

**Court of Appeals**  
*of the*  
**State of New York**

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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 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.*

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**OPPOSITION TO MOTION FOR LEAVE  
TO APPEAR AS *AMICUS CURIAE***

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— and —

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COURT OF APPEALS OF THE STATE OF NEW YORK

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

APL-2021-00087

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

App. Div. Case No.:  
2020-02581

Petitioner-Appellant,

Index No.: 260441/2019  
(Bronx County)

-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,

**PETITIONER-  
APPELLANT’S  
OPPOSITION TO  
MOTION OF  
PROTECT THE  
HARVEST ET AL.  
FOR LEAVE TO  
APPEAR AS AMICUS  
CURIAE**

Respondents-Respondents.

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Petitioner-Appellant, the Nonhuman Rights Project, Inc. (“NhRP”), opposes the motion of Protect the Harvest, the Alliance of Marine Mammal Parks and Aquariums, the Animal Agriculture Alliance, and the Feline Conservation Foundation (collectively “Proposed Amici”) for leave to appear as amicus curiae in this appeal on the ground that the brief submitted by Proposed Amici violates 22 NYCRR Part 500.23.

22 NYCRR Part 500.23 contemplates that a movant seeking leave to appear as amicus curiae may file one proposed brief within the 7,000-word limit. The brief submitted by Proposed Amici, however, is not one brief but three briefs as it attaches and incorporates two previous amicus briefs filed in this case, one in the Supreme

Court, Orleans County, and one in the Appellate Division, First Department. *See* Proposed Br. at 3-4. Proposed Amici expressly urge this Court to review the arguments in those prior briefs while also advancing an entirely different argument for denying Happy habeas corpus relief. *Id.* at 4. The combined word count of the three briefs is 9,238 words, far exceeding the allowable limit.<sup>1</sup>

The NhRP respectfully submits that this Court should deny Proposed Amici's motion on the ground that their brief violates 22 NYCRR Part 500.23.

Dated: August 6, 2021

Respectfully submitted,

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<sup>1</sup> In Proposed Amici's motion, the brief attached as Exhibit A has 3,092 words; the brief attached as Exhibit B has 3,096 words; and the brief attached as Exhibit C has 3,050 words.

BY OVERNIGHT DELIVERY:

Clerk of the Court of Appeals  
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STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

ss.:

**AFFIDAVIT OF SERVICE  
BY OVERNIGHT FEDERAL  
EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

**On August 6, 2021**

deponent served the within: **OPPOSITION TO MOTION FOR LEAVE  
TO FILE AN AMICI CURIAE BRIEF**

**upon:**

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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  
the 6<sup>th</sup> day of August 2021.**



**MARIANA BRAYLOVSKIY**  
Notary Public State of New York  
No. 01BR6004935  
Qualified in Richmond County  
Commission Expires March 30, 2022



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**Job# 306524**