

**S281614**



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August 30, 2023

The Honorable Jorge E. Navarrete  
Clerk and Executive Officer  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4787

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

Dear Mr. Navarrete and,  
Honorable Justices:

Under California Rules of Court, Rule 8.500(g), *Amici Curiae*, Ven. Mahinda Deegalle, MTS, PhD, Ven. Aluthgama Chandananda and Ven. Bhante Soorakkulame Pematatana (“Buddhist Scholars”) submit this letter in support of the Verified Petition for Writ of Habeas Corpus and issuance of an order to show cause in the above-captioned case. In accordance with California Rule of Court Rule 8.500(g)(1), a copy of this letter was served on all parties to the case. Please transmit this letter to the Justices for their consideration.

As set forth below, assuming the factual allegations in the petition are proven true, the three elephants are entitled to *habeas corpus* relief. We implore this Court to grant an order to show cause because the treatment of

the three elephants in question is a matter of grave moral concern and they are not, from a moral, ethical or Buddhist perspective, merely things.

### **1. Statement of Interest of *Amici Curiae***

We, the undersigned submit this letter as Buddhist scholars with expertise in comparative religions, Buddhist ethics, bioethics, theology and more.<sup>i</sup> This case represents an opportunity for the law to redress a grave ethical wrong, as it has redressed other historical wrongs even though they were the custom and historical practice of the time.

Buddhism would have similarly objected to prior historical inequalities and injuries when used to discriminate against sentient beings on the basis of skin color, race, or gender-as it does to the sentient elephant. The lives of the three elephants imprisoned for economic gain can only be justified on the idea that one sentient life is more worthy of moral consideration than another...an idea that has led to slavery and mass genocides.

Legal judgments contain and have historically contained moral judgments as well because the law does not operate in a moral vacuum. This legal moment for the three elephants in the Fresno Zoo represents a great opportunity to consider the treatment of sentient beings from a cross-cultural and more moral perspective than we have done before, so as to avoid perpetuating a great moral wrong simply because it has been a habit of the law. Our scholarship advocates a cross-cultural, moral and ethical case.

### **2. Argument**

#### **Elephants are Sentient Beings**

The elephants, Nolwazi, Amahle and Mabu are sentient beings. As sentient beings, they should not be held captive in a zoo. This state of being represents suffering (Pāli *dukkha*) and is against the treatment of all beings that is prescribed in foundational Buddhist texts all of which consider the elephant a sentient being worthy of compassion (Sanskrit *karuṇā*) and kindness. They belong at minimum in a sanctuary and not a cage where their emotional, physical, and psychological state suffer from captivity as much as any other living being so confined would also suffer. Being forced to live in this artificial and confined state not as a punishment for any wrong they have done, but because they represent an economic opportunity. All forms of Buddhism recognize all beings like Nolwazi, Amahle and Mabu as sentient beings and call for compassionate treatment and kindness towards them.

We have observed the courts grapple with various ideas of personhood

to determine if a being is or is not worthy of *habeas corpus* relief. Historically, it was considered radical to grant women the right of *habeas corpus* or people of a different race. From a Buddhist ethical perspective, however, there is no question that these gentle giants are sentient beings, as much as any and every human being is a sentient being.

While societies have historically viewed and continue to view certain life primarily in economic terms, to Buddhism, *all* sentient life is deserving of respect because it is a unique form of life. The recognition of animals as sentient beings is central to Buddhist teachings and ethics.

Sentient beings have the ability to experience and suffer pain. It is well known that elephants have complex social bonds, that they experience emotions like grief, empathy and happiness, and even practice altruism. Elephants are elevated and venerated in Buddhist and Sri Lankan folklore for being wise, compassionate and capable of advanced thought.<sup>1</sup> In Buddhism this is not surprising as all beings are equal and indistinguishable in their essential nature, and have the prospect of being awakened sooner or later, in this life or next lives.

In the sixth century BCE, two extraordinarily peaceful religions formed in India at almost the same time. They both recognized non-human animals as sentient beings and proscribed their killing: Jainism and Buddhism. Jainism extended the idea of doing no harm to plants, considering them also sentient. Buddhism by contrast, stopped at non-human animals.

