

## S281614

August 29, 2023

The Honorable Jorge E. Navarrete  
Clerk and Executive Officer  
Supreme Court of California  
350 McAllister Street  
San Francisco, California 94102

Re: Letter of Amici Curiae, Animal Theology Experts, Supporting Verified Petition for a Common Law Writ of Habeas Corpus and Issuance of an Order to Show Cause in *In re Nonhuman Rights Project, Inc. on behalf of Amahle, Nolwazi, and Mabu On Habeas Corpus* (No. S281614)

Dear Mr. Navarrete:

Please transmit this letter to the justices for their consideration. As set forth below, animal theology experts Dr. Andrew Linzey and Dr. Clair Linzey of the Oxford Centre for Animal Ethics believe that Petitioner Nonhuman Rights Project, Inc. (“NhRP”) has made a prima facie case that the elephants confined at Fresno Chaffee Zoo in Fresno, CA—Nolwazi, Amahle, and Mabu—are entitled to habeas corpus relief. Accordingly, we respectfully urge the Court to issue an order to show cause in this matter.

### INTEREST OF AMICI CURIAE

Amici are professors of animal theology with extensive backgrounds and expertise in the study of animal ethics, and have an active interest in the law evolving to remedy injustices inflicted upon nonhuman animals. Reverend and Professor Andrew Linzey, Ph.D., D.D., Hon. D.D. (“Dr. A. Linzey”), is the director of the Oxford Centre for Animal Ethics and has been a member of the Faculty of Theology at the University of Oxford for nearly three decades. Dr. A. Linzey is also a visiting professor of animal theology at the University of Winchester, a professor of animal ethics at the Graduate Theological Foundation, and a special professor at Saint Xavier University, Chicago. He has authored and/or edited more than thirty books, including *Animal Theology*, SCM Press, University of Illinois Press (1994); *Why Animal Suffering Matters: Philosophy, Theology, and Practical Ethics*, Oxford University Press (2009); *The Global Guide to Animal Protection*, University of Illinois Press (2013); and *The Palgrave Handbook of Practical Animal Ethics*, Palgrave Macmillan (2018). In 2001, Dr. A. Linzey was awarded a Doctor of Divinity by the Archbishop of Canterbury – the highest award an Archbishop can bestow upon a theologian – in recognition of his animal-related work.

Professor Clair Linzey, Ph.D. (“Dr. C. Linzey”) is the deputy director of the Oxford Centre for Animal Ethics and is a professor of animal theology at the Graduate Theological Foundation. Dr. C. Linzey obtained her doctorate degree in theology from the University

of St. Andrews, after completing her masters in theology at Harvard University. She authored *Developing Animal Theology*, Routledge (1st ed. 2020) and is co-editor of the *Journal of Animal Ethics* and the Palgrave Macmillan Animal Ethics Series. Additionally, Dr. C. Linzey and Dr. A. Linzey are co-editors of *Animal Ethics for Veterinarians*, University of Illinois Press (2017); *The Ethical Case Against Animal Experiments*, University of Illinois Press (2018); *The Routledge Handbook of Religion and Animal Ethics*, Routledge (2018); *The Palgrave Handbook of Practical Animal Ethics*, Palgrave Macmillan (2018); and *Animal Ethics and Animal Law*, Lexington (2011), and *Animal Theologians*, Oxford University Press (2023).

Amici submit this letter in support of the NhRP's petition to this Court to recognize Nolwazi, Amahle, and Mabu's right to bodily liberty on the grounds that doing so is a moral necessity grounded in Christian theology.

## ARGUMENT

### A. Introduction

We believe that this Court should issue an order to show cause and ultimately hold that the common law extends the right to bodily liberty under the writ of habeas corpus to non-human animals such as elephants. Nolwazi, Amahle, and Mabu were robbed of their freedom when they were captured from their natural habitat in Africa and brought to the United States, where they have since lived in captivity. As we will discuss, Nolwazi, Amahle, and Mabu have been forced to endure a demonstrably neglected and undignified existence in their confinement at the Fresno Chaffee Zoo. This letter seeks to provide an ethical perspective grounded in Christian theology to argue that recognizing the right to bodily liberty for these elephants for the limited purpose of obtaining habeas corpus relief is a moral necessity and the next logical step in the ethical advancement of our society.

