

October 16, 2023

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

Re: Letter of Amici Curiae, Philosophers, 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), the undersigned philosophers submit this letter in support of Petitioner Nonhuman Rights Project, Inc.'s ("NhRP") habeas corpus petition in the above-captioned matter. Please transmit this letter to the justices for their consideration.

I. INTEREST OF AMICI CURIAE

We, the undersigned, submit this letter as philosophers with expertise in ethics, animal ethics, political theory, the philosophy of animal cognition and behavior, and the philosophy of biology in support of the NhRP's efforts to secure habeas corpus relief for the elephants Amahle, Mabu, and Nolwazi. It is our understanding that the previous denials of habeas corpus relief for these individuals in *In re Nonhuman Rights Project, Inc., on behalf of Amahle, Nolwazi, and Vusmusi, On Habeas Corpus* (Fresno Sup. Ct. No. 22CECG02471) and *Nonhuman Rights Project, Inc. v. Fresno's Chaffee Zoo Corporation et al.* (Cal. Ct. App. No. F085722) have rested on a misinterpretation of the law or have gone without adequate explanation. We have observed that, in similar cases, there has been confusion over the question of whether elephants, like Amahle, Mabu, and Nolwazi, or any other nonhuman animal, may be considered persons for the purposes of law. This letter is an effort to briefly clarify the common uses of the term "person" and urge the courts not to equivocate between them in their reasoning.

The undersigned have long-standing, active interests in our duties to other animals. We reject arbitrary distinctions that deny adequate protections to other animals who share with protected humans relevantly similar vulnerabilities to harms and relevantly similar interests in avoiding such harms. We submit this letter to affirm our shared interest in ensuring a more just coexistence with other animals who live in our communities. We strongly urge this Court, in keeping with the best philosophical standards of rational judgment and justice, to recognize that Amahle, Mabu, and Nolwazi are nonhuman persons who should be released from their current confinement and transferred to an appropriate elephant sanctuary, pursuant to habeas corpus.

II. ARGUMENT

Currently, the question of whether any nonhuman animal is the sort of being who can enjoy habeas corpus relief is contested. As other courts have denied habeas corpus relief on the ground

that the individuals in question were not persons and so the law could not apply to them, we here assume that, likewise, the central issue is whether the concept of “personhood” applies to animals like Amahle, Mabu, and Nolwazi.

In grappling with similar petitions, New York State courts have struggled with the legal dichotomy of person and thing. In *The Nonhuman Rights Project, Inc. v Breheny* (N.Y. Sup. Ct. 2020) 2020 WL 1670735 *10, Justice Tuitt determined that “Happy [an elephant] is more than just a legal thing, or property. She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty.” Regarding *Matter of Nonhuman Rights Project, Inc. v Lavery* (2018) 31 N.Y.3d 1054, 1057, 1059 (Fahey, J., concurring), Judge Fahey reasoned that chimpanzees are not mere things and that the important matter is whether they have a “right to liberty protected by habeas corpus.” As he explains, to deny an autonomous being, like a chimpanzee (or, in the present case, an elephant), the right to liberty is to regard them “as entirely lacking independent worth, as a mere resource for human use, a thing the value of which consists entirely in its usefulness to others.” *Id.* at 1058.

We write as a diverse group of philosophers who share the conviction that if the courts are employing the concept of “personhood” to determine whether to extend or deny habeas corpus relief, they should consistently employ a non-arbitrary definition of “personhood” and “persons.” In this letter, we argue that there is a diversity of ways in which humans (*Homo sapiens*) are persons and that there are no non-arbitrary conceptions of personhood that can include all post-natal humans and exclude all nonhuman animals. To do so we describe and briefly assess four prominent conceptions of personhood that can be found in recent legal decisions.

- 1. Species Membership.** This conception of personhood is arbitrary because it picks out one level of biological taxonomic classification, species, and confers moral worth and legal status on members of only one species, *Homo sapiens*. Attempts to justify this stance are self-defeating because they demonstrate that it is the various criteria used to defend this choice that are actually doing the moral work. Indeed, these criteria will not concern those features or characteristics that biologists use to identify members of our species and so cannot respect such a taxonomic “boundary.” Consequently, these criteria invariably exclude some humans or include some nonhuman animals. This is because our species, like every other, is the product of gradual evolutionary processes that create an array of similarities between species and an array of differences within them.
- 2. Social Contract.** This conception of personhood is frequently misconstrued as endowing personhood only upon parties to the social contract. Instead, social contracts make citizens out of persons. The exclusion of an individual from the contract does not strip that individual of personhood. To be a contractor, one must already be a person, but the legal rights protected by a social contract are not limited only to contractors. “Indeed...the plausibility of social contract theory depends on the possibility of persons who are not contractors—either because they choose not to contract...or because they cannot contract[.]”¹ This is because the traditional conception of social contractors requires capacities that would exclude some humans (e.g., infants, some persons with

