings. I am not a party to this proceeding, nor do I represent any of the parties to it. The biographies of the *Amici Curiae* are attached as an exhibit hereto.

2. Pursuant to Rule 500.23 of the Rules of Practice of this Court, Amici's proposed brief has identified arguments that might otherwise escape the Court's consideration and would be of assistance to the Court.
3. No party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner.
4. The Petitioner-Appellant Nonhuman Rights Project funded the costs of printing, filing, and serving the brief and motion in support. No other person or entity, other than movants or movants' counsel, contributed money that was intended to fund preparation or submission of the brief.

WHEREFORE, I respectfully request that this Court enter an order: (i) granting the motion of *Amici Curiae* for leave to file the annexed brief; (ii) accepting the brief that has been filed and served along with this motion, and; (iii) granting such other and further relief as this Court deems just and proper.

Dated: April 4, 2022

Respectfully submitted,

By: Amy Trakinski

Amy Trakinski

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New York, NY 10024

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Attorney for Amici Curiae Jewish Scholars

Biographies of *Amici Curiae* Jewish Scholars

Biographies of *Amici Curiae* Jewish Scholars

1. **Dr. Carol Bakhos**: Carol Bakhos is Professor of Late Antique Judaism and Study of Religion in the Department of Near Eastern Languages and Cultures at UCLA. Since 2012 she has served as Chair of the Study of Religion Interdisciplinary program and Director of the Center for the Study of Religion at UCLA. Her most recent monograph, *The Family of Abraham: Jewish, Christian and Muslim Interpretations* (Harvard University Press, 2014), was translated into Turkish (2015). Her other monographs and edited works include: *Ishmael on the Border: Rabbinic Portrayals of the First Arab* (SUNY, 2006), winner of a Koret Foundation Award, *Islam and Its Past*, edited with Michael Cook (Oxford, 2017), *Judaism in its Hellenistic Context* (Brill, 2004), *Current Trends in the Study of Midrash* (Brill, 2006) and the co-edited work, *The Talmud in its Iranian Context* (Mohr Siebeck, 2010).
2. **Dr. Julia Watts Belser**: Julia Watts Belser is an associate professor of Jewish Studies in the Department of Theology and Religious Studies at Georgetown University and core faculty in Georgetown's Disability Studies Program, as well as a senior research fellow at the Berkley Center. Her research centers on gender, sexuality, and disability in classical Jewish texts, as well as queer feminist disability ethics. She is the author of *Rabbinic Tales of Destruction: Gender, Sex, and Disability in the Ruins of Jerusalem* (Oxford University

Press, 2018). She has held faculty fellowships at Harvard Divinity School and the Katz Center for Advanced Jewish Studies at the University of Pennsylvania. She is an ordained rabbi, as well as a longtime activist for disability, LGBTQ, and gender justice. She co-authored an international Health Handbook for Women with Disabilities, developed in collaboration with disability activists from 42 countries and translated into 14 languages. She currently directs an initiative on disability and climate change, which brings together disability activists, artists, policy makers, and academics to address how disability communities are disproportionately affected by environmental risk and climate disruption. She previously taught a class supported through the Berkley Center's Doyle Seminars project.

3. **Dr. Beth Berkowitz:** Beth A. Berkowitz is Ingeborg Rennert Chair of Jewish Studies and Professor in the Department of Religion at Barnard College. She is the author of *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (Oxford University Press, 2006; winner of the Salo Baron prize for First Book in Jewish Studies); *Defining Jewish Difference: From Antiquity to the Present* (Cambridge University Press, 2012); and *Animals and Animality in the Babylonian Talmud* (Cambridge University Press, 2018). She is co-editor of *Religious Studies and Rabbinics: A Conversation* (Routledge, 2017) and a contributor to it. She has published

articles in the AJS Review, Biblical Interpretation, Jewish Quarterly Review, Journal for the American Academy of Religion, Journal of Ancient Judaism, Journal of Jewish Studies, and Yale Journal of Law and the Humanities. She was a professor of Talmud and Rabbinics at the Jewish Theological Seminary of America from 2004-2012 and has held post-doctoral fellowships in Yale University's Program in Judaic Studies, University of Pennsylvania's Katz Center for Advanced Judaic Studies, and New York University Law School's Tikvah Center for Law and Jewish Civilization. Her research interests include rabbinic literature, Bible exegesis, Jewish difference, and critical animal studies.

4. **Rabbi Jonathan Bernhard:** Rabbi Jonathan Jaffe Bernhard is currently the Executive Director of Shamayim: Jewish Animal Advocacy. Previously he served for 25 years at Adat Ari El in Los Angeles, CA. He is a past president of the Southern California Board of Rabbis and currently the co-president of the Sandra Caplan Community Beit Din.
5. **Dr. Daniel Boyarin:** Professor Daniel Boyarin, Taubman Professor of Talmudic Culture and rhetoric, UC Berkeley ret. received his Ph.D. in 1975 from the Jewish Theological Seminary of America. He has been an NEH Fellow (twice), a Guggenheim Fellow, a Fellow of the Institute for Advanced Studies in Jerusalem, a holder of the Berlin Prize at the American Academy

in Berlin and a Ford Foundation Fellow. He spent the academic year 2012-2013 as a fellow of the Wissenschaft Kolleg in Berlin and was a von Humboldt Forschung Preisträger at the FU Berlin in 2017. He is a fellow of the American Academy of Arts and Sciences since 2006. Boyarin has written extensively on talmudic and midrashic studies, and his work has focused on cultural studies in rabbinic Judaism, including issues of gender and sexuality as well as research on the Jews as a colonized people. His most recent research interests centered primarily around questions of the relationship of Judaism and Christianity in late antiquity and the genealogy of the concepts of “religion” and “Judaism.”

