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DOCKET NO. TTD-CV-18-5010280

In the matter of a Petition for a Common Law Writ of Habeas Corpus,	:	SUPERIOR COURT
NONHUMAN RIGHTS PROJECT, INC., on behalf of BEULAH, MINNIE, and KAREN, Petitioner,	:	JUDICIAL DISTRICT OF TOLLAND
v.	:	AT ROCKVILLE
R.W. COMMERFORD & SONS, INC. a/k/a COMMERFORD ZOO, and WILLIAM R. COMMERFORD, as President of R.W. COMMERFORD & SONS, INC., Respondents.	:	June 8, 2018

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SUPERIOR COURT
TOLLAND JUDICIAL DISTRICT
ROCKVILLE

VERIFIED PETITION FOR A
COMMON LAW WRIT OF HABEAS CORPUS

"Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? . . . To treat a chimpanzee as if he or she had no right to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth, as a mere resource for human use, a thing the value of which consists exclusively in its usefulness to others. Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect. . . .

The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. . . . Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a 'person,' there is no doubt that it is not merely a thing."

-*Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 2018 WL 2107087, at *1-2 (N.Y. May 8, 2018)(Fahey, J. concurring)

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Pursuant to Connecticut Practice Book § 23-21 *et seq.* and C.G.S.A. § 52-466 *et seq.*, the Nonhuman Rights Project, Inc. ("NhRP" or "Petitioner") submits this Verified Petition for a Common Law Writ of Habeas Corpus ("Petition") on behalf of Beulah, Minnie, and Karen, three

elephants, and attaches a Memorandum of Law in Support ("Memorandum"), an Appendix of Exhibits, Exhibits, Expert Affidavits (including one expert legal affidavit and numerous expert scientific affidavits), and a proposed Writ of Habeas Corpus, and states:

I. Parties

1. 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." https://www.nonhumanrights.org/who-we-are/. 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 from 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 from 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.

7. 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 should

they be released from Respondents' unlawful detention. A true and correct copy of the trust is attached hereto as **Exhibit 1.**

II. Introduction and Overview

8. This Petition is filed as an application in good faith seeking the extension or modification of the Connecticut common law of habeas corpus as it pertains to Beulah, Minnie, and Karen, who are being detained by Respondents solely because they are presently classified under the common law as rightless things rather than the legal persons they should be for the purpose of securing their common law right to bodily liberty through common law habeas corpus. This Court must determine, in light of the Expert Legal and Scientific Affidavits and the NhRP's legal arguments, whether Beulah, Minnie, and Karen, as autonomous beings, should now be recognized as "persons" solely for the purpose of the Connecticut common law of habeas corpus pursuant to a Connecticut common law that keeps abreast of evolving standards of justice, morality, experience, and scientific discovery.

9. 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).

10. Connecticut courts are "charged with the ongoing responsibility to revisit our common-law doctrines when the need arises." *Brocuglio*, 264 Conn. at 793.

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

12. 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 Conn. Practice Book §§ 23-21 - 23-40 and do not affect the substantive entitlement to the writ. In Connecticut, "[t]he writ of habeas corpus exists as part of the common law and the purpose of the statutes regulating its issuance is to

perfect the remedy it is designed to afford (citation omitted). Such statutes have not been intended to detract from its force but to add to its efficiency." *Hudson v. Groothoff*, 10 Conn. Supp. 275, 278-79 (Conn. C.P. 1942). *See also Kaddah v. Comm'r of Correction*, 324 Conn. 548, 565-66 (2017).

13. The determination of legal personhood for purposes of the common law writ of habeas corpus is a matter for common law adjudication and is based on public policy rather than biology. *Craig v. Driscoll*, 262 Conn. 312, 330 n.15 (2003). *See Byrn v. New York City Health & Hosps. Corp.*, 31 N.Y.2d 194, 201-02 (1972); *Tommy*, 2018 WL 2107087, at *1-2 (N.Y. 2018) (Fahey, J. concurring).

14. Accordingly, it is for the courts alone to decide whether Beulah, Minnie, and Karen are "persons" for purposes of the common law of habeas corpus. *E.g.*, *Craig*, 262 Conn. at 330 n.15. The decision will turn on whether Beulah, Minnie, and Karen's present common law classification as rightless things, despite their autonomy, is an anachronism that no longer meets the requirements of justice. (Mem. at 10-23). *See Tommy*, 2018 WL 2107087, at *2 (Fahey, J., concurring) ("The reliance on a paradigm that determines entitlement to a court decision based on whether the party is considered a 'person' or relegated to the category of a 'thing' amounts to a refusal to confront a manifest injustice. . . . To solve this dilemma, we have to recognize its complexity and confront it.")

