No. A169697

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, FIFTH DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

WAYNE HANSEN HSIUNG,
Defendant and Appellant.

On Appeal from Sonoma County Superior Court
Trial Court Case No. SCR-7214641
Hon. Laura Passaglia

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND [PROPOSED] AMICUS CURIAE BRIEF OF THE NONHUMAN RIGHTS PROJECT INC. IN SUPPORT OF APPELLANT

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons who must be listed in this certificate under California Rules of Court, rule 8.208(e)(3).

August 4, 2025

Christopher Berry

Attorney for Amicus Curiae
Nonhuman Rights Project

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND INTEREST OF AMICUS CURIAE

TO THE PRESIDING JUSTICE:

Pursuant to California Rule of Court 8.200(c), the Nonhuman Rights Project, Inc. ("NhRP") respectfully requests leave to file the accompanying brief as *amicus curiae* in support of Appellant. A copy of this brief accompanies the application.

Founded in 1995 by Attorney Steven M. Wise, NhRP is the only civil rights organization in the United States dedicated solely to securing legal rights for nonhuman animals. NhRP exists to challenge an archaic, unjust status quo that views and treats nonhuman animals as "things." In furtherance of its mission, since December 2013, NhRP has filed and litigated habeas corpus petitions seeking to secure the right to bodily liberty of chimpanzees and elephants in New York, Connecticut, California, Michigan, Hawaii, and Colorado.

NhRP's most notable case to date is *Nonhuman Rights Project, Inc. v. Breheny* (2022) 38 N.Y.3d 555, which Harvard historian Jill Lepore described as "the most important animal-rights case of the 21st century,"[1] and marked the first time a state high court decided whether a nonhuman animal has the right to bodily liberty. While the New York Court of Appeals

[1] (Jill Lepore, The Elephant Who Could be a Person (Nov. 16, 2021), THE ATLANTIC, https://bit.ly/41lGlOg).

ruled against NhRP in a 5-2 vote, the decision included two historic, groundbreaking dissents—spanning over 80 pages—from now-Chief Judge Rowan Wilson and Judge Jenny Rivera, who found that the common-law writ of habeas corpus was available for an elephant to challenge her unjust confinement at a zoo.

Given NhRP's commitment to the just and compassionate development of the common law as it pertains to the legal status of nonhuman animals, we have a keen interest in this appeal's outcome and how it is decided. A central issue on appeal is whether the common law defense of necessity encompasses nonhuman animals, specifically whether it applies to the prevention of harm as severe as animal cruelty. Addressing this issue requires grappling with the evolving legal status of nonhuman animals.[2]

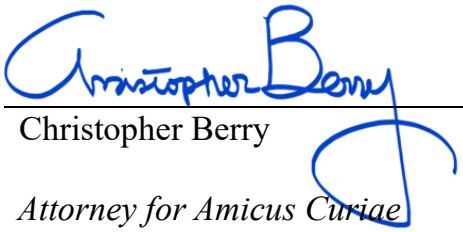
The proposed brief will assist this Court by examining the question of whether animal cruelty is a "significant evil" for purposes of the necessity defense, through the application of fundamental principles that govern common-law adjudication. The brief explains that because necessity is a common law defense, its application must conform to contemporary social

[2] In June 2025, a New York trial court recognized that in claims for negligent infliction of emotional distress, dogs now qualify as "immediate family" under the zone of danger rule for bystander recovery—a category once reserved for humans. (*DeBlase v. Hill* (N.Y. Sup. Ct., June 17, 2025) 2025 N.Y. Slip Op. 25156, 15.) The court relied in part on two amicus briefs submitted by NhRP, noting it "appreciate[d] the extensive efforts engaged in by all amici in elucidating the issues present in this motion, including by performing what is obviously extensive legal research." (*Id*. at *1 n. 1.)

values and the demands of justice, and these considerations compel recognizing animal cruelty as a "significant evil" for purposes of the defense.

No party or counsel for a party in the pending case authored the proposed amicus brief in whole or in part or made any monetary contribution intended to fund its preparation or submission.

