MTREARG

DOCKET NO. LLI-CV-17-5009822-S	:	SUPERIOR COURT
In the matter of a Petition for a Common Law Writ of Habeas Corpus,	:	JUDICIAL DISTRICT OF LITCHFIELD
NONHUMAN RIGHTS PROJECT, INC., on behalf of BEULAH, MINNIE, and KAREN, Petitioner,	:	AT TORRINGTON
v.	:	
R.W. COMMERFORD & SONS, INC. a/k/a COMMERFORD ZOO, and WILLIAM R. COMMERFORD, as President of R.W. COMMERFORD & SONS, INC., Respondents.	:	January 16, 2018

OFFICE OF THE CLERK
SUPERIOR COURT
2018 JAN 16 PM 2 46
JUDICIAL DISTRICT OF
LITCHFIELD
STATE OF CONNECTICUT

MOTION TO REARGUE
AND FOR LEAVE TO AMEND THE PETITION

Pursuant to Section 11-11 and Section 10-60 of the Connecticut Practice Book, the undersigned Nonhuman Rights Project, Inc. ("NhRP") hereby moves this Court to allow it to reargue the Court's decision contained in its Memorandum of Decision dated December 26, 2017, by the Hon. James Bentivegna (the "Decision"), in which the Court dismissed the NhRP's Verified Petition for a Writ of Habeas Corpus ("Petition") on the grounds that it was both "wholly frivolous" and that the NhRP lacked standing pursuant to Practice Book Rule section 23-24(a)(1). A copy of the Decision is attached hereto as **Exhibit 1**.

THIS MOTION IS A CONNECTICUT PRACTICE BOOK SECTION 11-11 MOTION

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In the event that this Court finds that Connecticut standing law imposes a "significant relationship" test and also finds that the NhRP failed to adequately allege that it has a significant relationship with Beulah, Minnie, and Karen, or that Beulah, Minnie, and Karen lack any significant relationship with any "person" whose interests are not adverse to them, then the NhRP moves this Court to reargue this Court's decision and grant the NhRP leave to amend the Petition to make clear that the NhRP is alleging that the three elephants have no significant relationships (to the extent that such allegation is deemed to be necessary for purposes of subject matter jurisdiction notwithstanding the NhRP's arguments to the contrary). A copy of the proposed First Amended Petition, with an amended ¶ 49 is attached hereto as **Exhibit 2**. A copy of the proposed First Amended Petition (with added language underlined and deleted language stricken through or bracketed) is attached hereto as **Exhibit 3**.

In support of this motion, the NhRP states:

1. As set forth in the attached Memorandum of Law, this Court erred when it: (1) determined the Petition was "wholly frivolous on its face in legal terms" under Practice Book § 23-24(a)(2) thereby conflating "novel" with "frivolous"; (2) ignored long-standing Connecticut Supreme Court precedent which permits a stranger to file a habeas petition in the rare case of a private individual being detained by another private individual; (3) misinterpreted General Statutes § 52-466 and relied upon two inapposite areas of habeas corpus standing jurisprudence, (those dealing with child-custody and prisoner cases); (4) erroneously relied on components of *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990) that have not been adopted by any Connecticut court, and; (5) failed to note that the Petition made the implicit, if not explicit, allegation that the elephants have no "significant relationships," thus satisfying *Whitmore,* even if it did apply.

2. This Court should, on reargument, follow the procedure used by the lower court and approved *sub silentio* by the Supreme Court in *Lebron v. Commissioner of Correction*, 274 Conn. 507 (2005) in which that habeas court did not deprive Lebron of a hearing on his matter of first impression, but properly issued the writ according to Practice Book §23-24 then dismissed the case after the respondent filed an appropriate motion to dismiss and a hearing was conducted.

WHEREFORE, the undersigned hereby respectfully requests that the Court grant the NhRP's Motion to Reargue the Decision and grant the NhRP leave to amend the Petition as requested herein (to the extent that such amendment is deemed to be necessary for purposes of subject matter jurisdiction notwithstanding the NhRP's arguments to the contrary).

THE NONHUMAN RIGHTS PROJECT, INC.

By: _____

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CERTIFICATION OF SERVICE

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on January 16, 2018, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served, as follows:

There are no counsel or self-represented parties of record to be served.

David B. Zabel

EXHIBIT 1

DOCKET NO. LLI-CV-17-5009822-S	SUPERIOR COURT
NONHUMAN RIGHTS PROJECT, INC. EX REL. BEULAH, MINNIE, & KAREN	JUDICIAL DISTRUCT OF LITCHFIELD
V.	AT TORRINGTON
R.W. COMMERFORD & SONS, INC.	DECEMBER 26, 2017

OFFICE OF THE CLERK
SUPERIOR COURT
2017 DEC 26 AM 8 45
JUDICIAL DISTRICT OF
LITCHFIELD
STATE OF CONNECTICUT

MEMORANDUM OF DECISION

PETITION FOR WRIT OF HABEAS CORPUS (NO. 101)

The petitioner, Nonhuman Rights Project, Inc., seeks a writ of habeas corpus on behalf of three elephants, Beulah, Minnie, and Karen, which are owned by the respondents, R.W. Commerford & Sons, Inc. a/k/a Commerford Zoo, and William R. Commerford, as president of R.W. Commerford & Sons, Inc. The issue is whether the court should grant the petition for writ of habeas corpus because the elephants are "persons" entitled to liberty and equality for the purposes of habeas corpus. The court denies the petition on the ground that the court lacks subject matter jurisdiction and the petition is wholly frivolous on its face in legal terms.

The petitioner filed this petition; Docket Entry no. 101; on November 13, 2017, along with a supporting memorandum of law; Docket Entry no. 102; and thirteen exhibits consisting of expert affidavits and related material.[1] The petitioner's "mission is to change the common law status of at least some nonhuman animals from mere things, which lack the capacity to possess

[1] The petitioner's exhibits include: (1) affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.; (2) CD of exhibits to affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.; (3) affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.; (4) CD of exhibits to affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.; (5) affidavit of Joyce Poole, Ph.D.; (6) CD of exhibits to affidavit of Joyce Poole, Ph.D.; (7) affidavit of Karen McComb, Ph.D.; (8) CD of exhibits to affidavit of Karen McComb, Ph.D.; (9) affidavit of Cynthia Moss; (10) CD of exhibits to affidavit of Cynthia Moss; (11) affidavit of Ed Stewart; and (12) CD of exhibits to affidavit of Ed Stewart.

12/26/17 Copy of memo mailed to Atty. David B. Zabel, Cohen & Wolf PC, 1115 Broad St., Bridgeport, CT 06604; Atty. Steven M. Wise, 5195 NW 112th Terr., Coral Springs, FL 33076; [illegible] Decisions 231 Capitol Ave. Hfd. CT 06106. PL

any legal rights, to persons, who possess such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them. The [petitioner] does not seek to reform animal welfare legislation." Pet. Writ Habeas Corpus, ¶ 1, Docket Entry no. 101. "While this Petition challenges neither the conditions of their confinement nor Respondents' treatment of the elephants, but rather the fact of their detention itself, the deplorable conditions of Beulah's, Minnie's, and Karen's confinement underscore the need for immediate relief and the degree to which their bodily liberty and autonomy are impaired." Pet. Writ Habeas Corpus, ¶ 51, Docket Entry no. 101. "The Expert Affidavits submitted in support of this Petition set forth the facts that demonstrate that elephants such as Beulah, Minnie, and Karen are autonomous beings who live extraordinarily complex emotional, social, and intellectual lives and who possess those complex cognitive abilities sufficient for common law personhood and the common law right to bodily liberty protected by the common law of habeas corpus, as a matter of common law liberty, equality, or both." Pet. Writ Habeas Corpus, ¶ 10, Docket Entry no. 101.

I

DISCUSSION

The petition was filed pursuant to Practice Book § 23-24 and General Statutes § 52-466. See Pet. Writ Habeas Corpus, ¶ 7, Docket Entry no. 101. Practice Book § 23-24 provides: "(a) The judicial authority shall promptly[2] review any petition for a writ of habeas corpus to

[2] Although "promptly" is not defined for the purposes of Practice Book § 23-24, General Statutes § 52-470 (a) provides: "The court or judge hearing any habeas corpus shall proceed in a summary way to determine the facts and issues of the case, by hearing the testimony and arguments in the case, and shall inquire fully into the cause of imprisonment and thereupon dispose of the case as law and justice require." "The proceeding is 'summary' in the sense that it should be heard promptly, without continuances . . . but the use of the word also implies that the proceeding should be short, concise and conducted in a prompt and simple manner, without the

determine whether the writ should issue. The judicial authority shall issue the writ unless it appears that: (1) the court lacks jurisdiction; (2) the petition is wholly frivolous on its face; or (3) the relief sought is not available. (b) The judicial authority shall notify the petitioner if it declines to issue the writ pursuant to this rule."

PRACTICE BOOK § 23-24 (a) (1)

"THE COURT LACKS JURISDICTION"

"Subject matter jurisdiction for adjudicating habeas petitions is conferred on the Superior Court by General Statutes § 52-466, which gives it the authority to hear those petitions that allege illegal confinement or deprivation of liberty." (Internal quotation marks omitted.) *Small* v. *Commissioner of Correction*, 144 Conn. App. 749, 753, 75 A.3d 35 (2013). Section 52-466 provides in relevant part: "(a) (1) An application for a writ of habeas corpus, other than an application pursuant to subdivision (2) of this subsection, shall be made to the superior court, or to a judge thereof, for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of such person's liberty. (2) An application for a writ of habeas corpus claiming illegal confinement or deprivation of liberty, made by or on behalf of an inmate or prisoner confined in a correctional facility as a result of a conviction of a crime, shall be made to the superior court, or to a judge thereof, for the judicial district of Tolland."

The petitioner claims that the elephants are illegally confined in Goshen, Connecticut, which lies within the judicial district of this court, Litchfield. The petitioner therefore, has

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aid of a jury, or in other respects out of the regular course of the common law." *State* v. *Phidd*, 42 Conn. App. 17, 31, 681 A.2d 310 (1996) (discussing § 52-470 [a]), cert. denied, 238 Conn. 907, 679 A.2d 2 (1996), cert. denied, 520 U.S. 1108, 117 S. Ct. 1115, 137 L. Ed. 2d 315 (1997). Black's Law Dictionary (9th Ed. 2009) defines a summary proceeding as: "A nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner."

complied with § 52-466 (a) (1) in the sense that it requires application to be made in the superior court for the judicial district in which the person who's custody is in question is claimed to be illegally confined. Had the petition been "made . . . on behalf of an inmate . . . as a result of a conviction of a crime," the petitioner would have been required to make its application "to the superior court . . . for the judicial district of Tolland"; see § 52-466 (a) (2); the point being that the petitioner cannot rely on § 52-466 (a) (2).

Although for persons confined as a result of a criminal conviction, § 52-466 (a) (2) provides that an application for a writ of habeas corpus may be "made by or on behalf of an inmate," § 52-466 (a) (1) does *not* provide language regarding a petition being made "on behalf of" the person whose noncriminal custody is in question. In this sense, § 52-466 (a) (1) is inapposite to what the petitioner claims to be an equivalent statute in the state of New York, N.Y. C.P.L.R. 7002 (a), which governs by whom a petition for a writ of habeas corpus may be brought in that state, and provides: "A person illegally imprisoned *or otherwise restrained* in his liberty within the state, *or one acting on his behalf* . . . may petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance." (Emphasis added.) Unlike § 52-466, N.Y. C.P.L.R. 7002 (a) does not distinguish between a person whose confinement is a result of a criminal conviction, and one whose confinement is not. In *Nonhuman Rights Project, Inc. ex rel. Hercules & Leo* v. *Stanley*, 49 Misc. 3d 746, 755-56, 16 N.Y.S.3d 898 (N.Y. Sup. Ct. 2015), the New York trial court relied on this provision in determining that the petitioner had standing to seek a writ on behalf of two chimpanzees. "As [N.Y. C.P.L.R. 7002 (a)] places no restriction on who may bring a petition for habeas on behalf of the person restrained, and absent any authority for the proposition that the statutory phrase

'one acting on his behalf' is modified by a requirement for obtaining standing by a third party, petitioner has met its burden of demonstrating that it has standing." Id.

Although § 52-466 (a) (1) does not contain language regarding a petition made "on behalf of" someone else, this does not mean that one cannot make such a petition thereunder. On the contrary, "[i]t is well settled in Connecticut law that a petition for a writ of habeas corpus is a proper procedural vehicle with which to challenge the custody of a child." *Weidenbacher* v. *Duclos*, 234 Conn. 51, 60, 661 A.2d 988 (1995). The court must, however, first "determine whether the person seeking the equitable remedy of habeas corpus has standing to initiate the action. Standing focuses on whether a party is the proper party to request adjudication of the issues, rather than on the substantive rights of the aggrieved parties. . . . It is a basic principle of law that a plaintiff must have standing for the court to have jurisdiction. Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. . . . These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy . . . provides the requisite assurance of concrete adverseness and diligent advocacy." (Citations omitted; internal quotation marks omitted.) *Weidenbacher* v. *Duclos*, supra, 234 Conn. 61-62.

"This court, recognizing that courts must be ever mindful of what is in the best interests of a child and of who should be allowed to intrude in the life of a child, has placed limits on the class of persons who have standing to bring a habeas petition for custody. In *Doe* v. *Doe*, [163 Conn. 340, 345, 307 A.2d 166 (1972)], the court held that a person must allege parenthood or legal guardianship of a child born out of wedlock in order to have standing. In *Nye* v. *Marcus*, 198 Conn. 138, 143-44, 502 A.2d 869 (1985), where foster parents sought custody of their foster child, the court reiterated that 'only parents or legal guardians of a child have standing to seek habeas corpus relief,' and explained that 'parents' could include either biological or adoptive parents, but not foster parents." *Weidenbacher* v. *Duclos*, supra, 234 Conn. 62-63. In response to *Nye*, our legislature enacted subsection (f) to § 52-466, which provides: "A foster parent or an approved adoptive parent shall have standing to make application for a writ of habeas corpus regarding the custody of a child currently or recently in his care for a continuous period of not less than ninety days in the case of a child under three years of age at the time of such application and not less than one hundred eighty days in the case of any other child." See *Weidenbacher* v. *Duclos*, supra, 63 n.18. The petitioner in the present case naturally does not allege that it is a parent of any sort to the elephants. On the contrary, were the court to determine that the elephants are "persons," it is *the respondents* who are more akin to parents of Beulah, Minnie, and Karen. Of course, as there are avenues other than habeas for a stranger to ensure the removal of a child from an abusive home; see General Statutes § 17a-101g (governing removal of child from home due to abuse or neglect); there are also in the case of animal cruelty. See General Statutes §§ 22-329a (governing removal of animal from home for animal cruelty) and 53-247 (criminalizing animal cruelty, including "harass[ing] or worr[ying] any animal for the purpose of making it perform for amusement, diversion or exhibition").

Outside the context of child custody, a petitioner deemed to be a "next friend" of a detainee has standing to bring a petition for writ of habeas on the detainee's behalf. See *State* v. *Ross*, 272 Conn. 577, 597, 863 A.2d 654 (2005) (death penalty). "It is clear . . . that a person who seeks next friend status by the very nature of the proceeding will have no specific personal and legal interest in the matter." Id. "A next friend does not himself become a party to the habeas corpus action in which he participates, but simply pursues the cause on behalf of the detained person, who remains the real party in interest. Most important for present purposes, next friend standing is by no means granted automatically to whomever seeks to pursue an action on behalf of another. Decisions applying the habeas corpus statute have adhered to at least two firmly rooted prerequisites for next friend standing. First, a next friend must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action. . . . Second, the next friend must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate . . . and it has been further suggested that a next friend must have some significant relationship with the real party in interest." (Citations omitted; internal quotation marks omitted.) *Whitmore* v. *Arkansas*, 495 U.S. 149, 163-64, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990); see also *State* v. *Ross*, supra, 272 Conn. 599-611 (adopting *Whitmore*).

"It suffices . . . to conclude that no preexisting relationship whatever is insufficient." (Footnote omitted.) *Hamdi* v. *Rumsfeld*, 294 F.3d 598, 604 (4th Cir. 2002). "To begin with, this conclusion is truest to the language of *Whitmore* itself. The first prong of the next friend standing inquiry disposed of that case because the purported next friend had failed to show that the prisoner was unable to proceed on his own behalf. . . . Nevertheless, the Court thought it important to begin by stating that there are '*at least two* firmly rooted prerequisites for "next

friend" standing,' . . . thereby suggesting that there may be more. And after specifying the first two requirements, the Court went out of its way to observe that 'it has been further suggested that a "next friend" must have some significant relationship with the real party in interest.' . . . *Whitmore* is thus most faithfully understood as requiring a would-be next friend to have a significant relationship with the real party in interest."[3] (Citations omitted; emphasis in original.) *Hamdi* v. *Rumsfeld*, supra, 604. See also *Massie ex rel. Kroll* v. *Woodford*, 244 F.3d 1192, 1194 (9th Cir. 2001) (reading *Whitmore* as requiring that "the next friend ha[ve] some significant relationship with, and [be] truly dedicated to the best interests of, the petitioner"); id., 1199 n. 3; *T.W.* v. *Brophy*, 124 F.3d 893, 897 (7th Cir. 1997) ("[i]t follows, as the Court suggested in the *Whitmore* case, that not just anyone who expresses an interest in the subject matter of a suit is eligible to be the plaintiff's next friend - that he 'must have some significant relationship with the real party in interest'"); *Amerson* v. *Iowa*, 59 F.3d 92, 93 n. 3 (8th Cir. 1995) (under *Whitmore*, "next friend has burden to establish why real party in interest cannot prosecute habeas petition, that 'next friend' is 'truly dedicated' to best interests of person on whose behalf she litigates, and that she has some significant relationship with real party in interest").

In *Hamdi*, the detainee "was captured as an alleged enemy combatant during military operations in Afghanistan." *Hamdi* v. *Rumsfeld*, supra, 294 F.3d 600. In response, a public defender and a concerned citizen, both individually filed habeas petitions on the detainee's

[3] The court in *Hamdi* indicated that the situation might be different in the case of a detainee that has no significant relationships. *Hamdi* v. *Rumsfeld*, supra, 294 F.3d 606 ("We do not have here the situation of someone who has no significant relationships. If we did, this might be a different case.") The petitioner here makes no such allegation, and thus, the court shall not make the allegation for it. See *Moye* v. *Commissioner of Correction*, 316 Conn. 779, 789, 114 A.3d 925 (2015) ("a habeas petitioner is limited to the allegations in his petition"). The petitioner, instead, cited a number of cases for the broad proposition that a stranger has standing to bring a petition for writ of habeas corpus on behalf of another before this court; see Pet. Writ Habeas Corpus, ¶ 48, Docket Entry no. 101; which, after examination, proved to be an inaccurate understanding of those cases.

behalf. Id., 601. The court concluded that both petitioners lacked standing to pursue their petitions because neither had any preexisting relationship with the detainee. Id., 606 ("However well-intentioned [the concerned citizen]'s actions may be, his rationale for filing a habeas petition on [the detainee]'s behalf is not consonant with [the constitutional requirement of standing]. The Supreme Court [has] emphasized . . . that the 'generalized interest of all citizens in constitutional governance' does not confer . . . standing.")

"The burden is on the next friend clearly to establish the propriety of his status and thereby justify the jurisdiction of the court." (Internal quotation marks omitted.) *Whitmore* v. *Arkansas*, supra, 495 U.S. 164. The elephants, naturally, lack the competence and accessibility to bring an action for habeas on their own behalf. What is at issue here is whether the petitioner is "truly dedicated to the best interests of the [elephants]"; *State* v. *Ross*, supra, 272 Conn. 599; and whether it has "some significant relationship with the [elephants]." Id. Because the petitioner has failed to allege that it possesses *any* relationship with the elephants, the petitioner lacks standing. Thus the court need not reflect over the second prong. For the foregoing reasons, the court dismisses the petition for writ of habeas.