15. Connecticut courts expand and define the common law based on a public policy that "can be found in express statutory or constitutional provisions, or in judicially conceived notions of public policy." *Curry v. Community Sys., Inc.*, 1993 WL 383281, at *3 (Conn. Super. Sept. 17, 1993).

16. As set forth in the accompanying Memorandum at 14-23, autonomy is a *sufficient* condition for personhood for purposes of the common law of habeas corpus based on Connecticut's public policy interests in liberty and equality.

17. The common law of habeas corpus is deeply rooted in our cherished ideas of individual autonomy and free choice. Autonomy is a supreme Connecticut common law value

that trumps even the State's interest in human life. The common law therefore mandates the protection of the fundamental interest of autonomous beings to their bodily liberty. (Mem. at 14-17).

18. Equality is a deeply enshrined principle of Connecticut statutory, constitutional, and common law. There exists a general public policy in Connecticut to eliminate all forms of invidious and arbitrary discrimination. Classifying Beulah, Minnie, and Karen as "things" solely because they are not human, thereby denying them the capacity for any legal right, is so arbitrary and unjust that it violates basic common law equality. (Mem. at 17-23). The Expert Scientific Affidavits demonstrate that Beulah, Minnie, and Karen are autonomous and that their interest in exercising their autonomy is as fundamental to them as it is to us. To deny some autonomous beings all legal rights across the board, merely because they are nonhuman, while granting those same legal rights to all humans, regardless of autonomy, offends common law equality.

19. Connecticut public policy already recognizes nonhuman animals as "persons" for trust purposes. The Connecticut legislature has granted nonhuman animals the rights of a true beneficiary, and therefore personhood, for the purpose of the Connecticut "Pet Trust" statute, C.G.S.A. § 45a-489a ("Trust to provide for care of animal"), 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.). This alone makes clear that there is at least a possibility that Beulah, Minnie, and Karen could be deemed legal persons for the purpose of common law habeas corpus, too. (Mem. at 23-24).

20. As the NhRP is not seeking any right other than the common law right to bodily liberty protected by common law habeas corpus, this Court need not initially determine whether Beulah, Minnie, and Karen are "persons" for any purpose other than the Connecticut common law of habeas corpus in order to issue the requested writ of habeas corpus. Instead, this Court *must* issue the writ if the NhRP demonstrates a mere *possibility* that they *could be* legal persons

solely for the purposes of seeking to vindicate their common law right to bodily liberty. The issuance of the writ by this Court harmonizes with the procedure historically used by courts faced with habeas corpus petitions that turned on novel (at the time) personhood claims. There is ample common law precedent in which the writ of habeas corpus was used by or on behalf of individuals not recognized as legal persons to secure their bodily liberty and consequently, legal personhood, at least with respect to the right to bodily liberty protected by habeas corpus.

21. In *Somerset v. Stewart*, 1 Lofft 1, 98 Eng. Rep. 499 (K.B. 1772), which was incorporated into Connecticut common law, *Jackson v. Bulloch*, 12 Conn. 38, 40-42, 53 (1837),[1] Lord Mansfield issued the habeas corpus writ that required the respondent to provide a legally sufficient reason for detaining a black slave.

22. 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.

23. 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.

24. In *The Nonhuman Rights Project, Inc. ex rel. Hercules & Leo v. Stanley*, 16 N.Y.S.3d 898, 908, 917 (N.Y. Sup. Ct. 2015), the court issued the order to show cause under New York State's habeas corpus procedural statute on behalf of two chimpanzees and expressly rejected respondents' argument that the issuance of the writ "requires an initial, substantive finding that chimpanzees are not entitled to legal personhood for the purpose of obtaining a writ of habeas corpus."

25. Analogously, in *Lebron v. Commissioner of Correction*, 82 Conn. App. 475, 477-79 (2004), a case of first impression, the petitioner claimed that the Superior Court had improperly concluded that it lacked subject matter jurisdiction because the petitioner was not in

[1] Connecticut adopted English common law as it existed prior to 1776. *See State v. Courchesne*, 296 Conn. 622, 680 (2010).

"custody" at the time he filed his petition pursuant to C.G.S.A. § 52-466. The habeas court properly issued the writ, conducted a hearing, and then dismissed the case only after the respondent filed a motion to dismiss.

