

## 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 *Amicus Curiae*, Maneesha Deckha, 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,

Under California Rules of Court, rule 8.500(g), *Amicus Curiae*, I, Professor Maneesha Deckha submit this letter supporting the Verified Petition for Writ of Habeas Corpus and issuance of an order to show cause in the above-captioned case. Please transmit this letter to the justices for their consideration.

As set out below, assuming the factual allegations in the petition are proven true, elephants are entitled to *habeas* relief based, firstly, on policy considerations that support the extension of *habeas corpus* to nonhuman animals. The legal status of nonhuman animals as property is based upon human exceptionalism, a cultural norm that scholars in the fields of animal law, animal studies, and psychology are increasingly casting a critical eye upon and a cultural norm that overlooks the vulnerability, embodiment, and relationality of nonhuman animals. The legal status of nonhuman animals as property is unjustified given the absence of a defensible explanation that precludes nonhuman animals from qualifying as legal subjects. Secondly, a substantive conception of the rule of law supports the extension of *habeas corpus* to nonhuman animals.

### **I. STATEMENT OF INTEREST OF *AMICUS CURIAE***

I am Professor and Lansdowne Chair in Law at the University of Victoria, Faculty of Law in Victoria, British Columbia. I have authored numerous works in the fields of animal law and philosophy, addressing the ethical need for social and legal reform for nonhuman animals. My body of work demonstrates the ethical deficiency of nonhuman animals' current legal classification as property when considered in light of leading social theories about who is entitled to legal personhood and subjecthood. Specifically, my scholarship shows how anthropocentric and human exceptionalist attitudes toward nonhuman animals support other systemic biases in North America such as sexism and racism.

In my monograph, *Animals as Legal Beings: Contesting Anthropocentric Legal Orders*,<sup>1</sup> I propose “beingness” as a new legal subjectivity for nonhuman animals, which, like personhood, is meant to stop human instrumentalization of nonhuman animals. While I argue that legal beingness for nonhuman animals would be more in tune than legal personhood with nonhuman animals’ vulnerability, embodiment, and relationality, the main premise of my body of work explains why the common law must depart from anthropocentric thinking that normalizes nonhuman animals as property. I have promoted liberty for nonhuman animals throughout my work. Thus, I have a heightened interest in juridical consideration of issues integral to this case, namely the Petitioner’s argument that Nolwazi, Amahle, and Mabu have a right to bodily liberty; the indefensibility of continuing the legal property status of nonhuman animals; and the legal meaning of personhood. Based on my interest in legal reform that is responsive to nonhuman animal suffering, I respectfully request that this Court grant the Petitioner’s request to issue an order to show cause in order to decide the merits of this case.

## **II. POLICY CONSIDERATIONS SUPPORT THE EXTENSION OF *HABEAS CORPUS* TO NONHUMAN ANIMALS**

### **a. Nonhuman Animals’ Property Status Is Predicated upon Human Exceptionalism, a Discredited Cultural Outlook that Ignores Nonhuman Animals’ Vulnerability, Embodiment, and Relationality**

Nonhuman animals’ property status is rooted in human exceptionalism, a viewpoint that encourages humans to see themselves as different from and superior to all other beings.<sup>2</sup> Such a viewpoint is an increasingly discredited cultural norm. Scientific studies have repeatedly demonstrated that nonhuman animals, just like humans, have capacities for reason, language, and tool use, all of which were once used to distinguish human animals from their nonhuman counterparts. Yet the benchmark for the human-animal divide continues to shift as humans continue to learn more about nonhuman animal capacities.<sup>3</sup> Nor is there a defensible ethical basis for human exceptionalism. In fact, human exceptionalism is inextricably linked with discrimination and inequality. Scholars in the fields of animal law, animal studies, and psychology have demonstrated links between devaluing animals via human exceptionalist thinking, on the one hand, and intra-human

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<sup>1</sup> (University of Toronto Press. 2021).