PRACTICE BOOK § 23-24 (a) (2)

"THE PETITION IS WHOLLY FRIVOLOUS ON ITS FACE"

Setting aside that the petitioner lacks standing to bring this petition on behalf of the elephants, § 52-466 (a) (1) provides for an application to "be made to the superior court . . . for the judicial district in which the *person* whose custody is in question is claimed to be illegally confined or deprived of such *person*'s liberty." (Emphasis added.) Section 52-466 (a) (1). This

language indicates that in order to invoke the writ of habeas corpus, an elephant must be considered, in the eyes of the law, a "person" for such purposes.[4]

"[T]he writ of habeas corpus [has] evolved as a remedy available to effect discharge from any confinement contrary to the [c]onstitution or fundamental law . . . . [I]n order to invoke successfully the jurisdiction of the habeas court, a petitioner must allege an interest sufficient to give rise to habeas relief. . . . In order to . . . qualify as a constitutionally protected liberty, [however] the interest must be one that is *assured* either by statute, judicial decree, or regulation. (Citations omitted; emphasis in original; internal quotation marks omitted.) *Fuller* v. *Commissioner of Correction*, 144 Conn. App. 375, 378, 71 A.3d 689, cert. denied, 310 Conn. 946, 80 A.3d 907 (2013). Thus, even if the petitioner here had standing, resolution in its favor would require this court to determine that the asserted liberty interests in its petition are assured by statute, constitution, or common law, i.e., that an elephant is a person for the purposes of this land's laws that protect the liberty and equality interests of its persons.

"A habeas appeal . . . is not . . . frivolous . . . if the appellant can show: that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." (Citation omitted; internal quotation marks omitted.) *Fernandez* v. *Commissioner of Correction*, 125 Conn. App. 220, 223-24, 7 A.3d 432 (2010), cert. denied, 300 Conn. 924, 15 A.3d 630 (2011). There, "[i]n his petition for a writ of habeas corpus, the petitioner alleged that he is a 'foreign national,' who is being treated as a 'slave' and a 'prisoner of war' in that he is being held at the 'plantation of MacDougall–Walker' in violation of his constitutional rights and 'Geneva Convention Treaties,

[4] The petitioner agrees that "[o]nly a 'person' may invoke a common law writ of habeas corpus and the inclusion of elephants as 'persons' for that purpose is for this Court to decide." (Pet. Writ Habeas Corpus, ¶ 22, Docket Entry no. 101).

Convention Against Torture, European Convention on Human Rights and U.S. Human Rights Acts.' He asserted that his status as a 'slave' and 'prisoner of war' constitutes both a deprivation of due process and cruel and unusual punishment, and that he is being improperly held as an 'enemy combatant' as a result of 'Post Sept[ember] 11' policies of the government. Because the record amply reveals that the petitioner is not a 'prisoner of war' and is not 'enslaved' but, rather, is incarcerated as a result of convictions for crimes of which he was found guilty, we conclude that the court did not abuse its discretion in determining that the petition was frivolous and declining to issue a writ of habeas corpus." Id., 224 (petitioner had been convicted of five counts for sales of narcotics).

In *Henry E.S., Sr.* v. *Hamilton*, Superior Court, judicial district of Stamford-Norwalk, Docket No. F02-CP-07-003237-A (February 28, 2008, *Maronich, J.*), Judge Maronich discussed the meaning of "wholly frivolous" under Practice Book § 23-24 (a) (2)[5] relative to the requirement for habeas in family matters, which requires that the petition be "meritorious." See Practice Book § 25-41 (a) (2).[6] "Meritorious is defined as 'meriting esteem or reward . . . meriting a legal victory; having legal worth.' Black's Law Dictionary (8th Ed. 2004). Conversely, a frivolous claim is defined as being '[a] claim that has no legal basis or merit . . . ." Black's Law Dictionary (8th Ed. 2004). One must conclude that the Practice Book § 25-41 (a) (2) provision that the petition be 'meritorious' is the higher standard. The requirement of § 23-

[5] Practice Book § 23-24 (a) (2) provides in relevant part: "The judicial authority shall issue the writ unless it appears that . . . the petition is wholly frivolous on its face . . . ."
[6] Practice Book § 25-41 provides: "(a) The judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ if it appears that: (1) the court has jurisdiction; (2) the petition is meritorious; and (3) another proceeding is not more appropriate. (b) The judicial authority shall notify the petitioner if it declines to issue the writ pursuant to this section."

24 (a) (2) is that of a possibility of victory, while the requirement of § 25-41 (a) (2) is that of a probability of victory." *Henry E.S., Sr.* v. *Hamilton*, supra.

Habeas corpus has been called "the great writ of liberty." *Lozada* v. *Warden*, 223 Conn. 834, 840, 613 A.2d 818 (1992). Does the petitioner's theory that an elephant is a legal person entitled to those same liberties extended to you and I have a possibility or probability of victory? The petitioner is unable to point to any authority which has held so, but instead relies on basic *human* rights of freedom and equality, and points to expert averments of similarities between elephants and human beings as evidence that this court must forge new law. Based on the law as it stands today, this court cannot so find.

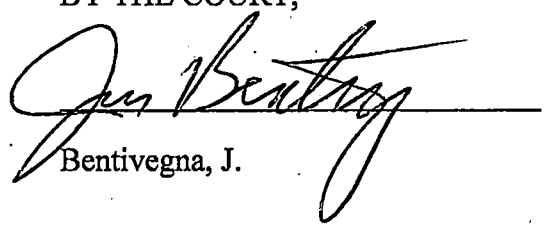
II

CONCLUSION

For the foregoing reasons, the court dismisses the petition for writ of habeas, and points the petitioner to this state's laws prohibiting cruelty to animals; see §§ 22-329a and 53-247; as a potential alternative method of ensuring the well-being of any animal.

SO ORDERED.

BY THE COURT,



Bentivegna, J.

EXHIBIT 2

DOCKET NO. LLI-CV-17-5009822-S	:	SUPERIOR COURT
In the matter of a Petition for a Common Law Writ of Habeas Corpus,	:	JUDICIAL DISTRICT OF LITCHFIELD
NONHUMAN RIGHTS PROJECT, INC., on behalf of BEULAH, MINNIE, and KAREN, Petitioner,	:	AT TORRINGTON
v.	:	
R.W. COMMERFORD & SONS, INC. a/k/a COMMERFORD ZOO, and WILLIAM R. COMMERFORD, as President of R.W. COMMERFORD & SONS, INC., Respondents.	:	January 16, 2018

FIRST AMENDED VERIFIED PETITION FOR A COMMON LAW WRIT OF HABEAS CORPUS

PARTIES

1. Petitioner the Nonhuman Rights Project, Inc. ("NhRP" or "Petitioner") is a not-for-profit corporation organized pursuant to the laws of the State of Massachusetts with a principal address at 5195 NW 112th Terrace, Coral Springs, FL 33076. Its mission is "to change the common law status of at least some nonhuman animals from mere 'things,' which lack the capacity to possess any legal rights, to 'persons,' who possess such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them." The NhRP does not seek to reform animal welfare legislation.

2. Respondent R.W. Commerford & Sons, Inc., also known as the Commerford Zoo, is a Connecticut corporation with a business address at 48 Torrington Road, Goshen, CT 06756.

3. Respondent William R. Commerford is the President of R.W. Commerford & Sons, Inc., with a residential address at 64 Crossman Road, Goshen, CT 06752.

4. Karen is a female African elephant in her mid-thirties. She was captured in the wild around 1983. Respondents have owned Karen since 1984. Her last known address is 48 Torrington Rd, Goshen, CT 06756.

5. Beulah is a female Asian elephant in her mid-forties. She was captured in the wild in 1967 in Myanmar. Upon information and belief, Respondents have owned Beulah since 1973. Her last known address is 48 Torrington Rd, Goshen, CT 06756.

6. Minnie is a female Asian elephant. Respondents have owned Minnie since at least 1989. Her last known address is 48 Torrington Rd, Goshen, CT 06756.

INTRODUCTION

7. On behalf of Beulah, Minnie, and Karen, the NhRP submits this Verified Petition for a Common Law Writ of Habeas Corpus (the "Petition") and states: This Petition is filed pursuant to Connecticut Practice Book ("Practice Book") § 23-21 *et seq.* as well as Conn. Gen. Stat. § 52-466 *et seq.*, and requests that this Court: (a) issue the requested writ of habeas corpus and require Respondents to file a return to the Petition pursuant to Connecticut Practice Book § 23-21 *et seq.* including, *inter alia*, setting forth the facts claimed to justify the denial of liberty, detention and imprisonment of Beulah, Minnie, and Karen, three illegally confined elephants in Respondents' custody; and (b) order the immediate release of Beulah, Minnie, and Karen from such illegal confinement.

8. This Petition is brought under the common law of Connecticut, which is broad, flexible, and adaptable. *State v. Brocuglio*, 264 Conn. 778, 793 (2003); *State v. Guess*, 244 Conn. 761, 778 (1998); *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184, 196 (1996); *Dacey v. Connecticut Bar Association*, 184 Conn. 21, 25-26 (1981).

9. Connecticut courts have long recognized the common law writ of habeas corpus. *Hudson v. Groothoff*, 10 Conn. Supp. 275, 278 (Conn. C.P. 1942). This Petition is filed as an application in good faith for an extension of the Connecticut common law of habeas corpus to Beulah, Minnie, and Karen, who are being imprisoned solely because they are legal things rather than the legal persons they should be for the purpose of common law habeas corpus.

10. The Expert Affidavits attached to this Petition set forth the facts that demonstrate that elephants such as Beulah, Minnie, and Karen are autonomous beings who live extraordinarily complex emotional, social, and intellectual lives and who possess those complex cognitive abilities sufficient for common law personhood and the common law right to bodily liberty protected by the common law of habeas corpus, as a matter of common law liberty, equality, or both.

11. As this action is instituted *ex parte* pursuant to Practice Book § 23-23, Respondents have not been served with this Petition. The NhRP will promptly serve the Petition upon Respondents upon the issuance of the writ or as otherwise directed by the Court.

12. The NhRP is entitled, as of right, to the issuance of the writ. Practice Book § 23-24 provides that the court: "shall issue the writ unless it appears that: (1.) the court lacks jurisdiction; (2.) the petition is wholly frivolous on its face; or (3.) the relief sought is not available."

13. There is no question this court has jurisdiction and that relief is available, *infra* at Paragraphs 46-48.

14. The Petition is also not "wholly frivolous on its face," a requirement satisfied by a mere "possibility of victory." *Henry E.S., Sr. v. Hamilton*, 2008 WL 1001969, at *5 (Conn. Super. Ct. Feb. 28, 2008). *See The Nonhuman Rights Project, Inc. ex rel. Hercules & Leo v. Stanley*, 16 N.Y.S.3d 898, 917 (N.Y. Sup. Ct. 2015) ("Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed.").

15. While this Petition raises a novel issue of personhood in Connecticut common law jurisprudence, it is far from "wholly frivolous on its face." To the contrary, it is powerfully meritorious and the writ it seeks has been issued on behalf of nonhuman animals at least four times in other jurisdictions.

16. An order to show cause, which is the equivalent of the writ pursuant to New York Civil Practice Law and Rules ("CPLR") Article 70, was issued once on behalf of two chimpanzees in New York. *Id.* at 917.

17. The writ was also issued once on behalf of a chimpanzee named Cecilia in Mendoza, Argentina, The Third Court of Guarantees, Mendoza, Argentina, in *In re Cecilia*, File No. P-72.254/15 at 22-23 (November 3, 2016), which declared a chimpanzee to be a "non-human person," then ordered her immediate release from imprisonment in a zoo to a sanctuary in Brazil.

18. The writ was also issued once on behalf of an orangutan named Sandra in Buenos Aires, Argentina) *Asociacion de Funcionarios y Abogados por los Derechos de los Animales y Otros contra GCBA, Sobre Amparo* (*Association of Officials and Attorneys for the Rights of Animals and Others v. GCBA, on Amparo*), EXPTE. A2174-2015 (October 21, 2015).

19. A writ was also issued once on behalf of a bear named Chucho in Colombia, though that ruling was overruled by a higher court and further appeal is pending. *Luis Domingo Gomez Maldonado contra Corporacion Autonoma Regional de Caldas Corpocaldas*, AHC4806-2017 (July 26, 2017).

20. The cases that the NhRP filed on behalf of chimpanzees in New York are being noted by the courts of other states as well. For instance, in *State v. Fessenden*, 355 Ore. 759, 769-70 (2014), the Supreme Court of Oregon referenced the "ongoing litigation" brought by the NhRP which "seeks to establish legal personhood for chimpanzees" and wrote: "As we continue to learn more about the interrelated nature of all life, the day may come when humans perceive less separation between themselves and other living beings than the law now reflects. However, we do not need a mirror to the past or a telescope to the future to recognize that the legal status of animals has changed and is changing still[.]"

21. The NhRP's litigation and arguments over whether a nonhuman animal can be a legal person for habeas corpus or any other purpose has been covered by thousands of media outlets around the world[1] and has captured the interest of the world's leading legal scholars and

[1] Since December 2013, the NhRP has brought numerous habeas corpus petitions on behalf of captive chimpanzees in New York State, and these suits have been the subject of thousands of legal commentaries, national and international news articles, radio and television programs, and podcasts. For example, there were at least 2,095 articles published on the issue of whether a

the most selective academic publications,[2] while catalyzing the development of a whole field of academic research and debate, generating extensive discussion in dozens of law review articles, multiple academic books, several science journals, and a variety of legal industry publications.[3]

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chimpanzee could have the right to a common law writ of habeas corpus in the six months between March and September 2017 alone. These outlets include, in the US, *NBC News*, *Wall Street Journal*, *Washington Post*, *Associated Press*, *Law360*, *Gizmodo*, *Fox News*, and *Salon*, and around the world, the *Sydney Morning Herald*, *Kremlin Express*, *Yahoo Japan*, Mexico's *Entrelíneas*, and India's *Economic Times*. The collective potential reach of this media coverage is approximately 1.4 billion people, according to the media monitoring service Meltwater. A spreadsheet containing the full list of 2,095 media items covering this case is available for download at: https://www.nonhumanrights.org/content/uploads/Media-Coverage-Tommy-Kiko-Appellate-Hearing-Raw-Data.csv (last accessed November 10, 2017).

[2] *See* Richard A. Epstein, *Animals as Objects of Subjects of Rights*, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); Richard A. Posner, *Animal Rights: Legal Philosophical, and Pragmatic Perspectives,* ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); *VI. Aesthetic Injuries, Animal Rights, and Anthropomorphism*, 122 HARV. L. REV. 1204, 1216 (2009); Jeffrey L. Amestoy, *Uncommon Humanity: Reflections on Judging in A Post-Human Era*, 78 N.Y.U. L. REV. 1581 (2003); Richard A. Epstein, *Drawing the Line: Science and the Case for Animal Rights*, 46 PERSPECTIVES IN BIOLOGY AND MEDICINE 469 (2003); Craig Ewasiuk, *Escape Routes: The Possibility of Habeas Corpus Protection for Animals Under Modern Social Contract Theory*, 48 COLUM. HUM. RTS. L. REV. 69 (2017); Adam Kolber, *Standing Upright: The Moral and Legal Standing of Humans and Other Apes*, 54 STAN. L. REV. 163 (2001); Will Kymlicka, *Social Membership: Animal Law beyond the Property/Personhood Impasse*, 40 DALHOUSIE LAW JOURNAL 123 (2017); Kenan Malik, *Rights and Wrongs*, 406 NATURE 675 (2000); Greg Miller, *A Road Map for Animal Rights*, 332 SCIENCE 30 (2011); Greg Miller, *The Rise of Animal Law: Will Growing Interest in How the Legal System Deals with Animals Ultimately Lead to Changes for Researchers?* 332 SCIENCE 28 (2011); Martha C. Nussbaum, *Working with and for Animals: Getting the Theoretical Framework Right*, 94 DENV. L. REV. 609, 615 (2017); Martha C. Nussbaum, *Animal Rights: The Need for A Theoretical Basis*, 114 HARV. L. REV. 1506, 1541 (2001); Richard A. Posner, *Animal Rights*, 110 YALE L.J. 527, 541 (2000); Diana Reiss, *The Question of Animal Rights*, 418 NATURE 369 (2002); Cass R. Sunstein, *The Rights of Animals*, 70 U. CHI. L. REV. 387, 401 (2003); Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. REV. 1333 (2000); Laurence H. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Work of Steven M. Wise*, 7 ANIMAL L. 1 (2001).

[3] Richard A. Epstein, *Animals as Objects of Subjects of Rights*, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); Richard A. Posner, *Animal Rights: Legal Philosophical, and Pragmatic Perspectives,* ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); Justin F. Marceau and Steven M. Wise, "Exonerating the Innocent: Habeas for Nonhuman Animals," WRONGFUL CONVICTIONS AND THE DNA REVOLUTION - TWENTY-FIVE YEARS OF FREEING THE INNOCENT (Daniel S. Medwed, ed. Cambridge University Press 2017); Steven M.

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22. Who is a "person" is the most important individual question that can come before a court, as the term person identifies those entities capable of possessing one or more legal rights. Only a "person" may invoke a common law writ of habeas corpus and the inclusion of elephants as "persons" for that purpose is for this Court to decide.

23. As the NhRP is not seeking any right other than the common law right to bodily liberty, this Court need not determine whether Beulah, Minnie, and Karen are "persons" for any purpose other than the Connecticut common law of habeas corpus.

24. "Person" has never been a synonym for "human being;" rather it designates Western law's most fundamental category by identifying those capable of possessing a legal right. Personhood determines who counts, who lives, who dies, who is enslaved, and who is free.

25. The procedures for utilizing the common law writ of habeas corpus are set forth in Title 52, C.G.S.A. §§ 52-466 - 52-470, and in the Practice Book §§ 23-21 - 23-40 and do not affect the substantive entitlement to the writ. "Such statutes have not been intended to detract from its force, but rather to add to its efficiency . . . the statutes have been intended to prevent the writ being rendered inoperative." *Hudson v. Groothof,* 10 Conn. Supp. 275, 278-79 (1942). *See Kaddah v. Comm'r of Correction*, 324 Conn. 548, 565-66 (2017).

26. The issuance of the writ by this Court harmonizes with the procedure historically used by courts faced with habeas petitions that turned on novel (at the time) personhood claims.

27. In *Somerset v. Stewart*, 1 Lofft 1, 98 Eng. Rep. 499 (K.B. 1772), which was incorporated into Connecticut common law, *State v. Courchesne*, 296 Conn. 622, 680 (2010),

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Reconceptualizing the Legal Person," LEGAL PERSONHOOD: ANIMALS, ARTIFICIAL INTELLIGENCE AND THE UNBORN (Tomasz Pietrzykowski and Visa Kurki, eds., Springer, 2017); Brandon Keim, *The Eye of the Sandpiper: Stories from the Living World*, Comstock (2017), pp. 132-150; Charles Seibert, "Should a Chimp Be Able to Sue Its Owner?", *New York Times Magazine* (April 23, 2014), *available at:* https://www.nytimes.com/2014/04/27/magazine/the-rights-of-man-and-beast.html (last accessed October 16, 2017); Astra Taylor, "Who Speaks for the Trees?", *The Baffler*, (Sept. 7, 2016), *available at*: thebaffler.com/salvos/speaks-trees-astra-taylor (last accessed October 16, 2017); Sindhu Sundar, "Primal Rights: One Attorney's Quest for Chimpanzee Personhood.", Law360 (March 10, 2017), *available at*: https://www.law360.com/articles/900753 (last accessed October 16, 2017).

Lord Mansfield for the first time in history issued the writ that required the respondent to provide a legally sufficient reason for detaining a black slave.

28. In *Arabas v. Ivers*, 1 Root 92 (Conn. Super. 1784), the court issued a writ of habeas corpus upon the petition of a slave who claimed he was being unlawfully detained.

29. In *United States ex rel. Standing Bear v. Crook*, 25 F. Cas. 695 (C.C. Neb. 1879), the court rejected the United States Attorney's argument that no Native American could ever be a "person" able to obtain a writ of habeas corpus and issued a writ of habeas corpus on behalf of the Ponca Chief, Standing Bear.

30. In *Stanley*, 16 N.Y.S.3d at 908, the court rejected respondents' argument that the issuance of the writ "inappropriately requires an initial, substantive finding that chimpanzees are not entitled to legal personhood for the purpose of obtaining a writ of habeas corpus."

31. This Court's determination of personhood will turn on whether elephants, as autonomous beings, should be recognized as "persons" pursuant to a Connecticut common law that keeps abreast of evolving standards of justice, morality, experience, and scientific discovery.

32. Autonomy is the supreme value at the heart of the Connecticut common law of *liberty*. Trumping even the State's interest in life, it mandates the protection of the fundamental interest of autonomous beings to their bodily liberty through the common law of habeas corpus.