III. The NhRP has stated a *prima facie* case entitling it to issuance of the writ.

26. The NhRP is entitled, as of right, to the issuance of the writ. The provisions of Conn. Practice Book § 23-24 govern the application of the common law writ of habeas corpus. Section 23-24 provides that 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." As discussed below, the Court must issue the writ because this Court has jurisdiction, the Petition is not wholly frivolous on its face, and the relief sought is available.

A. This Court has subject matter jurisdiction.

27. This Court has subject matter 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 upon the issuance of the writ or as otherwise directed by the Court. *See* C.G.S.A. § 52–466(a).[2]

28. "It is well established that, in determining whether a court has subject matter jurisdiction, 'every presumption favoring jurisdiction should be indulged,'" *Amodio v. Amodio*, 247 Conn. 724, 727-28 (1999) (citations omitted), and "[t]here is a judicial bias in favor of jurisdiction in petitions for writs of habeas corpus." *Mock v. Warden*, 40 Conn. Supp. 470, 477 (Sup. Ct. 2003).

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[2] Petitioner filed a petition for a writ of habeas corpus in the Superior Court for the Judicial District of Litchfield at Torrington on November 13, 2017, basing venue on C.G.S.A. § 53-466(a)(1), because the elephants are detained and confined within that Judicial District. Petitioner files this Petition in the Rockville venue due to this Court's extensive experience and expertise with habeas corpus petitions. Further, this Court's location would be convenient for Petitioner and Respondents, and their respective counsel. If a writ of habeas corpus issues and the Respondents desire to challenge venue, they may do so. Otherwise any objection to venue is waived. *Richardello v. Butka,* 45 Conn. Supp. 336, 337 (1997).

29. " '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.' " *Hickey v. Commission of Corrections*, 82 Conn. App. 25, 31 (2004) (quoting *Abed v. Commissioner of Correction*, 43 Conn. App. 176, 179, *cert. denied*, 239 Conn. 937 (1996)), *app. dism.*, 274 Conn. 553 (2005). "The jurisprudential history of our habeas corpus statute is consistent with the English common-law principles of the Great Writ and the federal habeas corpus statute." *Id.*

30. 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*, 82 Conn. App. at 31-32, 34, 36. *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). Of course, even if the elephants are temporarily brought outside of Connecticut, they remain in Respondents' custody, and Respondents are domiciled in Connecticut.

31. The NhRP has standing to bring this Petition both under the common law and the governing procedural statutes, C.G.S.A. § 52-466(a) and Conn. Practice Book § 23-40(a). Neither § 52-466(a)(2) nor Conn. Practice Book § 23-40(a) places any limitation on *who* may bring a habeas corpus petition on behalf of another. *See generally 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. Ct. Oct. 22, 2009); *Suarez v. Warden-Chesire*, 2001 WL 291057, at *2 (Conn. Super. Ct. Mar. 2, 2001).

32. Section 52-466 was enacted against a background of centuries of Anglo-American habeas corpus law recognizing that *anyone* — including complete strangers — may bring habeas corpus petitions on behalf of another, and carries on that common law tradition. The leading Connecticut case of a stranger having standing to file a petition seeking a common law writ of habeas corpus on behalf of a privately detained individual is *Jackson v. Bulloch*, 12 Conn. 38

(1837). In *Jackson*, the famed black abolitionist and former slave, James Mars, successfully sought a common law writ of habeas corpus on behalf of a slave named Nancy Jackson, to whom he was a stranger, who had been brought temporarily into Connecticut by her Georgia master, James S. Bulloch. *Id. Jackson* remains controlling on this Court, and is consistent with decades of Anglo-American common law precedent. *See Somerset*, 1 Lofft 1, 98 Eng. Rep. 499 (unrelated third parties received common law writ of habeas corpus on behalf of a black slave imprisoned on a ship) (*Somerset* was cited with approval and was said to be settled law in Connecticut by the Connecticut Supreme Court of Errors in *Jackson*, 12 Conn. at 53); *Lemmon v. People*, 20 N.Y. 562, 562, 599-600 (1860) (as he had in other cases, the free black abolitionist dock worker Louis Napoleon received a common law writ of habeas corpus on behalf of eight detained slaves, adults and children, with whom he had no relationship[3]); *State ex rel. v. Malone*, 35 Tenn. 699, 705 (1856) ("It is not absolutely necessary that either the petition for the writ, or the affidavit, should be by the party in detention, though such a course is more regular. In the *Hottentot Venus Case*, 13 East, 185, the woman was incapable to make either one or the other."); *In re Kirk*, 1 Edm. Sel. Cas. 315, 315 (N.Y. Supr. Ct. 1846) (as he would in *Lemmon, supra,* Louis Napoleon received a writ of habeas corpus on behalf of a slave with whom he had no relationship); *Commonwealth v. Aves*, 35 Mass. 193, 193, 206 (1836) (Boston abolitionist Levin H. Harris received a common law writ of habeas corpus on behalf of an eight year old slave girl named Med, to whom he was a stranger, who was being held by her Louisiana master