August 4, 2025



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BRIEF OF AMICUS CURIAE

This Court has both the power and the duty to ensure that the common law necessity defense develops in accordance with contemporary values and justice—a responsibility that compels recognizing animal cruelty, as defined by California Penal Code section 597, as a "significant evil."[1]

The trial court committed reversible error by categorically excluding the application of the defense to the prevention of nonhuman animal harm. In so ruling, the court implicitly held that such harm, including harm as severe as animal cruelty, could never be sufficiently serious to allow a defendant to invoke the defense. That ruling hinges on the untenable view that nonhuman animals are mere "things" akin to inanimate objects, whose needless suffering does not matter.

The fact that California courts have yet to apply the necessity defense in the case of nonhuman animal suffering does not signal its unavailability but rather marks an essential question awaiting judicial determination. Necessity is a common law defense and, as such, it is subject to judicial evolution. The common law is not an anachronism, static and unchanging, but characterized by its inherent flexibility and capacity for growth. As stewards of the common law, courts have a responsibility to update doctrines

[1] To justify an instruction on necessity, there must be evidence sufficient to establish, among other things, that the defendant "'violated the law (1) to prevent a significant evil.'" (*People v. Trujeque* (2015) 61 Cal.4th 227, 273 [citation omitted].)

to reflect contemporary social values and the demands of justice. Accordingly, this Court must determine whether judicial extension of necessity is warranted in light of fundamental common law principles.

To assist this Court's analysis, this brief argues (A) because necessity is a common law defense, its application must conform to contemporary social values and the demands of justice, and (B) those considerations compel recognizing animal cruelty as a "significant evil" for purposes of necessity. Embedded in these arguments is the underlying idea that species membership alone should have no bearing on this Court's determination.

ARGUMENT

A. Because necessity is a common law defense, this Court is obliged to ensure its application conforms to contemporary social values and the demands of justice.

Ensuring the common law's just and rational development is a core judicial responsibility. Courts are charged with the responsibility for the continuous "upkeep of the common law," which is not the codification of static, inflexible rules, but rather "the embodiment of broad and comprehensive unwritten principles, inspired by natural reason and an innate sense of justice." (*Rodriguez v. Bethlehem Steel Corp*. (1974) 12 Cal.3d 382, 393 [cleaned up]; see also *People v. Drew* (1978) 22 Cal.3d 333, 347 ["the judiciary has the responsibility for legal doctrine which it has created"].) Inherently flexible, the common law develops "in keeping with advancing

civilization and the new conditions and progress of society." (*Rodriguez*, 12 Cal.3d at 394 [cleaned up].)

It is the "well-established duty of common law courts to reflect contemporary social values and ethics." (*Green v. Superior Court* (1974) 10 Cal.3d 616, 640.) As such, courts must "remain alert to their obligation and opportunity to change the common law when reason and equity demand it":

> The nature of the common law requires that each time a rule of law is applied, it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it the instrument of injustice. Whenever an old rule is found unsuited to present conditions or unsound, it should be set aside and a rule declared which is in harmony with those conditions and meets the demands of justice.

(*Rodriguez*, 12 Cal.3d at 394 [cleaned up]; see also *Katz v. Walkinshaw* (1903) 141 Cal. 116, 123 [the common law "adapts itself to varying conditions, and modifies its own rules so as to serve the ends of justice under the different circumstances"]; *County Sanitation Dist. No. 2 v. Los Angeles County Employees Assn.* (1985) 38 Cal.3d 564, 584 ["This court has long recognized the need to redefine, modify or even abolish a common law rule . . . when its underlying principles are no longer justifiable in light of modern society."]; *People v. Dillon* (1983) 34 Cal.3d 441, 462 [affirming the power to "conform the common law of this state to contemporary conditions and enlightened notions of justice"].)