33. Connecticut common law equality forbids discrimination based upon unreasonable means or illegitimate ends. Beulah's, Minnie's, and Karen's common law classification as rightless "things" rather than "persons" violates equality as it furthers the illegitimate end of depriving autonomous beings of their bodily liberty.

34. Connecticut common law equality further forbids the deprivation of fundamental rights based upon a single characteristic or trait. Classifying Beulah, Minnie, and Karen as "things" solely because they are not human, thereby denying them the capacity for any legal right, is so inequitable that it violates basic common law equality.

35. This Court must hold the required hearing and recognize Beulah's, Minnie's, and Karen's common law personhood and right to bodily liberty then order their immediate release from their unlawful confinement.

36. For the safety of the elephants as well as the public, this Court should consider releasing Beulah, Minnie, and Karen to the Performing Animal Welfare Society Sanctuary ("PAWS") near Sacramento, California, which has agreed to provide permanent sanctuary for them.[4]

37. At PAWS, Beulah, Minnie, and Karen, along with other elephants, will flourish in an environment that respects their autonomy to the greatest degree possible, as close to their native Asia and Africa as may be found in North America.

38. This habeas corpus case is not an "animal protection" or "animal welfare" case, any more than a habeas corpus case brought on behalf of a detained human would be a "human protection" or "human welfare" case. *See People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 149 (3d Dept. 2014), *leave to appeal den.*, 26 N.Y.3d 902 (2015); *Stanley*, 16 N.Y.S.3d at 901.

39. The issue before this Court, as it is in any habeas corpus action, is whether Beulah, Minnie, and Karen may be legally detained at all.

40. Even if Respondents were violating animal welfare statutes, habeas corpus remains available, as alternative remedies do not alter one's ability to bring the writ. *In re Jonathan M.*, 255 Conn. 208, 221 (2001); *Weidenbacher v. Duclos*, 234 Conn. 51, 64-65 (1995).

41. The determination of legal personhood is a matter for common law adjudication and is not a biological question. *Craig v. Driscoll*, 262 Conn. 312, 330 n.15 (2003); *Byrn v. New York City Health & Hosps. Corp.*, 31 N.Y.2d 194, 201-202 (1972).

42. As public policy determines personhood, and as the writ of habeas corpus in Connecticut is solely a common law remedy, it is for the courts *alone* to decide whether Beulah,

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[4] Attached hereto is an affidavit from Ed Stewart, Co-Founder and President of PAWS. Affidavit of Ed Stewart ["Stewart Aff."] ¶2.

Minnie, and Karen are "persons" for purposes of the common law of habeas corpus. *E.g.*, *Craig*, 262 Conn. at 330 n.15.

43. Beulah's, Minnie's, and Karen's imprisonment and deprivation of bodily liberty by Respondents is unlawful under the common law, pursuant to which all persons are presumed free absent positive law. *Somerset, supra.*

44. The fact this Petition does not seek the immediate production of Beulah, Minnie, and Karen to the Court or placement in a temporary home and does not then seek their ultimate release into the wild or onto the streets of Connecticut but rather into the care of a sanctuary does not preclude them from habeas corpus relief. *See Dart v. Mecum*, 19 Conn. Supp. 428, 434 (Super. Ct. 1955); *Buster v. Bonzagni*, 1990 WL 272742, at *2 (Conn. Super. Ct. Apr. 5, 1990) *aff'd sub Comm'r of Correction*, 26 Conn. App. 48 (1991).

45. Beulah, Minnie and Karen are beneficiaries of an *inter vivos* trust created by the NhRP pursuant to C.G.S.A. § 45a-489a for the purpose of their care and maintenance once they are released from Respondents' unlawful custody as directed by this Court and are therefore already "persons" for that purpose as only "persons" may be trust beneficiaries. RESTATEMENT (THIRD) OF TRUSTS § 43 *Persons Who May Be Beneficiaries* (2003); RESTATEMENT (THIRD) OF TRUSTS § 47 (Tentative Draft No. 2, approved 1999); RESTATEMENT (SECOND) OF TRUSTS § 124 (1959); Kate McEvoy, "§ 2:16. Pet trusts," 20 CONN. PRAC., CONN. ELDER LAW § 2:16 (2014 ed.). A true and correct copy of the trust is attached hereto as **Exhibit 1.**

JURISDICTION AND STANDING

46. This Court has jurisdiction over Beulah, Minnie, and Karen, as they are owned by, and in the custody of, the Connecticut Respondents upon whom service of process will be delivered in Connecticut, even if one or more elephants are temporarily out of state. *See* C.G.S.A. § 52–466(a).

47. Connecticut courts have jurisdiction to issue writs of habeas corpus even on behalf of petitioners located outside of Connecticut so long as they remain in the *custody* of a Connecticut respondent. *See Wyman v. Commissioner of Correction,* 86 Conn. App. 98, 101

(2004); *Hickey v. Comm'r of Correction*, 82 Conn. App. 25, 31-32, 34, 36 (2004), *app. dism.*, 274 Conn. 553 (2005). *See also Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 495 (1973); *Peyton v. Rowe*, 391 U.S. 54, 58 (1968); Paul D. Halliday, *Habeas Corpus: From England to Empire* 42–43 (2010).

48. The NhRP has standing to bring this Petition both under the common law and the governing procedural statutes. Petitions may be brought by the corpus, the prisoner himself, or by another on behalf of the detained person even if she and the detainee are strangers. *E.g.*, *Jackson v. Bulloch*, 12 Conn. 38 (1837); *Rodd v. Norwich State Hosp.*, 5 Conn. Supp. 360, 360 (Super. Ct. 1937); *Moye v. Warden*, 2009 WL 3839292, at *2 n.1 (Conn. Super. 2009); *Suarez v. Warden-Chesire*, 2001 WL 291057, at *2 (Conn. Super. 2001); *Lemmon v. People*, 20 N.Y. 562 (1860); *Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery*, 152 A.D.3d 73, 75 n.1 (1st Dept. 2017) ("*Tommy*"); *Lavery*, 124 A.D.3d at 150-53; *Stanley*, 16 N.Y.S.3d at 905; *Somerset*, Lofft 1, 98 Eng. Rep. 499.

49. Connecticut procedural statutes continue the common law tradition of permitting unrelated third parties to file habeas petitions. Conn. Practice Book § 23-40(a); C.G.S.A. § 52-466(a). Section 52-466(a)(2) does not concern *who* may bring a habeas corpus petition, but merely confers subject matter jurisdiction on a court to hear a habeas corpus case when an imprisoned person is in "custody" and determines venue for the situation when an inmate is in "custody" seeks habeas corpus. Connecticut has only adopted the first prong of the *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990)[5] test, pertaining to incapacity to sue, as part of its next

[5] *Whitmore* established two prongs for next friend standing for purposes of federal jurisprudence under Article III. First, the next friend must provide "an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action." *Id.* at 163 (citations omitted). Second, the next friend must demonstrate that it is "truly dedicated to the best interests of the person on whose behalf [it] seeks to litigate." *Id.* The Court noted in *dicta* that "it has been further suggested that a 'next friend' must have some significant relationship with the real party in interest," but said nothing further on that issue. *Id.* at 163-64.

friend standing jurisprudence.[6] Nonetheless, the NhRP satisfies the entire *Whitmore* test. The NhRP satisfies the first *Whitmore* prong, as Beulah, Minnie, and Karen, as elephants, lack the capacity to sue. The NhRP also satisfies the second prong, as it is undeniably dedicated to the best interests of the elephants (*supra* at ¶¶ 1, 36, 37, 45). Finally, many federal courts have properly recognized that *Whitmore*'s language regarding the "significant relationship" is *dicta* and not a requirement for next friend standing, even under federal jurisprudence, and no Connecticut court has adopted this *dicta*[7]. However, even federal courts that have adopted the significant-relationship *dicta* as a standing requirement (either as a third *Whitmore* prong or as a component of the second prong), have held that a significant relationship is not necessary where the real party in interest has no significant relationships.[8] Beulah, Minnie, and Karen have no, and can have no, significant relationships with any "person" willing, able, and competent to serve as their next friend in a habeas corpus action, particularly where, as here, Respondents have owned, controlled, and economically exploited them for decades, making their interests powerfully adverse to the elephants.

STATEMENT PURSUANT TO PRACTICE BOOK § 23-22

50. Upon the NhRP's best knowledge and belief, the cause or pretense of Beulah's, Minnie's, and Karen's imprisonment is that they are owned by, and being used for, entertainment

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[6] *See State v. Ross*, 272 Conn. 577, 596-611 (2005); *In re Ross*, 272 Conn. 653, 655-56 (2005); *Carrubba v. Moskowitz*, 274 Conn. 533, 549 (2005); *Phoebe G. v. Solnit*, 252 Conn. 68, 71 (1999).

[7] *See Sam M. v. Carcieri*, 608 F.3d 77, 90-91 (1st Cir. 2010); *Padilla v. Rumsfeld*, 352 F.3d 695, 703 n.7 (2d Cir. 2003), *rev'd and remanded on other grounds*, 542 U.S. 426 (2004); *Sanchez-Velasco v. Secretary of Dept. of Corrections*, 287 F.3d 1015, 1026 (11th Cir. 2002); *Coal. of Clergy v. Bush*, 310 F.3d 1153, 1165-66 (9th Cir. 2002) (Berzon J., concurring); *ACLU Found. v. Mattis*, 2017 WL6558503 at *4 (D.D.C. December 23, 2017); *Nichols v. Nichols*, 2011WL2470135, at *4 (D. Or. 2011); *Does v. Bush*, 2006 U.S. Dist. LEXIS 79175, 2006 WL 3096685, at *6 (D.D.C. Oct. 31, 2006).

[8] *See Hamdi v. Rumsfeld*, 294 F.3d 598, 604 n.3 (4th Cir. 2002) ("we reserve the case of someone who possesses no significant relationships at all."); *Coal. Of Clergy, Lawyers & Professors*, 310 F.3d 1153, 1162 (9th Cir. 2002) ("[n]ot all detainees may have a relative, friend, or even a diplomatic delegation able or willing to act on their behalf.").

and profit by the Respondents in such a manner that they are deprived of their autonomy and consequently their ability to choose how to live their emotionally, socially, and cognitively complex lives. They are trucked from place-to-place. They are forced to give public performances, do tricks, and give rides to members of the public at such places as county fairs under fear of being struck with bullhooks. Upon information and belief, they are rented out for private use in weddings and other private events. One elephant was forced into the Cathedral of St. John the Divine in New York City. The Respondents have been frequently cited for violations of the Federal Animal Welfare Act for their treatment of the elephants in their custody.

51. While this Petition challenges neither the conditions of their confinement nor Respondents' treatment of the elephants, but rather the fact of their detention itself, the deplorable conditions of Beulah's, Minnie's, and Karen's confinement underscore the need for immediate relief and the degree to which their bodily liberty and autonomy are impaired.

52. No previous application for the writ of habeas corpus asked herein has been made.

53. No appeal has been taken from any order by virtue of which Beulah, Minnie, and Karen are detained.

COUNT 1

54. Attached are the following affidavits, including four affidavits from five of the world's most renowned experts on the cognitive abilities of elephants ("Expert Affidavits"). These affidavits include:

(a) Affidavit of Kevin R. Schneider, Esq.

(b) Joint Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.

(c) Affidavit of Joyce Poole, Ph.D.

(d) Affidavit of Karen McComb, Ph.D.

(e) Affidavit of Cynthia Moss

(f) Affidavit of Ed Stewart

55. Expert Affidavits (b) through (e) demonstrate that elephants such as Beulah, Minnie, and Karen possess complex cognitive abilities sufficient for common law personhood

and the common law right to bodily liberty, as a matter of common law liberty, equality, or both under Connecticut common law. These include: autonomy; empathy; self-awareness; self-determination; theory of mind (awareness others have minds); insight; working memory, and an extensive long-term memory that allows them to accumulate social knowledge; the ability to act intentionally and in a goal-oriented manner, and to detect animacy and goal directedness in others; to understand the physical competence and emotional state of others; imitate, including vocal imitation; point and understand pointing; engage in true teaching (taking the pupil's lack of knowledge into account and actively showing them what to do); cooperate and build coalitions; cooperative problem-solving, innovative problem-solving, and behavioral flexibility; understand causation; intentional communication, including vocalizations to share knowledge and information with others in a manner similar to humans; ostensive behavior that emphasizes the importance of a particular communication; wide variety of gestures, signals, and postures; use of specific calls and gestures to plan and discuss a course of action, adjust their plan according to their assessment of risk, and execute the plan in a coordinated manner; complex learning and categorization abilities, and; an awareness of and response to death, including grieving behaviors.

56. African and Asian elephants share numerous complex cognitive abilities with humans, such as self-awareness, empathy, awareness of death, intentional communication, learning, memory, and categorization abilities.[9]

57. Many of these capacities have been considered — erroneously — as uniquely human; each is a component of autonomy.[10] African and Asian elephants are autonomous, as they exhibit "self-determined behaviour that is based on freedom of choice. As a psychological

[9] Joint Affidavit of Lucy Bates and Richard M. Byrne ["Bates & Byrne Aff."] ¶37; Affidavit of Karen McComb ["McComb Aff."] ¶31; Affidavit of Joyce Poole ["Poole Aff."] ¶29; Affidavit of Cynthia Moss ["Moss Aff."] ¶25.
[10] Bates & Byrne Aff. ¶37; McComb Aff. ¶31; Poole Aff. ¶29; Moss Aff. ¶25.

concept it implies that the individual is directing their behaviour based on some non-observable, internal cognitive process, rather than simply responding reflexively."[11]

58. Elephants possess the largest absolute brain of any land animal.[12] Even relative to their body sizes, elephant brains are large.[13]

59. An encephalization quotient ("EQ") of 1.0 means a brain is exactly the size expected for that body size; values greater than 1.0 indicate a larger brain than expected for that body size. (*Id.*).[14] Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species).[15] This means an elephant's brain can be more than twice as large as is expected for an animal of its size.[16] These EQ values are similar to those of the great apes, with whom elephants have not shared a common ancestor for almost 100 million years.[17]

60. A large brain allows greater cognitive skill and behavioral flexibility.[18] Typically, mammals are born with brains weighing up to 90% of the adult weight.[19] This figure drops to about 50% for chimpanzees.[20] At birth, human brains weigh only about 27% of the adult brain weight and increase in size over a prolonged childhood period.[21] This lengthy period of brain development (termed "developmental delay") is a key feature of human brain evolution.[22] It provides a longer period in which the brain may be shaped by experience and learning, and plays a role in the emergence of complex cognitive abilities such as self-awareness, creativity, forward

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[11] Bates & Byrne Aff. ¶30, ¶60; McComb Aff. ¶24, ¶31, ¶54; Poole Aff. ¶22, ¶53; Moss Aff. ¶18; ¶48.
[12] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[13] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[14] Encephalization quotients (EQ) are a standardized measure of brain size relative to body size, and illustrate by how much a species' brain size deviates from that expected for its body size. Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[15] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[16] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[17] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[18] Bates & Byrne Aff. ¶¶32-33; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[19] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[20] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[21] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[22] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.

planning, decision making and social interaction.[23] Elephant brains at birth weigh only about 35% of their adult weight, and elephants accordingly undergo a similarly protracted period of growth, development and learning.[24] This similar developmental delay in the elephant brain is likewise associated with the emergence of analogous cognitive abilities.[25]

61. Physical similarities between human and elephant brains occur in areas that link to the capacities necessary for autonomy and self-awareness.[26] Elephant and human brains share deep and complex foldings of the cerebral cortex, large parietal and temporal lobes, and a large cerebellum.[27] The temporal and parietal lobes of the cerebral cortex manage communication, perception, and recognition and comprehension of physical actions, while the cerebellum is involved in planning, empathy, and predicting and understanding the actions of others.[28]

62. Elephant brains hold nearly as many cortical neurons as do human brains, and a much greater number than do chimpanzees or bottlenose dolphins.[29] Elephants' pyramidal neurons — the class of neurons found in the cerebral cortex, particularly the pre-frontal cortex, which is the brain area that controls "executive functions" — are larger than in humans and most other species.[30] The term "executive function" refers to controlling operations, such as paying attention, inhibiting inappropriate responses, and deciding how to use memory search. These abilities develop late in human infancy and are often impaired in dementia. The degree of complexity of pyramidal neurons is linked to cognitive ability, with more complex connections between pyramidal neurons being associated with increased cognitive capabilities.[31] Elephant

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[23] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[24] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[25] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[26] Bates & Byrne Aff. ¶34; Poole Aff. ¶26; McComb Aff. ¶28; Moss Aff. ¶22.
[27] Bates & Byrne Aff. ¶34; McComb Aff. ¶28; Poole Aff. ¶26; Moss Aff. ¶22.
[28] Bates & Byrne Aff. ¶34; McComb Aff. ¶28; Poole Aff. ¶26; Moss Aff. ¶22.
[29] Humans: 1.15×10^{10}; elephants: 1.1×10^{10}, chimpanzees: 6.2×10^{9}; dolphins: 5.8×10^{9}. Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[30] Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[31] Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.

pyramidal neurons have a large number of connections with other neurons for receiving and sending signals, known as a dendritic tree.[32]

63. Elephants, like humans, great apes, and some cetaceans, possess *von Economo neurons*, or spindle cells, the so-called "air-traffic controllers for emotions," in the anterior cingulate, fronto-insular, and dorsolateral prefrontal cortex areas of the brain.[33] In humans, these cortical areas are involved, among other things, with the processing of complex social information, emotional learning and empathy, planning and decision-making, and self-awareness and self-control.[34] The presence of spindle cells in the same brain locations in elephants and humans strongly implies that these higher-order brain functions, which are the building blocks of autonomous, self-determined behavior, are common to both species.[35]

64. Elephants have extensive and long-lasting memories.[36] McComb et al. (2000), using experimental playback of long-distance contact calls in Amboseli National Park, Kenya, showed that African elephants remember and recognize the voices of at least 100 other elephants.[37] Each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average of 14 families in the population.[38] When the calls came from the test elephants' own family, they contact-called in response and approached the location of the loudspeaker; when they were from another non-related but familiar family, one that had been shown to have a high association index with the test group, they listened but remained relaxed.[39] However, when a test group heard unfamiliar contact calls from groups with a low association index with the test group, the elephants bunched together and retreated from the area.[40]

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[32] Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[33] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[34] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[35] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[36] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[37] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[38] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[39] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[40] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.