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[3] Louis Napoleon was able to file a petition for habeas corpus

> for seven persons whose names he did not know. They had been taken from the *City of Richmond* to a house on Carlisle Street, where Napoleon believed a Negro trader named 'Lemmings' was confining them on the 'pretense' that they were slaves. Lemmings intended to ship them to Texas and sell them, but they did not want to go there. Because Napoleon had not been able to speak with them, many of his facts were incorrect, but that was of no consequence: he had instituted a legal process, and all that mattered was the law.

Don Papson and Tom Calarco, *Secret Lives of the Underground Railroad in New York City; Sydney Howard Gay, Louis Napoleon and the* Record of Fugitives 83-84 *(McFarland & Co., Inc. 2015).*

in Boston) (*Aves* was cited with approval in *Jackson*, 12 Conn. at 42); *Case of the Hottentot Venus*, 13 East 185, 104 Eng. Rep. 344 (K.B. 1810) (English Abolitionist Society received common law writ of habeas corpus to determine whether an African woman who did not speak English was being exhibited in London against her will); *In re Trainor*, *New York Times*, May 11, 14, 21, 25, June 14 (1853) (abolitionist and underground railway conductor Jacob R. Gibbs on behalf of nine year old slave); *Lebranca* slaves, "Reported for the Express," *New York Evening Express*, July 13, 1847; *New York Legal Observer* 5, 299 (1847) (John Iverness, a black restauranteur, obtained writ of habeas corpus on behalf of three slaves he had never met who he was told were being held captive on a ship in New York harbor).

33. In the six habeas corpus cases that the NhRP has filed on behalf of nonhuman animals in New York State, not a single court found that the NhRP lacked standing. The New York State Supreme Court expressly recognized the standing of the NhRP to bring a petition for a common law writ of habeas corpus on behalf of two chimpanzees in *Stanley*, 16 N.Y.S. 3d 898. While it cited to a procedural statute, CPLR 7002(a), allowing "one acting on his behalf" to bring suit, that statute merely codified the long-standing common law of habeas corpus that New York, English, and Connecticut cases had employed long before it, or its predecessors, had been enacted.[4] *See also Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery*, 152 A.D.3d 73, 75 n.1 (1st Dept. 2017) ("*Tommy*") ("[a]ssuming habeas relief may be sought on behalf of a chimpanzee, petitioner [NhRP] undisputedly has standing pursuant to CPLR 7002(a), which authorizes anyone to seek habeas relief on behalf of a detainee."), *leave to appeal den.*, No. 2018-268, 2018 WL 2107087 (N.Y. May 8, 2018); *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 150-53 (3d Dept. 2014), *leave to appeal den.*, 26 N.Y.3d 902 (2015).

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[4] *See People v. McLeod*, 3 Hill 635 n. "j" sec.7 (N.Y. 1842) ("The common law right was clear for any *friend* of the prisoner as well as *agent* to make the application. In the proceedings in parliament in the case of *Ashby and White,* the dispute arose whether the writ could relieve against a commitment by the house of commons; and one resolution of the lords, admitted by the commons, was, "that every Englishman who is imprisoned by any authority whatsoever, has an undoubted right, by his *agents* or *friends,* to apply for and obtain a writ of *habeas corpus* in order to procure his liberty by due course of law.") (emphases in original).

34. C.G.S.A. § 52-466 carries on the common law tradition of allowing third parties to file habeas corpus petitions on behalf of others, and merely regulates the manner in which convicted prisoners may challenge the legality of their convictions. The language of § 52-466(a)(2) simply requires a habeas corpus suit to be brought in the judicial district of Tolland when it is "made by or on behalf of an inmate or prisoner confined in a correctional facility as a result of a conviction of a crime." It does not, nor does it purport to, contract the longstanding common law precedent of allowing common law writs of habeas corpus to be sought by anyone, including strangers, on behalf of a detained individual. "Procedures that are appropriate for one type of habeas proceeding may not be appropriate for the other." Mark D. Falcoff, *Back to basics: Habeas corpus procedures and long-term executive detention*, 86 DENVER UNIV. L. REV. 961, 982 (2009) (comparing federal habeas corpus challenges to Guantanamo prisoners and federal habeas corpus challenges brought by state prisoners in federal court).