6. **Dr. Jonathan Brumberg-Kraus:** Dr. Rabbi Jonathan Brumberg-Kraus, a Professor of Religion at Wheaton College (MA), is the author of *Gastronomic Judaism as Culinary Midrash* (Lexington, 2018) and has published numerous articles on Jewish food.
7. **Rabbi Dr. Nathan Lopes Cardozo:** Rabbi Dr. Nathan Lopes Cardozo is the Founder and Dean of the David Cardozo Academy and the Bet Midrash of Avraham Avinu in Jerusalem. A sought-after lecturer on the international stage for both Jewish and non-Jewish audiences, Rabbi Cardozo is the author of 13 books and numerous articles in both English and Hebrew. Rabbi Cardozo heads a Think Tank focused on finding new Halachic and

philosophical approaches to dealing with the crisis of religion and identity amongst Jews and the Jewish State of Israel. Hailing from the Netherlands, Rabbi Cardozo is known for his original and often fearlessly controversial insights into Judaism. His ideas are widely debated on an international level on social media, blogs, books and other forums.

8. **Dr. Rabbi Geoffrey Claussen:** Geoffrey Claussen joined the Elon University faculty in August 2011. He was the founding coordinator of Elon's Jewish Studies program, which launched in Fall 2012, and he is the current chair of the Department of Religious Studies. Prof. Claussen's courses explore the history of Jewish traditions, from the Hebrew Bible to contemporary Judaism. His scholarship focuses on Jewish ethics and theology, and he has particular interests in questions of love and justice, war and violence, animal ethics, moral formation, and the legacy of the nineteenth-century Musar movement. He is a past president of the Society of Jewish Ethics and is the author of *Sharing the Burden: Rabbi Simhah Zissel Ziv and the Path of Musar* (SUNY Press, 2015) and *Modern Musar: Contested Virtues in Jewish Thought* (JPS/University of Nebraska Press, forthcoming, 2022).
9. **Dr. Rabbi Jonathan K. Crane:** Jonathan K. Crane, PhD, Rabbi, serves as the Raymond F. Schinazi Scholar in Bioethics and Jewish Thought at Emory's Center for Ethics. A Professor of Medicine and of Religion and Director of

the Food Studies and Ethics program, Crane is a past president of the Society of Jewish Ethics, founder and coeditor of the Journal of Jewish Ethics, and author or editor of several books, most recently Judaism, Race, and Ethics: Conversations and Questions.

10. **Rabbi Dr. Laura Duhan-Kaplan:** Rabbi Dr. Laura Duhan-Kaplan holds a B.A. in Philosophy from Brandeis University, Ph.D. in Philosophy and Education from Claremont Graduate University, Rabbinic Ordination from ALEPH: Alliance for Jewish Renewal, and Graduate Diploma in Spiritual Direction from the Vancouver School of Theology. She is Rabbi Emerita of Or Shalom Synagogue in Vancouver and Professor Emerita of Philosophy at UNC Charlotte. Rabbi Laura received many teaching awards, including the American Academy of Religion's Katie Geneva Cannon Award for Excellence in Teaching, American Association of Philosophy Teachers Award, Carnegie Foundation's U.S. Professor of the Year, UNC Board of Governor's Award for Teaching Excellence, and Bank of America Award for Teaching Excellence. Rabbi Laura is author or editor of ten books. Recently, she authored Mouth of the Donkey: Re-imagining Biblical Animals (Cascade, 2021) and The Infinity Inside: Jewish Spiritual Practice Through a Multi-Faith Lens (Albion-Andalus, 2019). Recent co-edited projects include Encountering the Other: Christian and Multi-faith Perspectives (Wipf &

Stock, 2020) with Dr. Harry Maier and Spirit of Reconciliation: A Multi-faith Resource (Canadian Race Relations Foundation, 2020) with Dr. Ray Aldred.

11. **Cantor Jonathan L. Friedmann**: Jonathan L. Friedmann is a scholar of Jewish music and history as well as a cantor. He is a Professor of Jewish Music History at the Academy for Jewish Religion California and Associate Dean of its Jewish Studies Program. He is also president of the Western States Jewish History Association and director of the Jewish Museum of the American West. He has written and edited books about Judaism, music, religion, and history including as collections of essays, writings, and quotations. He wrote the 2020 book Jewish Gold Country about Jewish pioneers in California from the gold rush era.
12. **Rabbi Mel Gottlieb**: Rabbi Mel Gottlieb, Ph.D is the President of the Academy for Jewish Religion, California. Ordained at Yeshiva University, he holds a doctorate in Mythology/Depth Psychology from Pacifica Graduate Institute where he has taught Myth, Literature and Religious Studies; Jung and Freud, and Kabbalah. He has also been on the faculty of Yeshiva University, Columbia University, and USC School of Social Work. His essays have appeared in national journals such as Psychological Perspectives, Ideas and Ideals, and Shma: the books Illuminating Letters and King David's Journey into Wholeness and publications such as the Huffington Post. A dynamic and

engaging speaker, he is a frequent lecturer at the C.G. Jung Institute of Los Angeles as well as synagogues of all denominations throughout Southern California. Rabbi Gottlieb is the former Director of Hillel at MIT, and Princeton, and the Co-Founder of Claremont Lincoln University. He has served as a congregational Rabbi in Los Angeles at The Westwood Village Synagogue and Kehillat Ma'arav. He was appointed by the Mayor of Santa Monica to the Homeless Task Force of Santa Monica and helped to create low cost housing and training for those in need of employment; Rabbi Gottlieb has also been the recipient of a Ford Foundation Grant for community organization work, and is a member of the Jewish-Muslim Forum in Los Angeles. Rabbi Gottlieb currently teaches Hasidic Commentaries on the Torah, Kabbalah and Consciousness, Mussar as a Psycho-Spiritual Growth Path, and Rav Kook and the Mystical Path at the Academy for Jewish Religion, Ca. He has also been a highly respected a psychotherapist in Los Angeles in private practice for over 25 years.