Because necessity is a "common law defense" (*People v. Buena Vista Mines, Inc.* (1998) 60 Cal.App.4th 1198, 1202), its application must conform to contemporary social values and the demands of justice. Rather than address these considerations, the government makes the irrelevant observation that the California Legislature could have, but did not, include nonhuman animals within the ambit of the necessity defense. (RB 36.) Common law change need not come from the Legislature: "Legislative action there could, of course, be, but we abdicate our own function, in a field peculiarly nonstatutory, when we refuse to reconsider an old and unsatisfactory court-made rule." (*Rodriguez*, 12 Cal.3d at 397 [cleaned up]; see also *Drew*, 22 Cal.3d at 347 n. 11 ("[L]egislative inaction does not necessarily constitute a tacit endorsement of the precise stage in the evolution of the law extant at the time when the Legislature did nothing; it may signify that the Legislature is willing to entrust the further evolution of legal doctrine to judicial development."). Nor is it relevant—as the government contends, RB 28-29—that the necessity defense has yet to be judicially extended to nonhuman animals, since the lack of precedent is no reason for California courts to "abdicate their responsibility for the upkeep of the common law." (*People v. Pierce* (1964) 61 Cal. 2d 879, 882.)

In *People v. Lovercamp* (1974) 43 Cal.App.3d 823, the court abided by these principles when it held that necessity is a viable defense to a charge of prison escape, permitting its application to inmates who, fearing for their

lives, escaped from a prison where they had been threatened with sexual assault.

Lovercamp represented a break from a line of cases holding that intolerable prison conditions could not justify escape, even when an inmate's life is threatened by physical or sexual assault. (*Id*. at 827-31.) In those cases, the interests of the public always outweighed the interests of the inmate. However, *Lovercamp* observed that "[i]n a humane society some attention must be given to the individual dilemma," and thus "adopted a position which gives reasonable consideration to both interests." (*Id*. at 827.) In allowing the necessity defense to a charge of escape under limited circumstances, the court noted it was applying "rules long ago established in a manner which effects fundamental justice." (*Id*.) This Court, too, must be mindful of what a humane society requires and apply necessity in a manner which effects fundamental justice.

B. Contemporary social values and the demands of justice compel recognizing animal cruelty as a "significant evil" for purposes of necessity.

The necessity defense "excuses criminal conduct if it is justified by a need to avoid an imminent peril and there is no time to resort to the legal authorities or such resort would be futile." (*People v. Beach* (1987) 194 Cal.App.3d 955, 971.) To justify an instruction on necessity, there must be sufficient evidence establishing, among other things, that the defendant violated the law "'to prevent a significant evil.'" (*People v. Trujeque* (2015)

61 Cal.4th 227, 273 [citation omitted].) There is no requirement that the evil to be prevented by the criminal conduct must be harm to humans.

As demonstrated below, the trial court erred in categorically excluding the prevention of nonhuman animal harm from the purview of necessity. Such exclusion is arbitrary and irrational: it is based on the untenable view that harm to nonhuman animals, including harm as severe as animal cruelty, could never be sufficiently serious to qualify as a "significant evil" for purposes of necessity. This view assumes nonhuman animals are mere "things" akin to inanimate objects, whose needless suffering does not matter. It is fundamentally contrary to contemporary social values and the demands of justice.

1. Animal cruelty is a significant evil according to contemporary social values.

Seventeenth-century philosopher René Descartes infamously argued nonhuman animals were insentient, unthinking machines that "eat without pleasure, cry without pain, grow without knowing it, desire nothing, fear nothing, and know nothing." (*Nonhuman Rights Project, Inc. v. Breheny* (2022) 38 N.Y.3d 555, 607 [Wilson, J., dissenting], quoting STEVEN NADLER, THE CAMBRIDGE COMPANION TO MALEBRANCHE 42 (2000).) Given what we know about the capacities of nonhuman animals, Descartes' ancient, dogmatic view is rejected today as uninformed and absurd. Yet it underlies the trial court's ruling, which denies the significance of animal suffering—

even suffering that rises to the level of animal cruelty. This denial is fundamentally inconsistent with contemporary social values, as reflected in societal norms and legislatively-enacted public policy.