35. Furthermore, Connecticut courts are not confined by the jurisdictional limitations of federal courts imposed by Article III of the U.S. Constitution, and thus, federal standing cases are inapposite. *See Connecticut Ass'n of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609, 613 (1986) ("our state constitution contains no 'case or controversy' requirement like that found in article three of the United States Constitution"); *Hyde v. Pysz*, 2006 WL 894921, at *4 n.8 (Conn. Super. Ct. Mar. 21, 2006) ("The court notes that the standing issue presented in *Linda R.S. v. Richard D.*, [citation omitted] implicated federal court jurisdiction under article III of the United States constitution, and 'the constraints of Article III do not apply in state courts.'") (citation omitted). *See also ASARCO, Inc. v. Kadish*, 400 U.S. 605, 617 (1989) ("We have recognized often that the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law, as when they are called upon to interpret the Constitution or, in this case, a federal statute."); *Whitmore v. Arkansas*, 495 U.S. 149, 176 n.3 (1990) (Marshall, J., dissenting) ("The question whether Whitmore may act as Simmons' next friend in this Court is distinct from the question whether Whitmore could do so in

the Arkansas Supreme Court. This Court cannot impose federal standing restrictions, whether derived from Article III or federal common law, on state courts [citation omitted]. The Court's holding thus affects only federal courts."). Consequently, neither *Whitmore*, 459 U.S. 149, *see infra* at ¶¶ 36-38, nor *Naruto v. Slater*, No. 16-15469, 2018 U.S. App. LEXIS 9477, at *2 (9th Cir. Apr. 13, 2018) (holding both that no one can assert the interests of a nonhuman animal as next friend in the context of a copyright claim and that every nonhuman animal has standing to sue directly under Article III) have any bearing on Connecticut standing law. To rely upon Article III federal jurisprudence would be particularly inappropriate where, as here, the detained individual is not a convicted prisoner, but one who has heretofore been enslaved by a private detainer in a manner that precludes the detainee from having any recourse but through the acts of a stranger, *e.g.*, *Jackson, supra* (slave); *Somerset, supra* (slave), and *Standing Bear*, *supra* (Native Americans).

36. In *Whitmore*, 495 U.S. at 163-64, the United States Supreme Court adopted a two-prong test for Article III "next friend" standing.[5] The Connecticut Supreme Court has not adopted the *Whitmore* test but has merely applied the first of the two prongs (that a next friend provide an adequate explanation why the real party in interest cannot appear on his own behalf), to habeas corpus petitions filed on behalf of inmates or children in custody disputes,[6] which is consonant with centuries of habeas corpus practice. *See id.* at 165 ("And in keeping with the ancient tradition of the doctrine, we conclude that one necessary condition for 'next friend' standing in federal court is a showing by the proposed 'next friend' that the real party in interest

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[5] Under the first prong, 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). Under the second prong, 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 Supreme Court noted in *dicta* that "it has been further suggested [by a single U.S. district court] 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.

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

is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability."). The second prong of the *Whitmore* test has no applicability to Connecticut habeas corpus practice, as it solely vindicates Article III values.

37. Although *Whitmore* is irrelevant to this case, and the second prong of *Whitmore* has never been adopted into Connecticut jurisprudence, the NhRP nonetheless satisfies the entire *Whitmore* test. The first *Whitmore* prong is satisfied, as Beulah, Minnie, and Karen, as elephants and therefore legal things, lack the capacity to sue. The second prong is also satisfied, as the NhRP is undeniably dedicated to the best interests of the elephants and has a lengthy history of unwavering dedication to the best interests of every nonhuman client it has represented (*supra* at ¶ 1).

38. Many federal courts have properly recognized that *Whitmore*'s language regarding a "significant relationship" (at 163-64) is nonbinding *dictum.*[7] No Connecticut court has adopted this *dictum*, nor should it. Even federal courts that have adopted the significant-relationship *dictum* as a standing requirement have held that a significant relationship is not necessary where the real party in interest has no significant relationships with an entity with the capacity to sue.[8] Beulah, Minnie, and Karen would readily fall into this exception. As elephants, they cannot have "significant" relationships with any such entity in the manner intended by *Whitmore*, and even if they could, Respondents have owned, controlled, and economically exploited the elephants for decades, making their interests powerfully adverse to the elephants

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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); *Coal. of Clergy v. Bush*, 310 F.3d 1153, 1165-66 (9th Cir. 2002) (Berzon J., concurring); *Sanchez-Velasco v. Secretary of Dept. of Corrections*, 287 F.3d 1015, 1026 (11th Cir. 2002); *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 making it impossible for the elephants to form significant relationships with other humans. Their only recourse is through the actions of strangers.

