

**S281614**

October 11, 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, Lester O'Brien, 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:

Pursuant to California Rules of Court, rule 8.500(g), Lester O'Brien submits this letter in support of the Verified Petition for a Common Law Writ of Habeas Corpus in the above-captioned case. Please transmit this letter to the justices for their consideration.

#### **INTEREST OF AMICUS CURIAE**

I am a former Elephant Manager from a large Canadian zoological institute and would like to submit my professional opinion for your consideration. Due to the enormity of the subject and in respect to your time, much of my opinion must be in summary.

I have worked alongside and have been mentored by many of the world's experts in the field of elephant science. It is important to note that not all sciences are made equal nor are their sources. This is apparent in my background: I started my career as a zookeeper and "graduated" into the role of elephant management. While working within the zoo community, I found I wasn't contributing to elephant conservation as I believed I would earlier in my career. After two decades of confusion and hypocrisy within that community, I left with the help of serious wildlife biologists, whose greatest achievements were the study of free-ranging elephants. Among those earnest individuals was Dr. Fred Kurt. He, and many as qualified as he, helped me see beyond the captive restraints elephants suffer when encapsulated in boxes and bowls.

I am not a barrister, but I understand that without this esteemed Court issuing an order to show cause, this case cannot be heard. I urge you to issue the order to show cause so the Nonhuman Rights Project, Inc., can argue on behalf of Amahle, Nolwazi, and Mabu.

## ARGUMENT

Unlike elephants in zoos, free-ranging elephants live vibrant complex lives. They travel great distances, have a vast variety in their diet, and show incredible behaviours of solidarity, exploration, and play. They seldom sleep in the same location repeatedly, live harmoniously with a multi-generational herd(s), peacefully congregate with unrelated elephant herds regularly, and add substance to the environment. Zoos deny elephants the ability to this opportunity and to the vibrance we see in wild places since captive elephants are merely shadows of what their free-ranging counterparts are.

### **I. Captive Elephant Diets Versus Wild Elephant Diets**

Free-ranging elephants eat a variety of foods. For example, Indian elephants target and consume 112 species. Thai elephants consume over 400 species. Captive elephants are fed a base diet of hay, (usually timothy or orchard grass) along with supplements and sometimes offered a few varieties of plants occasionally under the label of “enrichment.” This contrast to free-ranging elephants is the equivalent of 16th-century prison rations of bread and water. It is nutritional neglect and shows. Captive elephants are shorter than free-ranging elephants but are fatter despite it because of their lack of a gall bladder and overfeeding of high protein hay to occupy them. This is often accompanied by high-sugar fruits as treats with little regard for their health. This also leads to extreme foot issues which nearly every captive facility experiences.

### **II. Elephants In Captivity Exhibit Behaviours Not Seen in the Wild**

Consider these contrasts:

- Accreditation bodies, like the Association of Zoos and Aquariums (AZA), allow elephants to be chained to the floor and separated from herd members for the birthing of their offspring. Yet parturition is always done in a family setting. To fetter any complex-brained animal and then take their offspring from them for “examination” to be later re-introduced to the mother while she is restrained is, by every definition, abusive. The first few moments after birth are vitally important for bonding yet accreditation bodies like the AZA allow this due to the number of rejected calves or instances of infanticide. Although not all zoos do this, it is an accepted practice and a widely used one. Elephants that need to be chained to give birth because they are declared “ignorant” are not really elephants. (See Nat Geo Wild Documentary Season 1 Episode 1 – Special Delivery. Houston Zoo chained elephant video. Here an elephant is chained, hooked and electro-prodded during the birth of her calf.)