65. McComb et al. has demonstrated that this social knowledge accumulates with age, with older females having the best knowledge of the contact calls of other family groups, and that older females are better leaders than younger, with more appropriate decision-making in response to potential threats (in this case, in the form of hearing lion roars).[41] Younger matriarchs under-reacted to hearing roars from male lions, elephants, most dangerous predators.[42] Sensitivity to the roars of male lions increased with increasing matriarch age, with the oldest, most experienced females showing the strongest response to this danger.[43] These studies show that elephants continue to learn and remember information about their environments throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they age.[44]

66. Further demonstration of elephants' long-term memory emerges from data on their movement patterns.[45] African elephants move over very large distances in their search for food and water.[46] Leggett (2006) used GPS collars to track the movements of elephants living in the Namib Desert, with one group traveling over 600 km in five months.[47] Viljoen (1989) showed that elephants in the same region visited water holes approximately every four days, though some were more than 60 km apart.[48]

67. Elephants inhabiting the deserts of Namibia and Mali may travel hundreds of kilometers to visit remote water sources shortly after the onset of a period of rainfall, sometimes along routes that have not been used for many years.[49] These remarkable feats suggest exceptional cognitive mapping skills that rely upon the long-term memories of older individuals

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[41] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[42] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[43] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[44] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[45] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[46] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[47] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[48] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[49] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.

who may have traveled that same path decades earlier.[50] Thus, family groups headed by older matriarchs are better able to survive periods of drought.[51] These older matriarchs lead their families over larger areas during droughts than families headed by younger matriarchs, again drawing on their accrued knowledge, this time about the locations of permanent, drought-resistant sources of food and water, to better lead and protect their families.[52]

68. Studies reveal that long-term memories, and the decision-making mechanisms that rely on this knowledge, are severely disrupted in elephants who have experienced trauma or extreme disruption due to "management" practices initiated by humans.[53] Shannon *et al.* (2013) demonstrated that South African elephants who experienced trauma decades earlier showed significantly reduced social knowledge.[54] As a result of archaic culling practices, these elephants had been forcibly separated from family members and subsequently taken to new locations.[55] Two decades later, their social knowledge and skills and decision-making abilities were impoverished compared to an undisturbed Kenyan population.[56] Disrupting elephants' natural way of life has substantial negative impacts on their knowledge and decision-making abilities.[57]

69. Elephants demonstrate advanced working memory skills.[58] Working memory is the ability to temporarily store, recall, manipulate and coordinate items from memory.[59] Working memory directs one's attention to relevant information, utilized in reasoning, planning, coordination, and execution of cognitive processes through a "central executive."[60] Adult human working memory has a capacity of around seven items.[61] When experiments were conducted

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[50] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[51] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[52] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[53] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[54] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[55] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[56] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[57] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[58] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[59] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[60] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[61] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.

with wild elephants in Kenya in which the locations of fresh urine samples from related or unrelated elephants were manipulated, the elephants responded by detecting urine from known individuals in surprising locations, thereby demonstrating the ability continually to track the locations of at least 17 family members in relation to themselves, as either absent, present in front of self, or present behind self.[62] This remarkable ability to hold in mind and regularly update information about the locations and movements of a large number of family members is best explained by the fact that elephants possess an unusually large working memory capacity that is much larger than that of humans.[63]

70. Elephants display a sophisticated categorization of their environment on par with humans.[64] Bates, Byrne, Poole, and Moss experimentally presented the elephants of Amboseli National Park, Kenya with garments that gave olfactory or visual information about their human wearers, either Maasai warriors who traditionally attack and spear elephants as part of their rite of passage, or Kamba men who are agriculturalists and traditionally pose little threat to elephants.[65] In the first experiment, the only thing that differed between the cloths was the smell, derived from the ethnicity and/or lifestyle of the wearers.[66] The elephants were significantly more likely to run away when they sniffed cloths worn by Maasai men than those worn by Kamba men or no one at all. (See "Video 7" attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit K").[67]

71. In a second experiment, they presented the elephants with two cloths that had not been worn by anyone; one was white (a neutral stimulus) and the other red, the color ritually worn by Maasai warriors.[68] With access only to these visual cues, the elephants showed

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[62] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[63] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[64] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[65] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[66] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[67] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[68] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.

significantly greater, sometimes aggressive, reactions to red garments than white.[69] They concluded that elephants are able to categorize a single species (humans) into sub-classes (i.e., "dangerous" or "low risk") based on either olfactory or visual cues alone.[70]

72. McComb et al. further demonstrated that these same elephants distinguish human groups based on voices.[71] The elephants reacted differently, and appropriately, depending on whether they heard Maasai or Kamba men speaking, and whether the speakers were male Maasai versus female Maasai, who also pose no threat.[72] Scent, sounds and visual signs associated specifically with Maasai men are categorized as "dangerous," while neutral signals are attended to but categorized as "low risk."[73] These sophisticated, multi-modal categorization skills may be exceptional among non-human animals and demonstrate elephants' acute sensitivity to the human world and how they monitor human behavior and learn to recognize when we might cause them harm.[74]

73. Human speech and language reflect autonomous thinking and intentional behavior.[75] Similarly, elephants vocalize to share knowledge and information.[76] Male elephants primarily communicate about their sexual status, rank and identity, whereas females and dependents emphasize and reinforce their social units.[77] Call types are separated into those produced by the larynx (such as "rumbles") and calls produced by the trunk (such as "trumpets"), with different calls in each category used in different contexts.[78] Field experiments have shown that African elephants distinguish between call types. For example, such contact calls as "rumbles" may travel kilometers and maintain associations between elephants, or "oestrus

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[69] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[70] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[71] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[72] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[73] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[74] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[75] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[76] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[77] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[78] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.

rumbles" may occur after a female has copulated, and these call types elicit different responses in listeners.[79]

74. Elephant vocalizations are not merely reflexive; they have distinct meanings to listeners and communicate in a manner similar to the way humans use language.[80] Elephants display more than two hundred gestures, signals and postures that they use to communicate information to their audience.[81] Such signals are adopted in many contexts, such as aggressive, sexual or socially integrative situations, are well-defined, carry a specific meaning both to the actor and recipient, result in predictable responses from the audience, and together demonstrate intentional and purposeful communication intended to share information and/or alter the others' behavior to fit their own will.[82]

75. Elephants use specific calls and gestures to plan and discuss a course of action.[83] These may be to respond to a threat through a group retreating or mobbing action (including celebration of successful efforts), or planning and discussing where, when and how to move to a new location.[84] In group-defensive situations, elephants respond with highly coordinated behaviour, both rapidly and *predictably*, to specific calls uttered and particular gestures exhibited by group members.[85] These calls and gestures carry specific meanings not only to elephant listeners, but to experienced human listeners as well.[86] The rapid, predictable and collective response of elephants to these calls and gestures indicates that elephants have the capacity to understand the goals and intentions of the signalling individual.[87]

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[79] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[80] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[81] Poole Aff. ¶43; Bates & Byrne Aff. ¶52; McComb Aff. ¶46; Moss Aff. ¶40.
[82] Bates & Byrne Aff. ¶52; McComb Aff. ¶46; Poole Aff. ¶43; Moss Aff. ¶40.
[83] Poole Aff. ¶44.
[84] Poole Aff. ¶44.
[85] Poole Aff. ¶45.
[86] Poole Aff. ¶45.
[87] Poole Aff. ¶45.

76. Elephant group defensive behavior is highly evolved and involves a range of different tactical maneuvers adopted by different elephants.[88] For example, matriarch Provocadora's contemplation of Poole's team through listening and "j-sniffing," followed by her purposeful "perpendicular-walk" (in relation to Poole's team) toward her family and her "ear-flap-slide" clearly communicated that her family should begin a "group-advance" upon Poole's team.[89] This particular elephant attack is a powerful example of elephants' use of empathy, coalition and cooperation.[90] Provocadora's instigation of the "group-advance" led to a two-and-a-half minute "group-charge" in which the three other large adult females of the 36-member family took turns leading the charge, passing the baton, in a sense, from one to the next.[91] Once they succeeded in their goal of chasing Poole's team away, they celebrated their victory by "high-fiving" with their trunks and engaging in an "end-zone-dance."[92] "High-fiving" is also typically used to initiate a coalition and is both preceded by and associated with other specific gestures and calls that lead to very goal oriented collective behavior.[93]

77. Ostensive communication refers to the way humans use particular behavior, such as tone of speech, eye contact, and physical contact, to emphasize that a particular communication is important.[94] Lead elephants in family groups use ostensive communication frequently as a way to say, "Heads up – I am about to do something that you should pay attention to."[95]

78. In planning and communicating intentions regarding a movement, elephants use both vocal and gestural communication.[96] For example, Poole has observed that a member of a family will use the axis of her body to point in the direction she wishes to go and then vocalize,

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[88] Poole Aff. ¶45.
[89] Poole Aff. ¶45.
[90] Poole Aff. ¶45.
[91] Poole Aff. ¶45.
[92] Poole Aff. ¶45.
[93] Poole Aff. ¶45.
[94] Poole Aff. ¶36.
[95] Poole Aff. ¶36.
[96] Poole Aff. ¶46.

every couple of minutes, with a specific call known as a "let's-go" rumble, "I want to go this way, let's go together."[97] The elephant will also use intention gestures — such as "foot-swinging" — to indicate her intention to move.[98] Such a call may be successful or unsuccessful at moving the group or may lead to a 45-minute or longer discussion (a series of rumble exchanges known as "cadenced rumbles") that researchers interpret as negotiation.[99] Sometimes such negotiation leads to disagreement that may result in the group splitting and going in different directions for a period of time.[100] In situations where the security of the group is at stake, such as when movement is planned through or near human settlement, all group members focus on the matriarch's decision.[101] So while "let's go" rumbles are uttered, others adopt a "waiting" posture until the matriarch, after much "listening," "j-sniffing," and "monitoring," decides it is safe to proceed, where upon they bunch together and move purposefully, and at a fast pace in a "group-march."[102]

79. Elephants typically move through dangerous habitat and nighttime hours at high speed in a clearly goal-oriented manner known as "streaking," which has been described and documented through the movements of elephants wearing satellite tracking collars.[103] The many different signals — calls, postures, gestures and behaviors elephants use to contemplate and initiate such movement (including "ear-flap," "ear-flap-slide") — are clearly understood by other elephants (just as they can be understood after long-term study by human observers), mean very specific things, and indicate that elephants: 1) have a particular plan which they can communicate with others, 2) can adjust their plan according to their immediate assessment of risk or opportunity, and 3) can communicate and execute the plan in a coordinated manner.[104]

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[97] Poole Aff. ¶46.
[98] Poole Aff. ¶46.
[99] Poole Aff. ¶46.
[100] Poole Aff. ¶46.
[101] Poole Aff. ¶46.
[102] Poole Aff. ¶46.
[103] Poole Aff. ¶46.
[104] Poole Aff. ¶46.

80. Elephants can vocally imitate sounds they hear, from the engines of passing trucks to the commands of human zookeepers.[105] Imitating another's behavior is demonstrative of a sense of self, as it is necessary to understand how one's own behavior relates to the behavior of others.[106] African elephants recognize the importance of visual attentiveness on the part of an intended recipient, elephant or human, and of gestural communication, which further demonstrates that elephants' gestural communications are intentional and purposeful.[107] This ability to understand the visual attentiveness and perspective of others is crucial for empathy, mental-state understanding, and "theory of mind," the ability to mentally represent and think about the knowledge, beliefs and emotional states of others, while recognizing that these can be distinct from your own knowledge, beliefs and emotions.[108]

81. As do humans, Asian elephants exhibit "mirror self-recognition" (MSR) using Gallup's classic "mark test."[109] MSR is the ability to recognize a reflection in the mirror as oneself, while the mark test involves surreptitiously placing a colored mark on an individual's forehead that she cannot see or be aware of without the aid of a mirror.[110] If the individual uses the mirror to investigate the mark, the individual must recognize the reflection as herself. (See "Video 1," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit D").[111]

82. MSR is significant because it is a key identifier of self-awareness.[112] Self-awareness is intimately related to autobiographical memory in humans and is central to

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[105] Bates & Byrne Aff. ¶51; McComb Aff. ¶45; Poole Aff. ¶47; Moss Aff. ¶39.
[106] Bates & Byrne Aff. ¶51; McComb Aff. ¶45; Poole Aff. ¶47; Moss Aff. ¶39.
[107] Bates & Byrne Aff. ¶53; McComb Aff. ¶47; Poole Aff. ¶48; Moss Aff. ¶41.
[108] Bates & Byrne Aff. ¶40, ¶53; McComb Aff. ¶34, ¶47; Poole Aff. ¶32, ¶48; Moss Aff. ¶28, ¶41.
[109] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26. African elephants have not yet been tested.
[110] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[111] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[112] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.

autonomy and being able to direct one's own behavior to achieve personal goals and desires.[113] By demonstrating they can recognize themselves in a mirror, elephants must be holding a mental representation of themselves from another perspective and thus be aware that they are a separate entity from others.[114]

83. One who understands the concept of dying and death must possess a sense of self.[115] Both chimpanzees and elephants demonstrate an awareness of death by reacting to dead family or group members.[116] Having a mental representation of the self, which is a pre-requisite for mirror-self recognition, likely confers an ability to comprehend death.[117]

84. Wild African elephants have been shown experimentally to be more interested in the bones of dead elephants than the bones of other animals. (See "Video 2," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit E").[118] They have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead individuals.[119] Although they do not give up trying to lift or elicit movement from a dead body immediately, elephants appear to realize that once dead, the carcass can no longer be helped; and instead they engage in more "mournful" or "grief-stricken" behavior, such as standing guard over the body with dejected demeanor and protecting it from predators. (See "Photographs," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit F").[120]

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[113] "Autobiographical memory" refers to what one remembers about his or her own life; for example, not that "Paris is the capital of France," but the recollection that you had a lovely time when you went there. Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[114] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[115] Poole Aff. ¶31; Bates & Byrne Aff. ¶39; Moss Aff. ¶27.
[116] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[117] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[118] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[119] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[120] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.

85. Wild African elephants have been observed to cover the bodies of their dead with dirt and vegetation.[121] Mothers who lose a calf may remain with the calf's body for an extended period, but do not behave towards the body as they would a live calf.[122] Indeed, the general demeanor of elephants attending to a dead elephant is one of grief and compassion, with slow movements and few vocalizations.[123] These behaviors are akin to human responses to the death of a close relative or friend and demonstrate that elephants possess some understanding of life and the permanence of death. (See "Photographs," attached to the Affidavit of Karen McComb, Ph.D. on CD as "Exhibit E").[124]

86. Elephants' interest in the bodies, carcasses and bones of elephants who have passed is so marked that when one has died, trails to the site of death become worn into the ground by the repeated visits of many elephants over days, weeks, months, even years.[125] The accumulation of dung around the site attests to the extended time that visiting elephants spend touching and contemplating the bones.[126] Poole observed that, over years, the bones may become scattered over tens or hundreds of square meters as elephants pick up the bones and carry them away.[127] The tusks are of particular interest and may be carried and deposited many hundreds of meters from the site of death.[128]

87. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities.[129] Empathy is defined as identifying with and understanding another's experiences or feelings by relating personally to their situation.[130]

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[121] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[122] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[123] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[124] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[125] Poole Aff. ¶31.
[126] Poole Aff. ¶31.
[127] Poole Aff. ¶31.
[128] Poole Aff. ¶31.
[129] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[130] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.

88. Empathy is an important component of human consciousness and autonomy and is a cornerstone of normal social interaction.[131] It requires modeling the emotional states and desired goals that influence others' behavior both in the past and future, and using this information to plan one's own actions; empathy is only possible if one can adopt or imagine another's perspective, and attribute emotions to that other individual.[132] Thus, empathy is a component of "theory of mind."[133]

89. Elephants frequently display empathy in the form of protection, comfort and consolation, as well as by actively helping those in difficulty, such as assisting injured individuals to stand and walk, or helping calves out of rivers or ditches with steep banks. (See "Video 3," attached to the Affidavit of Karen McComb, Ph.D. on CD as "Exhibit F").[134] Elephants have been seen to react when anticipating the pain of others by wincing when a nearby elephant stretched her trunk toward a live wire, and have been observed feeding those unable to use their own trunks to eat and attempting to feed those who have just died.[135]

90. In an analysis of behavioural data collected from wild African elephants over a 40-year continuous field study, Bates and colleagues concluded that as well as possessing their own intentions, elephants can diagnose animacy and goal directedness in others, understand the physical competence and emotional state of others, and attribute goals and mental states (intentions) to others.[136]

91. This is borne out by examples such as:

> IB family is crossing river. Infant struggles to climb out of bank after its mother. An adult female [not the mother] is standing next to calf and moves closer as the infant struggles. Female does not push calf out with its trunk, but digs her tusks into the mud behind the calf's front right leg which acts to provide some anchorage for the calf, who then scrambles up and out and rejoins mother.

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[131] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[132] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[133] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[134] Bates & Byrne Aff. ¶41; McComb Aff. ¶35; Poole Aff. ¶33; Moss Aff. ¶29.
[135] Poole Aff. ¶33; Bates & Byrne Aff. ¶41; McComb Aff. ¶35; Moss Aff. ¶29.
[136] Bates & Byrne Aff. ¶42; McComb Aff. ¶36; Poole Aff. ¶34; Moss Aff. ¶30.

> At 11.10ish Ella gives a "lets go" rumble as she moves further down the swamp . . . At 11.19 Ella goes into the swamp. The entire group is in the swamp except Elspeth and her calf [<1 year] and Eudora [Elspeth's mother]. At 11.25 Eudora appears to "lead" Elspeth and the calf to a good place to enter the swamp — the only place where there is no mud.

(See "Video 3," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit G").[137]

92. In addition to the examples analyzed in Bates *et al.*, Poole observed two adult females rush to the side of a third female who had just given birth, back into her, and press their bodies to her in what appeared to be a spontaneous attempt to prevent injury to the newborn.[138] In describing the situation, Poole wrote:

> The elephants' sounds [relating to the birth] also attracted the attention of several males including young and inexperienced, Ramon, who, picking up on the interesting smells of the mother [Ella], mounted her, his clumsy body and feet poised above the newborn. Matriarch Echo and her adult daughter Erin, rushed to Ella's side and, I believe, purposefully backed into her in what appeared to be an attempt to prevent the male from landing on the baby when he dismounted.[139]

93. Such examples demonstrate that the acting elephant(s) (the adult female in the first example, Eudora in the second, and Erin and Echo in the third) were able to understand the intentions or situation of the other (the calf in the first case, Elspeth in the second, Ella's newborn and the male in the third), and could adjust their own behavior to counteract the problem being faced by the other.[140]

94. In raw footage Poole acquired of elephant behavior filmed by her brother in the Mara, Kenya, an "allo-mother" (an elephant who cares for an infant and is not the infant's mother or father) moves a log from under the head of an infant in what appears to be an effort to make him more comfortable. (See "Video 1," attached to the Affidavit of Joyce Poole, Ph.D. on CD as "Exhibit C").[141] In a further example of the ability to understand goal directedness of

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[137] Bates & Byrne Aff. ¶42.
[138] Poole Aff. ¶34.
[139] Poole Aff. ¶34.
[140] Bates & Byrne Aff. ¶42; McComb Aff. ¶36; Poole Aff. ¶34; Moss Aff. ¶30.
[141] Poole Aff. ¶34.

others, elephants appear to understand that vehicles drive on roads or tracks and they further appear to know where these tracks lead.[142] In Gorongosa, Mozambique, where elephants exhibit a culture of aggression toward humans, charging, chasing and attacking vehicles, adult females anticipate the direction the vehicle will go and attempt to cut it off by taking shortcuts *before* the vehicle has begun to turn.[143]

95. Empathic behavior begins early in elephants. In humans, rudimentary sympathy for others in distress has been recorded in infants as young as 10 months old; young elephants similarly exhibit sympathetic behavior.[144] For example, during fieldwork in the Maasai Mara in 2011, Poole filmed a mother elephant using her trunk to assist her one-year-old female calf up a steep bank. Once the calf was safely up the bank she turned around to face her five-year-old sister, who was also having difficulties getting up the bank. As the older calf struggled to clamber up the bank the younger calf approached her and first touched her mouth (a gesture of reassurance among family members) and then reached her trunk out to touch the leg that had been having difficulty. Only when her sibling was safely up the bank did the calf turn to follow her mother. (See "Video 2," attached to the Affidavit of Joyce Poole, Ph.D. on CD as "Exhibit D").[145]

94. Captive African elephants attribute intentions to others, as they follow and understand human pointing gestures.[146] The elephants understood that the human experimenter was pointing to communicate information to them about the location of a hidden object. (See "Video 4," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit H").[147] Attributing intentions and understanding another's reference point is central to both empathy and "theory of mind."[148]

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[142] Poole Aff. ¶34.
[143] Poole Aff. ¶34.
[144] Poole Aff. ¶34.
[145] Poole Aff. ¶34.
[146] Bates & Byrne Aff. ¶43; McComb Aff. ¶37; Poole Aff. ¶35; Moss Aff. ¶31.
[147] Bates & Byrne Aff. ¶43; McComb Aff. ¶37; Poole Aff. ¶35; Moss Aff. ¶31.
[148] Bates & Byrne Aff. ¶43; McComb Aff. ¶37; Poole Aff. ¶35; Moss Aff. ¶31.

95. There is evidence of "natural pedagogy," or true teaching — whereby a teacher takes into account the knowledge states of the learner as she passes on relevant information — in elephants. Bates, Byrne, and Moss's analysis of simulated "oestrus behaviours"[149] in African elephants — whereby a non-cycling, sexually experienced older female will simulate the visual signals of being sexually receptive, even though she is not ready to mate or breed again — demonstrates that these knowledgeable females can adopt false "oestrus behaviours" to demonstrate to naïve young females how to attract and respond appropriately to suitable males.[150] The experienced females may be taking the youngster's lack of knowledge into account and actively showing them what to do — a possible example of true teaching as it is defined in humans.[151] This evidence, coupled with the data showing they understand the ostensive cues in human pointing, suggests that elephants understand the intentions and knowledge states (minds) of others.[152]

96. Coalitions and cooperation have been frequently documented in wild African elephants, particularly to defend family members or close allies from (potential) attacks by outsiders, such as when one family group tries to "kidnap" a calf from an unrelated family.[153] These behaviors are generally preceded by gestural and vocal signals, typically given by the matriarch and acted upon by family members, and are based on one elephant understanding the emotions and goals of a coalition partner.[154]

97. Cooperation is evident in captive Asian elephants, who demonstrate they can work together in pairs to obtain a reward, but also understand the pointlessness of attempting the

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[149] Bates & Byrne Aff. ¶44. Ostension is the way that we can "mark" our communications to show people that that is what they are. If you do something that another copies, that's imitation; but if you deliberately indicate what you are doing to be helpful, that's "ostensive" teaching. Similarly, we may "mark" a joke, hidden in seemingly innocent words; or "mark" our words as directed towards someone specific by catching their eye. Ostension implies that the signaller knows what she is doing.