13. **Dr. Rabbi Arthur Green:** Dr. Arthur Green was the founding dean and is currently rector of the Rabbinical School and Irving Brudnick Professor of Jewish Philosophy and Religion at Hebrew College in Newton MA. He is Professor Emeritus at Brandeis University, where he occupied the distinguished Philip W. Lown Professorship of Jewish Thought. He is both a

historian of Jewish religion and a theologian; his work seeks to form a bridge between these two distinct fields of endeavor. He is a leading figure of Neo-Hasidism in the contemporary Jewish world, seeking to articulate a contemporary Jewish mysticism, based on the Hasidic model. He was the founder of Havurat Shalom in Somerville, Massachusetts in 1968, the beginning of the *havurah* movement in American Jewish life. Educated at Brandeis University and the Jewish Theological Seminary of America, where he received rabbinic ordination, Dr. Green has taught Jewish mysticism, Hasidism, and theology to several generations of students at the University of Pennsylvania, the Reconstructionist Rabbinical College (where he served as both Dean and President), Brandeis, and now at Hebrew College. He has taught and lectured widely throughout the Jewish community of North America as well as in Israel, where he visits frequently. Dr. Green is author, editor, and translator of over twenty books. Among his scholarly works are *Tormented Master: A Life of Rabbi Nahman of Bratslav* and *Keter: The Crown of God in Early Jewish Mysticism*. Dr. Green is also well known for his translations and interpretations of Hasidic teachings, including *The Light of the Eyes* by R. Menaḥem Naḥum of Chernobyl (Stanford, 2021). Most recent of his theological writings is *Judaism for the World: Reflections on*

God, Life, and Love (Yale, 2020), winner of the National Jewish Book Award.

His commentary on the Hebrew prayerbook will be published in 2022.

14. **Dr. Aaron Saul Gross:** Aaron S. Gross is a historian of religions with a specialization in contemporary Jewish thought and ethics and a sub-specialization in contemporary Jain and Buddhist traditions. He is active in the leadership of the Society for Jewish Ethics and the American Academy of Religion's Animals and Religion Group, and founded and serves as CEO of the nonprofit advocacy organization, Farm Forward. Gross's 2014 monograph, *The Question of the Animal and Religion: Theoretical Stakes, Practical Implications* (Columbia University Press), has become a foundational text in the subfield of animals and religion. He brought some of the insights from that book to the big screen while serving as co-writer for the award-winning 2018 documentary, *Eating Animals*, based on Jonathan Safran Foer's 2009 internationally bestselling book of the same name. His most recent book, *Feasting and Fasting: The History and Ethics of Jewish Food* (New York University Press, 2019), models the fruitful cross-pollination possible between the study of food and the study of religion. In addition to his scholarly publications, Gross's critical analyses of the American food system has been featured in numerous popular venues including *The New York Times*, *The Washington Post*, and *The Guardian*.

15. **Rabbi Dr. Irving (Yitz) Greenberg:** Rabbi Irving (Yitz) Greenberg was ordained by Beth Joseph Rabbinical Seminary of Brooklyn, New York and has a PhD in history from Harvard University. He served in the rabbinate, notably at the Riverdale Jewish Center in the 1960s. He served as professor and chairman of the Department of Jewish Studies of City College of the City University of New York in the 1970s. Together with Elie Wiesel, he founded CLAL: The National Jewish Center for Learning and Leadership and served as its president until 1997. CLAL offered pluralistic Jewish learning for Jewish communal leadership and programs of intra-faith dialogue for rabbis of every denominational background. From 1997 to 2008, he served as founding president of Jewish Life Network/Steinhardt Foundation which created such programs as birthright Israel and the Partnership for Excellence in Jewish Education. When Elie Wiesel served as chairman of the President's Commission on the Holocaust, Rabbi Greenberg served as its (Executive) Director. He is a leading Jewish thinker and has written extensively on post-Holocaust Jewish religious thought, Jewish-Christian relations, pluralism, and the ethics of Jewish power. In his book, *Interpreters of Judaism in the Late Twentieth Century*, Professor Steven T. Katz wrote: "No Jewish thinker has had a greater impact on the American Jewish Community in the last two decades than Irving (Yitz) Greenberg." In his new book, *The Triumph of Life*

(forthcoming), he argues that the Holocaust and the Jewish assumption of power in creating the state of Israel are the beginning of a new era in Jewish history.