<sup>2</sup> DECKHA, 5-6, 33, 92-93. 2021.

<sup>3</sup> PAOLA CAVALIERI, *THE ANIMAL QUESTION: WHY NON-HUMAN ANIMALS DESERVE HUMAN RIGHTS* 78 (Oxford University Press. 2001); RAYMOND CORBEY, *THE METAPHYSICS OF APES: NEGOTIATING THE ANIMAL-HUMAN BOUNDARY* 160-163 (Cambridge University Press. 2005).

discrimination like racism, sexism, ageism, and ableism, on the other hand.<sup>4</sup> Additionally, human exceptionalist thinking excuses the instrumentalization of nonhuman animals and nature, which has propelled the current environmental crisis.<sup>5</sup> In response, legal scholars have advocated for a shift away from human exceptionalism toward interspecies harmony.<sup>6</sup>

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<sup>4</sup> For the fields of animal law and animal studies, see DECKHA. 2021; Maneesha Deckha, *Veganism, dairy, and decolonization*, 11 JOURNAL OF HUMAN RIGHTS AND THE ENVIRONMENT (2020); Maneesha Deckha, *Unsettling Anthropocentric Legal Systems: Reconciliation, Indigenous Laws, and Animal Personhood*, 41 JOURNAL OF INTERCULTURAL STUDIES (2020); Maneesha Deckha, *Welfarist and Imperial: The Contributions of Anticruelty Laws to Civilization Discourse*, 65 AMERICAN QUARTERLY (2013); Maneesha Deckha, *The Subhuman as a Cultural Agent of Violence*, 8 JOURNAL FOR CRITICAL ANIMAL STUDIES (2010); Maneesha Deckha, *Intersectionality and Posthumanist Vision of Equality*, 23 WISCONSIN JOURNAL OF LAW, GENDER AND SOCIETY (2008); Maneesha Deckha, *Disturbing Images: PETA and the Feminist Ethics of Animal Advocacy*, 13 ETHICA AND THE ENVIRONMENT (2008); Maneesha Deckha, *Animal Justice, Cultural Justice: A Posthumanist Response to Cultural Rights in Animals*, 2 J. ANIMAL L. & ETHICS (2007); Maneesha Deckha, *The Salience of Species Difference for Feminist Theory*, 17 HASTINGS WOMEN'S L.J. (2006); Marie Fox, *What is special about the human body?*, 7 LAW, INNOVATION AND TECHNOLOGY (2015); Marie Fox, *Re-thinking Kinship: Law's Construction of the Animal Body*, 57 CURRENT LEGAL PROBLEMS (2004); Sue Donaldson & Will Kymlicka, *Children and animals*, in THE ROUTLEDGE HANDBOOK OF THE PHILOSOPHY OF CHILDHOOD AND CHILDREN (2018); Will Kymlicka, *Connecting domination contracts*, 41 ETHNIC AND RACIAL STUDIES (2018); CHARLOTTE E. BLATTNER, et al., ANIMAL LABOUR: A NEW FRONTIER OF INTERSPECIES JUSTICE? (Oxford University Press First ed. 2020); CLAIRE JEAN KIM, DANGEROUS CROSSINGS: RACE, SPECIES, AND NATURE IN A MULTICULTURAL AGE (Cambridge University Press. 2015). For the field of psychology, see KRISTOF DHONT, et al., WHY WE LOVE AND EXPLOIT ANIMALS: BRIDGING INSIGHTS FROM ACADEMIA AND ADVOCACY (Routledge. 2019); Kristof Dhont, et al., *Rethinking human-animal relations: The critical role of social psychology*, 22 GROUP PROCESSES & INTERGROUP RELATIONS (2019).

<sup>5</sup> Helena Pedersen, *Education, anthropocentrism, and interspecies sustainability: confronting institutional anxieties in omniscidal times*, 16 ETHICS AND EDUCATION (2021).

