

<p>4th Judicial District El Paso County</p> <p>El Paso County Judicial Building 270 S Tejon St Colorado Springs, CO 80903</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Petitioner:</p> <p>NONHUMAN RIGHTS PROJECT, INC., on behalf of Missy, Kimba, Lucky, LouLou, and Jambo,</p> <p>v.</p> <p>Respondents:</p> <p>CHEYENNE MOUNTAIN ZOOLOGICAL SOCIETY, and BOB CHASTAIN, in his official capacity as President and CEO of Cheyenne Mountain Zoological Society.</p>	
<p>NONHUMAN RIGHTS PROJECT, INC:</p> <p>Jacob Davis, Esq. Nonhuman Rights Project, Inc. 525 Skyles Pl, Ste 302 Whitefish, MT 59937 Phone: (513) 833-5165 jdavis@nonhumanrights.org Atty. Reg. #: 54032</p>	<p>Case No: 2023CV31236</p> <p>Div: 8</p> <p>Courtroom:</p>
<p style="text-align: center;">SUPPLEMENTAL PLEADING</p>	

Petitioner Nonhuman Rights Project, Inc. supplements its Verified Petition for Writ of Habeas Corpus (“Petition”) as follows:

1. The Petition establishes that Missy, Kimba, Lucky, LouLou, and Jambo, five African elephants at the Cheyenne Mountain Zoo, are deprived of a suitable environment appropriate for their species, one that would allow them to exercise their autonomy and

meet their complex physical, psychological, and behavioral needs. Recent evidence confirms that the Cheyenne Mountain Zoo is an unacceptable place for elephants.

2. Attached to this supplemental pleading as **Exhibit A** and **Exhibit B**, respectively, are the Declaration of Courtney Fern, dated November 1, 2023 (“Fern Decl.”), and the Supplemental Declaration of Dr. Bob Jacobs, dated November 1, 2023 (“Jacobs Supp. Decl.”), and they are made a part hereof.
3. On October 27, 2023, Ms. Fern visited the Cheyenne Mountain Zoo and recorded videos of two of the elephants: LouLou and Jambo (see here: <https://bit.ly/3QAUlvS>). Fern Decl. ¶ 3.
4. The videos represent clear evidence that the elephants are living a sad, miserable existence, as they depict LouLou and Jambo “engaging in repeated swaying behavior,” or “classic stereotypies, which are not observed in wild elephants, but are common in captivity.” Jacobs Supp. Decl. ¶ 5. As Dr. Jacobs explains:

In my professional opinion, the videos of Jambo and LouLou repeatedly swaying back and forth are strong evidence that these elephants are undergoing chronic stress and brain dysregulation from being held captive at the Cheyenne Mountain Zoo. The cause of their suffering is clear: their psychological and behavioral needs are not being met in the impoverished zoo environment. As I stated in my Original Declaration, “from a neural perspective, imprisoning large mammals and putting them on display is undeniably cruel.” The recent videos showing Jambo and LouLou exhibiting stereotypies, a sign of brain damage, strongly reinforce this conclusion.

Id. at ¶ 7.

5. Dr. Jacobs notes that the videos depict “the same stereotypic behaviors [he] observed at the zoo more than a year ago,” and so “for the past year (and years before), this has been their existence, day in and day out.” *Id.* at ¶ 5. “[T]here really isn’t much for these elephants to do except be escorted by their trainers to a fawning public, and to ‘explore’

an enclosure that provides nothing of interest to them. What a sad existence when stereotypy consumes your life.” *Id.*

6. When Ms. Fern visited the Cheyenne Mountain Zoo on October 27, 2023, the temperature was between 35-50 degrees Fahrenheit with moderate wind. Fern Decl. ¶ 5. The next day, there was a freeze warning in Colorado Springs and it snowed in the morning, and from 1 pm – 3 pm—when Ms. Fern was half a mile away from the zoo—it was below 40 degrees with moderate wind. *Id.*
7. The winter weather is especially problematic for the elephants. “[D]uring the day, they are either outside in very cold temperatures, which can exacerbate arthritic joint pain, or confined in the barn all day, which could contribute to foot and joint damage.” Jacobs Supp. Decl. ¶ 8.

DATED: November 2, 2023

Nonhuman Rights Project, Inc.

By: /s/ Jake Davis
 Jake Davis, Esq.

Attorney for Petitioner Nonhuman Rights Project, Inc. on behalf of
Missy, Kimba, Lucky, LouLou, and Jambo

EXHIBIT A

Declaration of Courtney Fern

I, Courtney Fern, declare as follows:

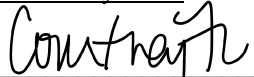
1. My name is Courtney Fern. Since February 2018, I have worked for the Nonhuman Rights Project as the Director of Government Relations and Campaigns.
2. On October 26, 2023, I purchased an admission ticket that allowed me to enter the Cheyenne Mountain Zoo on October 27, 2023.
3. On October 27, 2023, shortly after 10 am, I entered the Cheyenne Mountain Zoo using my admission ticket. I walked directly to the elephant exhibit and spent approximately one hour observing Jambo, Kimba, LouLou, Lucky, and Missy. The videos in the following Google Drive folder—depicting LouLou and Jambo—are true and accurate representations of the ones I took using my iPhone on the date I visited the zoo: <https://bit.ly/3QAuLvS>.
4. I observed LouLou swaying continuously for approximately 10 minutes without stopping. She only stopped when a zoo employee called for her and moved her to another yard in the exhibit. I also observed Jambo swaying and rocking for approximately 5-7 minutes. She stopped briefly to move closer to a fence in the yard in which she was confined and stopped again when a zoo employee called for her to move towards them.
5. While I was at the Cheyenne Mountain Zoo on October 27, 2023, the temperature was between 35-40 degrees Fahrenheit and there was moderate wind. On October 28, 2023, I was approximately 0.5 miles away from the zoo from 1 pm – 3 pm and it was below 40 degrees with moderate wind. There was a freeze warning in Colorado Springs for that day and it snowed in the morning.