16. **Rabbi Jill Hammer:** Rabbi Jill Hammer, PhD, is the Director of Spiritual Education at the Academy for Jewish Religion (www.ajrsem.org), and the co-founder of the Kohenet Hebrew Priestess Institute (www.kohenet.org). Her most recent book is titled *Return to the Place: The Magic, Meditation, and Mystery of Sefer Yetzirah*, and her forthcoming book is titled *Undertorah: An Earth-Based Kabbalah of Dreams*. Rabbi Hammer is also the author of other books including *The Hebrew Priestess: Ancient and New Visions of Jewish Women's Spiritual Leadership* (with Taya Shere), *The Jewish Book of Days: A Companion for all Seasons*, *Sisters at Sinai: New Tales of Biblical Women*, and *The Book of Earth and Other Mysteries*. Rabbi Hammer was ordained at the Jewish Theological Seminary and received a doctorate in social psychology from the University of Connecticut.

17. **Sarah Imhoff:** Dr. Sarah Imhoff is Associate Professor of Jewish Studies & Religious Studies and Director of Graduate Studies at the Robert A. and Sandra S. Borns Jewish Studies Program at Indiana University. Imhoff's work has appeared in the *Journal of Religion*, *Religion and American Culture*,

American Jewish History, Religious Studies Review, Jewish Social Studies, and other academic journals and edited volumes.

18. **Dr. Barbara C. Johnson:** Dr. Barbara Cottle Johnson is Professor Emerita of Anthropology & Jewish Studies at Ithaca College.
19. **Rabbi David Kay:** Rabbi David Kay was ordained by the Jewish Theological Seminary of American (JTS) in Manhattan in 2002, where he also earned a Master's degree in education. As a rabbinical student, David had student pulpits for the High Holidays of Rosh Hashanah and Yom Kippur at Rochester Institute of Technology / National Technical Institute of the Deaf and for Passover at Shalom Masorti Congregation in Johannesburg, South Africa. Upon ordination, he took a position with a start-up congregation in Naples, FL, before coming to Orlando and Congregation Ohev Shalom, where he would serve from 2004 until retiring from the pulpit at the end of July 2021. He served on the board of the Collier County Humane Society, performed music for festivals and special events, and coordinated the annual interfaith/multicultural celebration of the life and legacy of the Rev. Dr. Martin Luther King, Jr., on behalf of the Interfaith Council of Central Florida (ICCF) and in conjunction with the Orlando Mayor's Commission on the MLK Holiday. He is now a member of that commission and currently serves

as chair of ICCF. In 2019, he was also instrumental in establishing an annual city-wide Pride Shabbat celebration.

20. **Dr. Adrienne Krone:** Adrienne Krone is an Assistant Professor of Religious Studies and Director of Jewish Life at Allegheny College. She has a Ph.D. in American Religion from Duke University and her research focuses on religious food justice movements in North America. Her current research project is an ethnographic and historical study of the Jewish community farming movement.
21. **Dr. Laura Levitt:** Laura Levitt is Professor of Religion, Jewish Studies, and Gender at Temple University where she has chaired the Religion Department and directed both the Jewish Studies and the Gender, Sexuality and Women's Studies Programs. Levitt is the author *The Objects that Remain* (Penn State University Press, November 2020); *American Jewish Loss after the Holocaust* (2007); and *Jews and Feminism: The Ambivalent Search for Home* (1997). With Laurence Silberstein and Shelley Hornstein, she edited *Impossible Images: Contemporary Art After the Holocaust* (2003), and with Miriam Peskowitz she edited *Judaism Since Gender* (1997). Laura Levitt edits NYU Press's North American Religions Series with Tracy Fessenden (Arizona State University) and David Harrington Watt (Haverford College) <https://nyupress.org/search-results/?series=north-american-religions>. She

currently chairs the Committee on Sexual Misconduct for the Association for Jewish Studies (AJS) and led the task force that created and implemented this learned society's sexual misconduct policies and procedures. Levitt is working on a series of new projects that consider the reliquary desires that inform contemporary acts of commemoration while putting together a collection of essays whose working title is *I and You: Jewish Feminist Writing*.

22. **Dr. Jody Myers:** Dr. Jody Myers is Professor of Religious Studies and Director of the Jewish Studies Interdisciplinary Program at California State University, Northridge. She has written on modern religious thought and expression. She is the author of *Seeking Zion: Modernity and Messianic Activism in the Writings of Tsevi Hirsch Kalischer* (Littman Library, 2004) and *Kabbalah and the Spiritual Quest: The Kabbalah Center in America* (Praeger, 2007), as well as more than two dozen articles.

23. **Rabbi William Plevan:** Rabbi William (Bill) Plevan holds a doctorate in Religion from Princeton University where he wrote a dissertation on the German-Jewish philosopher Martin Buber. He has taught Jewish philosophy, theology and ethics at the Jewish Theological Seminary, Gratz College, Hebrew Union College, and in a variety of adult educational settings.

24. **Dr. Rachel Rafael Neis**: Rachel Rafael Neis is jointly appointed in the Department of History and in the Frankel Center for Judaic Studies at the University of Michigan, where they've been teaching since 2007. They have degrees in Law, Religion, and Jewish Studies from the London School of Economics (1995), Boston University (2002), and Harvard University (2007). Their training has been enriched by the study of philosophy and Jewish texts in Jerusalem at Hebrew University and other (non-academic) institutions, and Fine Art at the Bezalel Academy (1991–92, 1995–98 n.d.).
25. **Dr. Saul M. Oylan**: Saul M. Oylan is Samuel Ungerleider Jr. Professor of Judaic Studies and Professor of Religious Studies at Brown University. He is author of *Friendship in the Hebrew Bible* (Yale University Press, 2017); *Social Inequality in the World of the Text: The Significance of Ritual and Social Distinctions in the Hebrew Bible* (Vandenhoeck & Ruprecht, 2011); *Disability in the Hebrew Bible: Interpreting Mental and Physical Differences* (Cambridge University Press, 2008); *Biblical Mourning: Ritual and Social Dimensions* (Oxford University Press, 2004); *Rites and Rank: Hierarchy in Biblical Representations of Cult* (Princeton University Press, 2000); "A Thousand Thousands Served Him": Exegesis and the Naming of Angels in Ancient Judaism (J.C.B. Mohr/Paul Siebeck, 1993); and *Asherah and the Cult of Yahweh in Israel* (Scholars Press, 1988). He is editor or co-editor of eleven

volumes, including *Ritual Violence in the Hebrew Bible* (Oxford University Press, 2015); *Social Theory and the Study of Israelite Religion* (SBL, 2012) and *Household and Family Religion in Antiquity* (Blackwell, 2008, with John Bodel), and the author of various journal articles, essays and reviews.