[150] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.

[151] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.

[152] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.

[153] Bates & Byrne Aff. ¶45; McComb Aff. ¶39; Poole Aff. ¶37; Moss Aff. ¶33.

[154] Bates & Byrne Aff. ¶45; McComb Aff. ¶39; Poole Aff. ¶37; Moss Aff. ¶33.

task if their partner was not present or could not access the equipment. (See "Video 5," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit I").[155] Problem-solving and working together to achieve a collectively desired outcome involve mentally representing both a goal and the sequence of behaviors that is required to achieve that goal; it is based on (at the very least) short-term action planning.[156]

98. Wild elephants have frequently been observed engaging in such cooperative problem-solving as retrieving calves kidnapped by other groups, helping calves out of steep, muddy river banks (see "Video 3," attached to the Affidavit of Karen McComb, Ph.D. on CD as "Exhibit F"), rescuing a calf attacked by a lion (acoustic recording calling to elicit help from others), and navigating through human-dominated landscapes to reach a desired destination such as a habitat, salt-lick, or waterhole.[157] These behaviors demonstrate the purposeful and well-coordinated social system of elephants and show that elephants can collectively hold specific aims in mind, then work together to achieve those goals.[158] Such intentional, goal-directed action forms the foundation of independent agency, self-determination, and autonomy.[159]

99. Elephants also show innovative problem-solving in experimental tests of insight, defined as the "a-ha" moment when a solution to a problem suddenly becomes clear.[160] A juvenile male Asian elephant demonstrated such a spontaneous action by moving a plastic cube and standing on it to obtain previously out-of-reach food.[161] After solving this problem once, he showed flexibility and generalization of the technique to other similar problems by using the same cube in different situations, or different objects in place of the cube when it was

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[155] Bates & Byrne Aff. ¶46; McComb Aff. ¶40; Poole Aff. ¶38; Moss Aff. ¶34.
[156] Bates & Byrne Aff. ¶46; McComb Aff. ¶40; Poole Aff. ¶38; Moss Aff. ¶34.
[157] Poole Aff. ¶39; Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Moss Aff. ¶35.
[158] Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Poole Aff. ¶39; Moss Aff. ¶35.
[159] Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Poole Aff. ¶39; Moss Aff. ¶35.
[160] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36. In cognitive psychology terms, "insight" is the ability to inspect and manipulate a mental representation of something, even when you can't physically perceive or touch the something at the time. Simply, insight is using only thinking to solve problems.
[161] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36.

unavailable. (See "Video 6," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit J").[162] This experiment demonstrates that elephants can choose an appropriate action and incorporate it into a sequence of behavior to achieve a goal they kept in mind throughout the process.[163]

100. Asian elephants demonstrate the ability to understand goal-directed behavior.[164] When presented with food that was out of reach, but with some bits resting on a tray that could be pulled within reach, elephants learned to pull only those trays baited with food.[165] Success in this kind of "means-end" task demonstrates causal knowledge, which requires understanding not just that two events are associated with each other, but that some mediating force connects and affects the two which may be used to predict and control events.[166] Understanding causation and inferring object relations may be related to understanding psychological causation, which is appreciation that others are animate beings who generate their own behavior and have mental states (e.g., intentions).[167]

101. PAWS is a 501(c)(3) non-profit organization incorporated in 1984. It maintains three captive wildlife sanctuaries: the original 30-acre PAWS sanctuary in Galt, California; the 100-acre Amanda Blake Memorial Wildlife Refuge in Herald, California; and the 2,300-acre ARK 2000 sanctuary in San Andreas, California, that are home to elephants, bears, and big cats. The Galt sanctuary was the first sanctuary in the country equipped to care for elephants.[168] PAWS sanctuaries provide rescued animals with specially designed peaceful, natural habitats where they have the freedom to engage in natural autonomous behaviors that are as close to their native habitat as can be found in North America.

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[162] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36.
[163] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36.
[164] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[165] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[166] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[167] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[168] Stewart Aff. ¶4.

102. The mission of PAWS is to protect performing wild animals, provide sanctuary to abused, abandoned or retired captive wildlife, promote the best standards of care for all captive wildlife, preserve wild species and their habitat, and educate the public about captive wild animals.[169]

103. The ARK 2000 sanctuary is located near the Sierra Nevada Mountains in San Andreas, California, and has five elephant barns, one for female Asian elephants, one for female African elephants, and three for bull elephants. The property encompasses 2,300 acres of rolling foothills with varied natural terrain. Habitats include natural grasses, trees, lakes and pools in which the elephants may bathe. The Asian and African barns are each 20,000 square feet in size. Barns are equipped with heaters, hydraulic gates, restraint devices for veterinary procedures, heated and padded concrete floors, dirt floors, spacious sleeping stalls and pipe hallways for introduction and socialization of new elephants. The African barn has an indoor therapy pool. The Asian elephant barn contains dirt-floor sleeping stalls specially designed for older elephants with foot and joint problems.[170]

104. In support of this Petition, the NhRP has filed its Memorandum of Law in Support of Verified Petition for Common Law Writ of Habeas Corpus as well as an Appendix of Exhibits in Support of Verified Petition for Common Law Writ of Habeas Corpus which contains the exhibits referred to in this Petition. The Petitioner's proposed Writ of Habeas Corpus is attached hereto.

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[169] Stewart Aff. ¶6.
[170] Stewart Aff. ¶8.

DEMAND

WHEREFORE, Petitioner respectfully requests the following relief:

A. Issuance of the Writ of Habeas Corpus directing the Respondents to file a return to the Petition pursuant to Connecticut Practice Book § 23-21 *et seq.* including, *inter alia*, setting forth the facts claimed to justify the detention and denial of liberty of Beulah, Minnie, and Karen, three illegally confined elephants in Respondents' custody;

B. Upon a determination that Beulah, Minnie, and Karen are being unlawfully denied their liberty, detained and imprisoned, ordering their immediate release from Respondents' custody and illegal confinement forthwith to PAWS;

C. Awarding Petitioner NhRP its costs and disbursements in connection with this matter; and

D. Granting such other and further relief as this Court deems just and proper.

THE PETITIONER,
THE NONHUMAN RIGHTS PROJECT, INC.

BY:_____

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OATH

I, Kevin Schneider, Executive Director of The Nonhuman Rights Project, Inc., solemnly and sincerely affirm and declare that the statements contained herein are true to the best of my knowledge and belief, upon the pains and penalties of perjury or false statement.

_____
Kevin Schneider

Kevin Schneider, being duly sworn, states that the above information is true to the best of his knowledge and belief.

Sworn to and subscribed before me this ____ day of January, 2018.

_____

Notary Public
Commissioner of the Superior Court

January 16, 2018

Re: Nonhuman Rights filing in Torrington (50 Field Street)

1. Please file originals with the Clerk's Office
2. Please have the copy of the initial page of the filing stamped by the Clerk's Office at the time of filing
3. Please scan the stamped page to: piacozza@cohenandwolf.com
4. Please mail the stamped page in the envelope provided

Please contact our office at (203) 368-0211 and ask for David Zabel if any problems

THANK YOU!

EXHIBIT 3

DOCKET NO. _____	:	SUPERIOR COURT
In the matter of a Petition for a Common Law Writ of Habeas Corpus,	:	JUDICIAL DISTRICT OF LITCHFIELD
NONHUMAN RIGHTS PROJECT, INC., on behalf of BEULAH, MINNIE, and KAREN, Petitioner,	:	AT TORRINGTON
v.	:	
R.W. COMMERFORD & SONS, INC. a/k/a COMMERFORD ZOO, and WILLIAM R. COMMERFORD, as President of R.W. COMMERFORD & SONS, INC., Respondents.	:	November 13, 2017

FIRST AMENDED VERIFIED PETITION FOR A COMMON LAW WRIT OF HABEAS CORPUS

PARTIES

1. Petitioner the Nonhuman Rights Project, Inc. ("NhRP" or "Petitioner") is a not-for-profit corporation organized pursuant to the laws of the State of Massachusetts with a principal address at 5195 NW 112th Terrace, Coral Springs, FL 33076. Its mission is "to change the common law status of at least some nonhuman animals from mere 'things,' which lack the capacity to possess any legal rights, to 'persons,' who possess such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them." The NhRP does not seek to reform animal welfare legislation.

2. Respondent R.W. Commerford & Sons, Inc., also known as the Commerford Zoo, is a Connecticut corporation with a business address at 48 Torrington Road, Goshen, CT 06756.

3. Respondent William R. Commerford is the President of R.W. Commerford & Sons, Inc., with a residential address at 64 Crossman Road, Goshen, CT 06752.

4. Karen is a female African elephant in her mid-thirties. She was captured in the wild around 1983. Respondents have owned Karen since 1984. Her last known address is 48 Torrington Rd, Goshen, CT 06756.

5. Beulah is a female Asian elephant in her mid-forties. She was captured in the wild in 1967 in Myanmar. Upon information and belief, Respondents have owned Beulah since 1973. Her last known address is 48 Torrington Rd, Goshen, CT 06756.

6. Minnie is a female Asian elephant. Respondents have owned Minnie since at least 1989. Her last known address is 48 Torrington Rd, Goshen, CT 06756.

INTRODUCTION

7. On behalf of Beulah, Minnie, and Karen, the NhRP submits this Verified Petition for a Common Law Writ of Habeas Corpus (the "Petition") and states: This Petition is filed pursuant to Connecticut Practice Book ("Practice Book") § 23-21 *et seq.* as well as Conn. Gen. Stat. § 52-466 *et seq.*, and requests that this Court: (a) issue the requested writ of habeas corpus and require Respondents to file a return to the Petition pursuant to Connecticut Practice Book § 23-21 *et seq.* including, *inter alia*, setting forth the facts claimed to justify the denial of liberty, detention and imprisonment of Beulah, Minnie, and Karen, three illegally confined elephants in Respondents' custody; and (b) order the immediate release of Beulah, Minnie, and Karen from such illegal confinement.

8. This Petition is brought under the common law of Connecticut, which is broad, flexible, and adaptable. *State v. Brocuglio*, 264 Conn. 778, 793 (2003); *State v. Guess*, 244 Conn. 761, 778 (1998); *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184, 196 (1996); *Dacey v. Connecticut Bar Association*, 184 Conn. 21, 25-26 (1981).

9. Connecticut courts have long recognized the common law writ of habeas corpus. *Hudson v. Groothoff*, 10 Conn. Supp. 275, 278 (Conn. C.P. 1942). This Petition is filed as an application in good faith for an extension of the Connecticut common law of habeas corpus to Beulah, Minnie, and Karen, who are being imprisoned solely because they are legal things rather than the legal persons they should be for the purpose of common law habeas corpus.

10. The Expert Affidavits attached to this Petition set forth the facts that demonstrate that elephants such as Beulah, Minnie, and Karen are autonomous beings who live extraordinarily complex emotional, social, and intellectual lives and who possess those complex cognitive abilities sufficient for common law personhood and the common law right to bodily liberty protected by the common law of habeas corpus, as a matter of common law liberty, equality, or both.

11. As this action is instituted *ex parte* pursuant to Practice Book § 23-23, Respondents have not been served with this Petition. The NhRP will promptly serve the Petition upon Respondents upon the issuance of the writ or as otherwise directed by the Court.

12. The NhRP is entitled, as of right, to the issuance of the writ. Practice Book § 23-24 provides that the court: "shall issue the writ unless it appears that: (1.) the court lacks jurisdiction; (2.) the petition is wholly frivolous on its face; or (3.) the relief sought is not available."

13. There is no question this court has jurisdiction and that relief is available, *infra* at Paragraphs 46-48.

14. The Petition is also not "wholly frivolous on its face," a requirement satisfied by a mere "possibility of victory." *Henry E.S., Sr. v. Hamilton*, 2008 WL 1001969, at *5 (Conn. Super. Ct. Feb. 28, 2008). *See The Nonhuman Rights Project, Inc. ex rel. Hercules & Leo v. Stanley*, 16 N.Y.S.3d 898, 917 (N.Y. Sup. Ct. 2015) ("Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed.").

15. While this Petition raises a novel issue of personhood in Connecticut common law jurisprudence, it is far from "wholly frivolous on its face." To the contrary, it is powerfully meritorious and the writ it seeks has been issued on behalf of nonhuman animals at least four times in other jurisdictions.

16. An order to show cause, which is the equivalent of the writ pursuant to New York Civil Practice Law and Rules ("CPLR") Article 70, was issued once on behalf of two chimpanzees in New York. *Id.* at 917.

17. The writ was also issued once on behalf of a chimpanzee named Cecilia in Mendoza, Argentina, The Third Court of Guarantees, Mendoza, Argentina, in *In re Cecilia*, File No. P-72.254/15 at 22-23 (November 3, 2016), which declared a chimpanzee to be a "non-human person," then ordered her immediate release from imprisonment in a zoo to a sanctuary in Brazil.

18. The writ was also issued once on behalf of an orangutan named Sandra in Buenos Aires, Argentina) *Asociacion de Funcionarios y Abogados por los Derechos de los Animales y Otros contra GCBA, Sobre Amparo* (*Association of Officials and Attorneys for the Rights of Animals and Others v. GCBA, on Amparo*), EXPTE. A2174-2015 (October 21, 2015).

19. A writ was also issued once on behalf of a bear named Chucho in Colombia, though that ruling was overruled by a higher court and further appeal is pending. *Luis Domingo Gomez Maldonado contra Corporacion Autonoma Regional de Caldas Corpocaldas*, AHC4806-2017 (July 26, 2017).

20. The cases that the NhRP filed on behalf of chimpanzees in New York are being noted by the courts of other states as well. For instance, in *State v. Fessenden*, 355 Ore. 759, 769-70 (2014), the Supreme Court of Oregon referenced the "ongoing litigation" brought by the NhRP which "seeks to establish legal personhood for chimpanzees" and wrote: "As we continue to learn more about the interrelated nature of all life, the day may come when humans perceive less separation between themselves and other living beings than the law now reflects. However, we do not need a mirror to the past or a telescope to the future to recognize that the legal status of animals has changed and is changing still[.]"

21. The NhRP's litigation and arguments over whether a nonhuman animal can be a legal person for habeas corpus or any other purpose has been covered by thousands of media outlets around the world[1] and has captured the interest of the world's leading legal scholars and

[1] Since December 2013, the NhRP has brought numerous habeas corpus petitions on behalf of captive chimpanzees in New York State, and these suits have been the subject of thousands of legal commentaries, national and international news articles, radio and television programs, and podcasts. For example, there were at least 2,095 articles published on the issue of whether a

the most selective academic publications,[2] while catalyzing the development of a whole field of academic research and debate, generating extensive discussion in dozens of law review articles, multiple academic books, several science journals, and a variety of legal industry publications.[3]

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chimpanzee could have the right to a common law writ of habeas corpus in the six months between March and September 2017 alone. These outlets include, in the US, *NBC News*, *Wall Street Journal*, *Washington Post*, *Associated Press*, *Law360*, *Gizmodo*, *Fox News*, and *Salon*, and around the world, the *Sydney Morning Herald*, *Kremlin Express*, *Yahoo Japan*, Mexico's *Entrelíneas*, and India's *Economic Times*. The collective potential reach of this media coverage is approximately 1.4 billion people, according to the media monitoring service Meltwater. A spreadsheet containing the full list of 2,095 media items covering this case is available for download at: https://www.nonhumanrights.org/content/uploads/Media-Coverage-Tommy-Kiko-Appellate-Hearing-Raw-Data.csv (last accessed November 10, 2017).

[2] *See* Richard A. Epstein, *Animals as Objects of Subjects of Rights*, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); Richard A. Posner, *Animal Rights: Legal Philosophical, and Pragmatic Perspectives*, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); *VI. Aesthetic Injuries, Animal Rights, and Anthropomorphism*, 122 HARV. L. REV. 1204, 1216 (2009); Jeffrey L. Amestoy, *Uncommon Humanity: Reflections on Judging in A Post-Human Era*, 78 N.Y.U. L. REV. 1581 (2003); Richard A. Epstein, *Drawing the Line: Science and the Case for Animal Rights*, 46 PERSPECTIVES IN BIOLOGY AND MEDICINE 469 (2003); Craig Ewasiuk, *Escape Routes: The Possibility of Habeas Corpus Protection for Animals Under Modern Social Contract Theory*, 48 COLUM. HUM. RTS. L. REV. 69 (2017); Adam Kolber, *Standing Upright: The Moral and Legal Standing of Humans and Other Apes*, 54 STAN. L. REV. 163 (2001); Will Kymlicka, *Social Membership: Animal Law beyond the Property/Personhood Impasse*, 40 DALHOUSIE LAW JOURNAL 123 (2017); Kenan Malik, *Rights and Wrongs*, 406 NATURE 675 (2000); Greg Miller, *A Road Map for Animal Rights*, 332 SCIENCE 30 (2011); Greg Miller, *The Rise of Animal Law: Will Growing Interest in How the Legal System Deals with Animals Ultimately Lead to Changes for Researchers?* 332 SCIENCE 28 (2011); Martha C. Nussbaum, *Working with and for Animals: Getting the Theoretical Framework Right*, 94 DENV. L. REV. 609, 615 (2017); Martha C. Nussbaum, *Animal Rights: The Need for A Theoretical Basis*, 114 HARV. L. REV. 1506, 1541 (2001); Richard A. Posner, *Animal Rights*, 110 YALE L.J. 527, 541 (2000); Diana Reiss, *The Question of Animal Rights*, 418 NATURE 369 (2002); Cass R. Sunstein, *The Rights of Animals*, 70 U. CHI. L. REV. 387, 401 (2003); Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. REV. 1333 (2000); Laurence H. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Work of Steven M. Wise*, 7 ANIMAL L. 1 (2001).

[3] Richard A. Epstein, *Animals as Objects of Subjects of Rights*, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); Richard A. Posner, *Animal Rights: Legal Philosophical, and Pragmatic Perspectives*, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); Justin F. Marceau and Steven M. Wise, "Exonerating the Innocent: Habeas for Nonhuman Animals," WRONGFUL CONVICTIONS AND THE DNA REVOLUTION - TWENTY-FIVE YEARS OF FREEING THE INNOCENT (Daniel S. Medwed, ed. Cambridge University Press 2017); Steven M.

