

**S281614**

*Via TrueFiling*

September 13, 2023

Supreme Court of California

350 McAllister Street

San Francisco, CA 94102-4797

Re: *In re Nonhuman Rights Project, Inc., on behalf of Amahle, Nolwazi, and Mabu*,  
Case No. S281614

Honorable Justices:

Under California Rules of Court, rule 8.500(g), *amici curiae* – a group of animal law scholars – write to urge the Court to grant an Order to Show Cause in this matter, as requested by the Nonhuman Rights Project (“NHRP”). As set forth below, this case presents an opportunity to clarify important aspects of habeas corpus law as well as the substantive rights of nonhuman animals, including the elephants at issue in this petition, Amahle, Nolwazi, and Mabu (“the Elephants”).

**I. Interest of Amici**

*Amici curiae* are 23 law professors from across the United States and Canada who teach and research in the rapidly evolving field of animal law. *Amici* have a special expertise in the issues presented by this case and the significance these issues hold for the broader development of animal law as a discipline. *Amici* have a special interest in guiding the evolution of their field and in assisting the Court in grappling with the foundational jurisprudential issues that this case raises. *Amici* respectfully urge the Court to issue an Order to Show Cause in response to the NHRP’s Petition for a Common Law Writ of Habeas Corpus, based on *amici*’s interest in ensuring the field of animal law develops according to rational principles of justice that are consistent with our legal system’s commitment to equality and liberty.

**II. The Trial Court’s Limitation of Habeas Relief to Cases of State Custody is Wrong.**

The Trial Court denied the petition for a writ of habeas corpus on the grounds that the writ does not reach private forms of detention and applies only to petitioners who are in state custody. As early as 1850, however, the California Supreme Court recognized the applicability of the writ of habeas corpus in defending the liberty interests of those held in private captivity. In *Ex Parte The Queen of the Bay*, this Court ordered the discharge of five women kidnapped from the Island of Dominick in Polynesia by an American ship captain named Snow. *Ex parte The Queen of the Bay*, 1 Cal. 157, 158 (1850). That the five women were held captive by a private party – Captain Snow was not a state actor – was no obstacle to this Court granting habeas relief. “The writ was issued, and they were brought up; and Captain Snow, not pretending to have any legal right to detain them, they were discharged; and were subsequently sent back to their own country.” *Id.* at 158. As NHRP argues in its brief, and as the UK scholars emphasize in their amicus letter, such uses of the writ against private detention have a long history in other jurisdictions as well.

To be sure, the writ of habeas corpus is rarely used against private detention today because there are other causes of action available. Fifteen years after this Court decided *Queen of the Bay*, the United States added the Thirteenth Amendment to its constitution, prohibiting the enslavement of human beings. U.S. Const. Amend. XIII. The U.S. Congress and the California legislature have also created non-habeas statutory causes of action for unlawfully detained humans outside of the prison context. *See, e.g.*, 18 U.S.C. §§ 1581-1597; Cal. Civil Code § 52.5. When human beings are privately detained without justification, they may avail themselves of these remedies. *See, e.g.*, *Owino v. CoreCivic, Inc.*, 60 F.4th 437, 441 (9th Cir. 2022) (alleging violations of state and federal trafficking statutes on behalf of detainees at a civil immigration detention facility); *Menocal v. GEO Grp., Inc.*, 113 F. Supp. 3d 1125, 1128 (D. Colo. 2015) (same). In light of these readily available alternatives, it is no surprise that common law habeas corpus is no longer used in cases of private detention of human beings.

Animals, however, are not within the scope of the Thirteenth Amendment, at least according to the only federal court to consider the question. *Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. Sea World Parks & Ent., Inc.*, 842 F. Supp. 2d 1259, 1264 (S.D. Cal. 2012). Nor are they covered by the statutory enactments against *human* trafficking. *See* Cal. Civil Code §52.5. Thus, while the use of habeas corpus in cases of private human detention has waned, replaced by statutory and constitutional alternatives, its availability in the case of private detention of *animals* is more necessary than ever. Indeed, it may be one of the only remedies available for wrongfully confined nonhumans.