- Only captive elephants commit infanticide. This has never been recorded in the wild except in one case of a young bull killing an infant. (Wanghongsa, 2006). In zoos, mothers often kill their offspring which is exactly the opposite of what free-ranging elephants do. They are extremely social and protect their offspring at almost all costs. If an elephant kills its own offspring, they aren't really an elephant. This is completely unnatural.
  - Captive elephants often neglect their offspring. Again, this does not happen in the wild. If an elephant rejects their own offspring, they aren't really an elephant.
  - Only captive elephants commit fratricide. This does not happen in the wild with female herds and is very rare for bull elephants even in musth, a phenomenon of heightened testosterone production and aggression bull elephants experience occasionally. If an elephant kills a related family member, they aren't really an elephant.
  - Captive bull elephants stay in musth far longer than their wild counterparts. This has serious physical repercussions from the acceleration of foot deterioration to impacted temporal glands, to name a few. Musth is short-lived in the wild yet can last a year or more in captivity.
  - Only captive elephants show signs of stereotypies. Not a single instance of stereotypic behaviour has been seen in free-ranging elephants.

Just these few examples of the hundreds I could mention are never seen by qualified wildlife researchers. From Dr. Cynthia Moss to Dr. Fred Kurt, Dr. Joyce Poole to Dr. Keith has never been recorded nor has ever been considered healthy normal elephant behaviour.

### **III. Zoos Can Never Provide Adequate Space for Elephants**

I am not campaigning on behalf of any sanctuary. I have zero affiliations. Captivity in any form is a problem for elephants. But some sanctuaries, not all, are the best of the bad options for these animals as they are not reintroduction candidates. The behavioural damage they sustain in captivity, which is in direct correlation to brain damage, means they cannot survive in the wild. We, humans that allow them to be contained, have damaged them beyond full repair. However, less human interaction, more space, and more freedom to control their own outcomes have shown encouraging results to give these animals a peaceful and dignified end to their lives. The status quo of zoos, despite their false claims of improvement, will never suffice.

For example, the space zoos offer is not even a fraction of what the species needs for their survival. The quick math is this: the smallest species of elephant, Bornean, has a natural area of around 250 square km. One square km equals 247 acres for a total of 61,750 acres of space, which is required for their long-term survival. Elephants in Samburu, Kenya utilize over 10,000 square km. Thus, zoos that claim to have several acres of space (after millions of dollars of renovations) are ultimately showing those who understand elephants how massive a failure zoos are when it comes to providing what elephants need. It gives an idea of the waste of finances and shows how badly elephants have been treated regarding available space at zoos. Zoos like Fresno, San Diego, and Los Angeles, which may have several acres of space, still fail dramatically when it comes to the spatial needs of elephants. Nor could a zoo ever replicate the complexity of wild places that wild elephants share with other species.

Consider, wild meerkats require 5 square km of space, or 1235 acres; therefore, most zoo exhibits that claim expansive elephant exhibits of 10, 20, or 100 acres are not enough space for an animal like a meerkat that weighs a few pounds, never mind for elephants.

#### **IV. Most Zoo narratives are misleading and/or examples of casuistry**

Do not be distracted by non-related emotional statements like, “the keepers love the elephants.” This is a diversion and has no bearing on the matter. And be aware of several false narratives zoos offer:

- Elephants are not domesticated. They have not undergone multiple generations of selective genetic breeding. They have been tamed by brutalization, much of which I was trained to do and have done myself and have executed and witnessed on many occasions on several continents.
- *Zoos are conservation centers for elephants.* This is false. Elephants have never been self-sustaining in captivity. We have 3500 years of documented history that shows captive reproduction has always failed. Therefore, zoos cannot be a lifeboat for the species. Nor has there been a single elephant born in a first-world zoo that has been reintroduced to the wild.
- If zoos are conservation facilities, why were African Savanna elephants added to the endangered species list as of March 2020? There is no evidence that the little money that zoos donate to in-situ conservation gets to the species in need. Most is eaten up by these organizations operating costs and inflated salaries.
- *Elephants love the keepers.* This projection and claim is called a hypothetical psychological construct. In short, a false claim based on no provable or testable evidence and is based on circular reasoning and always seems to work in favour of the captor. No one person knows what another is thinking or feeling therefore to

claim you can is a hypothetical psychological construct. When elephants interact with human keepers, what choice do they have?