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Public Outcry: A Unique Political and Legal Opportunity for Fundamental Change to the Legal Protection of Marine Mammals in the United States, 53 IUS GENTIUM 237, 256 (2016); Joan E. Schaffner, *Animal Law in Australasia: A Universal Dialogue of "Trading Off" Animal Welfare*, 6 JOURNAL OF ANIMAL ETHICS 95 (2016); Anders Schinkel, *Martha Nussbaum on Animal Rights*, 13 ETHICS AND THE ENVIRONMENT 41 (2009); Megan A. Senatori, *The Second Revolution: The Diverging Paths of Animal Activism and Environmental Law*, 8 WIS. ENVTL. L.J. 31, 39 (2002); S.M. Solaiman, *Legal Personality of Robots, Corporations, Idols and Chimpanzees: A Quest for Legitimacy*, 25 ARTIFICIAL INTELLIGENCE AND LAW 155 (2017); Cass R. Sunstein, *The Rights of Animals*, 70 U. CHI. L. REV. 387, 401 (2003); Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. REV. 1333 (2000); Brian Sullivan, *Instant Evolution Some Espouse Fauna/flora Fast Track to Personhood As Means of Legal Protection*, ABA J., February 2014, at 71; Lisa Stansky, *Personhood for Bonzo*, 86 ABA J. 94 (2000); Jerrold Tannenbaum, *What Is Animal Law?*, 61 CLEV. ST. L. REV. 891, 935 (2013); Erica R. Tatoian, *Animals in the Law: Occupying A Space Between Legal Personhood and Personal Property*, 31 J. ENVTL. L. & LITIG. 147, 156 (2015); Joyce Tischler, *A Brief History of Animal Law, Part II (1985 - 2011)*, 5 STAN. J. ANIMAL L. & POL'Y 27, 60 (2012); Joyce Tischler, Monica Miller, Steven M. Wise, Elizabeth Stein, *Manumission for Chimpanzees*, 84 TENN. L. REV. 509, 511 (2017); Laurence H. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Work of Steven M. Wise*, 7 ANIMAL L. 1 (2001); Bryan Vayr, *Of Chimps and Men: Animal Welfare vs. Animal Rights and How Losing the Legal Battle May Win the Political War for Endangered Species*, 2017 U. ILL. L. REV. 817, 857 (2017); Robert R.M. Verchick, *A New Species of Rights*, 89 CAL. L. REV. 207, 209 (2001); Paul Waldau, *Will the Heavens Fall? De-Radicalizing the Precedent-Breaking Decision*, 7 ANIMAL L. 75, 78 (2001); Peter S. Wenz, Against Cruelty to Animals, 33 SOCIAL THEORY AND PRACTICE 127 (2007); Steven White, *Animals and the Law: A New Legal Frontier?*, 29 Melb. U. L. REV. 298, 303 (2005); Thomas I. White, *Humans and Dolphins: An Exploration of Anthropocentrism in Applied Environmental Ethics*, 3 JOURNAL OF ANIMAL ETHICS 85 (2013); Steven M. Wise, *Introduction to Animal Law Book*, 67 SYRACUSE L. REV. 7 (2017); Steven M. Wise, *Legal Personhood and the Nonhuman Rights Project*, 17 ANIMAL L. 1 (2010); Steven M. Wise, *Nonhuman Rights to Personhood*, 30 PACE ENVTL. L. REV. 1278 (2013); Steven M. Wise, Elizabeth Stein, Monica Miller, Sarah Stone, *The Power of Municipalities to Enact Legislation Granting Legal Rights to Nonhuman Animals Pursuant to Home Rule*, 67 SYRACUSE L. REV. 31, 32 (2017); Steven M. Wise, *Rattling the Cage Defended*, 43 B.C. L. REV. 623, 624 (2002); Steven M. Wise, *The Entitlement of Chimpanzees to the Common Law Writs of Habeas Corpus and De Homine Replegiando*, 37 GOLDEN GATE U. L. REV. 219, 220 (2007); Steven M. Wise, *Animal Thing to Animal Person-Thoughts on Time, Place, and Theories*, 5 ANIMAL L. 61 (1999); Steven M. Wise, *Animal Law-the Casebook*, 6 Animal L. 251, 252 (2000); David J. Wolfson, *Steven M. Wise: Rattling the Cage-Toward Legal Rights for Animals*, 6 ANIMAL L. 259, 262 (2000); Richard York, *Humanity and Inhumanity: Toward a Sociology of the Slaughterhouse*, 17 ORGANIZATION AND ENVIRONMENT 260 (2004); Randall S. Abate and Jonathan Crowe, *From Inside the Cage to Outside the Box*, 5(1) Global Journal of Animal Law (2017); Jonas -Sebastian Beaudry, *From Autonomy to Habeas Corpus: Animal Rights Activists Take the Parameters of Legal Personhood to Court*, 4(1) Global Journal of Animal Law (2016); Natalie Prosin and Steven M. Wise, *The Nonhuman Rights Project - Coming to a Country Near You*, in 2(2) Global Journal of Animal Law (2014); "Why Things Can Hold Rights:

22. Who is a "person" is the most important individual question that can come before a court, as the term person identifies those entities capable of possessing one or more legal rights. Only a "person" may invoke a common law writ of habeas corpus and the inclusion of elephants as "persons" for that purpose is for this Court to decide.

23. As the NhRP is not seeking any right other than the common law right to bodily liberty, this Court need not determine whether Beulah, Minnie, and Karen are "persons" for any purpose other than the Connecticut common law of habeas corpus.

24. "Person" has never been a synonym for "human being;" rather it designates Western law's most fundamental category by identifying those capable of possessing a legal right. Personhood determines who counts, who lives, who dies, who is enslaved, and who is free.

25. The procedures for utilizing the common law writ of habeas corpus are set forth in Title 52, C.G.S.A. §§ 52-466 - 52-470, and in the Practice Book §§ 23-21 - 23-40 and do not affect the substantive entitlement to the writ. "Such statutes have not been intended to detract from its force, but rather to add to its efficiency . . . the statutes have been intended to prevent the writ being rendered inoperative." *Hudson v. Groothof,* 10 Conn. Supp. 275, 278-79 (1942). *See Kaddah v. Comm'r of Correction*, 324 Conn. 548, 565-66 (2017).

26. The issuance of the writ by this Court harmonizes with the procedure historically used by courts faced with habeas petitions that turned on novel (at the time) personhood claims.

27. In *Somerset v. Stewart*, 1 Lofft 1, 98 Eng. Rep. 499 (K.B. 1772), which was incorporated into Connecticut common law, *State v. Courchesne*, 296 Conn. 622, 680 (2010),

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Reconceptualizing the Legal Person," LEGAL PERSONHOOD: ANIMALS, ARTIFICIAL INTELLIGENCE AND THE UNBORN (Tomasz Pietrzykowski and Visa Kurki, eds., Springer, 2017); Brandon Keim, *The Eye of the Sandpiper: Stories from the Living World*, Comstock (2017), pp. 132-150; Charles Seibert, "Should a Chimp Be Able to Sue Its Owner?", *New York Times Magazine* (April 23, 2014), *available at:* https://www.nytimes.com/2014/04/27/magazine/the-rights-of-man-and-beast.html (last accessed October 16, 2017); Astra Taylor, "Who Speaks for the Trees?", *The Baffler*, (Sept. 7, 2016), *available at*: thebaffler.com/salvos/speaks-trees-astra-taylor (last accessed October 16, 2017); Sindhu Sundar, "Primal Rights: One Attorney's Quest for Chimpanzee Personhood.", Law360 (March 10, 2017), *available at*: https://www.law360.com/articles/900753 (last accessed October 16, 2017).

Lord Mansfield for the first time in history issued the writ that required the respondent to provide a legally sufficient reason for detaining a black slave.

28. In *Arabas v. Ivers*, 1 Root 92 (Conn. Super. 1784), the court issued a writ of habeas corpus upon the petition of a slave who claimed he was being unlawfully detained.

29. In *United States ex rel. Standing Bear v. Crook*, 25 F. Cas. 695 (C.C. Neb. 1879), the court rejected the United States Attorney's argument that no Native American could ever be a "person" able to obtain a writ of habeas corpus and issued a writ of habeas corpus on behalf of the Ponca Chief, Standing Bear.

30. In *Stanley*, 16 N.Y.S.3d at 908, the court rejected respondents' argument that the issuance of the writ "inappropriately requires an initial, substantive finding that chimpanzees are not entitled to legal personhood for the purpose of obtaining a writ of habeas corpus."

31. This Court's determination of personhood will turn on whether elephants, as autonomous beings, should be recognized as "persons" pursuant to a Connecticut common law that keeps abreast of evolving standards of justice, morality, experience, and scientific discovery.

32. Autonomy is the supreme value at the heart of the Connecticut common law of *liberty*. Trumping even the State's interest in life, it mandates the protection of the fundamental interest of autonomous beings to their bodily liberty through the common law of habeas corpus.

33. Connecticut common law equality forbids discrimination based upon unreasonable means or illegitimate ends. Beulah's, Minnie's, and Karen's common law classification as rightless "things" rather than "persons" violates equality as it furthers the illegitimate end of depriving autonomous beings of their bodily liberty.

34. Connecticut common law equality further forbids the deprivation of fundamental rights based upon a single characteristic or trait. Classifying Beulah, Minnie, and Karen as "things" solely because they are not human, thereby denying them the capacity for any legal right, is so inequitable that it violates basic common law equality.

35. This Court must hold the required hearing and recognize Beulah's, Minnie's, and Karen's common law personhood and right to bodily liberty then order their immediate release from their unlawful confinement.

36. For the safety of the elephants as well as the public, this Court should consider releasing Beulah, Minnie, and Karen to the Performing Animal Welfare Society Sanctuary ("PAWS") near Sacramento, California, which has agreed to provide permanent sanctuary for them.[4]

37. At PAWS, Beulah, Minnie, and Karen, along with other elephants, will flourish in an environment that respects their autonomy to the greatest degree possible, as close to their native Asia and Africa as may be found in North America.

38. This habeas corpus case is not an "animal protection" or "animal welfare" case, any more than a habeas corpus case brought on behalf of a detained human would be a "human protection" or "human welfare" case. *See People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 149 (3d Dept. 2014), *leave to appeal den.*, 26 N.Y.3d 902 (2015); *Stanley*, 16 N.Y.S.3d at 901.

39. The issue before this Court, as it is in any habeas corpus action, is whether Beulah, Minnie, and Karen may be legally detained at all.

40. Even if Respondents were violating animal welfare statutes, habeas corpus remains available, as alternative remedies do not alter one's ability to bring the writ. *In re Jonathan M.*, 255 Conn. 208, 221 (2001); *Weidenbacher v. Duclos*, 234 Conn. 51, 64-65 (1995).

41. The determination of legal personhood is a matter for common law adjudication and is not a biological question. *Craig v. Driscoll*, 262 Conn. 312, 330 n.15 (2003); *Byrn v. New York City Health & Hosps. Corp.*, 31 N.Y.2d 194, 201-202 (1972).

42. As public policy determines personhood, and as the writ of habeas corpus in Connecticut is solely a common law remedy, it is for the courts *alone* to decide whether Beulah,

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[4] Attached hereto is an affidavit from Ed Stewart, Co-Founder and President of PAWS. Affidavit of Ed Stewart ["Stewart Aff."] ¶2.

Minnie, and Karen are "persons" for purposes of the common law of habeas corpus. *E.g.*, *Craig*, 262 Conn. at 330 n.15.

43. Beulah's, Minnie's, and Karen's imprisonment and deprivation of bodily liberty by Respondents is unlawful under the common law, pursuant to which all persons are presumed free absent positive law. *Somerset, supra.*

44. The fact this Petition does not seek the immediate production of Beulah, Minnie, and Karen to the Court or placement in a temporary home and does not then seek their ultimate release into the wild or onto the streets of Connecticut but rather into the care of a sanctuary does not preclude them from habeas corpus relief. *See Dart v. Mecum*, 19 Conn. Supp. 428, 434 (Super. Ct. 1955); *Buster v. Bonzagni*, 1990 WL 272742, at *2 (Conn. Super. Ct. Apr. 5, 1990) *aff'd sub Comm'r of Correction*, 26 Conn. App. 48 (1991).

45. Beulah, Minnie and Karen are beneficiaries of an *inter vivos* trust created by the NhRP pursuant to C.G.S.A. § 45a-489a for the purpose of their care and maintenance once they are released from Respondents' unlawful custody as directed by this Court and are therefore already "persons" for that purpose as only "persons" may be trust beneficiaries. RESTATEMENT (THIRD) OF TRUSTS § 43 *Persons Who May Be Beneficiaries* (2003); RESTATEMENT (THIRD) OF TRUSTS § 47 (Tentative Draft No. 2, approved 1999); RESTATEMENT (SECOND) OF TRUSTS § 124 (1959); Kate McEvoy, "§ 2:16. Pet trusts," 20 CONN. PRAC., CONN. ELDER LAW § 2:16 (2014 ed.). A true and correct copy of the trust is attached hereto as **Exhibit 1.**

JURISDICTION AND STANDING

46. This Court has jurisdiction over Beulah, Minnie, and Karen, as they are owned by, and in the custody of, the Connecticut Respondents upon whom service of process will be delivered in Connecticut, even if one or more elephants are temporarily out of state. *See* C.G.S.A. § 52–466(a).

47. Connecticut courts have jurisdiction to issue writs of habeas corpus even on behalf of petitioners located outside of Connecticut so long as they remain in the *custody* of a Connecticut respondent. *See Wyman v. Commissioner of Correction,* 86 Conn. App. 98, 101

(2004); *Hickey v. Comm'r of Correction*, 82 Conn. App. 25, 31-32, 34, 36 (2004), *app. dism.*, 274 Conn. 553 (2005). *See also Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 495 (1973); *Peyton v. Rowe*, 391 U.S. 54, 58 (1968); Paul D. Halliday, *Habeas Corpus: From England to Empire* 42–43 (2010).

48. The NhRP has standing to bring this Petition both under the common law and the governing procedural statutes. Petitions may be brought by the corpus, the prisoner himself, or by another on behalf of the detained person even if she and the detainee are strangers. *E.g.*, *Jackson v. Bulloch*, 12 Conn. 38 (1837); *Rodd v. Norwich State Hosp.*, 5 Conn. Supp. 360, 360 (Super. Ct. 1937); *Moye v. Warden*, 2009 WL 3839292, at *2 n.1 (Conn. Super. 2009); *Suarez v. Warden-Chesire*, 2001 WL 291057, at *2 (Conn. Super. 2001); *Lemmon v. People*, 20 N.Y. 562 (1860); *Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery*, 152 A.D.3d 73, 75 n.1 (1st Dept. 2017) ("*Tommy*"); *Lavery*, 124 A.D.3d at 150-53; *Stanley*, 16 N.Y.S.3d at 905; *Somerset*, Lofft 1, 98 Eng. Rep. 499.

49. Connecticut procedural statutes continue the common law tradition of permitting unrelated third parties to file habeas petitions. Conn. Practice Book § 23-40(a); C.G.S.A. § 52-466(a). Section 52-466(a)(2) does not concern *who* may bring a habeas corpus petition, but merely confers subject matter jurisdiction on a court to hear a habeas corpus case when an imprisoned person is in "custody" and determines venue for the situation when an inmate is in "custody" seeks habeas corpus. Connecticut has only adopted the first prong of the *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990)[5] test, pertaining to incapacity to sue, as part of its next

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[5] *Whitmore* established two prongs for next friend standing for purposes of federal jurisprudence under Article III. First, the next friend must provide "an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action." *Id.* at 163 (citations omitted). Second, the next friend must demonstrate that it is "truly dedicated to the best interests of the person on whose behalf [it] seeks to litigate." *Id.* The Court noted in *dicta* that "it has been further suggested that a 'next friend' must have some significant relationship with the real party in interest," but said nothing further on that issue. *Id.* at 163-64.

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friend standing jurisprudence.[6] Nonetheless, the NhRP satisfies the entire *Whitmore* test. The NhRP satisfies the first *Whitmore* prong, as Beulah, Minnie, and Karen, as elephants, lack the capacity to sue. The NhRP also satisfies the second prong, as it is undeniably dedicated to the best interests of the elephants (*supra* at ¶¶ 1, 36, 37, 45). Finally, many federal courts have properly recognized that *Whitmore*'s language regarding the "significant relationship" is *dicta* and not a requirement for next friend standing, even under federal jurisprudence, and no Connecticut court has adopted this *dicta*[7]. However, even federal courts that have adopted the significant-relationship *dicta* as a standing requirement (either as a third *Whitmore* prong or as a component of the second prong), have held that a significant relationship is not necessary where the real party in interest has no significant relationships.[8] Beulah, Minnie, and Karen have no, and can have no, significant relationships with any "person" willing, able, and competent to serve as their next friend in a habeas corpus action, particularly where, as here, Respondents have owned, controlled, and economically exploited them for decades, making their interests powerfully adverse to the elephants.~~Connecticut procedural statutes continue the common law tradition of permitting unrelated third parties to file habeas petitions. Conn. Practice Book § 23-40(a); C.G.S.A. § 52-466(a); C.G.S.A. § 52-466(b). Although Connecticut has not adopted the entire *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990)[9] test as part of Connecticut's next~~

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[6] *See State v. Ross*, 272 Conn. 577, 596-611 (2005); *In re Ross*, 272 Conn. 653, 655-56 (2005); *Carrubba v. Moskowitz*, 274 Conn. 533, 549 (2005); *Phoebe G. v. Solnit*, 252 Conn. 68, 71 (1999).

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[7] *See Sam M. v. Carcieri*, 608 F.3d 77, 90-91 (1st Cir. 2010); *Padilla v. Rumsfeld*, 352 F.3d 695, 703 n.7 (2d Cir. 2003), *rev'd and remanded on other grounds*, 542 U.S. 426 (2004); *Sanchez-Velasco v. Secretary of Dept. of Corrections*, 287 F.3d 1015, 1026 (11th Cir. 2002); *Coal. of Clergy v. Bush*, 310 F.3d 1153, 1165-66 (9th Cir. 2002) (Berzon J., concurring); *ACLU Found. v. Mattis*, 2017 WL6558503 at *4 (D.D.C. December 23, 2017); *Nichols v. Nichols*, 2011WL2470135, at *4 (D. Or. 2011); *Does v. Bush*, 2006 U.S. Dist. LEXIS 79175, 2006 WL 3096685, at *6 (D.D.C. Oct. 31, 2006).

[8] *See Hamdi v. Rumsfeld*, 294 F.3d 598, 604 n.3 (4th Cir. 2002) ("we reserve the case of someone who possesses no significant relationships at all."); *Coal. Of Clergy, Lawyers & Professors*, 310 F.3d 1153, 1162 (9th Cir. 2002) ("[n]ot all detainees may have a relative, friend, or even a diplomatic delegation able or willing to act on their behalf.").

[9] ~~*Whitmore* established two requirements for next friend standing for purposes of federal jurisprudence under Article III. First, the next friend must provide "an adequate explanation—~~

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~~friend standing jurisprudence, and has only ever applied its first prong pertaining to incapacity to sue (*See* Memorandum in Support of Motion to Reconsider at XXXXXX).~~[10] ~~the NhRP satisfies the *Whitmore* test as interpreted by federal courts that have adopted the entire test, including the *dicta* about a significant relationship.~~[11] ~~NhRP readily satisfies the first *Whitmore* prong, regarding incapacity to sue, as Beulah, Minnie, and Karen, as elephants, lack the capacity to sue in the same way a child lacks the capacity to sue. The NhRP also readily satisfies the second~~

Comment [MM1]: I'm thinking it's best to incorporate by reference rather than repeat all the authorities here

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~~such as inaccessibility, mental incompetence, or other disability – why the real party in interest cannot appear on his own behalf to prosecute the action." *Id.* at 163 (citations omitted). Second, the next friend must demonstrate that it is "truly dedicated to the best interests of the person on whose behalf [it] seeks to litigate." *Id.* The Court noted in *dicta* that "it has been further suggested that a 'next friend' must have some significant relationship with the real party in interest," but said nothing further on that issue. *Id.* at 163-64 (citing only *Davis v. Austin*, 492 F. Supp. 273, 275-276 (N.D. Ga. 1980) (minister and first cousin of prisoner denied "next friend" standing)). The *Whitmore* dissent, at 177 n.6 (Brennan, J. and Marshall, J., dissenting) correctly noted that "[i]f the Court's suggestion were true, it would necessitate abolishing next-friend standing entirely. In terms of Article III, a next friend who represents the interests of an incompetent person with whom he has a significant relation is no different from a next friend who pursues a claim on behalf of a competent stranger; both rely wholly on the injury to the real party in interest to satisfy constitutional standing requirements."~~

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~~[10] *See State v. Ross*, 272 Conn. 577, 596-611 (2005); *In re Ross*, 272 Conn. 653, 655-56 (2005); *Carrubba v. Moskowitz*, 274 Conn. 533, 549 (2005); *Phoebe G. v. Solnit*, 252 Conn. 68, 71 (1999).~~

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~~[11] Many federal courts have recognized that the language this Court relied upon regarding the "significant relationship" is both mere *dicta* and not a requirement for next friend standing, even under *federal* jurisprudence. *See Sam M. v. Carcieri*, 608 F.3d 77, 90-91 (1st Cir. 2010); *Padilla v. Rumsfeld*, 352 F.3d 695, 703 n.7 (2d Cir. 2003), *rev'd and remanded on other grounds*, 542 U.S. 426 (2004); *Sanchez-Velasco v. Secretary of Dept. of Corrections*, 287 F.3d 1015, 1026 (11th Cir. 2002); *Coal. of Clergy v. Bush*, 310 F.3d 1153, 1165-66 (9th Cir. 2002) (Berzon J., concurring); *ACLU Found. v. Mattis*, 2017 WL6558503 at *4 (D.D.C. December 23, 2017) ("*Whitmore* . . . noted *in dicta* that 'it has been further suggested that a 'next friend' must have some significant relationship with the real party in interest,' but did not opine on that issue (citation omitted)'"); *Nichols v. Nichols*, 2011WL2470135, at *4 (D. Or. 2011) ("The Supreme Court did not hold that a significant relationship is a necessary prerequisite for Next Friend status, but noted that some courts have 'suggested' that a Next Friend must also have a significant relationship with the real party in interest."); *Does v. Bush*, 2006 U.S. Dist. LEXIS 79175, 2006 WL 3096685, at *6 (D.D.C. Oct. 31, 2006). (*See* Memorandum in Support of Motion to Reconsider at 17XXXXXX).~~

