

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORLEANS

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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,

v.

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.

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**SUPPLEMENTAL  
AFFIDAVIT OF  
JAMES BREHENY**

Index No. 18-45164

STATE OF NEW YORK    )  
                                  ) SS.:  
COUNTY OF BRONX    )

James J. Breheny, being duly sworn, deposes and says:

1. I was appointed Director of Respondent Wildlife Conservation Society's ("WCS") Bronx Zoo in 2005, and Executive Vice President and General Director, Zoos and Aquarium, and Jonathan Little Cohen Director, Bronx Zoo in 2011. I earned a B.S. in Biology from Manhattan College and an M.S. in Biology from Fordham University. I have been a staff member of WCS for over 35 years, and taught as an adjunct professor of Biology at Manhattan College for 17 years. I have also served as the Chair of the Board of Directors for the Association of Zoos and Aquariums ("AZA"), and currently serve as AZA Board Liaison to the AZA Accreditation Commission. As such, I am fully familiar with the facts and circumstances of this matter.

2. I submit this affidavit in opposition to Petitioner the Nonhuman Rights Project, Inc.'s ("NRP") petition for a writ of habeas corpus on behalf of Happy, an Asian elephant currently at the Bronx Zoo.

3. I have reviewed the affidavit of Ed Stewart, sworn to September 26, 2018 ("Stewart Aff."); the affidavit of Joyce Poole, sworn to December 2, 2016; the undated supplemental affidavit of Joyce Poole ("Poole Sup. Aff."); the joint affidavit of Lucy Bates and Richard W. Byrne, sworn to January 5, 2017; the affidavit of Karen McComb, sworn to December 22, 2016; and the affidavit of Cynthia J. Moss, sworn to May 6, 2017, all submitted in support of NRP's petition.

4. In addition to the fact that most of these affidavits in substance are almost verbatim duplicates of each other, as discussed below, the affidavits provide little to no relevant information regarding whether Happy is "unlawfully imprisoned" at the Bronx Zoo.

**A. NRP's petition entirely fails to take into consideration Happy, her well-being, or her specific needs**

5. The affidavits NRP relies upon only provide generalized, anecdotal discussions of African and Asian elephants as observed in the wild. For example, the affidavits posit that elephants are generally better suited to the company of other elephants, without accounting for the particular needs, wants, and temperament of any one elephant. *E.g.*, Poole Sup. Aff. ¶¶ 4-5.

6. None of the affidavits submitted in support of NRP's petition make any reference to Happy, her current state of well-being, or her needs as an approximately 47 year-old Asian elephant who has lived for over forty years at the Bronx Zoo.

7. Elephants who have lived at zoos for long periods of time are significantly different from elephants in the wild, and the characteristics of one cannot be generally attributed to the other.

8. NRP's supporting affidavits therefore have very limited applicability to Happy and her specific needs.

9. In contrast, the Bronx Zoo employees, including myself, have been protecting Happy's interests and caring for her well-being, knowing her as an individual, for over forty years.

10. As further detailed in the affidavits of Patrick R. Thomas and Paul P. Calle, VMD, the Bronx Zoo has significant resources for the care and well-being of Happy that cannot be guaranteed (and may not even be available) at another facility, including a large number of highly experienced and trained staff that provides excellent care and medical attention for Happy, as well as the sustained financial resources of a major institution.

11. Happy also has longstanding relationships and familiarity with her caregivers and surroundings at the Bronx Zoo, where she has lived for nearly all of her life.

12. Ironically, although the affidavits submitted by NRP assert that elephants are intelligent, "autonomous" beings, NRP's position relies almost entirely upon generalized observations of elephants in the wild, without taking into consideration Happy's unique characteristics, personality and needs.

13. For example, Happy has a history of not interacting well with other elephants at the Bronx Zoo, which is why she has been housed separately since her companion died. Happy nevertheless is able to interact and communicate with the other elephant at the Bronx Zoo through sound, olfaction, and touch.

14. NRP's petition to transfer Happy to an animal sanctuary, such as the one operated by the Performing Animal Welfare Society ("PAWS") in California, fails to take into consideration the distinct possibility that Happy would not socialize well with the elephants at the PAWS facility. Instead, NRP appears to assume that Happy would choose to befriend these unfamiliar elephants, and further assumes that the PAWS elephants would allow her to do so.

15. Even the Stewart affidavit submitted by NRP concedes that "[t]hough naturally social, it is unnatural for unrelated elephants to live together, as they do in captivity, and social interactions can range from harmonious to acrimonious." Stewart Aff.