B. The Petition is not wholly frivolous on its face.

39. This Petition presents a matter of first impression involving a novel issue of personhood in Connecticut common law jurisprudence, and is far from wholly frivolous on its face. *See Tommy*, 2018 WL 2107087, at *2 (Fahey, J., concurring) ("The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. . . ."); *Stanley*, 16 N.Y.S.3d at 917 ("Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed.") (See also ¶¶ 42-71 below).

40. This case is obviously not frivolous within the meaning of the Connecticut Rule of Professional Conduct 3.1, which provides that a lawsuit containing a good faith argument for an extension, modification or reversal of existing law is not frivolous. See Affidavit of Mark Dubois ("Dubois Aff.") at ¶¶ 10-11.

41. And necessarily then, it is not frivolous for the purpose of seeking a writ of habeas corpus, where the standard is even more deferential to the petitioner. The standard for determining frivolity under Conn. Practice Book § 23-24(a)(2) is set forth in *Henry E.S., Sr. v. Hamilton*, 2008 WL 1001969 at *5, 2008 Conn. Super. LEXIS 717, at *14-15 (Conn. Super. Ct. Feb. 28, 2008): it "is that of a *possibility* of victory," not even a "probable victory" or "[m]eritorious." Although no test for determining what claims meet this low threshold under the statute has been set forth, the courts have developed an analogous disjunctive three-criteria test (known as the "*Lozada* criteria"[9]) for determining whether claims are frivolous for purposes of a habeas court's denial of certification to appeal. *See Fernandez v. Comm'r of Corr.*, 125 Conn. App. 220, 223-24 (2010). A habeas case is not "frivolous" under this test if: (i) "the issues are debatable among jurists of reason," (ii) "a court could resolve the issues [in a different manner],"

[9] The test is derived from *Lozada v. Deeds*, 498 U.S. 430, 432 (1991).

or (iii) "the questions are adequate to deserve encouragement to proceed further." *Id.* Satisfying any one of these criteria is sufficient to demonstrate that a claim is not frivolous. *Id. See also Simms v. Warden*, 230 Conn. 608, 616 (1994) ("A habeas appeal that satisfies one of the *Lozada* criteria is not frivolous."); *Vanwhy v Commissioner of Correction*, 121 Conn. App. 1, 6 (2010) ("we review the petitioner's substantive claims for the purpose of ascertaining whether those claims satisfy *one or more of the three criteria identified in* [*Lozada*]") (emphasis added). As shown below, the NhRP satisfies *all three* criteria. (*See also* Dubois Aff. at ¶¶ 18-22).

i. *The issues are debatable among jurists of reason.*

42. The Petition is powerfully meritorious and satisfies the first *Lozoda* criteria for four independent reasons. (*See also* Dubois Aff. at ¶ 22).

43. First, not only are the issues debatable among jurists of reason, but jurists of reason have *already granted* the relief the NhRP seeks in other jurisdictions. At least four courts have issued writs of habeas corpus (or their equivalents) on behalf of nonhuman animals, one in New York, two in Argentina, and one in Colombia.

44. 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 on behalf of two chimpanzees in New York. *Stanley*, 16 N.Y.S.3d at 917. As the court in *Stanley* noted, "[t]he lack of precedent for treating animals as persons for habeas corpus purposes does not, however, end the inquiry, as the writ has over time gained increasing use given its 'great flexibility and vague scope.'" 16 N.Y.S.3d at 912. (See Mem. at 1-2, 5-6, 10, 15, 25, and 34 for further discussion of *Stanley*).

45. A writ was issued 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. (See Mem. at 6-7).

46. A writ was issued 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).

47. A writ was issued on behalf of a bear named Chucho in Colombia, though that ruling was overturned 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).