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~~*Whitmore* prong regarding the best interests of the real party. The NhRP is undeniably dedicated to the best interests of the elephants. Its Mission Statement makes clear that is seeks to gain the fundamental legal right of bodily liberty for Beulah, Minnie, and Karen, *supra* at ¶ 1. The NhRP has not only set up a trust which it created pursuant to C.G.S.A. §45a-489a for the purpose of their care and maintenance, *supra* at ¶45, but it has arranged for a world-renowned elephant sanctuary to accept Beulah, Minnie, and Karen for the rest of their lives where they will "flourish in an environment that respects their autonomy to the greatest degree possible, as close to their native Asia or Africa as may be found in North America." *Supra* at ¶¶ 36, 37, 101-103, Affidavit of Ed Stewart, Co-Founder and President of the Performing Animal Welfare Society. Finally, there is ample authority, even among the federal courts cited by this Court (Decision at 7-8), that have adopted the significant relationship *dicta* as a standing requirement (either as a third *Whitmore* prong or as a component of the second prong), that have held that a significant relationship is not necessary where: (1) the real party has no significant relationships, (2) in "desperate circumstances" or (3) "extreme cases." Even the case of *Hamdi v. Rumsfeld*, 294 F.3d 598, 604 n.3 (4th Cir. 2002), upon which this Court relied in its statement that a significant relationship was required for standing (Decision at 7), the Fourth Circuit admonished that "we reserve the case of someone who possesses no significant relationships at all." As the Ninth Circuit observed in *Coal. Of Clergy, Lawyers & Professors*, "[n]ot all detainees may have a relative, friend, or even a diplomatic delegation able or willing to act on their behalf." 310 F.3d 1153, 1162 (9th Cir. 2002). Sometimes this absence of someone willing to serve as a next friend is due to, as in the recent case of *Mattis*, 2017 WL 6558503, impediments caused by the entity in control of the detainee, which is precisely the situation in the case at bar. Beulah, Minnie, and Karen, who are incompetent, have no, and can have no, significant relationships with any person willing, able, and competent to serve as their next friend in a habeas corpus action, particularly where, as here, Respondents have owned, controlled, and economically exploited them for decades, making their interests powerfully adverse to the elephants. In short, NhRP clearly has~~

~~standing under Connecticut common law based on *Jackson*, and can satisfy the entire *Whitmore* test even though Connecticut has only adopted the first prong regarding incapacity to sue.~~

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STATEMENT PURSUANT TO PRACTICE BOOK § 23-22

50. Upon the NhRP's best knowledge and belief, the cause or pretense of Beulah's, Minnie's, and Karen's imprisonment is that they are owned by, and being used for, entertainment and profit by the Respondents in such a manner that they are deprived of their autonomy and consequently their ability to choose how to live their emotionally, socially, and cognitively complex lives. They are trucked from place-to-place. They are forced to give public performances, do tricks, and give rides to members of the public at such places as county fairs under fear of being struck with bullhooks. Upon information and belief, they are rented out for private use in weddings and other private events. One elephant was forced into the Cathedral of St. John the Divine in New York City. The Respondents have been frequently cited for violations of the Federal Animal Welfare Act for their treatment of the elephants in their custody.

51. While this Petition challenges neither the conditions of their confinement nor Respondents' treatment of the elephants, but rather the fact of their detention itself, the deplorable conditions of Beulah's, Minnie's, and Karen's confinement underscore the need for immediate relief and the degree to which their bodily liberty and autonomy are impaired.

52. No previous application for the writ of habeas corpus asked herein has been made.

53. No appeal has been taken from any order by virtue of which Beulah, Minnie, and Karen are detained.

COUNT 1

54. Attached are the following affidavits, including four affidavits from five of the world's most renowned experts on the cognitive abilities of elephants ("Expert Affidavits"). These affidavits include:

(a) Affidavit of Kevin R. Schneider, Esq.

(b) Joint Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.

(c) Affidavit of Joyce Poole, Ph.D.

(d) Affidavit of Karen McComb, Ph.D.

(e) Affidavit of Cynthia Moss

(f) Affidavit of Ed Stewart

55. Expert Affidavits (b) through (e) demonstrate that elephants such as Beulah, Minnie, and Karen possess complex cognitive abilities sufficient for common law personhood and the common law right to bodily liberty, as a matter of common law liberty, equality, or both under Connecticut common law. These include: autonomy; empathy; self-awareness; self-determination; theory of mind (awareness others have minds); insight; working memory, and an extensive long-term memory that allows them to accumulate social knowledge; the ability to act intentionally and in a goal-oriented manner, and to detect animacy and goal directedness in others; to understand the physical competence and emotional state of others; imitate, including vocal imitation; point and understand pointing; engage in true teaching (taking the pupil's lack of knowledge into account and actively showing them what to do); cooperate and build coalitions; cooperative problem-solving, innovative problem-solving, and behavioral flexibility; understand causation; intentional communication, including vocalizations to share knowledge and information with others in a manner similar to humans; ostensive behavior that emphasizes the importance of a particular communication; wide variety of gestures, signals, and postures; use of specific calls and gestures to plan and discuss a course of action, adjust their plan according to their assessment of risk, and execute the plan in a coordinated manner; complex learning and categorization abilities, and; an awareness of and response to death, including grieving behaviors.

56. African and Asian elephants share numerous complex cognitive abilities with humans, such as self-awareness, empathy, awareness of death, intentional communication, learning, memory, and categorization abilities.[12]

57. Many of these capacities have been considered — erroneously — as uniquely human; each is a component of autonomy.[13] African and Asian elephants are autonomous, as they exhibit "self-determined behaviour that is based on freedom of choice. As a psychological concept it implies that the individual is directing their behaviour based on some non-observable, internal cognitive process, rather than simply responding reflexively."[14]

58. Elephants possess the largest absolute brain of any land animal.[15] Even relative to their body sizes, elephant brains are large.[16]

59. An encephalization quotient ("EQ") of 1.0 means a brain is exactly the size expected for that body size; values greater than 1.0 indicate a larger brain than expected for that body size. (*Id.*).[17] Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species).[18] This means an elephant's brain can be more than twice as large as is expected for an animal of its size.[19] These EQ values are similar to those of the great apes, with whom elephants have not shared a common ancestor for almost 100 million years.[20]

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[12] Joint Affidavit of Lucy Bates and Richard M. Byrne ["Bates & Byrne Aff."] ¶37; Affidavit of Karen McComb ["McComb Aff."] ¶31; Affidavit of Joyce Poole ["Poole Aff."] ¶29; Affidavit of Cynthia Moss ["Moss Aff."] ¶25.
[13] Bates & Byrne Aff. ¶37; McComb Aff. ¶31; Poole Aff. ¶29; Moss Aff. ¶25.
[14] Bates & Byrne Aff. ¶30, ¶60; McComb Aff. ¶24, ¶31, ¶54; Poole Aff. ¶22, ¶53; Moss Aff. ¶18; ¶48.
[15] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[16] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[17] Encephalization quotients (EQ) are a standardized measure of brain size relative to body size, and illustrate by how much a species' brain size deviates from that expected for its body size. Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[18] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[19] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[20] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.

60. A large brain allows greater cognitive skill and behavioral flexibility.[21] Typically, mammals are born with brains weighing up to 90% of the adult weight.[22] This figure drops to about 50% for chimpanzees.[23] At birth, human brains weigh only about 27% of the adult brain weight and increase in size over a prolonged childhood period.[24] This lengthy period of brain development (termed "developmental delay") is a key feature of human brain evolution.[25] It provides a longer period in which the brain may be shaped by experience and learning, and plays a role in the emergence of complex cognitive abilities such as self-awareness, creativity, forward planning, decision making and social interaction.[26] Elephant brains at birth weigh only about 35% of their adult weight, and elephants accordingly undergo a similarly protracted period of growth, development and learning.[27] This similar developmental delay in the elephant brain is likewise associated with the emergence of analogous cognitive abilities.[28]

61. Physical similarities between human and elephant brains occur in areas that link to the capacities necessary for autonomy and self-awareness.[29] Elephant and human brains share deep and complex foldings of the cerebral cortex, large parietal and temporal lobes, and a large cerebellum.[30] The temporal and parietal lobes of the cerebral cortex manage communication, perception, and recognition and comprehension of physical actions, while the cerebellum is involved in planning, empathy, and predicting and understanding the actions of others.[31]

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[21] Bates & Byrne Aff. ¶¶32-33; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[22] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[23] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[24] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[25] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[26] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[27] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[28] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[29] Bates & Byrne Aff. ¶34; Poole Aff. ¶26; McComb Aff. ¶28; Moss Aff. ¶22.
[30] Bates & Byrne Aff. ¶34; McComb Aff. ¶28; Poole Aff. ¶26; Moss Aff. ¶22.
[31] Bates & Byrne Aff. ¶34; McComb Aff. ¶28; Poole Aff. ¶26; Moss Aff. ¶22.

62. Elephant brains hold nearly as many cortical neurons as do human brains, and a much greater number than do chimpanzees or bottlenose dolphins.[32] Elephants' pyramidal neurons — the class of neurons found in the cerebral cortex, particularly the pre-frontal cortex, which is the brain area that controls "executive functions" — are larger than in humans and most other species.[33] The term "executive function" refers to controlling operations, such as paying attention, inhibiting inappropriate responses, and deciding how to use memory search. These abilities develop late in human infancy and are often impaired in dementia. The degree of complexity of pyramidal neurons is linked to cognitive ability, with more complex connections between pyramidal neurons being associated with increased cognitive capabilities.[34] Elephant pyramidal neurons have a large number of connections with other neurons for receiving and sending signals, known as a dendritic tree.[35]

63. Elephants, like humans, great apes, and some cetaceans, possess *von Economo neurons*, or spindle cells, the so-called "air-traffic controllers for emotions," in the anterior cingulate, fronto-insular, and dorsolateral prefrontal cortex areas of the brain.[36] In humans, these cortical areas are involved, among other things, with the processing of complex social information, emotional learning and empathy, planning and decision-making, and self-awareness and self-control.[37] The presence of spindle cells in the same brain locations in elephants and humans strongly implies that these higher-order brain functions, which are the building blocks of autonomous, self-determined behavior, are common to both species.[38]

64. Elephants have extensive and long-lasting memories.[39] McComb et al. (2000), using experimental playback of long-distance contact calls in Amboseli National Park, Kenya,

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[32] Humans: 1.15×10^{10}; elephants: 1.1×10^{10}, chimpanzees: 6.2×10^{9}; dolphins: 5.8×10^{9}. Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[33] Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[34] Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[35] Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[36] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[37] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[38] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[39] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.

showed that African elephants remember and recognize the voices of at least 100 other elephants.[40] Each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average of 14 families in the population.[41] When the calls came from the test elephants' own family, they contact-called in response and approached the location of the loudspeaker; when they were from another non-related but familiar family, one that had been shown to have a high association index with the test group, they listened but remained relaxed.[42] However, when a test group heard unfamiliar contact calls from groups with a low association index with the test group, the elephants bunched together and retreated from the area.[43]

65. McComb et al. has demonstrated that this social knowledge accumulates with age, with older females having the best knowledge of the contact calls of other family groups, and that older females are better leaders than younger, with more appropriate decision-making in response to potential threats (in this case, in the form of hearing lion roars).[44] Younger matriarchs under-reacted to hearing roars from male lions, elephants, most dangerous predators.[45] Sensitivity to the roars of male lions increased with increasing matriarch age, with the oldest, most experienced females showing the strongest response to this danger.[46] These studies show that elephants continue to learn and remember information about their environments throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they age.[47]

66. Further demonstration of elephants' long-term memory emerges from data on their movement patterns.[48] African elephants move over very large distances in their search for

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[40] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[41] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[42] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[43] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[44] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[45] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[46] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[47] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[48] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.

food and water.[49] Leggett (2006) used GPS collars to track the movements of elephants living in the Namib Desert, with one group traveling over 600 km in five months.[50] Viljoen (1989) showed that elephants in the same region visited water holes approximately every four days, though some were more than 60 km apart.[51]

67. Elephants inhabiting the deserts of Namibia and Mali may travel hundreds of kilometers to visit remote water sources shortly after the onset of a period of rainfall, sometimes along routes that have not been used for many years.[52] These remarkable feats suggest exceptional cognitive mapping skills that rely upon the long-term memories of older individuals who may have traveled that same path decades earlier.[53] Thus, family groups headed by older matriarchs are better able to survive periods of drought.[54] These older matriarchs lead their families over larger areas during droughts than families headed by younger matriarchs, again drawing on their accrued knowledge, this time about the locations of permanent, drought-resistant sources of food and water, to better lead and protect their families.[55]

68. Studies reveal that long-term memories, and the decision-making mechanisms that rely on this knowledge, are severely disrupted in elephants who have experienced trauma or extreme disruption due to "management" practices initiated by humans.[56] Shannon *et al.* (2013) demonstrated that South African elephants who experienced trauma decades earlier showed significantly reduced social knowledge.[57] As a result of archaic culling practices, these elephants had been forcibly separated from family members and subsequently taken to new locations.[58] Two decades later, their social knowledge and skills and decision-making abilities were

[49] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[50] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[51] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[52] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[53] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[54] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[55] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[56] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[57] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[58] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.

impoverished compared to an undisturbed Kenyan population.[59] Disrupting elephants' natural way of life has substantial negative impacts on their knowledge and decision-making abilities.[60]

69. Elephants demonstrate advanced working memory skills.[61] Working memory is the ability to temporarily store, recall, manipulate and coordinate items from memory.[62] Working memory directs one's attention to relevant information, utilized in reasoning, planning, coordination, and execution of cognitive processes through a "central executive."[63] Adult human working memory has a capacity of around seven items.[64] When experiments were conducted with wild elephants in Kenya in which the locations of fresh urine samples from related or unrelated elephants were manipulated, the elephants responded by detecting urine from known individuals in surprising locations, thereby demonstrating the ability continually to track the locations of at least 17 family members in relation to themselves, as either absent, present in front of self, or present behind self.[65] This remarkable ability to hold in mind and regularly update information about the locations and movements of a large number of family members is best explained by the fact that elephants possess an unusually large working memory capacity that is much larger than that of humans.[66]

70. Elephants display a sophisticated categorization of their environment on par with humans.[67] Bates, Byrne, Poole, and Moss experimentally presented the elephants of Amboseli National Park, Kenya with garments that gave olfactory or visual information about their human wearers, either Maasai warriors who traditionally attack and spear elephants as part of their rite of passage, or Kamba men who are agriculturalists and traditionally pose little threat to

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[59] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[60] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[61] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[62] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[63] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[64] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[65] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[66] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[67] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.

elephants.[68] In the first experiment, the only thing that differed between the cloths was the smell, derived from the ethnicity and/or lifestyle of the wearers.[69] The elephants were significantly more likely to run away when they sniffed cloths worn by Maasai men than those worn by Kamba men or no one at all. (See "Video 7" attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit K").[70]

71. In a second experiment, they presented the elephants with two cloths that had not been worn by anyone; one was white (a neutral stimulus) and the other red, the color ritually worn by Maasai warriors.[71] With access only to these visual cues, the elephants showed significantly greater, sometimes aggressive, reactions to red garments than white.[72] They concluded that elephants are able to categorize a single species (humans) into sub-classes (i.e., "dangerous" or "low risk") based on either olfactory or visual cues alone.[73]

72. McComb et al. further demonstrated that these same elephants distinguish human groups based on voices.[74] The elephants reacted differently, and appropriately, depending on whether they heard Maasai or Kamba men speaking, and whether the speakers were male Maasai versus female Maasai, who also pose no threat.[75] Scent, sounds and visual signs associated specifically with Maasai men are categorized as "dangerous," while neutral signals are attended to but categorized as "low risk."[76] These sophisticated, multi-modal categorization skills may be exceptional among non-human animals and demonstrate elephants' acute sensitivity to the human world and how they monitor human behavior and learn to recognize when we might cause them harm.[77]

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[68] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[69] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[70] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[71] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[72] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[73] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[74] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[75] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[76] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[77] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.

73. Human speech and language reflect autonomous thinking and intentional behavior.[78] Similarly, elephants vocalize to share knowledge and information.[79] Male elephants primarily communicate about their sexual status, rank and identity, whereas females and dependents emphasize and reinforce their social units.[80] Call types are separated into those produced by the larynx (such as "rumbles") and calls produced by the trunk (such as "trumpets"), with different calls in each category used in different contexts.[81] Field experiments have shown that African elephants distinguish between call types. For example, such contact calls as "rumbles" may travel kilometers and maintain associations between elephants, or "oestrus rumbles" may occur after a female has copulated, and these call types elicit different responses in listeners.[82]

74. Elephant vocalizations are not merely reflexive; they have distinct meanings to listeners and communicate in a manner similar to the way humans use language.[83] Elephants display more than two hundred gestures, signals and postures that they use to communicate information to their audience.[84] Such signals are adopted in many contexts, such as aggressive, sexual or socially integrative situations, are well-defined, carry a specific meaning both to the actor and recipient, result in predictable responses from the audience, and together demonstrate intentional and purposeful communication intended to share information and/or alter the others' behavior to fit their own will.[85]

75. Elephants use specific calls and gestures to plan and discuss a course of action.[86] These may be to respond to a threat through a group retreating or mobbing action (including celebration of successful efforts), or planning and discussing where, when and how to move to a

[78] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[79] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[80] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[81] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[82] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[83] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[84] Poole Aff. ¶43; Bates & Byrne Aff. ¶52; McComb Aff. ¶46; Moss Aff. ¶40.
[85] Bates & Byrne Aff. ¶52; McComb Aff. ¶46; Poole Aff. ¶43; Moss Aff. ¶40.
[86] Poole Aff. ¶44.

new location.[87] In group-defensive situations, elephants respond with highly coordinated behaviour, both rapidly and *predictably*, to specific calls uttered and particular gestures exhibited by group members.[88] These calls and gestures carry specific meanings not only to elephant listeners, but to experienced human listeners as well.[89] The rapid, predictable and collective response of elephants to these calls and gestures indicates that elephants have the capacity to understand the goals and intentions of the signalling individual.[90]

76. Elephant group defensive behavior is highly evolved and involves a range of different tactical maneuvers adopted by different elephants.[91] For example, matriarch Provocadora's contemplation of Poole's team through listening and "j-sniffing," followed by her purposeful "perpendicular-walk" (in relation to Poole's team) toward her family and her "ear-flap-slide" clearly communicated that her family should begin a "group-advance" upon Poole's team.[92] This particular elephant attack is a powerful example of elephants' use of empathy, coalition and cooperation.[93] Provocadora's instigation of the "group-advance" led to a two-and-a-half minute "group-charge" in which the three other large adult females of the 36-member family took turns leading the charge, passing the baton, in a sense, from one to the next.[94] Once they succeeded in their goal of chasing Poole's team away, they celebrated their victory by "high-fiving" with their trunks and engaging in an "end-zone-dance."[95] "High-fiving" is also typically used to initiate a coalition and is both preceded by and associated with other specific gestures and calls that lead to very goal oriented collective behavior.[96]

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[87] Poole Aff. ¶44.
[88] Poole Aff. ¶45.
[89] Poole Aff. ¶45.
[90] Poole Aff. ¶45.
[91] Poole Aff. ¶45.
[92] Poole Aff. ¶45.
[93] Poole Aff. ¶45.
[94] Poole Aff. ¶45.
[95] Poole Aff. ¶45.
[96] Poole Aff. ¶45.