There are by varying accounts, between 500–1.6 billion Buddhists in the world and several schools of Buddhist thought. While there is some

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<sup>1</sup> Deegalle, Mahinda. “Śrī Pāda Sacred to Many: Sufi Mystics on Pilgrimage to Adam’s Peak.” *Multiculturalism in Asia*, Edited by Imtiyaz Yusuf (Bangkok: Mahidol University and Konrad Adenauer Stiftung, 2018), pp. 50–59. Amici Curiae have authored significant books and articles in the Study of Religions, Ethics and Philosophy of Religion and Buddhism including, *Popularizing Buddhism: Preaching as Performance in Sri Lanka* (Albany, NY: State University of New York Press, 2006), and the editor of several volumes including, *Buddhism, Conflict and Violence in Modern Sri Lanka* (London and New York: Routledge, 2006), and *Justice and Statecraft: Buddhist Ideals Inspiring Contemporary World* (Kelaniya: Nagananda International Buddhist University, 2017), and the book chapters, “Śrī Pāda Sacred to Many: Sufi Mystics on Pilgrimage to Adam’s Peak” (2018: 40–69) and “When Buddhism Meets Cosmopolitanism: An Education for Global Citizenship” (2013: 11–24). And an upcoming book on the treatment of elephants in Buddhist countries from a historical, religious, and legal basis.

disagreement among Buddhist schools of thought about what Buddha actually said, it is universally accepted among all schools of Buddhism that the First Precept of Buddhism, teaches its practitioners, to do no harm to any living being. This doctrine of abstention from taking any form of life is the central pillar of the philosophy of *Ahiṃsā* (non-violence or non-injury) in Sanskrit and means doing no harm to other living things.

This philosophy of non-violent life is based on two principles. The first of these is the belief in an extended and extensive form of life that goes through the process of rebirth (or reincarnation). Every other living thing, whether human or non-human, may have the possibility of having been in the past, or becoming in the future a person's mother or father or any other relations. Buddhism holds that each one of us, has been reborn multiple times in a seemingly unending cycle of birth, death and rebirth traditionally identified as *samsāra*. By not treating an animal with compassion and kindness, a person would in a real sense be mistreating their own deceased mother or father. There is a continuity and connection between all life in Buddhism.

This fundamental continuity with some discontinuity among all forms of life in Buddhist thought, happens through the process of birth and rebirth that is subject to the quintessential Buddhist philosophical teaching of impermanence (P. *anicca*). It is this continuity that also equates all animal life, whether human or non-human, as sentient life.

In Buddhism, the highest and more spiritually, and intellectually privileged form of rebirth is to be born a human because humans are capable of achieving the religious ultimate *nibbāna* (awakening) or Buddhahood. But this does not mean that Buddhism discriminates between sentient beings on the basis of a moral worth. It does not.

According to the *Jātaka* Stories, which tell the tales of the historical Buddha's past lives, it is not the status of being born a human or non-human animal, as if one is higher or lower than the other, that determines a being's next existence, but its actions. In these same *Jātaka* stories, animals are often shown to be more moral and spiritually evolved than their human counterparts. The Buddha himself was said to be born as an elephant in a prior life (*Chaddanta Jātaka*, no. 514).<sup>2</sup> In stories of the Buddha's birth and rebirth, he is born many times as a sentient non-human. In other Buddhist stories, an elephant, Pārileyya, and the Buddha live together in the forest

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<sup>2</sup> Tricycle, Jataka Tale: The Elephant, March 1, 2011.

<https://tricycle.org/trikedaily/jataka-tale-elephant/> Accessed October 7, 2021.

enjoying its solitude (*Vinaya* I.352f). The elephant takes care of the Buddha during his stay in the forest, and upon the elephant's death based on his good deeds, he becomes reborn as a god.