48. Second, the only written opinion from the judge of an American state's highest court on the issue presented in this case is the concurrence of Judge Fahey in *Tommy*, 2018 WL 2107087, in which the judge opined that nonhuman animals should no longer be deemed mere "things." While Judge Fahey agreed that the case was properly dismissed on a procedural issue, he disagreed with the lower courts' decisions on the merits, writing separately "to underscore that denial of leave to appeal is not a decision on the merits of petitioner's claims." *Id.* at *1. Judge Fahey declared: "The question will have to be addressed eventually. Can a non-human animal be entitled to release from confinement through the writ of habeas corpus? Should such a being be treated as a person or as property, in essence a thing." *Id.* Judge Fahey added: "In the interval since we first denied leave to the Nonhuman Rights Project . . . I have struggled with whether this was the right decision. Although I concur in the Court's decision to deny leave to appeal now [on a procedural issue], I continue to question whether the Court was right to deny leave in the first instance. The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a 'person,' *there is no doubt that it is not merely a thing.*" *Id.* at *2 (emphasis added).

49. In addition to Judge Fahey's powerful opinion, the Supreme Court of Oregon referenced NhRP's "ongoing litigation" and declared in a similar fashion: "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[.]" *State v. Fessenden*, 355 Or. 759, 769-70 (2014).

50. Furthermore, the Indian Supreme Court has held that nonhuman animals have both a statutory and a constitutional right to personhood and certain legal rights. *Animal Welfare Board v. Nagaraja,* 6 SCALE 468 (2014), *available at*: https://indiankanoon.org/doc/39696860/ (last accessed on May 14, 2018).

51. Third, and dispositive of the *Lozoda* analysis in Connecticut, is that cases of first impression are *per se* not frivolous. *See Torres v. Commissioner of Correction*, 175 Conn. App. 460, 468 (2017) (noting that "[t]his court has previously concluded that issues of first impression in Connecticut meet one or more of the three criteria"). Because the issues presented in this case have never been decided by the Connecticut Supreme Court or the Connecticut Appellate Courts, this case is *necessarily deemed* debatable among jurists of reason. *See id.* at 468-69 ("Because the petitioner's second petition presents two issues of first impression in Connecticut, we will conduct a full review of the merits of his appeal."); *State v. Obas*, 147 Conn. App. 465, 475 (2014) ("Two issues of law were raised by the state before the trial court, neither of which previously has been decided by the Connecticut Supreme or Appellate Courts. . . . These are questions of law on which our state's court of last resort has not ruled, both debatable among jurists of reason and, both deserving encouragement to proceed further."); *Bates v. Commissioner of Correction*, 86 Conn. App. 777, 781 (2005) ("This case presents an issue of first impression. . . We [therefore] conclude that this case presents an issue that is debatable among jurists of reason."); *Graham v. Commissioner of Correction*, 39 Conn. App. 473, 476 (1995) ("The issue . . . is a case of first impression in Connecticut. We hold that the issue is debatable among jurists of reason and that a court could resolve the issue in a different manner."), *cert. denied*, 235 Conn. 930 (1995).

52. Fourth, noted scholars of American jurisprudence have submitted *amicus curiae* briefs in favor of habeas corpus relief for nonhuman animals including constitutional law scholar Professor Laurence H. Tribe of Harvard Law School, and habeas corpus experts Justin Marceau,

of the University of Denver Law School and Samuel Wiseman, of the Florida State University College of Law.[10] *See Tommy*, 2018 WL 2107087, at *1 (Fahey, J., concurring) (finding persuasive the amicus briefs of Tribe, Marceau, and Wiseman).

53. A group of North American moral philosophers also submitted an *amicus curiae* brief in support of extending habeas corpus for nonhuman animals.[11] *See Tommy*, 2018 WL 2107087, at *1 (Fahey, J., concurring) ("the amici philosophers with expertise in animal ethics and related areas draw our attention to recent evidence that chimpanzees demonstrate autonomy by self–initiating intentional, adequately informed actions, free of controlling influences."). These philosophers included: Kristin Andrews (York University); Gary Comstock (North Carolina State University); G.K.D. Crozier (Laurentian University); Sue Donaldson (Queen's University); Andrew Fenton (Dalhousie University); Tyler M. John (Rutgers University); L. Syd M Johnson (Michigan Technological University); Robert Jones (California State University, Chico); Will Kymlicka (Queen's University); Letitia Meynell (Dalhousie University); Nathan Nobis (Morehouse College); David Peña-Guzmán (California State University, San Francisco); James Rocha (California State University, Fresno); Bernard Rollin (Colorado State); Jeffrey Sebo (New York University); Adam Shriver (University of British Columbia); Rebecca L. Walker (University of North Carolina at Chapel Hill).

