

S281614



August 30, 2023

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

Re: Letter of *Amicus Curiae*, Friends of Animals, 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,

Amicus curiae Friends of Animals respectfully submits this letter supporting the Verified Petition for a Common Law Writ of Habeas Corpus by Petitioner the Nonhuman Rights Project, Inc. (hereafter “NhRP”) on behalf of three African elephants: Amahle, Nolwazi, and Mabu (hereafter “Petition”). The Petition raises important issues of California law. Friends of Animals accordingly believes that this Court should issue an order to show cause and order full briefing on the Petition.

I. STATEMENT OF INTEREST OF AMICUS CURIAE

Friends of Animals is a non-profit international advocacy organization incorporated in the state of New York since 1957. Friends of Animals has nearly 200,000 members worldwide. Friends of Animals and its members seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human animals, both free-living and domestic.

Friends of Animals has a deep history with two of the subjects of the Petition, mother and daughter, Nolwazi and Amahle, respectively. As the Petition recounts, these two elephants were born in the wild in what was then Swaziland (now Eswatini). Three U.S. zoos, with the cooperation of Swaziland’s Big Game Parks and with the approval of the U.S. Fish and Wildlife Service (hereafter “FWS”), took these two elephants, along with fifteen other African elephants born in the wild. The full story of how zoos took Amahle and Nolwazi from the wild and how they later moved them like pawn pieces to a different zoo, the Fresno Chaffee Zoo, only magnifies their need for habeas relief, which NhRP has cogently explained in its Petition.

II. DISCUSSION

None of the elephants consented to their forced removal from their life in the wild in Swaziland to a life in confinement in the U.S. Likely knowing that forcibly removing elephants from the wild is morally indefensible, would drive away large numbers of customers, and jeopardize their hopes of getting the required import permit altogether, the zoos put together a complicated story where they were not paying to kidnap elephants from their homes for permanent confinement in small zoos pens but were instead rescuing elephants by donating money to an organization in Swaziland that planned to kill them. See Draft Environmental Assessment; Dallas Zoo Management; Dallas, Texas, 80 Fed. Reg. 64,008 (Oct. 22, 2015). Not only were the zoos “rescuing” the elephants, but they were also conveniently donating money to help endangered rhinoceroses. See, e.g., Charles Seibert, *Zoos Called it a 'Rescue.' But Are the Elephants Really Better Off?*, N.Y. TIMES MAGAZINE (July 9, 2019), available at <https://www.nytimes.com/2019/07/09/magazine/elephants-zoos-swazi-17.html>.

Instrumental to the zoos’ push for the elephants in the first place was the Association of Zoos and Aquariums (hereafter “AZA”), and specifically the AZA’s Elephant Taxon Advisory Group and Species Survival Plan (TAG/SSP). See, e.g., Final Environmental Assessment (Dec. 30, 2015), available at <https://www.regulations.gov/document/FWS-HQ-IA-2015-0157-3374> (hereafter “Environmental Assessment”). The TAG/SSP works to advance the AZA’s interest in managing African elephants across North American zoos to ensure that there is a population of African elephants for those zoos to display for decades to come. See The AZA Elephant TAG/SSP, <https://www.aza.org/connect-stories/stories/aza-elephant-taxon-advisory-group-species-survival-plan>. In practice, what that means is frequent movement of elephants between zoos to maximize breeding opportunities so that additional captive elephants are born. See *id.* Any elephants born in captivity quickly become victims of the TAG/SSP’s breeding goals. It is an endless and crushing cycle for the elephants.

Yet perpetuating elephant captivity is much more difficult than the TAG/SSP would like. Breeding success rates in captivity are dismal: only 25 elephants were born in captivity before 1999, and only six of these elephants were still alive in 2000. See Environmental Assessment at 6. In the zoos’ permit application, the TAG/SSP stressed the importance of the import of the Swaziland elephants for the continued viability of captive African elephants in North America. *Id.* Specifically, TAG/SSP warned that the then 208 captive elephants were not self-sustaining in the long-term without the introduction of genetically unrelated elephants. *Id.* Thus, the prospect of taking 18 elephants born in the wild who were genetically unrelated to the vast majority of captive elephants in North America was of critical importance to TAG/SSP.

Friends of Animals participated in the rulemaking process before FWS, urging FWS to deny the zoos an import permit, without which they would be unable to transport the elephants to the States. Friends of Animals explained why the elephants’ confinement in zoos for the rest of their lives would be incredibly detrimental to their physical, social, mental, and psychological well-being. Friends of Animals pointed FWS to a wealth of evidence demonstrating how harmful confinement in zoos would be for these elephants. Sadly, FWS did not heed the warnings from Friends of Animals and a host of biologists, elephant experts,

and organizations. See Draft [sic] Environmental Assessment; Dallas Zoo Management; Dallas, Texas, 81 Fed. Reg. 3,817 (Jan. 22, 2016). FWS granted an import permit to the three zoos.