¹ ANDREWS ET AL., CHIMPANZEE RIGHTS: THE PHILOSOPHERS’ BRIEF (2019) page 45.

advanced dementia, and some other neurodiverse individuals) and a common contemporary conception of personhood is more inclusive (i.e., it includes infants and the relevant neurodiverse individuals).

3. **Community Membership.** This conception rests on the idea that personhood has a social dimension and is importantly linked to membership in the human community. On one view, to be a person is to be embedded in social relationships of interdependency, meaning, and community. Amahle, Mabu, and Nolwazi clearly meet this criterion: we have made them a part of our human community of persons. They live in a human institution, interact with humans, are dependent on humans for their basic needs, and have supporters within our communities who want to see them in sanctuary. On another view, to be a person requires not only social embedding but also the possession of certain psychological capacities, such as beliefs, desires, emotions, complex intelligence, and autonomy. Again, these capacities are reasonably ascribed to Amahle, Mabu, and Nolwazi. On either view, they are members of our community.
4. **Capacities.** This conception, which the NhRP endorses, maintains that personhood rests on having certain capacities. Autonomy is typically considered a capacity sufficient (though not necessary) for personhood. Violations of autonomy constitute a serious harm. In light of the elephant scientists' declarations, it is reasonable to believe that Amahle, Mabu, and Nolwazi are autonomous. As autonomous beings they should be considered persons and enjoy the legal protections of persons, particularly, their right to liberty.

Each conception supports different reasoning regarding personhood. The first, species membership, is weak due to its arbitrary character. The other three, when properly understood and applied in the present case, entail that Amahle, Mabu, and Nolwazi are persons. On these grounds, we agree with the NhRP that it is unjust to deny Amahle, Mabu, and Nolwazi habeas corpus relief.

We also note one final equivocation that, we believe, may also confuse matters—a common, though misleading, use of the term “species,” exemplified in *Nonhuman Rights Project, Inc. v. Breheny* (2022) 38 N.Y.3d 555. *Breheny* stated that, “Unlike the human species, which has the capacity to accept social responsibilities and legal duties, nonhuman animals cannot—neither individually nor collectively—be held legally accountable or required to fulfill obligations imposed by law.” *Id.* at 572. There is extensive scientific discussion on what exactly a species is, but the key point here is that it is not co-extensive with the *members* of the species. For instance, species evolve by natural selection, but individual members of a species do not evolve. The human species as a whole clearly does not have social responsibilities or legal duties—it is not even clear what this could mean—but members of the human species do. We believe that the intent of this sentence is to say, roughly, “Unlike the members of the species *Homo sapiens*, which have the capacity to accept social responsibilities and legal duties, nonhuman animals cannot—either individually or collectively—be held legally accountable or required to fulfill obligations imposed by law.” However, this rephrasing shows the claim to be manifestly false. Many, even most, members of our species have the capacity to accept social responsibilities and legal duties, but obviously not all of us do. Moreover, it is worth reflecting on the fact that all of us as individuals go through some significant portion of our lives incapable of accepting legal duties or fulfilling social responsibilities. It is difficult to judge whether, say, infants within some collective can “be

held legally accountable or required to fulfill obligations imposed by law,” without more information about what exactly the judges intend by this. In sum, the claim that the human species has the capacity to accept social responsibilities and legal duties, which has been used as a reason to deny habeas corpus relief to individuals that share legally salient capacities like autonomy, is either unintelligible as it stands or clearly false.

III. CONCLUSION

At its best, law recognizes and responds to the demands of justice. Arbitrariness is antithetical to justice and so law, at its best, should not be arbitrary. We have observed that recent decisions to deny such animals as chimpanzees and elephants legal personhood or deny them habeas corpus relief rely on arbitrary or incoherent reasoning. Any society that aspires to be just cannot afford to tolerate such manifest injustice. We urge the court to issue the NhRP’s requested Order to Show Cause and correct that injustice.

Respectfully submitted,

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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 **October 16, 2023**, I served **Letter of Amici Curiae, Philosophers, 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 16, 2023, at Los Angeles, California.

Jonathan Redford
[Printed Name]

/s/ Jonathan Redford
Signature