

April 14, 2015

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# Court of Appeals

FOR THE STATE OF NEW YORK

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**THE PEOPLE OF THE STATE OF NEW YORK** *ex rel.*  
**THE NONHUMAN RIGHTS PROJECT, INC.** *on behalf of* **TOMMY,**

*Appellant,*

-v-

**PATRICK C. LAVERY**, individually and as an officer of  
**Circle L Trailer Sales, Inc.**, **DIANE LAVERY** and **CIRCLE L**  
**TRAILER SALES, INC.**,

*Respondents.*

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**LETTER BRIEF OF AMICUS CURIAE JUSTIN MARCEAU, HABEAS**  
**CORPUS SCHOLAR, IN SUPPORT OF MOTION FOR LEAVE TO**  
**APPEAL**

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**JUSTIN F. MARCEAU, ESQ.**  
*2255 E. Evans Avenue*  
*Denver, Colorado 80208*  
*(617) 256-9073*

COURT OF APPEALS OF THE STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW  
YORK ex rel. THE NONHUMAN  
RIGHTS PROJECT, INC., on behalf of  
TOMMY,

Appellant,

v.

PATRICK C. LAVERY, individually and as an  
Officer of Circle L Trailer Sales, Inc., DIANE  
LAVERY, and CIRCLE L TRAILER SALES, INC.,

Respondents.

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1. I have been a full time law professor at the University of Denver, Sturm College of Law for seven years. I was awarded tenure in 2012. I specialize in constitutional and criminal law with an emphasis in habeas corpus procedures. I regularly teach habeas corpus courses in addition to criminal law and advanced criminal procedure and a variety of other courses.

2. I regularly research and write in the field of habeas corpus. I co-authored the book *Federal Habeas Corpus* (Carolina Academic Press, Second Edition) and have written approximately 15 scholarly papers dealing with issues related to habeas corpus. Andrea D. Lyon, Emily Hughes, Marry Prosser & Justin Marceau, *Federal Habeas Corpus* (2d ed. 2011). My publications have been cited in over 200 cases and scholarly works, including leading treatises such as *Federal Habeas Corpus*

*Practice and Procedure and Criminal Procedure*. Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* (6th ed. 2011); Wayne R. LaFave et al., *Criminal Procedure* (3d ed. 2014). My habeas corpus publications have appeared in the *Yale Law Journal*, the *William & Mary Law Review*, the *Hastings Law Journal*, and many others.

3. Before becoming an academic, I practiced law as a federal public defender specializing in habeas corpus. In addition to teaching, I continue to consult and practice law in the habeas corpus field. I also provide training to experienced habeas corpus counsel. I was recently invited to give a lecture at the 2015 Annual Federal Habeas Corpus Conference for federal public defenders.

4. Over the past several years, I have collaborated with other habeas corpus scholars to write several amicus briefs. I was the lead author and counsel of record on a habeas corpus amicus brief during the United States Supreme Court's last term. Last month I was part of an amicus brief consisting of "habeas corpus scholars and professors" for a case filed in the Court of Appeals for the Ninth Circuit.

5. As a habeas corpus scholar and practitioner, I can attest that the case of Tommy the Chimp is of the utmost importance to the meaning and development of habeas corpus as an equitable doctrine. I write to respectfully request that this Court grant leave for appeal so that I can seek to collaborate with other habeas

corpus scholars and produce a comprehensive amicus brief to assist this Court in the proper resolution of this case. This may be one of the most important habeas corpus issues in decades and the lower court's resolution of the matter is in fundamental tension with core tenets of the historical writ of habeas corpus.

6. I respectfully request that this Court grant the motion for a leave to appeal in this case so that I can attempt to compile a team of habeas corpus scholars and practitioners to address the novel issues raised in this appeal.