The second principle of the First Precept is expressed in the Buddhist scripture *Udāna* (Utterances) which is part of the Pāli Canon of Theravāda Buddhism. The second principle directs that people care for and feel for others just as they would feel for themselves. This is expressed in the following words attributed to the Buddha, “Since to others, to each one for himself, the self is dear, therefore let him who desires his own advantage not harm another.”<sup>3</sup> (#61)

Buddhism teaches that all animals are capable of experiencing suffering (physical and emotional)-be they human animals or non-human animals. Since the capacity for suffering is the same between all animals, our moral obligation not to inflict unnecessary suffering on humans, should be expanded to animals. “ All animals tremble at violence; life is dear to all. Putting oneself in the place of another, one should not harm or cause another to harm.” (Dhammapada 130)<sup>4</sup>

It is wrong, given the universal nature of suffering for all things that live, to benefit from another's suffering. But this is more than a negative prescription. In Buddhism, the call to develop infinite compassion means to strive to become more and more sensitive to suffering and with this heightened vision—to alleviate it.

### **3. Non-distinction between human animals and non-human animals**

In its broadest sense, Buddhism does not believe in speciesism. The idea of regarding all sentient beings (all living things) with the same loving kindness (P. *mettā*) as that to which one would hold most dear, is a fundamental and often repeated prescription in Buddhism. In Buddhism, the *Metta Sutta* (*Suttanipāta* vv. 143–152)<sup>5</sup> directs that loving kindness be extended in thought and deed to all living things, without qualification, “Just as a mother would protect her only child at the risk of her own life, even so towards all beings one should cultivate a boundless heart (*mānasam*)

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<sup>3</sup> Edward Conze, *Buddhism: Its Essence and Development*. New York: Dover Publications, Inc., 2003, pp.61.

<sup>4</sup> *The Dhammapada*, translated from Pali by the Venerable Ananda Maitreya, revised by Rose Kramer. Berkley: Parallax Press, 1995, pp. 37-38.

<sup>5</sup> The Pāli text of the *Metta Sutta* can be found in the *Suttanipāta*, ed. Dines Andersen and Helmer Smith. Oxford: Oxford University Press, 1990, pp. 25–26.

*aparimānaṃ*, v. 7).<sup>6</sup>

“Just as a mother would protect her son, her only son, with her own life, so one should develop towards all beings a state of mind without boundaries.”<sup>7</sup>

What is absent from Buddhism, as contrasted with many other religions and philosophies, is any distinction in this prescribed conduct based on a hierarchy of species or distinction between and among sentient beings. According to Buddhism, all beings/all animals are not just equal, they are the same on the path of spiritual awakening in that they possess a Buddha-nature, which is the capacity to become an awakened/enlightened being.<sup>8</sup>

Buddhism does not differentiate between human and non-human beings.

### **Applying the argument above to this case**

These three elephants, suffer in what has been described as one of the worst zoos in America. They suffer in their forced captivity and Buddhism would dictate that we ought to show compassion to them.

Even a cursory observation of elephants at a sanctuary like the David Sheldrick Wildlife Trust, shows elephants as social beings with rich emotional lives and personalities.<sup>9</sup> What elephants have in the wild, where they are able to traverse hundreds of miles and follow ancient migratory routes, or even in sanctuaries, cannot be replicated in the glorified cages that are zoos.

We have a moral duty to consider these elephants as we would treat a

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<sup>6</sup> Deegalle, Mahinda. “When Buddhism Meets Cosmopolitanism: An Education for Global Citizenship.” *International Symposium on Education and Global Citizenship*, The 10th International Celebration of United Day of Vesak, Bangkok, Thailand, 21–22 May 2013, p. 20. A detailed analysis of the *Metta Sutta* including a translation of the verses can be found on pp. 18–22.

<sup>7</sup> Conze, 180.

<sup>8</sup> The Dalai Lama, On Buddha Nature, The Buddha Blog, PBS.org 2010, <https://www.pbs.org/thebuddha/blog/2010/Mar/9/dalai-lama-buddha-nature/>. Accessed August 30, 2023.

<sup>9</sup> The David Sheldrick Wildlife Trust, 2021. <https://www.sheldrickwildlifetrust.org/>. Accessed August 30, 2023.

person most dear to us. We would never want a loved one, who committed no crime, to be made to serve a life sentence in confinement just because it was profitable to someone else. According to Buddhist teachings, it is wrong for us to value our own freedom from being held in a cage and ignore the imprisonment of another sentient being-like these three elephants.