Animal cruelty is widely condemned as morally abhorrent—in other words, as a significant evil. "In our society, those who mistreat animals are the deserved object of obloquy, and their conduct is wrongful of itself and not just as a matter of legislative declaration." (*In re Jennings* (2004) 34 Cal.4th 254, 274, quoting *People v. Speegle* (1997) 53 Cal.App.4th 1405, 1415.) "It has long been the public policy of this country to avoid unnecessary cruelty to animals. . . . [T]here is a social norm that strongly proscribes the infliction of any unnecessary pain on animals, and imposes an obligation on all humans to treat nonhumans humanely." (*Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 504 [cleaned up]; *accord Animal Legal Defense Fund v. LT Napa Partners LLC* (2015) 234 Cal.App.4th 1270, 1286 n.10.) Indeed, "allowing the needless suffering of animals" has been described as "evil." (*Farm Sanctuary, Inc.*, 63 Cal.App.4th at 502; see also EVIL, BLACK'S LAW DICTIONARY (12th ed. 2024) [defining "evil," in part, as "[t]ending to harm; injurious to well-being"].)

Significantly, California public policy has deemed animal cruelty so wrongful that it is punishable as a crime, even as a felony. (Pen. Code, § 597.) The criminalization of animal cruelty is thus a legislative recognition that

such conduct *is* a significant evil, as is any criminal conduct that unjustifiably causes severe bodily injury and death. This is because the law, at its core, "reflects normative judgments about the behaviors we want to allow, encourage, discourage or prohibit," reflecting "our society's values and aspirations." (*Breheny*, 38 N.Y.3d at 613 [Wilson, J., dissenting].)

"California has one of the nation's toughest anticruelty laws." (*Animal Legal Defense Fund*, 234 Cal.App.4th at 1298 [cleaned up].) Among other conduct, California criminalizes subjecting "an animal to needless suffering" and failing "to provide the animal with proper food, drink, or shelter." (Pen. Code, § 597(b).) This aligns with the legislature's recognition since 1872 that "animals are special, sentient beings, because unlike other forms of property, animals feel pain, suffer and die." (*Martinez v. Robledo* (2012) 210 Cal.App.4th 384, 392.)

So significant is the evil of animal cruelty that, under California law, the Fourth Amendment's exigent circumstances exception extends to the protection of nonhuman animals in emergency situations. (*People v. Chung* (2010) 185 Cal.App.4th 247, 732 ["Exigent circumstances properly may be found when an officer reasonably believes immediate warrantless entry into a residence is required to aid a live animal in distress."].)

California public policy is not unique in condemning animal cruelty, as "statutes prohibiting animal cruelty have long been part of the fabric of American life." (*Id*. at 728; see also *U.S. v. Stevens* (2010) 559 U.S. 460, 469

["the prohibition of animal cruelty itself has a long history in American law"].) "Animal cruelty was not a crime under common law," but by "the end of the nineteenth century, many states had enacted laws that reflected society's acceptance of the idea that animals had an inherent right to be free from unnecessary pain and suffering and that the legal system should recognize that right." (*People v. Harris* (Colo. App. 2016) 405 P.3d 361, 371.)

"Beginning with New York State in 1828, all 50 states and the District of Columbia had adopted anti-cruelty laws by the year 1913." (*Humane Soc. of Rochester and Monroe County for Prevention of Cruelty To Animals, Inc. v. Lyng* (W.D.N.Y. 1986) 633 F.Supp. 480, 486.) In fact, all 50 states "now ha[ve] a felony animal cruelty law on the books." (*Laws that Protect Animals*, Animal Legal Def. Fund, bit.ly/49ayo3e). Where previously animal suffering was "simply seen as evil because of its effect on humans and society," it eventually became "viewed as an evil due to its effect on animals themselves." (*Breheny*, 38 N.Y.3d at 604 [Wilson, J., dissenting].) This is not surprising: "As human knowledge of animal capabilities and needs has increased over the past centuries, social norms concerning human treatment of animals, and the rights granted to them, have also changed significantly." (*Id*. at 603; see also *Cetacean Community v. Bush* (9th Cir. 2004) 386 F.3d 1169, 1175 ["Animals have many legal rights, protected under both federal and state laws," including under "criminal statutes punish[ing] those who violate statutory duties that protect animals."].)