¶ 15. And, Happy is an animal known to exhibit this behavior. The Stewart affidavit alludes to simply separating elephants into compatible groups. *Id.*

16. Thus, granting NRP's petition to transfer Happy to the PAWS facility in no way guarantees that Happy could be successfully introduced into a group of elephants in which she would find positive social interaction.

17. NRP's petition also fails to take into consideration the impact of moving Happy from the Bronx Zoo to the PAWS facility in San Andreas, California. Separating her from the keepers and surroundings she has known for nearly all her life could damage her welfare and physical well-being by forcing her to adapt to a completely new and alien environment without the emotional support of the people she has come to know and rely on.

18. Based upon past experiences with Happy, the Bronx Zoo knows that she becomes particularly distressed by even short moves within the zoo. If Happy were to

be moved from the Bronx Zoo to the PAWS facility in California, that move would be highly stressful and potentially detrimental to Happy's well-being.

19. The transportation of animals for long distances, particularly large mammals such as elephants, is an inherently risky process. This is especially true of older animals with a history of difficulty and stress in carrying out even brief moves.

20. By failing to take into consideration Happy's specific needs, NRP has prioritized the advancement of its own agenda over Happy's well-being.

**B. Granting NRP's petition would not provide Happy with bodily liberty**

21. NRP posits that Happy's alleged unlawful confinement may be cured by moving Happy to the PAWS facility or another animal sanctuary.

22. However, NRP's supporting affidavits fail to establish how animal sanctuaries generally or the PAWS facility specifically would promote Happy's well-being or release her from confinement.

23. With regard to animal sanctuaries generally, NRP merely asserts through that "[f]or elephants in captivity . . . human-run sanctuaries are currently the best option," without providing any analysis or support. Poole Sup. Aff. ¶ 5.

24. Ms. Poole also opines that "[h]olding [elephants] captive and confined prevents them from engaging in normal, autonomous behavior and can result in the development of arthritis, osteoarthritis, osteomyelitis, boredom and stereotypical behavior," yet Ms. Poole does not explain how an animal sanctuary, which is also a captive environment, could prevent any of the harms she enumerates. *Id.* ¶ 4.

25. The Stewart affidavit submitted by NRP establishes that even if Happy were transferred to the PAWS facility, Happy would still be living in an environment of confinement.

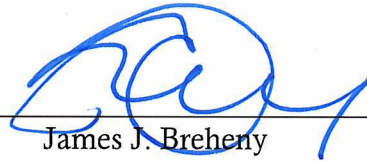
26. For example, the Stewart affidavit states that “[t]he elephant habitats are enclosed with steel pipe fencing and pipe-and-cable fencing,” and the “African elephant habitat includes a system of gates that can be used to control access to particular areas for management purposes.” Stewart Aff. ¶ 12.

27. Although most elephants at the PAWS facility “have indoor-outdoor access during the night,” older elephants, such as Happy, “may be kept indoors overnight” in elephant barns. *Id.* ¶ 13. The elephant barns at the PAWS facility have “heaters, hydraulic gates, restraint devices for veterinary procedures, heated and padded concrete floors, dirt floors . . . .”

28. Thus, even if Happy were transferred to NRP’s facility of choice, Happy would still be confined in an environment controlled by humans. NRP’s petition does not actually seek to provide Happy with “bodily liberty,” but again, only advances NRP’s agenda and seeks to transfer Happy to a facility of NRP’s choosing, without consideration for Happy’s well-being.

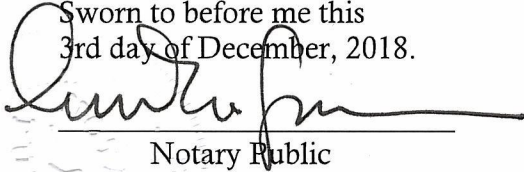
29. Based upon my expertise, decades-long experience with Happy, and the foregoing, it is my professional opinion that Happy’s interests would not be best served at this time by moving her to an animal sanctuary. I therefore respectfully request that the Court deny NRP’s petition.

30. Allowing humans to petition for the removal of animals from environments such as the Bronx Zoo, and to grant those requests, could have substantial, wide-ranging implications for millions of animals in various circumstances.



James J. Breheny

Sworn to before me this  
3rd day of December, 2018.



Notary Public

Doc #01-3164517

Muno M. Santos  
Notary Public, State of New York  
No. 02SA6108087  
Filed in Kings County  
Commission Expires April 12, 2020