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At a Term of the Supreme Court, of the State of New York, held in and for the County of Orleans at the Orleans County Courthouse, 1 South Main Street, in the Town of Albion, New York, on the 14th of December, 2018.

PRESENT: HON. TRACEY A. BANNISTER, J.S.C.
Justice Presiding

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORLEANS

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

~~PROPOSED~~ TAB
ORDER

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

Index No. 18-45164

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.

Petitioner The NonHuman Rights Project, Inc., ("Petitioner") having filed a Verified Petition for a Writ of Habeas Corpus on behalf of Happy the elephant by order to show cause, and having moved for the admission of Steven M. Wise, Esq. pro hac vice; and having moved the Court to rule on its Petition for a Writ of Habeas Corpus, and having moved to strike Respondents James Breheny and the Wildlife Conservation Society's

("Respondents") opposition to Petitioner's proposed order to show cause; and having moved for a preliminary injunction pursuant to CPLR 6301, and having moved for a protective order as to Respondents' Notice to Admit served pursuant to CPLR 408 and 3123; and

Respondents having opposed the Petition and Petitioner's proposed order to show cause, and having moved to change venue pursuant to CPLR 511 and 7004(c), or alternatively, to dismiss the Petition with prejudice pursuant to CPLR 3211(a), and having opposed Petitioner's motion for a preliminary injunction, and having opposed Petitioner's motion for a protective order; and

Putative *Amici* Alliance of Marine Mammal Parks and Aquariums, Protect the Harvest, and the Zoological Association of America ("*Amici*") having moved to appear *amicus curiae* in this proceeding; and

Petitioner having opposed *Amici*'s motion;

NOW, upon reading Petitioner's Verified Petition for a Writ of Habeas Corpus, sworn to October 2, 2018, with exhibits, the Joint Affidavit of Lucy Bates and Richard M. Byrne, sworn to December 5, 2016, with exhibits, the Affidavit of Karen McComb, sworn to December 22, 2016, with exhibits, the Affidavit of Cynthia J. Moss, sworn to May 6, 2017, with exhibits, the Affidavit of Joyce Poole, Ph.D., sworn to December 2, 2016, with exhibits, the Supplemental Affidavit of Joyce Poole, Ph.D., dated October 1, 2018, the Affidavit of Ed Stewart, sworn to September 26, 2018, with exhibit, and Petitioner's supporting memorandum of law, dated October 2, 2018, all filed in support of Petitioner's proposed order to show cause and in support of its Petition for a Writ of Habeas Corpus; and

The Affidavit of James Breheny in opposition to Petitioner's proposed order to show cause, sworn to October 9, 2018, and Respondents' supporting memorandum of law, dated October 9, 2018, both filed in opposition to Petitioner's proposed order to show cause; and

Petitioner's Notice of Motion to Strike Respondents' opposition to Petitioner's proposed order to show cause, dated October 10, 2018, and the Affirmation of Elizabeth Stein, dated October 10, 2018, both filed in support of Petitioner's Motion to Strike; and

Petitioner's Notice of Motion to Rule on Petitioner's Habeas Corpus Petition, dated October 25, 2018, the Affirmation of Elizabeth Stein, dated October 25, 2018, and Petitioner's supporting memorandum of law, dated October 25, 2018, all in support of Petitioner's Motion to Rule; and

The Affidavit of Joanna J. Chen, Esq. in Opposition to Petitioner's Motion to Strike and Motion to Rule, sworn to November 14, 2018, with exhibits, and Respondents' supporting memorandum of law, dated November 14, 2018, both in opposition to Petitioner's Motion to Strike and Motion to Rule; and

Respondents' Demand for Change of Venue, dated November 21, 2018, and the Affirmation in Opposition to Respondents' Demand to Change Venue, dated November 27, 2018; and

Respondents' Notice of Motion to Change Venue or alternatively to Dismiss Petitioner's Petition, dated December 3, 2018, the Affidavit of Kenneth A. Manning, Esq., sworn to December 3, 2018, with exhibits, the Supplemental Affidavit of James J. Breheny, sworn to December 3, 2018, the Affidavit of Paul P. Calle, sworn to December 3, 2018, the

Affidavit of Patrick Thomas, Ph.D., sworn to December 3, 2018, with exhibit, and Respondents' supporting memorandum of law, dated December 3, 2018, all in support of Respondents' Motion to Change Venue or alternatively to Dismiss and in Opposition to Petitioner's Petition for a Writ of Habeas Corpus; and