Oregon is an instructive example of contemporary social values vis-à-vis animal cruelty. The state explicitly recognizes that "[a]nimals are sentient beings capable of experiencing pain, stress and fear" who "should be cared for in ways that minimize pain, stress, fear and suffering." (*State v. Hershey* (Or. Ct. App. 2020) 304 Or.App. 56, 69, quoting O.R.S. § 167.305(1), (2).) In contrast to early animal cruelty laws, which were aimed at "protecting animals as property of their owners or as a means of promoting public morality, Oregon's animal cruelty laws have been rooted—for nearly a century—in a different legislative tradition of protecting individual animals themselves from suffering." (*State v. Crow* (Or. Ct. App. 2018) 294 Or.App. 88, 95, quoting *State v. Nix* (2014) 355 Or. 777, 796-97, *vacated on procedural grounds*, (2015) 356 Or. 768.) This means nonhuman animals can be "victims" of crime, warranting the severe consequence that a criminal defendant is subject to multiple convictions for the same conduct involving two or more animal victims. (See *State v. Hess* (Or. Ct. App. 2015) 273 Or.App. 26, 35 [affirming guilty verdicts on 45 counts of animal neglect and refusing to merge those counts into a single conviction, as each animal "was a separate victim for purposes of Oregon's anti-merger statute"].)

Additionally, Oregon courts have held—like California law—that the significance of animal suffering can justify the warrantless actions of police officers under the emergency aid and exigent circumstances exceptions. (See, e.g., *Hershey*, 286 Or.App. at 834 [warrantless entry onto property to render

immediate aid to starving cows]; *State v. Hsieh* (Or. Ct. App. 2021) 314 Or.App. 313, 326 [warrantless seizure of cat in urgent need of medical treatment].) Oregon's treatment of this issue is in line with other states.[2]

Courts throughout the country have also recognized the abhorrent nature of animal cruelty, understanding that nonhuman animals are sensitive, sentient beings whose suffering matters. (See, e.g., *Commonwealth v. J.A.* (2017) 478 Mass. 385, 390 [Cypher, J., concurring] ["Preventing animal cruelty is a tenet of our collective humanity and a crucial public policy goal in Massachusetts."]; *State v. Stanfield* (1982) 105 Wis.2d 553, 559, *overruled on other grounds*, (1990) 153 Wis.2d 493 ["Cruelty to animals is a particularly despicable offense because of the relative helplessness of animals when faced with inhumane humans willing or even anxious to mistreat them."]; *State v. Stone* (2004) 321 Mont. 489, 497 ["the District of Columbia, Wisconsin, Illinois, Texas, and Montana have all enacted laws

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[2] (See also *State v. Sheperd* (2017) 204 Vt. 592, 603 [observing that "multiple states have held that the exigent circumstances exception to the warrant requirement allows state agents to conduct a warrantless search or seizure in order to prevent an imminent threat to a nonhuman animal's well-being"; and holding that "a defendant's property rights over animals are limited when animal welfare is at risk, and we must take the animals' welfare into consideration when determining the legality of a search or seizure"]; *Com. v. Duncan* (2014) 467 Mass. 746, 753 ["needless suffering and death of animals is an exigent circumstance justifying the warrantless search for and rescue of the animals"] [cleaned up]; *State v. Bauer* (Wis. Ct. App. 1985) 127 Wis.2d 401, 409 ["Cruelty to animals is a statutory offense. It is therefore state policy to render aid to relatively vulnerable and helpless animals when faced with people willing or even anxious to mistreat them."].)

evidencing a strong public policy of preventing mistreatment and cruelty to animals"].)[3]

It is thus undeniable that animal cruelty is a significant evil according to contemporary social values—values that must inform this Court's common law decision-making. (See *Bueckner v. Hamel* (Tex. App. 1994) 886 S.W.2d 368, 377–78 [Andell, J., concurring] ["The law must be informed by evolving knowledge and attitudes. . . . Society has long since moved beyond the untenable Cartesian view that animals are unfeeling automatons and, hence, *mere* property."].)