Friends of Animals was convinced that FWS had ignored the law in granting the permit by failing to consider the impact the forced removal and confinement would have on the elephants. It was not content to sit by and let elephants be removed from the wild for a life in captivity, especially when the federal agency responsible for enforcing the Endangered Species Act had violated the law in issuing the permit. In a final attempt to prevent the import, Friends of Animals sued FWS to overturn the permit.

The zoos then deprived the elephants of the chance for Friends of Animals' case to be considered on the merits. After choosing to intervene in Friends of Animals' lawsuits, the zoos then agreed to a briefing schedule and to a March 17, 2016, date for a hearing on Friends of Animals' motion for a preliminary injunction. See Dkt. Case No. 1:16-cv-00216-JDB (D.D.C.). After agreeing to those dates, and without informing the court or Friends of Animals, the zoos chartered a cargo plane to Swaziland to take the elephants from their lives in the wild to their confinement in captivity. Friends of Animals got wind of this development and filed an emergency motion for a temporary restraining order. *Id.* In response, the court ordered the zoos not to remove any of the elephants from Swaziland until it had resolved that motion. The zoos then informed the court that it had already begun the process of transporting the elephants by sedating them. *Id.*, ECF No. 12. During an emergency teleconference, the zoos argued against a temporary restraining order on the grounds that they had already sedated the elephants for transport, and it would be difficult to do so again in the event the court issued a restraining order but later ruled in their favor on the merits. *Id.* Although the court was "not able to definitively resolve the issue," it found that there was "at least some risk to the elephants" from a second sedation and thus ruled that Friends of Animals had not carried its burden on the balance of harms and denied the motion. *Id.* The zoos imported the elephants a couple of days later. See ECF No. 18.

Before and after the import, the zoos stressed in their public communications that it was important to them to keep elephant families and social groups together. Dallas Zoo specifically justified the import by stressing that the elephants would "remain within their social groupings" and told the public that they wanted to keep the elephants in as large of social groups as possible. Yet after only two years of confinement there, Dallas Zoo was busy making arrangements to ship Amahle and Nolwazi across the country to the Fresno Zoo. Dallas Zoo offered no public hint that it intended to permanently transfer two of the elephants it had "rescued" from Swaziland and vowed to care for and protect. Not until their long journey to Fresno was complete did Dallas Zoo reveal the fate of Amahle and Nolwazi.

The Petition cogently explains how unjust and harmful the confinement of Amahle, Nolwazi, and Mabu is. No zoo can give elephants the autonomy that they deserve and thus no zoo should confine elephants. The unnatural confinement of any elephant, whether that elephant was born in captivity or in the wild, is an injustice. The sad history of Amahle's and Nolwazi's

forcible removal from their lives in the wild only further magnifies the injustice. It shows the coordination of zoos across North America and through the AZA, to perpetuate the cruel confinement of these autonomous and extraordinarily cognitively complex animals for decades to come. The only way for zoos to do that is for the TAG/SSP to move elephants between zoos and to acquire genetically unrelated elephants, which is only realistically possible by taking them from the wild in a few countries in southern Africa. Unfortunately for those elephants currently in U.S. zoos, the federal government has been complicit in enabling TAG/SSP to acquire and breed elephants for public display. The Petition offers this Court an opportunity to end the unjust confinement of Amahle, Nolwazi, and Mabu, which would be a step toward ending the zoo industry's confinement of these animals altogether.

CONCLUSION

In sum, the Petition states a prima facie case for relief and this Court should grant an order to show cause so that it can consider the merits of whether to grant habeas corpus relief to Amahle, Nolwazi, and Mabu.

Sincerely,

/s/Adam Kreger

/s/Stephen Hernick

/s/Jennifer Best

Friends of Animals

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PROOF OF ELECTRONIC SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 811 Wilshire Blvd, Ste. 900, Los Angeles, CA 90017. On **August 30, 2023**, I served **Letter of Amicus Curiae, Friends of Animals, 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)** on the interested parties in this action by electronic service pursuant to CRC Rule 2.251. Based on the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic addresses listed below for each party.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 30, 2023, at Los Angeles, California.

<u>Jonathan Redford</u>	<u>/s/ Jonathan Redford</u>
[Printed Name]	Signature