There are various examples of the legal system rectifying grave injustices throughout history, and while the basis for doing so is often substantiated by precedent or analytic reasoning, it is indisputable that morality has also played an important role in shaping many of our ethically groundbreaking legal outcomes. “[L]aw cannot be divorced from morality in so far as it clearly contains . . . the notion of the right to which the moral quality of justice corresponds.” Black’s Law Dictionary (11th ed. 2019) (quoting Paul Vinogradoff, *Common Sense in Law*, 19-20 (H.G. Hanbury ed., 2d ed. 1946)). The common law is not inflexible; principles including justice, ethics, and fairness are often contemplated to reform antiquated legal precedent. See NhRP Petition at 43-45.

As society continues to progress with respect to the civil rights of historically disadvantaged groups, so should our deliberations regarding the moral obstacles we have yet to overcome. As Justice Kennedy articulated: “If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied.” *Obergefell v Hodges* (2015), 576

U.S. 644, 671 (holding that same-sex couples have a fundamental right to marry, and that any such marriage shall be recognized by all states)). See also *Bostock v. Clayton County, Georgia* (2020) 140 S. Ct. 1731 (extending protections under Title VII of the Civil Rights Act to gay and transgender persons); *Loving v. Virginia* (1967) 388 US 1 (striking down Virginia miscegenation statutes). These landmark decisions, among many others, demonstrate a societal moral advancement whereby we reevaluated our treatment of a historically disadvantaged group to reject unjust legal precedent.

Christianity has a longstanding history of influencing not only American jurisprudence and the foundation of American law, but also ethical positions of the public. See, e.g., *Holy Trinity Church v. United States* (1892) 143 U.S. 457, 470 (noting the historical and cultural significance in the United States of “Christianity with liberty of conscience to all men,” as opposed to “an established church and tithes and spiritual courts”). It is therefore imperative that we contemplate a theological approach to morality in relation to our treatment of the vulnerable. Here, we must consider such an approach with regard to nonhuman animals – in the instant case Nolwazi, Amahle, and Mabu.

### **B. Background: Nolwazi, Amahle, and Mabu’s confinement**

The Fresno Chaffee Zoo deprives Nolwazi, Amahle, and Mabu of anything close to a natural life, and is entirely unsuitable for such large, migratory, intelligent, sensorily perceptive animals. African elephants are extremely social animals that tend to live in matriarchal, multigenerational families that can roam with groups of up to several hundred elephants. See Petition ex. XIII: Jacobs Decl. ¶ 21(a). Contrarily, at the Fresno Chaffee Zoo, there is only one mother-daughter pair and one male elephant. *Id.* While African elephants typically travel tens of kilometers per day across diverse terrain, Nolwazi, Amahle, and Mabu live in an enclosure consisting of approximately three acres and spend much of the year kept in an even smaller windowless concrete structure anytime the zookeepers are off-duty, or when the weather is cold. Jacobs Decl. ¶¶ 14, 21(c); Petition ex. XV: Lindsay Decl. ¶¶ 60-62, 69.

We now know that inhibiting the natural behaviors of elephants and placing them in an actively stressful environment year after year damages them on a neurological level. Jacobs Decl. ¶ 21(h). In addition to having inadequate space to roam and exercise, Nolwazi, Amahle, and Mabu are constantly bombarded by a variety of low-frequency noise—which elephants are incredibly sensitive to—as they are surrounded by freeways, major railway lines, construction noise, and the noise of human visitors. Jacobs Decl. ¶ 21(f). They are also forced to perform in front of noisy crowds, which the scientist Keith Lindsay opined is “undoubtedly disturbing to the elephants.” Lindsay Decl. ¶ 70.