2. Excluding animal cruelty from the purview of necessity is contrary to the demands of justice.

The necessity defense must be applied "in a manner which effects fundamental justice." (*Lovercamp*, 43 Cal.App.3d at 827.) "Justice" is defined as "[t]he quality of being fair or reasonable." (JUSTICE, BLACK'S LAW DICTIONARY (12th ed. 2024).) "[L]aw cannot be divorced from morality in so far as it clearly contains . . . the notion of right to which the moral quality of justice corresponds." (*Id*. quoting Paul Vinogradoff, *Common Sense in Law* 19–20 (H.G. Hanbury ed., 2d ed. 1946).) Because animal cruelty is a significant evil according to contemporary social values,

[3] (See also *People v. Robards* (Ill. App. Ct. 2018) 97 N.E.3d 600, 604–605 ["[D]efendant's acts caused serious physical harm and death to two sentient creatures that suffered greatly from terminal starvation and dehydration, which the defendant callously inflicted on them. We find the circuit court's sentence of 12 months' probation to be unjustly and inexplicably lenient."].)

excluding this evil from the purview of necessity is contrary to justice—that is, contrary to fairness and reason.

Categorically excluding harm to nonhuman animals from the scope of the necessity defense is fundamentally unfair and unreasonable. It would mean that in emergency situations where an individual violates the law to prevent harm as severe as animal cruelty—and where no adequate alternatives exist—the defendant will be criminally punished *even though* "the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged." (*People v. Heath* (1989) 207 Cal.App.3d 892, 901). By definition, such a result is unjust.

The necessity defense, when available to a criminal defendant, "represents a public policy decision not to punish such an individual despite proof of the crime." (*Id.*) Any judicial limitation placed on the defense must accord with public policy. (See *People v. Youngblood* (2001) 91 Cal.App.4th 66, 73 ["Since the defense of necessity is based on public policy, we must look to public policy to determine whether the defense was available to the defendant on the facts presented here."].)[4]

[4] In *Youngblood*, the California only case to address the applicability of necessity to the prevention of nonhuman animal harm, the appellate court held the defense unavailable in that particular case—where the defendant, convicted of hoarding 92 stray cats, claimed she was trying to save them from euthanasia by animal control. As the euthanasia of stray cats impounded in animal shelters was statutorily authorized, the proffered defense was contrary

Excluding animal cruelty from the purview of necessity is contrary to public policy, as it creates an arbitrary distinction between humans and nonhuman animals within the law of necessity. It would require this Court to endorse the untenable proposition that, unlike human harms, the evil of animal cruelty is insignificant—a proposition sustainable only by ignoring developments in the law and viewing nonhuman animals as mere "things" akin to inanimate objects. But as both science and common sense dictate, nonhuman animals are sentient beings capable of experiencing pain, fear, and distress, whose vulnerabilities too often allow them to be subjected to immense cruelty at the hands of humans. Their suffering matters, both morally and legally, and its significance has been recognized as a matter of public policy.

The government claims jury instruction CALCRIM 3403 "reflects the limits of the necessity defense," allegedly because the reference to "someone else" is limited to humans.[5] (RB. 30.) However, as the government acknowledges, jury instructions "are not authority to establish legal propositions or precedent, and should not be cited as authority for legal

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to public policy. (91 Cal.App.4th at 73-74.) Importantly, *Youngblood* did not foreclose necessity in other situations involving nonhuman animal harm, such as those involving animal cruelty, which has been criminalized by statute.