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the 1 (date) of 11 (month), 2023 (year)

at West Hollywood, California
(city or other location, and state or country)

Courtney Fern



(signature) · |

EXHIBIT B

Supplemental Declaration of Bob Jacobs

I, Bob Jacobs, declare as follows:

Introduction and Qualifications

1. My name is Bob Jacobs. I graduated with a Bachelor of Arts, *Magna Cum Laude*, in German from Whitman College in 1980. I received an M.A. in Germanics, with a minor in Teaching English as a Second Language, from the University of Washington in 1982. I received my Ph.D. from the University of California, Los Angeles (UCLA) in Applied Linguistics in 1991, completing a neuroanatomy dissertation under the supervision of Drs. Arnold B. Scheibel and John Schumann. The dissertation was entitled: “A Quantitative Dendritic Analysis of Wernicke's Area”. During this time, I also worked with Dr. Marian Diamond of the University of California, Berkeley. Post-doctoral research in neuroimaging was also completed from 1991-1993 under the supervision of Dr. Harry Chugani at UCLA. I began my tenure track professorship in the Department of Psychology at Colorado College in 1993, started the school’s Neuroscience major in 1996, and have been at Colorado College since that time, becoming a full professor in 2006. I retired in 2023 and was given emeritus status. I reside in Colorado Springs, CO.
2. My background and qualifications are set out more fully in my original Declaration in this matter.
3. I submit this Supplemental Declaration in support of the Nonhuman Rights Project, Inc.’s petition for a writ of habeas corpus regarding the captive elephants at the Cheyenne Mountain Zoo.
4. In this Supplemental Declaration, I provide my observations and opinions on recent videos taken by Courtney Fern on October 27, 2023, while she was at the Cheyenne Mountain Zoo (see here: <https://bit.ly/3QAuLvS>). As noted in her Declaration, dated November 1, 2023, those videos depict two of the elephants confined at the zoo: Jambo and LouLou.

Opinions

5. The videos depict Jambo and LouLou engaging in repeated swaying behavior. These behaviors are classic stereotypies, which are not observed in wild elephants, but are common in captivity (studies have observed stereotypies in 47-85% of zoo elephants) (Mason & Latham, 2004; Mason & Veasey, 2010). These are the same stereotypic behaviors I observed at the zoo more than a year ago. So, for the past year (and years before), this has been their existence, day in and day out. In fact, if one is being honest, there really isn't much for these elephants to do except be escorted by their trainers to a fawning public, and to "explore" an enclosure that provides nothing of interest to them. What a sad existence when stereotypy consumes your life.
6. Stereotypies are caused by chronic stress (McBride & Parker, 2015). Specifically, chronically elevated levels of stress hormones dysregulate the dopaminergic and serotonergic neurotransmitter systems, which results in suppression of the indirect movement pathway in the brain (Langen et al., 2011). The indirect movement pathway is responsible for inhibiting movements, and under normal circumstances, it interacts with the direct movement pathway to produce normal movement behavior. When the indirect pathway is suppressed by stress, this often results in pathological stereotyped movement patterns (stereotypies), such as those that Jambo and LouLou are exhibiting in the videos I reviewed.
7. In my professional opinion, the videos of Jambo and LouLou repeatedly swaying back and forth are strong evidence that these elephants are undergoing chronic stress and brain dysregulation from being held captive at the Cheyenne Mountain Zoo. The cause of their suffering is clear: their psychological and behavioral needs are not being met in the impoverished zoo environment. As I stated in my Original Declaration, "from a neural perspective, imprisoning large mammals and putting them on display is undeniably cruel." The recent videos showing Jambo and LouLou exhibiting stereotypies, a sign of brain damage, strongly reinforce this conclusion.
8. In addition, Courtney Fern noted in her Declaration that while she was at the Cheyenne Mountain Zoo on October 27, 2023, the temperature was between 35-40 degrees Fahrenheit

and there was moderate wind. Further, on October 28, 2023, there was a freeze warning in Colorado Springs and it snowed in the morning. The winter weather in Colorado is especially problematic for the elephants: during the day, they are either outside in very cold temperatures, which can exacerbate arthritic joint pain, or confined in the barn all day, which could contribute to foot and joint damage.

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the 1 (date) of 11 (month), 2023 (year)

at Colorado Springs, Colorado
(city or other location, and state or country)

Bob Jacobs, Ph.D.

A handwritten signature in black ink, appearing to read 'BJ' followed by a stylized flourish.

(signature)

References cited

- Langen, M., Kas, M. J.H., Staal, W.G., van Engeland, H., & Durston, S. (2011). The neurobiology of repetitive behavior: Of mice... *Neuroscience & Biobehavioral Reviews*, 35, 345-355. <https://doi.org/10.1016/j.neubiorev.2010.02.004>.
- Mason, G. J., & Veasey, JS. (2010). What do population-level welfare indices suggest about the well-being of zoo elephants? *Zoo Biology*, 29, 256-273. <https://doi.org/10.1002/zoo.20303>.
- Mason, G.J., & Latham, N.R. (2004). Can't stop, won't stop: Is stereotypy a reliable animal welfare indicator? *Animal Welfare*, 13 (Suppl), S57-S69.

McBride, S.D., & Parker, M.O. (2015). The disrupted basal ganglia and behavioural control: An integrative cross-domain perspective of spontaneous stereotypy. *Behavioural Brain Research*, 276, 45-58. <https://doi.org/10.1016/j.bbr.2014.05.057>.