A sanctuary would provide Nolwazi, Amahle, and Mabu with a natural environment far more comparable to that of African elephants in their natural habitat. Jacobs Decl. ¶ 21(g); Lindsay Decl. ¶¶ 67, 76-77. They would have elephant companions and an

abundance of land on which to travel. Further, they would no longer spend most of their time confined indoors for human convenience. The elephants would also be free of the auditory bombardment, forced performances for the public, and impoverished environment that they suffer at the Fresno Chaffee Zoo.

### **C. We have a moral duty rooted in Christian theology to protect nonhuman animals**

As humans we often behave as though the dominion we have over nonhuman animals sanctions us to treat them as commodities with no individual rights – a notion wholly unsupportable by adequately formulated Christian theology. The God-given dominance conferred upon humans over nonhuman animals should instead be interpreted through Christ himself, who exercised his power in the form of service to others. Christ's selflessness, generosity and altruism should frame our own models of behavior, especially with regard to sentient beings capable of experiencing fear, loneliness, stress and other complex emotions too often mistakenly considered uniquely human. We are the sole species created by God to represent divine love and compassion through service to others, and thus, God has tasked us with the role of caring for the world – a duty that should not be taken lightly. As Anglican theologian and writer C. S. Lewis argued, "we ought to prove ourselves better than the beasts precisely by the fact of acknowledging duties to them, which they do not acknowledge to us."<sup>1</sup> By treating nonhuman animals as though their suffering is immaterial, we are actively opposing God's desire for us to protect and care for all beings.

Dr. Robert Runcie, former Archbishop of Canterbury, argued that humans have an obligation to act in the best interest of all creatures rather than to solely benefit themselves. "He [man] must therefore exercise his 'dominion' in conformity with God's will and purposes, not only in relation to himself, but to the whole area of created life. Man is not an absolute owner of the earth which he inhabits."<sup>2</sup> He later argued that we too often mistakenly interpret our dominion as a license to exclusively consider our own interests with respect to nonhuman animals:

The temptation is that we will usurp God's place as Creator and exercise a tyrannical dominion over creation. ... At the present time, when we are beginning to appreciate the wholeness and interrelatedness of all that is in the cosmos, preoccupation with humanity will seem distinctly parochial. ... Too often our theology of creation, especially, here in the so called "developed" world, has been distorted by being too man-centered. We need

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<sup>1</sup> C.S. Lewis, 'Vivisection' in *Undeceptions: Essays on Theology and Ethics*, 182-86 (1952).

<sup>2</sup> Robert Runcie, *Statement by the Archbishop of Canterbury on Animal Welfare Matters*, 2 (1981).

to maintain the value, the preciousness of the human by affirming the preciousness of the nonhuman also – of all that is.<sup>3</sup>

Dr. Michael Ramsey, former Archbishop of Canterbury, commissioned a report expressing a similar sentiment:

Although it cannot be denied that man is very much at the centre of biblical teaching on creation, this teaching does not hold that nature has been created simply for man's sake. It exists for God's glory, that is to say, it has a meaning and worth beyond its meaning and worth as seen from the point of view of human utility. It is in this sense that we can say that it has intrinsic value. To imagine that God has created the whole universe solely for man's use and pleasure is a mark of folly.<sup>4</sup>

Believing God created all beings yet only has an interest in the welfare of one species – our own – is the pinnacle of human hubris. Former Archbishop Desmond Tutu similarly argued that humans inaccurately interpret our conferred dominion as a license to ignore or participate in the suffering of nonhuman animals:

If it is true that we [humans] are the most exalted species in creation, it is equally true that we can be the most debased and sinful. This realisation should give us pause. So much of our maltreatment of animals stems from a kind of spiritual blindness, a kind of hubris, in which we foolishly suppose that our own welfare is God's sole concern. *In fact, God's creation is entrusted to our care and under our protection.* There is something Christ-like about caring for suffering creatures, whether they are humans or animals.<sup>5</sup>

Instead of overlooking the suffering of nonhuman animals to suit our own objectives derived from financial gain, convenience or otherwise, we must refuse to abandon our God-given duty to protect and care for all of God's creatures.