[5] Among the elements of necessity set forth in CALCRIM 3403, the defendant must prove that: "(He/She) acted in an emergency to prevent a significant bodily harm or evil to (himself/herself/ [or] someone else)."

principles in appellate opinions." (RB. 30, quoting *People v. Montoya* (2021) 68 Cal.App.5th 980, 1000.) Jury instructions merely restate the law when they are accurate (*Montoya*, 68 Cal.App.5th at 1000), and the law in this area is unsettled. Since California courts have yet to decide whether the necessity defense applies to preventing harm to nonhuman animals, the term "someone else" does not purport to reflect a limitation based on species membership. Rather, "someone else" serves as a placeholder—California law, not the term itself, determines whether nonhuman animals are encompassed by the defense.

The use of human-centered language in legal doctrines that have not yet been applied to nonhuman animals was thoughtfully addressed by the Oregon Court of Appeals in a case extending the emergency aid exception to protect an emaciated horse, observing that:

> [T]he [previous] description of the exception in human terms [i.e., rendering immediate aid to "persons"] is understandable, perhaps inevitable, given that the few emergency aid cases it has addressed all have turned on perceived threats to human safety. The court simply has not been presented with the question of whether the exception extends to the protection of animals, and its description of the doctrine cannot fairly be said to have rejected that contention.

State v. Fessenden (2013) 258 Or.App. 639, 646.

The government also urges this Court to follow the decision in *Brooks v. State* (2013) 122 So.3d 418, where a Florida court held that the necessity defense was unavailable to a defendant who drove under the influence of

alcohol to transport a dying cat to an all-night veterinary clinic for treatment. (RB. 36-37). The first element of Florida's necessity defense requires a defendant to establish his action was "necessary to avoid an imminent threat of danger or serious bodily injury to himself *or others*," and the *Brooks* court, without analysis, held that the phrase "or others" cannot be interpreted as applying to nonhuman animals. (122 So.3d at 422.) The court also held, again without analysis, that the term "third person" in the jury instruction cannot refer to nonhuman animals. (*Id*.)[6]

While the government urges *Brooks* as the most apposite authority "to show that the uncodified, common-law defense of necessity is limited to harm to humans" (Resp't Br. 37), the case is an example of a static, inflexible approach to common law adjudication that California courts are duty-bound to reject, in keeping with their "obligation" to upkeep the common law. (See *supra* 13-15, discussing *Rodriguez*, 12 Cal.3d at 393-94 and other cases.) The question of whether nonhuman animals can be subjected to harms sufficiently serious to fall within the scope of the defense is a fundamentally normative one that cannot be resolved through a formalistic definitional analysis. To insist, solely based on species membership, that terms like

[6] (See *People v. Nance* (1991) 1 Cal.App.4th 1453, 1466 [Timlin, J., concurring] ["The mere fact that the proposition is oft-repeated, however, is not sufficient reason to adhere to it as a correct statement of the law when a reasoned analysis of the issue convincingly reveals a contrary proposition actually to be a correct statement of the law."].)

"someone else," "others," or "person" cannot apply to nonhuman animals unjustly reduces them to mere "things" under the law.[7] Nonhuman animals are sentient beings with moral and legal interests to be free from needless physical and psychological harm, and while Florida may ignore that reality, this Court should not.

It is notable that the necessity defense has been recognized in California and elsewhere to encompass protecting harm to property. (See *Heath*, 207 Cal.App.3d at 899–900 [at common law, where "A destroyed the dike in order to protect more valuable property from flooding, A could claim a defense of necessity"] [quoting *U.S. v. Bailey* (1980) 444 U.S. 394, 410]; *State v. Ward* (1915) 152 N.W. 501, 502 [necessity available where defendant contended he killed a deer "in order to prevent substantial injury to his property"]; *State v. Burk* (1921) 114 Wash. 370, 376 [necessity available where defendant contended he killed elk "for the protection of his property"];

[7] Contrary to *Brooks*, the term "person" is not limited to humans. For example, corporate entities—and sometimes other entities such as ships—are recognized as persons in some but not all circumstances. As Black's Law Dictionary recognizes, "a person is any being whom the law regards as capable of rights or duties," and "[a]ny being that is so capable is a person, whether a human being or not." (PERSON, BLACK'S LAW DICTIONARY (12th ed. 2024), quoting John Salmond, *Jurisprudence* 318 (Glanville L. Williams ed., 10th ed. 1947).] Thus, "if animals have legal rights, then they are legal persons." (Matthew Liebman, *Animal Plaintiffs* (2024) 108 Minn. L. Rev. 1707, 1756.) As noted earlier, "[a]nimals have many legal rights, protected under both federal and state laws." (*Cetacean Community*, 386 F.3d at 1175; see also *Breheny*, 38 N.Y.3d at 586 [Wilson, J., dissenting] ["[h]umans have granted animals countless rights"].)