26. **Sonja K. Pilz**: Rabbi Sonja K. Pilz, PhD, earned her doctorate from the department of Rabbinic Literature at Potsdam University in Germany and holds Rabbinic Ordination from Abraham Geiger College in Germany. Prior to becoming the spiritual leader of Congregation Beth Shalom, she worked for the Central Conference of American Rabbis as Editor of CCAR Press, taught Worship, Liturgy, and Ritual at HUC-JIR in New York and the School of Jewish Theology at Potsdam University, and served as a rabbinic intern, adjunct rabbi, and cantorial soloist for congregations in Germany, Switzerland, Israel, and the US. She loves to write poetry and prayers, and lives with her husband and son in Bozeman.

27. **Rabbi David Rosen**: Rabbi David Rosen, AJC's International Director of Interreligious Affairs, has been advancing understanding and good relations between religious communities for more than forty years – from the time he served as rabbi of the largest Orthodox Jewish congregation in South Africa, during his tenure as Chief Rabbi of Ireland; and throughout the last more than thirty years based in Jerusalem. In addition to interreligious representation and

education, his work involves mediation and peace building and he is heavily involved in multi-religious engagement on ecological issues. Among the various awards and recognition he has received, Rabbi Rosen was granted a papal Knighthood in 2005 for his contribution to Jewish-Catholic reconciliation and in 2010 he was made a CBE (Commander of the British Empire) by H.M. Queen Elizabeth II for his work promoting interfaith understanding and cooperation.

28. **Dr. Jeffrey Rubenstein**: Jeffrey L. Rubenstein was born in Johannesburg, South Africa and grew up in Chicago, Illinois. He received his B.A. in Religion from Oberlin College, his M.A. in Talmud from the Jewish Theological Seminary, where he also received rabbinic ordination, and his Ph.D. from the Department of Religion of Columbia University. He has taught at Columbia University, the University of Pennsylvania and the Jewish Theological Seminary in addition to New York University. His books include, *The History of Sukkot in the Second Temple and Rabbinic Periods* (1995); *Talmudic Stories: Narrative Art, Composition and Culture* (1999), *Rabbinic Stories* (Classics of Western Spirituality Series, 2002), *The Culture of the Babylonian Talmud* (2003), and *Stories of the Babylonian Talmud* (Johns Hopkins University Press, 2010). Dr. Rubenstein has written numerous

articles on the festival of Sukkot, Talmudic stories, the development of Jewish law, and topics in Jewish liturgy and ethics.

29. **Dr. Max Strassfeld**: Dr. Max Strassfeld (Ph.D. in Religious Studies, Stanford University) specializes in Rabbinic Literature, Transgender Studies, and Jewish Studies. His book, *Trans Talmud: Androgynes and Eunuchs in Rabbinic Literature*, is forthcoming from the University of California Press. The book explores eunuchs and androgynes in Jewish law, and pairs classical Jewish texts with intersex autobiography, transgender studies, and theories of queer temporality, in order to argue that the rabbis use these figures to map the boundaries of normative masculinity. In recognition of his work in gender and sexuality, he was awarded the Frankel Fellowship for New Perspectives on Gender and Jewish Life at the University of Michigan in 2013-2014. He served on the editorial board of the *Journal of the American Academy of Religion* from 2015-2017 and currently serves on the board of the Association for Jewish Studies. Dr. Strassfeld teaches a wide range of courses, including *Jews, Christians, and the Bible*; *Jews in the Roman Empire*; *Religion and Sex*; and *Gender, Women, and Religion*. Dr. Strassfeld is an affiliate of the Arizona Center for Judaic Studies and a faculty affiliate of Classics.
30. **Dr. Aaron Hahn Tapper**: Aaron J. Hahn Tapper, the Mae and Benjamin Swig Professor in Jewish Studies and the founding Director of the Swig

Program in Jewish Studies and Social Justice, has been at the University of San Francisco since 2007. An educator for more than two decades, his primary academic interest is the intersection between identity formation, social justice, and marginalized groups. Aaron completed his PhD in the Religious Studies Department at the University of California, Santa Barbara, where he studied the History of Religions, the Sociology of Religions, Nonviolence and Religions, Politics and Religions, and Modern Islamic Movements. His Dissertation focused on the relationship between power, the sociopolitical context of Israel and Palestine, and Jewish and Islamic religious law (*halachah* and *shari'a*, respectively). He also received an MTS from Harvard Divinity School, where he focused on World Religions, and a BA from Johns Hopkins University, where he majored in Psychology. He has co-edited two volumes -- Muslims and Jews in America: Commonalities, Contentions, and Complexities, with Reza Aslan (2011) and Social Justice and Israel/Palestine: Foundational and Contemporary Debates, with Mira Sucharov (2019) -- and written *Judaisms: A Twenty-First-Century Introduction to Jews and Jewish Identities* (2016).