#### **D. This Court must recognize Nolwazi, Amahle, and Mabu's right to bodily liberty**

Perhaps the solemnest aspect of Nowlazi, Amahle, and Mabu's confinement is that

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<sup>3</sup> Robert Runcie, *Address to the Global Forum of Spirituality and Parliamentary Leaders on Human Survival* (1988).

<sup>4</sup> H. Montefiore, *Man and Nature*, 67, London: Collins (1975).

<sup>5</sup> Desmond Tutu, *Extending Justice and Compassion*, Foreword to Andrew Linzey, *Global Guide to Animal Protection*, xv (2013) (emphasis added).

they spend their lives as prisoners, yet have committed no crime. The elephants have consistently been failed by humans; we as a species have ignored or participated in their suffering time and again for decades. A plethora of scientific research emerged ubiquitously demonstrating that elephants have complex cognitive and emotional capacities, yet we still ignore their sentience and overlook our God-given duty to protect them from suffering. This fact was recognized by the trial court in a previous case brought by the NhRP, which conceded that the NhRP's "five deeply educated, independent, expert opinions [are] all firmly grounded in decades of education, observation, and experience . . ." and that such experts "carefully demonstrate that elephants are autonomous beings possessed of extraordinarily cognitively complex minds." *The Nonhuman Rights Project, Inc. v. Breheny* (2020) 2020 WL 1670735, \*6. By confining Nolwazi, Amahle, and Mabu in an unnatural and distressing environment, all the while and despite fully understanding they are capable of emotions such as loneliness, frustration, sadness, boredom, and fear, we have betrayed the trust God has bestowed upon us.

Thus, we must use any legal means necessary to redeem ourselves before God and liberate these elephants from their suffering. There is no valid rationale, especially knowing what we know about elephants and their capacity to experience extreme psychological distress in confinement, that Nolwazi, Amahle, and Mabu should not have the right to bodily liberty for the limited purpose of petitioning for habeas corpus. Every disadvantaged group in our history has, at one time, been granted a legal liberty that was previously unprecedented, and we now view advocates of such legal victories as heroic, morally astute agents of change. See generally *Obergefell*, *Bostock* and *Loving*, cited supra. We must continue to use the legal system as a vehicle for the advancement of moral rights for nonhuman animals, a notion wholly supported by shifting societal norms that are increasingly sympathetic to the plight of beings like Nolwazi, Amahle, and Mabu. NhRP Petition at 42-44. As one court in 2012 acknowledged, "[c]aptivity is a terrible existence for any intelligent, self-aware species, which the undisputed evidence shows elephants are. To believe otherwise, as some high-ranking zoo employees appear to believe, is delusional." NhRP Petition at 46 (quoting *Leider v. Lewis* (2012) Case No. BC375234 at 30).

If Nolwazi, Amahle, and Mabu have their right to bodily liberty recognized, their victory would demonstrate our continued progression as an ethical society through compliance with our God-given moral duties to nonhuman animals. We must conform to the established notion that nonhuman animals are deserving of dignity and autonomy. A refusal to recognize Nolwazi, Amahle, and Mabu's right to bodily liberty would constitute a grave dereliction of our moral obligation to God.

## CONCLUSION

For much of their lives, we have failed to recognize Nolwazi, Amahle, and Mabu as sentient beings worthy of respect. Instead, we have treated them as if their most basic right

to bodily liberty as creations of God is of no significance. Yet we now are faced with a chance to redeem ourselves. The fact that their suffering could so easily be remedied by granting them the right to petition for habeas corpus relief further supports our contention that recognizing the right to bodily liberty in this context is a moral necessity. We urge this Court to issue an order to show cause and remedy the injustice that Nolwazi, Amahle, and Mabu have so undeservedly endured.

Respectfully submitted,

/s/ Andrew Linzey

Reverend and Professor Andrew Linzey,  
Ph.D.

/s/ Clair Linzey

D.D., Hon.D.D., Professor Clair Linzey,  
Ph.D.