77. Ostensive communication refers to the way humans use particular behavior, such as tone of speech, eye contact, and physical contact, to emphasize that a particular communication is important.[97] Lead elephants in family groups use ostensive communication frequently as a way to say, "Heads up – I am about to do something that you should pay attention to."[98]

78. In planning and communicating intentions regarding a movement, elephants use both vocal and gestural communication.[99] For example, Poole has observed that a member of a family will use the axis of her body to point in the direction she wishes to go and then vocalize, every couple of minutes, with a specific call known as a "let's-go" rumble, "I want to go this way, let's go together."[100] The elephant will also use intention gestures — such as "foot-swinging" — to indicate her intention to move.[101] Such a call may be successful or unsuccessful at moving the group or may lead to a 45-minute or longer discussion (a series of rumble exchanges known as "cadenced rumbles") that researchers interpret as negotiation.[102] Sometimes such negotiation leads to disagreement that may result in the group splitting and going in different directions for a period of time.[103] In situations where the security of the group is at stake, such as when movement is planned through or near human settlement, all group members focus on the matriarch's decision.[104] So while "let's go" rumbles are uttered, others adopt a "waiting" posture until the matriarch, after much "listening," "j-sniffing," and "monitoring," decides it is safe to proceed, where upon they bunch together and move purposefully, and at a fast pace in a "group-march."[105]

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[97] Poole Aff. ¶36.
[98] Poole Aff. ¶36.
[99] Poole Aff. ¶46.
[100] Poole Aff. ¶46.
[101] Poole Aff. ¶46.
[102] Poole Aff. ¶46.
[103] Poole Aff. ¶46.
[104] Poole Aff. ¶46.
[105] Poole Aff. ¶46.

79. Elephants typically move through dangerous habitat and nighttime hours at high speed in a clearly goal-oriented manner known as "streaking," which has been described and documented through the movements of elephants wearing satellite tracking collars.[106] The many different signals — calls, postures, gestures and behaviors elephants use to contemplate and initiate such movement (including "ear-flap," "ear-flap-slide") — are clearly understood by other elephants (just as they can be understood after long-term study by human observers), mean very specific things, and indicate that elephants: 1) have a particular plan which they can communicate with others, 2) can adjust their plan according to their immediate assessment of risk or opportunity, and 3) can communicate and execute the plan in a coordinated manner.[107]

80. Elephants can vocally imitate sounds they hear, from the engines of passing trucks to the commands of human zookeepers.[108] Imitating another's behavior is demonstrative of a sense of self, as it is necessary to understand how one's own behavior relates to the behavior of others.[109] African elephants recognize the importance of visual attentiveness on the part of an intended recipient, elephant or human, and of gestural communication, which further demonstrates that elephants' gestural communications are intentional and purposeful.[110] This ability to understand the visual attentiveness and perspective of others is crucial for empathy, mental-state understanding, and "theory of mind," the ability to mentally represent and think about the knowledge, beliefs and emotional states of others, while recognizing that these can be distinct from your own knowledge, beliefs and emotions.[111]

81. As do humans, Asian elephants exhibit "mirror self-recognition" (MSR) using Gallup's classic "mark test."[112] MSR is the ability to recognize a reflection in the mirror as

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[106] Poole Aff. ¶46.
[107] Poole Aff. ¶46.
[108] Bates & Byrne Aff. ¶51; McComb Aff. ¶45; Poole Aff. ¶47; Moss Aff. ¶39.
[109] Bates & Byrne Aff. ¶51; McComb Aff. ¶45; Poole Aff. ¶47; Moss Aff. ¶39.
[110] Bates & Byrne Aff. ¶53; McComb Aff. ¶47; Poole Aff. ¶48; Moss Aff. ¶41.
[111] Bates & Byrne Aff. ¶40, ¶53; McComb Aff. ¶34, ¶47; Poole Aff. ¶32, ¶48; Moss Aff. ¶28, ¶41.
[112] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26. African elephants have not yet been tested.

oneself, while the mark test involves surreptitiously placing a colored mark on an individual's forehead that she cannot see or be aware of without the aid of a mirror.[113] If the individual uses the mirror to investigate the mark, the individual must recognize the reflection as herself. (See "Video 1," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit D").[114]

82. MSR is significant because it is a key identifier of self-awareness.[115] Self-awareness is intimately related to autobiographical memory in humans and is central to autonomy and being able to direct one's own behavior to achieve personal goals and desires.[116] By demonstrating they can recognize themselves in a mirror, elephants must be holding a mental representation of themselves from another perspective and thus be aware that they are a separate entity from others.[117]

83. One who understands the concept of dying and death must possess a sense of self.[118] Both chimpanzees and elephants demonstrate an awareness of death by reacting to dead family or group members.[119] Having a mental representation of the self, which is a pre-requisite for mirror-self recognition, likely confers an ability to comprehend death.[120]

84. Wild African elephants have been shown experimentally to be more interested in the bones of dead elephants than the bones of other animals. (See "Video 2," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit E").[121] They have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead

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[113] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[114] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[115] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[116] "Autobiographical memory" refers to what one remembers about his or her own life; for example, not that "Paris is the capital of France," but the recollection that you had a lovely time when you went there. Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[117] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[118] Poole Aff. ¶31; Bates & Byrne Aff. ¶39; Moss Aff. ¶27.
[119] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[120] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[121] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.

individuals.[122] Although they do not give up trying to lift or elicit movement from a dead body immediately, elephants appear to realize that once dead, the carcass can no longer be helped; and instead they engage in more "mournful" or "grief-stricken" behavior, such as standing guard over the body with dejected demeanor and protecting it from predators. (See "Photographs," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit F").[123]

85. Wild African elephants have been observed to cover the bodies of their dead with dirt and vegetation.[124] Mothers who lose a calf may remain with the calf's body for an extended period, but do not behave towards the body as they would a live calf.[125] Indeed, the general demeanor of elephants attending to a dead elephant is one of grief and compassion, with slow movements and few vocalizations.[126] These behaviors are akin to human responses to the death of a close relative or friend and demonstrate that elephants possess some understanding of life and the permanence of death. (See "Photographs," attached to the Affidavit of Karen McComb, Ph.D. on CD as "Exhibit E").[127]

86. Elephants' interest in the bodies, carcasses and bones of elephants who have passed is so marked that when one has died, trails to the site of death become worn into the ground by the repeated visits of many elephants over days, weeks, months, even years.[128] The accumulation of dung around the site attests to the extended time that visiting elephants spend touching and contemplating the bones.[129] Poole observed that, over years, the bones may become scattered over tens or hundreds of square meters as elephants pick up the bones and carry them

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[122] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[123] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[124] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[125] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[126] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[127] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[128] Poole Aff. ¶31.
[129] Poole Aff. ¶31.

away.[130] The tusks are of particular interest and may be carried and deposited many hundreds of meters from the site of death.[131]

87. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities.[132] Empathy is defined as identifying with and understanding another's experiences or feelings by relating personally to their situation.[133]

88. Empathy is an important component of human consciousness and autonomy and is a cornerstone of normal social interaction.[134] It requires modeling the emotional states and desired goals that influence others' behavior both in the past and future, and using this information to plan one's own actions; empathy is only possible if one can adopt or imagine another's perspective, and attribute emotions to that other individual.[135] Thus, empathy is a component of "theory of mind."[136]

89. Elephants frequently display empathy in the form of protection, comfort and consolation, as well as by actively helping those in difficulty, such as assisting injured individuals to stand and walk, or helping calves out of rivers or ditches with steep banks. (See "Video 3," attached to the Affidavit of Karen McComb, Ph.D. on CD as "Exhibit F").[137] Elephants have been seen to react when anticipating the pain of others by wincing when a nearby elephant stretched her trunk toward a live wire, and have been observed feeding those unable to use their own trunks to eat and attempting to feed those who have just died.[138]

90. In an analysis of behavioural data collected from wild African elephants over a 40-year continuous field study, Bates and colleagues concluded that as well as possessing their own intentions, elephants can diagnose animacy and goal directedness in others, understand the

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[130] Poole Aff. ¶31.
[131] Poole Aff. ¶31.
[132] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[133] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[134] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[135] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[136] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[137] Bates & Byrne Aff. ¶41; McComb Aff. ¶35; Poole Aff. ¶33; Moss Aff. ¶29.
[138] Poole Aff. ¶33; Bates & Byrne Aff. ¶41; McComb Aff. ¶35; Moss Aff. ¶29.

physical competence and emotional state of others, and attribute goals and mental states (intentions) to others.[139]

91. This is borne out by examples such as:

> IB family is crossing river. Infant struggles to climb out of bank after its mother. An adult female [not the mother] is standing next to calf and moves closer as the infant struggles. Female does not push calf out with its trunk, but digs her tusks into the mud behind the calf's front right leg which acts to provide some anchorage for the calf, who then scrambles up and out and rejoins mother.
>
> At 11.10ish Ella gives a "lets go" rumble as she moves further down the swamp . . . At 11.19 Ella goes into the swamp. The entire group is in the swamp except Elspeth and her calf [<1 year] and Eudora [Elspeth's mother]. At 11.25 Eudora appears to "lead" Elspeth and the calf to a good place to enter the swamp — the only place where there is no mud.

(See "Video 3," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit G").[140]

92. In addition to the examples analyzed in Bates *et al.*, Poole observed two adult females rush to the side of a third female who had just given birth, back into her, and press their bodies to her in what appeared to be a spontaneous attempt to prevent injury to the newborn.[141] In describing the situation, Poole wrote:

> The elephants' sounds [relating to the birth] also attracted the attention of several males including young and inexperienced, Ramon, who, picking up on the interesting smells of the mother [Ella], mounted her, his clumsy body and feet poised above the newborn. Matriarch Echo and her adult daughter Erin, rushed to Ella's side and, I believe, purposefully backed into her in what appeared to be an attempt to prevent the male from landing on the baby when he dismounted.[142]

93. Such examples demonstrate that the acting elephant(s) (the adult female in the first example, Eudora in the second, and Erin and Echo in the third) were able to understand the intentions or situation of the other (the calf in the first case, Elspeth in the second, Ella's newborn and the male in the third), and could adjust their own behavior to counteract the

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[139] Bates & Byrne Aff. ¶42; McComb Aff. ¶36; Poole Aff. ¶34; Moss Aff. ¶30.
[140] Bates & Byrne Aff. ¶42.
[141] Poole Aff. ¶34.
[142] Poole Aff. ¶34.

problem being faced by the other.[143]

94. In raw footage Poole acquired of elephant behavior filmed by her brother in the Mara, Kenya, an "allo-mother" (an elephant who cares for an infant and is not the infant's mother or father) moves a log from under the head of an infant in what appears to be an effort to make him more comfortable. (See "Video 1," attached to the Affidavit of Joyce Poole, Ph.D. on CD as "Exhibit C").[144] In a further example of the ability to understand goal directedness of others, elephants appear to understand that vehicles drive on roads or tracks and they further appear to know where these tracks lead.[145] In Gorongosa, Mozambique, where elephants exhibit a culture of aggression toward humans, charging, chasing and attacking vehicles, adult females anticipate the direction the vehicle will go and attempt to cut it off by taking shortcuts *before* the vehicle has begun to turn.[146]

95. Empathic behavior begins early in elephants. In humans, rudimentary sympathy for others in distress has been recorded in infants as young as 10 months old; young elephants similarly exhibit sympathetic behavior.[147] For example, during fieldwork in the Maasai Mara in 2011, Poole filmed a mother elephant using her trunk to assist her one-year-old female calf up a steep bank. Once the calf was safely up the bank she turned around to face her five-year-old sister, who was also having difficulties getting up the bank. As the older calf struggled to clamber up the bank the younger calf approached her and first touched her mouth (a gesture of reassurance among family members) and then reached her trunk out to touch the leg that had been having difficulty. Only when her sibling was safely up the bank did the calf turn to follow her mother. (See "Video 2," attached to the Affidavit of Joyce Poole, Ph.D. on CD as "Exhibit D").[148]

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[143] Bates & Byrne Aff. ¶42; McComb Aff. ¶36; Poole Aff. ¶34; Moss Aff. ¶30.
[144] Poole Aff. ¶34.
[145] Poole Aff. ¶34.
[146] Poole Aff. ¶34.
[147] Poole Aff. ¶34.
[148] Poole Aff. ¶34.

94. Captive African elephants attribute intentions to others, as they follow and understand human pointing gestures.[149] The elephants understood that the human experimenter was pointing to communicate information to them about the location of a hidden object. (See "Video 4," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit H").[150] Attributing intentions and understanding another's reference point is central to both empathy and "theory of mind."[151]

95. There is evidence of "natural pedagogy," or true teaching — whereby a teacher takes into account the knowledge states of the learner as she passes on relevant information — in elephants. Bates, Byrne, and Moss's analysis of simulated "oestrus behaviours"[152] in African elephants — whereby a non-cycling, sexually experienced older female will simulate the visual signals of being sexually receptive, even though she is not ready to mate or breed again — demonstrates that these knowledgeable females can adopt false "oestrus behaviours" to demonstrate to naïve young females how to attract and respond appropriately to suitable males.[153] The experienced females may be taking the youngster's lack of knowledge into account and actively showing them what to do — a possible example of true teaching as it is defined in humans.[154] This evidence, coupled with the data showing they understand the ostensive cues in human pointing, suggests that elephants understand the intentions and knowledge states (minds) of others.[155]

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[149] Bates & Byrne Aff. ¶43; McComb Aff. ¶37; Poole Aff. ¶35; Moss Aff. ¶31.
[150] Bates & Byrne Aff. ¶43; McComb Aff. ¶37; Poole Aff. ¶35; Moss Aff. ¶31.
[151] Bates & Byrne Aff. ¶43; McComb Aff. ¶37; Poole Aff. ¶35; Moss Aff. ¶31.
[152] Bates & Byrne Aff. ¶44. Ostension is the way that we can "mark" our communications to show people that that is what they are. If you do something that another copies, that's imitation; but if you deliberately indicate what you are doing to be helpful, that's "ostensive" teaching. Similarly, we may "mark" a joke, hidden in seemingly innocent words; or "mark" our words as directed towards someone specific by catching their eye. Ostension implies that the signaller knows what she is doing.
[153] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.
[154] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.
[155] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.

96. Coalitions and cooperation have been frequently documented in wild African elephants, particularly to defend family members or close allies from (potential) attacks by outsiders, such as when one family group tries to "kidnap" a calf from an unrelated family.[156] These behaviors are generally preceded by gestural and vocal signals, typically given by the matriarch and acted upon by family members, and are based on one elephant understanding the emotions and goals of a coalition partner.[157]

97. Cooperation is evident in captive Asian elephants, who demonstrate they can work together in pairs to obtain a reward, but also understand the pointlessness of attempting the task if their partner was not present or could not access the equipment. (See "Video 5," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit I").[158] Problem-solving and working together to achieve a collectively desired outcome involve mentally representing both a goal and the sequence of behaviors that is required to achieve that goal; it is based on (at the very least) short-term action planning.[159]

98. Wild elephants have frequently been observed engaging in such cooperative problem-solving as retrieving calves kidnapped by other groups, helping calves out of steep, muddy river banks (see "Video 3," attached to the Affidavit of Karen McComb, Ph.D. on CD as "Exhibit F"), rescuing a calf attacked by a lion (acoustic recording calling to elicit help from others), and navigating through human-dominated landscapes to reach a desired destination such as a habitat, salt-lick, or waterhole.[160] These behaviors demonstrate the purposeful and well-coordinated social system of elephants and show that elephants can collectively hold specific aims in mind, then work together to achieve those goals.[161] Such intentional, goal-directed action forms the foundation of independent agency, self-determination, and autonomy.[162]

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[156] Bates & Byrne Aff. ¶45; McComb Aff. ¶39; Poole Aff. ¶37; Moss Aff. ¶33.
[157] Bates & Byrne Aff. ¶45; McComb Aff. ¶39; Poole Aff. ¶37; Moss Aff. ¶33.
[158] Bates & Byrne Aff. ¶46; McComb Aff. ¶40; Poole Aff. ¶38; Moss Aff. ¶34.
[159] Bates & Byrne Aff. ¶46; McComb Aff. ¶40; Poole Aff. ¶38; Moss Aff. ¶34.
[160] Poole Aff. ¶39; Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Moss Aff. ¶35.
[161] Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Poole Aff. ¶39; Moss Aff. ¶35.
[162] Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Poole Aff. ¶39; Moss Aff. ¶35.

99. Elephants also show innovative problem-solving in experimental tests of insight, defined as the "a-ha" moment when a solution to a problem suddenly becomes clear.[163] A juvenile male Asian elephant demonstrated such a spontaneous action by moving a plastic cube and standing on it to obtain previously out-of-reach food.[164] After solving this problem once, he showed flexibility and generalization of the technique to other similar problems by using the same cube in different situations, or different objects in place of the cube when it was unavailable. (See "Video 6," attached to the Affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D. on CD as "Exhibit J").[165] This experiment demonstrates that elephants can choose an appropriate action and incorporate it into a sequence of behavior to achieve a goal they kept in mind throughout the process.[166]

100. Asian elephants demonstrate the ability to understand goal-directed behavior.[167] When presented with food that was out of reach, but with some bits resting on a tray that could be pulled within reach, elephants learned to pull only those trays baited with food.[168] Success in this kind of "means-end" task demonstrates causal knowledge, which requires understanding not just that two events are associated with each other, but that some mediating force connects and affects the two which may be used to predict and control events.[169] Understanding causation and inferring object relations may be related to understanding psychological causation, which is appreciation that others are animate beings who generate their own behavior and have mental states (e.g., intentions).[170]

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[163] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36. In cognitive psychology terms, "insight" is the ability to inspect and manipulate a mental representation of something, even when you can't physically perceive or touch the something at the time. Simply, insight is using only thinking to solve problems.
[164] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36.
[165] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36.
[166] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36.
[167] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[168] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[169] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[170] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.

101. PAWS is a 501(c)(3) non-profit organization incorporated in 1984. It maintains three captive wildlife sanctuaries: the original 30-acre PAWS sanctuary in Galt, California; the 100-acre Amanda Blake Memorial Wildlife Refuge in Herald, California; and the 2,300-acre ARK 2000 sanctuary in San Andreas, California, that are home to elephants, bears, and big cats. The Galt sanctuary was the first sanctuary in the country equipped to care for elephants.[171] PAWS sanctuaries provide rescued animals with specially designed peaceful, natural habitats where they have the freedom to engage in natural autonomous behaviors that are as close to their native habitat as can be found in North America.

102. The mission of PAWS is to protect performing wild animals, provide sanctuary to abused, abandoned or retired captive wildlife, promote the best standards of care for all captive wildlife, preserve wild species and their habitat, and educate the public about captive wild animals.[172]

103. The ARK 2000 sanctuary is located near the Sierra Nevada Mountains in San Andreas, California, and has five elephant barns, one for female Asian elephants, one for female African elephants, and three for bull elephants. The property encompasses 2,300 acres of rolling foothills with varied natural terrain. Habitats include natural grasses, trees, lakes and pools in which the elephants may bathe. The Asian and African barns are each 20,000 square feet in size. Barns are equipped with heaters, hydraulic gates, restraint devices for veterinary procedures, heated and padded concrete floors, dirt floors, spacious sleeping stalls and pipe hallways for introduction and socialization of new elephants. The African barn has an indoor therapy pool. The Asian elephant barn contains dirt-floor sleeping stalls specially designed for older elephants with foot and joint problems.[173]

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[171] Stewart Aff. ¶4.
[172] Stewart Aff. ¶6.
[173] Stewart Aff. ¶8.

104. In support of this Petition, the NhRP has filed its Memorandum of Law in Support of Verified Petition for Common Law Writ of Habeas Corpus as well as an Appendix of Exhibits in Support of Verified Petition for Common Law Writ of Habeas Corpus which contains the exhibits referred to in this Petition. The Petitioner's proposed Writ of Habeas Corpus is attached hereto.

DEMAND

WHEREFORE, Petitioner respectfully requests the following relief:

A. Issuance of the Writ of Habeas Corpus directing the Respondents to file a return to the Petition pursuant to Connecticut Practice Book § 23-21 *et seq.* including, *inter alia*, setting forth the facts claimed to justify the detention and denial of liberty of Beulah, Minnie, and Karen, three illegally confined elephants in Respondents' custody;

B. Upon a determination that Beulah, Minnie, and Karen are being unlawfully denied their liberty, detained and imprisoned, ordering their immediate release from Respondents' custody and illegal confinement forthwith to PAWS;

C. Awarding Petitioner NhRP its costs and disbursements in connection with this matter; and

D. Granting such other and further relief as this Court deems just and proper.

THE PETITIONER,
THE NONHUMAN RIGHTS PROJECT, INC.

BY:_____

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OATH

I, Kevin Schneider, Executive Director of The Nonhuman Rights Project, Inc., solemnly and sincerely affirm and declare that the statements contained herein are true to the best of my knowledge and belief, upon the pains and penalties of perjury or false statement.

_____

Kevin Schneider

Kevin Schneider, being duly sworn, states that the above information is true to the best of his knowledge and belief.

Sworn to and subscribed before me this ____ day of November, 2017.

_____

Notary Public
Commissioner of the Superior Court