31. **Dr. Mira Beth Wasserman**: Rabbi Mira Wasserman, PhD, is director of the Center for Jewish Ethics and assistant professor of rabbinic literature at the Reconstructionist Rabbinical College. Her book, *Jews, Gentiles, and Other*

Animals, is a study of how the Talmud describes what makes Jews different from others.

32. **Rabbi Elyse Wachterman:** Rabbi Elyse Wechterman came to the Reconstructionist Rabbinical Association as Executive Director in the fall of 2015. During her tenure she created the Office of Rabbinic Career Development to serve the professional needs of rabbis in any field of work. She has also spearheaded a revised communications strategy and a renewed partnership with the movement's rabbinical college and national association. As one of the founding faculty at Camp Havaya, she has served on the summer faculty for many years. Rabbi Wechterman served as spiritual leader of Congregation Agudas Achim in Attleboro, Massachusetts from 2001 to June of 2014. Additionally, she has taught at the college and adult level in many settings and worked broadly with children and families with special needs to create inclusive communities for Jews of all abilities and backgrounds. She also previously worked for the national movement as Director of Congregational Services and consulted with congregations throughout the movement on governance, growth, staffing and other congregational issues. A graduate of the Reconstructionist Rabbinical College, Rabbi Wechterman brings an open and inclusive approach to teaching Jewish life and traditions. She is committed to empowering Jews and fellow travelers on their individual

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33. **Dr. Paul Root Wolpe:** Paul Root Wolpe is the Raymond F. Schinazi Distinguished Research Chair in Jewish Bioethics; a professor in the departments of medicine, pediatrics, psychiatry, neuroscience and biological behavior, and sociology; and the director of the Center for Ethics. Dr. Wolpe moved to Emory University in summer 2008 from the University of Pennsylvania, where he was on the faculty for more than 20 years in the departments of psychiatry, sociology, and medical ethics, and faculty in its Center for Bioethics. Dr. Wolpe spent 15 years as senior bioethicist for the National Aeronautics and Space Administration (NASA). He is the editor-in-chief of the American Journal of Bioethics Neuroscience and sits on the editorial boards of more than a dozen professional journals in medicine and ethics. His publications span the fields of sociology, medicine, and bioethics, and he has contributed to a variety of encyclopedias on bioethical issues. Considered one of the founders of the field of neuroethics, which examines the ethical implications of neuroscience, he also writes about other emerging technologies, especially artificial intelligence. His teaching and publications range across many other fields of bioethics, including death and dying,

genetics and eugenics, sexuality and gender, mental health and illness, alternative medicine, and bioethics in extreme environments such as space. He frames those discussions through his sociological interest in knowledge formation, ideology, religion, and social movements. A dynamic and popular speaker internationally, Dr. Wolpe has been chosen by the Teaching Company as a "Superstar Teacher of America," and his courses are distributed internationally on audio and videotape. He has won the World Technology Network Award in Ethics, has been featured in a TED talk, and was profiled in Atlantic Magazine as a "Brave Thinker of 2011." Dr. Wolpe is a contributor to broadcast and print media, as well as having been featured on 60 Minutes and profiled in the Science Times of the New York Times.

34. **Rabbi Shmuly Yanklowitz**: Rabbi Dr. Shmuly Yanklowitz is the President & Dean of the Valley Beit Midrash (a national Jewish pluralistic adult learning & leadership center), the Founder & President of Uri L'Tzedek (a Jewish Social Justice organization), the Founder and CEO of Shamayim (a Jewish animal advocacy movement), the Founder and President of YATOM, (the Jewish foster and adoption network), and the author of 21 books on Jewish ethics. Newsweek named Rav Shmuly one of the top 50 rabbis in America and the Forward named him one of the 50 most influential Jews.

PROPOSED *AMICI CURIAE* BRIEF

Court of Appeals
of the
State of New York

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

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

Petitioner-Appellant,

– against –

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

Respondents-Respondents.

**BRIEF OF AMICI CURIAE JEWISH SCHOLARS
IN SUPPORT OF PETITIONER-APPELLANT**

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Dated: April 4, 2022

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. Interest of <i>Amici Curiae</i>	1
II. Summary of Argument	2
III. Argument	3
a. Obligations to nonhuman animals are a foundational ethical issue sufficiently serious to merit challenges to previous interpretations of habeas corpus	3
b. Jewish Americans, like Americans in general, have been expressing greater concern for animals than in the past, and these changed values warrant greater legal protections for animals.....	6
c. Failing to remedy Happy’s confinement threatens the moral foundation of the legal system and ethics more generally. Allowing emotional, intelligent, and autonomous beings to be treated by the court as things is ethically dangerous	9

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery</i> , 31 N.Y.3d 1054 (2018).....	1, 3, 5
<i>The Nonhuman Rights Project v. Breheny</i> , 2020 WL 1670735 (Sup. Ct. 2020)	1