The Reply Affirmation of Elizabeth Stein, Esq., dated December 10, 2018, the Reply Affidavit of Steven Wise, sworn to December 10, 2018, the Reply Affirmation of Kevin Schneider, dated December 10, 2018, with exhibits, the Reply Affidavit of Lauren Choplin, sworn to December 10, 2018, with exhibits, the Reply Second Supplemental Affidavit of Joyce Poole, Ph.D., sworn to December 10, 2018, and Petitioner's Reply Memorandum of Law, dated December 10, 2018, all in opposition to Respondents' Motion to Change Venue or alternatively to Dismiss and in further support of Petitioner's Petition for a Writ of Habeas Corpus; and

Petitioner's Notice of Motion to File Late Reply Papers, dated December 11, 2018 (corrected on December 11, 2018, and further corrected on December 12, 2018), and the Affirmation of Elizabeth Stein, Esq., in Support of Petitioner's Motion to File a Late Reply, dated December 11, 2018; and

Petitioner's Notice of Motion for a Preliminary Injunction, dated December 12, 2018, the Affirmation of Elizabeth Stein, Esq. in Support of Petitioner's Motion for Preliminary Injunction, dated December 12, 2018, and Petitioner's supporting memorandum of law, dated December 12, 2018, all in support of Petitioner's Motion for a Preliminary Injunction; and

The Reply Affidavit of Joanna J. Chen, Esq. sworn to December 13, 2018, and Respondents' Reply Memorandum of Law in further Support of its Motion to Change

Venue or alternatively to Dismiss and in opposition to Petitioner's Motion for a Preliminary Injunction, both in further support of Respondents' Motion to Change Venue or alternatively to Dismiss and in Opposition to Petitioner's Motion for a Preliminary Injunction; and

Petitioner's Notice of Motion for a Protective Order, dated December 12, 2018, the two Affirmations of Kevin Schneider, Esq., both dated December 12, 2018, and the Affirmation of Elizabeth Stein, Esq., dated December 12, 2018, all in support of Petitioner's Motion for a Protective Order; and

The Affirmation of Kenneth A. Manning, Esq. in Opposition to Petitioner's Motion for a Protective Order, dated December 13, 2018, with exhibits; and

The Notice of Motion of *Amici* to File Brief *Amicus Curiae*, the Affirmation of Bezalel A. Stern, dated December 3, 2018, and the proposed Brief of *Amicus Curiae*, all in support of *Amici's* motion to File Brief *Amicus Curiae*; and Petitioner's Memorandum of Law in Opposition to *Amici's* Motion to File Brief *Amicus Curiae*, dated December 11, 2018; and all the papers and proceedings herein (and proof of service of the foregoing papers having been made); and having heard Petitioner The NonHuman Rights Project (Steven M. Wise, Esq., and Elizabeth Stein, Esq., of counsel) and Phillips Lytle LLP (Kenneth A. Manning, Esq. and Joanna J. Chen, Esq., of counsel), attorneys for Respondents, and after due deliberation thereon, and upon the attached transcript of the decision of this Court; it is hereby:

ORDERED that Respondents' motion to change venue is GRANTED; and it is further


ORDERED that

- (i) the above-captioned proceeding, with all pleadings, motions, and papers submitted herein, shall be and hereby is transferred to the New York State Supreme Court, Bronx County; and
- (ii) the Clerk of the Court is directed to transfer this proceeding forthwith upon the entry of this Order to the New York State Supreme Court for the County of the Bronx; and it is further

ORDERED that all motions and issues submitted to this Court and not expressly decided herein are hereby stayed, pending transfer of this proceeding to Bronx County; and it is further

ORDERED, that the Clerk of the Court may enter this Order without further notice.

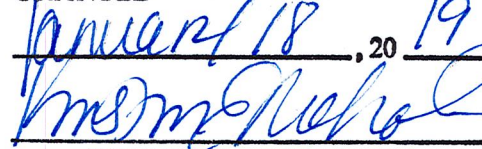
Dated: Buffalo, New York
January 18, 2019


HON. TRACEY A. BANNISTER, J.S.C.

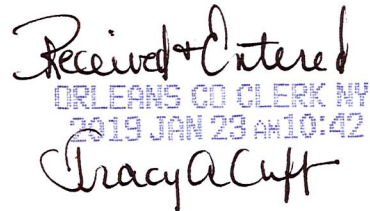
ENTER:

Doc #01-3169290

GRANTED


January 18, 2019

KRISTINE E. NICHOLSON
Chief Clerk


Received & Entered
ORLEANS CO CLERK NY
2019 JAN 23 AM 10:42