Strong v. State (Alaska Ct. App. 2022) 508 P.3d 1127, 1133-34 [necessity available where defendants, convicted of fishing in closed waters, acted to avert a "significant evil" when they acted to prevent economic harms: contamination of their catch of salmon and damage to equipment]; see also 2 Wayne R. LaFave, *Substantive Criminal Law* § 10.1(d)(1) (3d ed.) [The qualifying harm for necessity may be "harm to property, as where a firefighter destroys some property to prevent the spread of fire which threatens to consume other property of greater value."].)

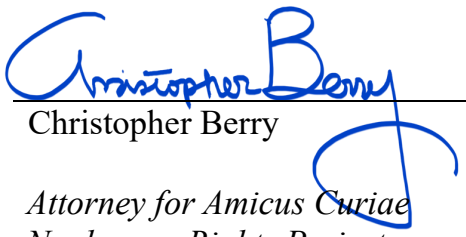
Accordingly, nothing inherent in the common law defense of necessity limits its application to the prevention of human harm, or excludes its use to prevent nonhuman harm as severe as animal cruelty. The evil of animal cruelty is significant. Holding otherwise, as the trial court did, creates an arbitrary distinction between human and nonhuman animals within the law of necessity, contrary to public policy—contrary to contemporary social values—and thus fails to accord with the demands of justice.

CONCLUSION

For the foregoing reasons, this Court should recognize that animal cruelty is a "significant evil" for purposes of the necessity defense.

August 4, 2025

Respectfully Submitted,



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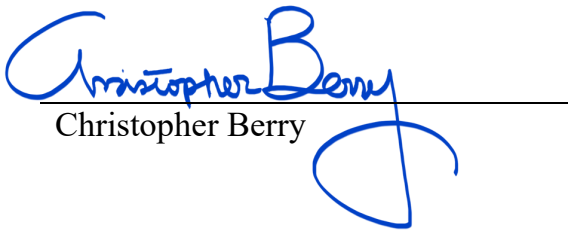
Nonhuman Rights Project

CERTIFICATE OF WORD COUNT

This Certificate of Word Count is submitted in accordance with Rule 8.204(c)(1) of the California Rules of Court. The foregoing APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND [PROPOSED] AMICUS CURIAE BRIEF OF THE NONHUMAN RIGHTS PROJECT INC. IN SUPPORT OF APPELLANT was produced with a computer. It is proportionately spaced in 13-point Times Roman typeface. The brief contains 4,502 words, including footnotes.

Executed on August 4, 2025, in Oakland, California:



Christopher Berry

PROOF OF SERVICE

I, Christopher Berry, hereby declare that I am not a party to the action, am over 18 years of age, and my business address is: Nonhuman Rights Project, 611 Pennsylvania Ave. SE #345, Washington, D.C. 2003.

On August 4, 2025, I served a copy of this APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND [PROPOSED] AMICUS CURIAE BRIEF OF THE NONHUMAN RIGHTS PROJECT INC. IN SUPPORT OF APPELLANT on all counsel of record for this case—Appeal No. A169697—via the Court's TrueFiling electronic filing system.

I further declare that on August 4, 2025, I served a copy of the same on the superior court by depositing in a sealed envelope via U.S. Postal Service to the following address:

Clerk for the Hon. Laura Passaglia
Sonoma County Superior Court
600 Administration Drive
Santa Rosa, CA 95403

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 4, 2025, in Oakland, California:

Christopher Berry