I. Interest of Amici Curiae

We the undersigned submit this brief as Jewish studies scholars and rabbis with broad expertise in Jewish traditions—including biblical studies, the study of rabbinic texts, Jewish thought and theology, Jewish ethics, animal ethics, and bioethics—in support of the Nonhuman Rights Projects (NhRP’s) efforts to see the elephant named Happy released from her present confinement in the Bronx Zoo and transferred to an appropriate elephant sanctuary, pursuant to habeas corpus. The undersigned have long-standing, active interests in animals, in human duties to them, and in the way that ethical stances towards animals are a constitutive part of any system of ethics and justice. The court has already determined that, per Hon. Allison Y. Tuitt in her February 2020 ruling on the case now being appealed, “uncontroverted scientific evidence” has proven that Happy is “an autonomous, intelligent being with advanced cognitive abilities akin to human beings.” *The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735 (Sup. Ct. 2020) at *2. For the court to further maintain that Happy is somehow simultaneously a thing is, per Hon. J. Fahey in his concurring opinion on a previous case brought by NhRP, a “manifest injustice.” *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1059 (2018) (Fahey, J., concurring) (“*Tommy*”). Such incoherence and injustice in the legal system threatens not only our ability to treat nonhuman animals justly, but the ethical basis of the law itself. For the court to establish that

autonomous, intelligent beings like Happy can be treated as things with impunity is a precedent that concerns us not only for the sake of animals, but for the sake of humanity.

II. Summary of Argument

In our view, the essential challenge before the court in Happy's case is how to manage changing social values about our relationship with the nonhuman world in general, and other animals with significant similarities to humans in particular. Before the court is not only a question of animal ethics, but a question about how important animal ethics should be—about how much our human obligations to animals should drive legal innovation. We therefore wish to emphasize first and foremost the extent to which Jewish traditions provide strong warrant for legal innovation on the basis of (changed) human moral intuitions about the suffering of other animals. As we will explain, Jewish traditions have long seen the question of our treatment of animals as a kind of ultimate concern; it is therefore appropriate that changing attitudes towards animals are ramifying in new legal understandings, like new understandings of the scope of habeas corpus.

In addition, we also note that American Jews, like Americans in general, are showing more concern for animals than ever before. If the court does not address the issues that NhRP is raising and continues to treat social mammals like elephants as things, it risks undermining its claims to legal integrity and moral authority.

Finally, we note that Jewish traditions have long argued that how human individuals are allowed by the law to treat animals can have important effects on how they treat other human beings. To acknowledge a being's emotional life, intelligence, and autonomy, and then to designate that being the legal equivalent of an inanimate object is not just incoherent, but a threat to justice.

III. Argument

a. Obligations to nonhuman animals are a foundational ethical issue sufficiently serious to merit challenges to previous interpretations of habeas corpus.

The issue before the court in Happy's case cuts to the very foundations of our civil society and legal institutions. In the words of Hon. J. Fahey in his concurring opinion on another case brought by NhRP, "The issue of whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it." *Tommy*, at 1059. Ultimately, we cannot ignore it, but the courts are doing a fairly good job of ignoring it for the moment. We urge the court to avoid the trap of evading ultimate issues, for we ignore them at great cost. The famous twentieth-century Jewish thinker, Rabbi Abraham Joshua Heschel, wrote in an essay on the interdependence of the world's religious traditions, "No Religion is an Island," that "[t]he supreme issue is today not the *halacha* [law] for the Jew or the Church for the Christian—but the premise underlying both

religions.” Similarly, at stake in this case is a basic premise of our legal system. Will the court attempt to engage or evade the fundamental legal question of our duties to nonhuman animals, or at least autonomous, emotional, and intelligent ones? We urge that the court address this issue.

Part of the weightiness of Happy’s case is that the court is being asked to challenge earlier thinking that did not envision applying habeas corpus to nonhumans. The question arises of whether the obligations of humans to prevent nonhuman suffering is sufficiently fundamental a moral-legal issue to challenge other values and precedents. We urge that it is.

Jewish traditions, despite their diversity of conclusions about the nature of our obligations to animals, have almost always argued that the primary Jewish legal principle that teaches compassion for animals, known as *tzaar baalei chayim* (literally “the suffering of living beings”), is a “Torah law” rather than a “rabbinic law”—which is to say that it is a principle established in the most authoritative strata of Jewish law. If a particular concern has the status of a Torah law then it trumps any concern with lesser status (for example, the laws enacted by the rabbis). What this means is that one of the only positions about animals that ancient and subsequent Jewish traditions have generally agreed upon is that how we treat animals is a matter of ultimate importance, a direct concern of God. It is certainly, therefore, sufficient

to drive consequential changes in the details of how the writ of habeas corpus is applied.

Several court justices in Happy's and related cases have expressed sympathy with the goals of the NhRP but failed to rule in their favor, indicating that they have felt "bound by precedent." Really, this has amounted to a failure to actually make a decision on the issue NhRP is trying to raise in the courts. As Hon. J. Fahey observed in the concurring opinion cited earlier, that case did not result in "a decision on the merits of petitioner's claims. The question will have to be addressed eventually. Can a non-human animal be entitled to release from confinement through the writ of habeas corpus? Should such a being be treated as a person or as property, in essence a thing?" *Tommy*, at 1059. Given the current state of scientific and social understanding of elephants, and our knowledge of Happy as an individual, it is rather obvious she is not a thing. Things do not have emotions, intelligence, and autonomy; things do not suffer. The Jewish legal-ethical principle of *tzaar baalei chayim* prohibits humans from causing *tzaar* (suffering) to *baalei chayim* (any being possessing life) unless there is some kind of human necessity. Happy's case is, for the undersigned, an uncomplicated case of suffering being inflicted without justification. It is the court's obligation to provide a remedy through habeas corpus.

b. Jewish Americans, like Americans in general, have been expressing greater concern for animals than in the past, and these changed values warrant greater legal protections for animals.