- *Zoos provide everything an elephant could ever want. I'd love to be provided for.* Another projection that is steeped in hypothetical psychological constructs. If the pandemic taught us anything it is that complex thinking beings struggle when encapsulated. There is no difference when the anthropocentric bias is removed. Remember, these animals have no opportunity to spurn this supposed gift. They are trapped.
- *Elephants born or spent most of their life in zoos don't know the difference.* All living beings that are self-aware gravitate to environments that offer the most freedom. The acknowledgment that complex-brained mammals have spatial awareness, (example CogniFit of how we adapt to environments) and more importantly, genetic memory, (Yang et al, 2014.) Genetic memory shows scientists that certain information is engrained into our DNA and requires no previous experience to understand. Like being locked up or abused. This is similar to the ability to eat or drink. These behaviours and understanding is pre-programmed, as it were. We must stop this assumption that these animals are stupid and couldn't possibly understand freedom or a sense of belonging elsewhere.

## **V. Zoos Remove Choice from Elephants and Elephants in Zoos Suffer in Ways Unimaginable to Humans**

What elephants truly need is the one thing zoos cannot provide; being left to manage themselves and determine their own outcomes in a vast expansive complex shifting environment. This primary reinforcer, choice, is taken from every zoo animal yet is innate in all living beings. With all mammals having a Limbic system that controls emotions, memory, and stimulus, the exact same as humans, why are we encapsulating these animals when they are not reintroduction candidates? The captive population of elephants are **not** self-sustaining, rejection or infanticide is almost commonplace, they exist in impoverished boxes and bowls that causes brain damages, to be denied privacy, and are used as objects of charity. This is, by definition, cruelty, not conservation.

Sri Lanka, a country where I have spent a great deal of time, has seen the wild population of elephants increase at a rate of about 1.3% per year for the last 10 consecutive years. (Sri Lankan elephant census). These censuses are being conducted by some of the finest minds in the world like Dr. Raman Sukumar. When left alone, these animals know exactly what to do. The only human help they need is to have their natural areas protected and not be interfered with. The truth is elephants don't need us. They have survived for thousands of years without human interference. They are ecosystem engineers that modify the environment which keeps the natural habitat healthy. They are an umbrella species. Their existence is directly related to the well-being of other species. When the strip bark

from trees, that bark feeds multiple species under them. They are a seed disperser. Many trees of the rainforest can only exist if their seeds are germinated within the elephant's gut, and they distribute those seeds up to 60 km away from the ingestion site. And they are a keystone species. Their survival is directly connected to the environment and vice versa. When held captive, they cannot do the ecological work that they were evolved to do. A zoo cannot claim a conservation strategy based on this alone. Yes, the wild might be stressful at times but elephants have evolved to handle these stressors. And some stress is healthy, but zoos are stressful all the time. Zoo elephants suffer beyond our imagination.

## **VI. Conclusion**

Lastly, consider that nations with the lowest standard of animal rights also have the lowest standards for women's rights, child rights, the rights of the elderly, have a lower standard of education, and are often the most imperialistic. Many studies show that cruelty to animals is directly related to cruelty to family members. (Ascione, et al, 1997) and *The Link Between Animal Cruelty and Human Violence* by Robinson, C (Formerly of the FBI's Behavioral Analysis Unit) & Clausen, V., (Current analyst with the FBI's Behavioral Analysis Unit). This matter should not be so easily dismissed. Consider the good that happens when we use kindness in our decisions and the lessons kindness teaches. Teaching children that forced imprisonment of complex beings is something "fun" is playing with fire.

I hope you will consider these points in your deliberations.

Kindest regards,  
/s/ Les O'Brien – Palladium Elephant Consulting

### References:

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Wanghongsa, S.; K. Boonkird; S. Rabiab and S. Ruksat. 2006. On the incident of infanticide in wild elephants. *Wildlife Yearbook* 7, 111-119.

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Website references:

Spatial Cognition:

<https://www.cognifit.com/science/spatial-perception>

Animal Abuse and Human Abuses:

<https://leb.fbi.gov/articles/featured-articles/the-link-between-animal-cruelty-and-human-violence>

Sri Lankan census:

<https://www.agrimin.gov.lk/web/index.php/news-scroll/1804-2022-09-15->

**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 **October 11, 2023**, I served **Letter of Amicus Curiae, Lester O'Brien, 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 October 11, 2023, at Los Angeles, California.

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