In the time Buddhism was born in ancient India, animal sacrifices were precept and practice. A mandatory requirement for currying favor with the gods of the Vedic tradition and one celebrated by the state. This did not stop the Buddha from speaking out against it. The consideration of morals is an important check against law and practice because it has been right where the latter has so often been wrong.

To allow Nolwazi, Amahle and Mabu to be held in captivity for economic gain, debases their lives and ours. Life has value in Buddhism that is far beyond pecuniary metrics. Elephants have an exalted place in living Buddhist communities. But beyond that, these are sentient beings, who we know, not being able to live freely as they would in a sanctuary, are suffering. We have taken everything from them; their ability to have a family, to make any choices, to raise their children as they would in their communities, to live with complex social bonds as they do in the wild, to walk freely, to not live in a concrete enclosure surrounded by nightclubs and freeways, to not suffer the mental harm that comes from a jail for a cornerstone species that is used to ranging hundreds of miles. To see this suffering creates a moral obligation to alleviate it. Buddhism asks us to have infinite compassion and to not do harm. In this instance, for this Honorable Court to do nothing, is to perpetuate and participate in a great harm.

On the other hand to act with kindness toward them, as we should towards every other living being, is to act according to our own Buddha nature—our best self. How we treat Nolwazi, Amahle and Mabu is important as any one of them could be someone who we once knew, or from whom we came, or even a potential “incarnation” on the path of perfection (*P. pāramitā*) to become a future Buddha. Treating them well, creates our own good future because every good action leads to a good outcome for the doer, and vice versa.

But this issue is the issue of justice before the Court in this case. Are Nolwazi, Amahle and Mabu the kind of non-sentient “things” that can be locked up merely as a means to an end? The Islamabad High Court refused to consider the captivity of the elephant Kavaan in the Islamabad Zoo as merely the holding of “thing,” and ruled that he be freed from his lifetime of suffering, citing Islamic texts among other cases around the world.

*Islamabad Wildlife Mgmt Bd, v, Metropolitan Corp. Islamabad*, W.P. No. 1155/2019. In the case of Happy the elephant, a group Christian scholars wrote an amicus brief to the Court of Appeals of the State of New York to implore that court to consider a Christian perspective that would require the release of Happy to a sanctuary. *Nonhuman Rights Project, Inc. v. Breheny* (2022) 38 N. .3d 555 There were also Jewish Scholars and Eastern Orthodox Theologians whose arguments went against the idea that an elephant is merely a “thing.” Buddhism is hardly alone in its answer of a resounding NO to the idea that the three elephants are just things.

To allow the captivity of Nolwazi, Amahle ad Mabu to continue is to fail to have compassion for their suffering, to not show kindness but instead to be complicit in harming them. From a historical perspective, the highest use of the law was often at times when it confronted great moral wrongs- refusing to grant them deference merely because they were the custom and habit of the law at the time. We have a moral responsibility to stop this wrong and respectfully implore that this Honorable Court consider the Petition for a Writ of *Habeas Corpus* by issuing an order to show cause.

Respectfully submitted,

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1 **PROOF OF ELECTRONIC SERVICE**

2 STATE OF CALIFORNIA )  
3 ) ss.  
4 COUNTY OF LOS ANGELES )

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a  
6 party to the within action; my business address is 427 C Street, Suite 310, San Diego, CA 92101.  
7 On August 30, 2023, I served Letter of Amici Curiae, Buddhist Scholars, Supporting Verified  
8 Petition for a Common Law Writ of Habeas Corpus and Issuance of an Order to Show Cause In re  
9 Nonhuman Rights Project, Inc., on behalf of Amahle, Nolwazi and Mabuhle on Habeas Corpus (No.  
10 S281614) on the interested parties in this action by electronic service pursuant to CRC Rule 2.251.  
11 Based on the parties to accept electronic service, I caused the documents to be sent to the persons at  
12 the electronic addresses listed below for each party.

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6 (Pro Hac Vice application pending)

7 I declare under penalty of perjury under the laws of the state of California that the above is true and  
8 correct. Executed on August 30, 2023, at San Diego, California.

9 Robert H. Rexrode  
10 [Printed Name]

11 *Robert Rexrode*  
12 Signature

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