<sup>6</sup> Anna Grear, *Legal Imaginaries and the Anthropocene: 'Of' and 'For'*, 31 LAW AND CRITIQUE (2020); Deckha, JOURNAL OF INTERCULTURAL STUDIES, (2020); Margaret Davies, *Distributed Cognition, Distributed Being, and the Foundations of Law*, in PERSONHOOD IN THE AGE OF BIOLEGALITY: BRAVE NEW LAW (Marc de

By seeking to justify the property status of nonhuman animals, the human exceptionalist cultural mindset also attempts to dismiss the vulnerability, relationality, and embodiment of nonhuman animals.<sup>7</sup> In my book, *Animals as Legal Beings: Contesting Anthropocentric Legal Orders*,<sup>8</sup> I discuss the embodiment, relationality, and vulnerability of nonhuman animals. Their sentience and, at a more basic level, their capacity for life are evidence of their embodied nature. Further, their familial relationships and ecological networks are evidence of their relationality. Finally, nonhuman animals' ability to experience injury and loss, which arises as a result of their embodiment and relationality, is evidence of their vulnerability.<sup>9</sup>

Nonhuman animals' legal classification as property overlooks contemporary socio-legal theory that recognizes the vulnerability that a property status creates. Contemporary critical socio-legal theory dictates that embodiment, relationality, and vulnerability require the extension of robust protections to nonhuman animals.<sup>10</sup> Indeed, Chief Justice Catherine Fraser of the Alberta Court of Appeal in Canada recognized that nonhuman animals are vulnerable based on their sentience and capacity for relationships. In a case that also dealt with elephant captivity, Chief Justice Fraser noted that nonhuman animals are "highly vulnerable" because humans have power over them and linked this constitutive feature of nonhuman animal lives to the issue of legal reform.<sup>11</sup> Nonhuman animals' current property status perpetuates this vulnerability and is, therefore, discordant with contemporary socio-legal theories regarding the place of nonhuman animals in society.

Given the foregoing, it is not ethically justifiable to limit the beneficiaries of the writ of *habeas corpus* to the human species, as this perpetuates an anthropocentric legal culture and reinforces human exceptionalism. The scientifically demonstrated capabilities

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Leeuw & Sonja van Wichelen eds., 2020); MICHAEL ASCH, et al., RESURGENCE AND RECONCILIATION: INDIGENOUS-SETTLER RELATIONS AND EARTH TEACHINGS (University of Toronto Press. 2018).

<sup>7</sup> DECKHA, *Animals as Legal Beings: Contesting Anthropocentric Legal Orders*. 2021.

<sup>8</sup> (University of Toronto Press, 2021).

<sup>9</sup> DECKHA, 124-137. 2021.

<sup>10</sup> *Id.*

<sup>11</sup> *Reece v. Edmonton (City)* (2011), 513 A.R. 199, para. 88 (Can. Alta. C.A.) ("Why are the rights of animals important in our society? Animals over whom humans exercise dominion and control are a highly vulnerable group.").

of elephants highlights the conflicting nature of the law's treatment of these nonhuman animals as property.

**b. Nonhuman Animals' Property Status Is Unjustified as There Exists No Defensible Explanation that Precludes Them from Qualifying as Legal Subjects**

The common law is inconsistent in its theorization of the concept of personhood, and decision-makers rarely justify the iteration of personhood that they opt to promote.<sup>12</sup> For example, other nonhumans, such as corporations, have qualified as legal persons but, unlike nonhuman animals, do not share with humans a living, breathing, material form or requisite cognitive capabilities or dignity qualifications for legal personhood that the law has identified as important.<sup>13</sup> Resultantly, no cohesive and persuasive justification for the exclusion of nonhuman animals from the legal category of personhood has been identified.<sup>14</sup> It would be productive to reconsider this incohesive rationalization for denying legal personhood – or an alternative type of legal subjectivity – to nonhuman animals. Denials of fundamental legal protections require persuasive theorization if they are to be seen as non-arbitrary. Denying Nolwazi, Amahle, and Mabu legal protection and legal subjectivity perpetuates their suffering in captivity without compelling justification. Such a denial presents as an arbitrary and unjust facet of the legal system.