### **III. The Petition Raises Important Issues of Law That are of Significant Interest to Californians**

California is a national leader in substantive animal protection laws. It was among the first jurisdictions to prohibit a wide-range of practices that inflict suffering upon animals. These include prohibitions on the use of wild animals in circuses, the trapping of animals for furs, the sale of some animals at pet stores, the production of meat and eggs through especially cruel forms of intensive confinement, the sale of such cruelly-produced products, and the use of animals in cosmetics testing. Cal. Fish & Game Code § 2207 (circuses); Cal. Fish & Game Code § 3003.1 (trapping); Cal. Health & Safety Code § 122354.5 (pet store sales); Cal. Health & Safety Code § 25990-25994 (production and sale of some animal products); Cal. Civ. Code § 1834.9.5) (cosmetics testing). Elephants receive special statutory protections against “abusive behavior” including the “deprivation of food, water, and rest” and some forms of physical punishment. Cal. Penal Code § 596.5. It is unlawful in California to use instruments like bullhooks or baseball bats to inflict pain upon elephants for training purposes. Cal. Fish & Game Code § 2128. These statutes illustrate the widespread interest Californians have in protecting animals, elephants especially.

But as the NHRP’s petition makes clear, the legal rights of animals are not exhausted by statutory law. The evolution of statutory protections for animals offers evidence of the shifting public attitude towards animals’ moral and legal entitlements, which ought to influence common law decision-making, including the writ of habeas corpus. The common law reaches beyond legislative enactments to ensure that even in the absence of majoritarian support, the judiciary will defend ideals of liberty, equality, and justice when those ideals are violated. As New York Court of Appeals Justice Jenny Rivera eloquently put it in a case similar to this one, “the fundamental right to be free is grounded in the sanctity of the body and the life of autonomous beings and does not require legislative enactment.” *Nonhuman Rights Project, Inc. v. Breheny* 38 N.Y.3d 555, 634 (2022) (Rivera, J., dissenting).

In the present case, the petition makes a strong case that elephants are the kinds of beings who have fundamental interests in liberty. Elephants are sentient beings with a well-developed capacity for rich experiences, including pain, pleasure, sadness, joy, and a wide range of other physical and psychological experiences. *See, e.g.,* Joyce H. Poole & Cynthia J. Moss, *Elephant Sociality and*

*Complexity: The Scientific Evidence*, in ELEPHANTS AND ETHICS: TOWARD A MORALITY OF COEXISTENCE 69 (Christen Wemmer & Catherine A. Christen eds. 2008). Elephants establish long-lasting bonds with their family members, form enduring memories that guide their social interactions, and grieve for their dead. *Id.* at 71, 87, 90. These capabilities establish that elephants have a fundamental interest in autonomously pursuing their lives and flourishing without unjustified human intervention. *See generally* MARTHA C. NUSSBAUM, JUSTICE FOR ANIMALS (2022).

This letter will not repeat NHRP’s substantive arguments on the merits of the petition, but *amici* agree that elephants, as sentient animals with goals, desires, emotions, familial connections, and other significant capabilities, have a fundamental right to liberty. Habeas corpus demands that infringements of liberty rights be explained and justified. *People v. Romero*, 8 Cal. 4th 728, 736-37 (1994), *as modified on denial of reh'g* (Jan. 5, 1995) (“The writ of habeas corpus was developed under the common law of England as a legal process designed and employed to give summary relief against illegal restraint of personal liberty. It continues to serve this purpose today under our law.”) (citation and punctuation removed). NHRP’s request for an Order to Show Cause seeks no more and no less – the justification of these elephants’ captivity.

*Amici* support NHRP’s petition, and they stand ready to offer their expertise in animal law, should further proceedings follow.

Respectfully submitted,

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University of San Francisco School of Law

For: The Undersigned Law Professors

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9/13/2023

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Date

/s/Matthew Liebman

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