Jewish traditions past and present are united in agreeing that the law requires nonhuman animals be protected from suffering unless there is some overriding human benefit. In different times and places Jews have applied this legal protection differently. In the context of the contemporary U.S., Happy's case, in the view of the undersigned, is exceptionally simple as there is both abundant scientific testimony to great suffering and no persuasive argument that human interests are compromised by remedying her situation through habeas corpus. The barrier to remedying Happy's situation is simply the fact that habeas corpus has previously only been applied to members of the species homo sapiens. Jewish law does not stress species membership as the crucial criteria for deserving protection from cruelty. As the court has agreed that Happy is emotional, intelligent, and autonomous, and expert testimony has established the extent of her suffering and the remedy to it (release to a sanctuary), Jewish ethical principles as understood by the undersigned experts would mitigate in favor of remedying her situation. While individual Jewish persons or institutions may of course draw different conclusions, the undersigned testify that in our expert opinion, not only do Jewish ethical reasonings favor releasing Happy to a sanctuary, but this is a conclusion that most Jewish American individuals would support were the court to adopt it.

Without suggesting the court should use any particular legal reasoning, we believe that the court has a duty to bring the law in line with our current social and scientific understanding of the lives of animals, which would include the right of liberty in Happy's case. Relevant scientific expertise has made abundantly clear that Happy's current state of confinement in the Bronx Zoo is incompatible with her basic health and thriving, and that releasing her to an animal sanctuary would remedy this situation. Whatever human interest may be claimed to exist in continuing Happy's confinement do not supersede the duty to relieve her suffering. Indeed, in the Bronx Zoo's arguments for continuing to keep Happy in confinement they attempted to argue that they, too, were acting in Happy's best interests; these claims, however, were not substantiated by independent scientific experts with a relevant record of peer-reviewed publication. Though the Bronx Zoo, like some other Zoos, has attempted to present the exhibition of elephants like Happy as aligned with educational efforts, these claims are doubtful and contradicted by several studies. For example, one study of 206 Zoos that analyzed more than 6,000 statements by Zoo visitors noted that: "In all the statements collected, no one volunteered information that would lead us to believe that they had an intention to advocate for protection of the animal or an intention to change their own behavior" (as quoted in a recent New York Times opinion piece, <https://www.nytimes.com/2021/06/11/opinion/zoos-animal-cruelty.html>; full study

available here: <https://onlinelibrary.wiley.com/doi/epdf/10.1002/zoo.20186>).

Moreover, the undersigned doubt that any prosocial learning could be associated with witnessing Happy's confinement in particular; seeing an intelligent, social mammal confined in circumstances that a clear scientific consensus suggests are harmful to that animal's wellbeing is not educational. With no compelling human interests that could justify Happy's confinement as a "necessity," Jewish ethics would seem to require her release to a sanctuary.

We also note that despite the massive diversity of Jewish views towards animal life, this much is clear: the direction of concern is increasing. This is reflected in society at large but easily witnessed in the Jewish context in terms of increased community programming on issues related to animal protection, the formation of new organizations specifically addressing animal protection from a Jewish perspective, time given to animal ethics at Jewish ethics conferences, and an expansion of Jewish publication about animal ethics. The ancient Rabbis required us to respect and to celebrate the differences between ourselves, elephants, and all animals: "The Sages taught: One who sees an elephant, monkey, or owl says, 'Blessed [are you, Lord] who makes creatures different'" (Talmud, Berachot 58b). We urge the court to bring the law closer in line with the commonsense understanding that beings that possess emotion, intelligence, and autonomy, as the court has established in Happy's case, also deserve liberty.

c. Failing to remedy Happy's confinement threatens the moral foundation of the legal system and ethics more generally. Allowing emotional, intelligent, and autonomous beings to be treated by the court as things is ethically dangerous.

Longstanding Jewish traditions have consistently argued that violence to animals can be problematic not only because of a potential violation of the law and principle of *tzaar baalei chayim*, but because of the potential harm that participating in violence can pose to humans' ability to act with sensitivity and compassion. Thus, for example, rabbinic texts for the training of *schochtim* (individuals trained in the practice of traditional Jewish animal slaughter) warn of the importance of finding a morally upstanding individual lest the inherent involvement in causing suffering that is essential to the profession lead to insensitivity to even human misery. This reasonable concern is quite intelligible to contemporary Jews and no less an expert in animal welfare than Dr. Temple Grandin (Colorado State University) has argued that still today the problem of sadistic personalities finding their way into slaughterhouse work remains a real concern that managers need to guard against. The deeper Jewish principle we invoke here is a sentiment that allowing cruelty to animals is not only a wrong to them, to the animals, but a threat to our own compassion, to a treasured aspect of our humanity. For the court to acknowledge that Happy is an emotional, intelligent, and autonomous being and then functionally put her in the legal category of "thing" threatens the law with incoherence and absurdity. We urge the court to hear both the simple call for justice in NhRP's arguments to

release Happy to a sanctuary and to recognize that expanding the application of habeas corpus is essential to preserving the moral coherence of the law. For if the law truly owes not even the foundational protection of habeas corpus to beings acknowledged to possess rich emotional lives, intelligence that is similar to humans, and autonomy, the law has abandoned a fundamental commitment to justice.

Dated: April 4, 2022

Respectfully submitted,

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

Pursuant to the Rules of the Court of Appeals (22 NYCRR) §§ 500.1 (j), 500.13 (c) (1) and (3), and 500.23 (a) (1) (i), I hereby certify that:

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Dated: April 4, 2022



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the address(es) designated by said attorney(s) for that purpose by depositing **1** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on April 4, 2022



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Commission Expires March 30, 2026



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