**III. THE RULE OF LAW SUPPORTS THE EXTENSION OF *HABEAS CORPUS* TO NONHUMAN ANIMALS**

The rule of law is alive to evolving social norms and the demands of justice, and American courts have already employed the rule of law to broaden the scope of fundamental rights and to add to the classes of individuals to whom these rights apply.<sup>15</sup> While these case involved the extension of rights to humans, such precedent does not necessarily preclude the courts from using a substantive vision of the rule of law to extend certain fundamental rights to nonhuman animals. The rule of law can apply to issues

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<sup>12</sup> NGAIRE NAFFINE, *LAW'S MEANING OF LIFE: PHILOSOPHY, RELIGION, DARWIN AND THE LEGAL PERSON* 235 (Hart 1<sup>st</sup> ed. 2009).

<sup>13</sup> *Id.*, 57, 96.

<sup>14</sup> *Id.*, 49.

<sup>15</sup> Jodi Lazare, *The Spousal Support Advisory Guidelines, Soft Law, and the Procedural Rules of Law*, 31 *CANADIAN JOURNAL OF WOMEN AND THE LAW* (2019); SONJA C. GROVER, *JUDICIAL ACTIVISM AND THE DEMOCRATIC RULE OF LAW: SELECTED CASE STUDIES* (Springer International Publishing 1<sup>st</sup> ed. 2020).

regarding nonhuman animals.<sup>16</sup> Indeed, the American Bar Association adopted a non-anthropocentric reading of the rule of law in support of its recent resolution calling for an international convention to protect nonhuman animals.<sup>17</sup> This Court is authorized to use domestic precedent that employs a substantive rule of law in matters regarding fundamental rights. Such recourse to the rule of law makes particular sense where the denial of legal protection to nonhuman animals preventing their non-voluntary confinement is arbitrary.<sup>18</sup> As such, it is doctrinally available for this Court to characterize the ongoing suffering of Nolwazi, Amahle, and Mabu in captivity as an injustice that violates the rule of law. The case at bar provides this Court with an opportunity to strengthen the rule of law by issuing an order to show cause in order to decide the merits of this case.

#### IV. CONCLUSION

In sum, policy considerations and the rule of law support extending the protection of the writ of *habeas corpus* to nonhuman animals. Nonhuman animal property status is rooted in an anthropocentric and human exceptionalist cultural viewpoint. Scholars in the fields of animal law, animal studies, and psychology have discredited human exceptionalism, as it denies the vulnerability, embodiment, and relationality of nonhuman animals; characteristics which legal scholars have demonstrated merit legal attention. There exists no justifiable explanation that disqualifies nonhuman animals as legal subjects, whether as persons or another type of subjectivity. Furthermore, a substantive vision of the rule of law supports questioning the legal divide that separates humans from nonhuman animals and, in this instance, supporting the extension of *habeas corpus* to elephants.

Respectfully submitted,  
Maneesha Deckha  
Professor and Lansdowne Chair in Law, University of Victoria  
/s/ Maneesha Deckha

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<sup>16</sup> *Reece*, *supra* note 11, paras 41, 1580161, 167, 171).

<sup>17</sup> International Law Section & Tort Trial & Insurance Practice Section, American Bar Association, Report to the House of Delegates, Resolution 101C (2021) (adopted), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/02/midyear-resolutions/101c.pdf>.

<sup>18</sup> John Adenitire, *The Rule of Law for All Sentient Animals*, 35 *CANADIAN JOURNAL OF LAW AND JURISPRUDENCE* (2022).