54. Apart from the above, the NhRP's cases have captured the interest of the world's leading legal scholars and the most selective academic publications,[12] while catalyzing the

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[10] The *amicus curiae* brief of Laurence Tribe in *Kiko* is available at: https://www.nonhumanrights.org/content/uploads/2016_150149_Tribe_ITMO-The-NonHuman-Right-Project-v.-Presti_Amicus-1-2.pdf (last accessed February 19, 2018). The *amicus curiae* brief of Justin Marceau and Samuel Wiseman in *Kiko* is available at: https://www.nonhumanrights.org/content/uploads/2016_150149_ITMO-The-Nonjuman-Rights-Project-v.-Presti_Amici.pdf (last accessed February 19, 2018).

[11] *See* https://www.nonhumanrights.org/content/uploads/In-re-Nonhuman-Rights-v.-Lavery-Proposed-Brief-by-PHILOSOPHERS-74435.pdf

[12] *See* Richard A. Epstein, *Animals as Objects of Subjects of Rights*, ANIMAL RIGHTS: CURRENT DEBATES & NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); Richard A. Posner, *Animal Rights: Legal Philosophical, and Pragmatic Perspectives,* ANIMAL RIGHTS: CURRENT DEBATES & NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004).

development of an entire field of academic research and debate, generating extensive discussion in almost one hundred law review articles, multiple academic books, science journals, and a variety of legal industry publications.[13]

See also 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, 1591 (2003); Richard A. Epstein, *Drawing the Line: Science and the Case for Animal Rights*, 46 PERSPECTIVES IN BIOLOGY & MED. 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 L. J. 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).

[13] *See* Justin F. Marceau and Steven M. Wise, *"Exonerating the Innocent: Habeas for Nonhuman Animals,"* WRONGFUL CONVICTIONS & THE DNA REVOLUTION - TWENTY-FIVE YEARS OF FREEING THE INNOCENT (Daniel S. Medwed ed. Cambridge University Press 2017); Steven M. Wise, *A Great Shout: Legal Rights for Great Apes,* THE ANIMAL ETHICS READER (Susan J. Armstrong & Richard G. Botzler eds. 2017); Steven M. Wise, *Animal Rights, One Step at a Time*, ANIMAL RIGHTS: CURRENT DEBATES & NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds. 2004); Steven M. Wise, *The Capacity of Non-Human Animals for Legal Personhood and Legal Rights,* THE POLITICS OF SPECIES: RESHAPING OUR RELATIONSHIPS WITH OTHER ANIMALS (Raymond Corbey & Annette Lanjouw eds. 2013); "Why Things Can Hold Rights: Reconceptualizing the Legal Person," LEGAL PERSONHOOD: ANIMALS, ARTIFICIAL INTELLIGENCE & THE UNBORN (Tomasz Pietrzykowski and Visa Kurki, eds. Springer 2017); Randall S. Abate and Jonathan Crowe, *From Inside the Cage to Outside the Box*, 5(1) GLOBAL J. OF ANIMAL L. (2017); Katrina M. Albright, *The Extension of Legal Rights to Animals Under A Caring Ethic: An Ecofeminist Exploration of Steven Wise's Rattling the Cage*, 42 NAT'L RESOURCES J. 915, 917 (2002); Kristin Andrews, *Cow Persons? How to Find Out*, 4 ANIMAL BEHAVIOR & COGNITION 499 (2017); Kristin Andrews, *Life in a Cage*, PHILOSOPHERS' MAG., 1st Quarter 2017, at 72; Pat Andriola, *Equal Protection for Animals*, 6 BARRY U. ENVTL. & EARTH L. J. 50, 64 (2016); Davidson Anestal, *Chimpanzees in Court: Limited Legal Personhood Recognition for Standing to Challenge Captivity and Abuse*, 15 DARTMOUTH L.J. 75 (2017); Louis Anthes & Michele Host, *Rattling the Cage: Toward Legal Rights for Animals by Steven M.*

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55. The issues raised by the NhRP's habeas cases have also been the subject of thousands of legal commentaries, national and international news articles, radio and television programs, and podcasts. For example, from March 1, 2017, through September 30, 2017, 2,095 media articles were published on the NhRP's claim that a chimpanzee should have the right to a writ of habeas corpus.[14] In the United States, these outlets ranged from *NBC News* and the *Wall Street Journal* to the *Washington Post*, *Associated Press*, *Law360*, *Gizmodo*, *Fox News*, and *Salon*. Around the world they included the *Sydney Morning Herald*, *Kremlin Express*, *Yahoo Japan*, Mexico's *Entrelíneas*, and India's *Economic Times*.

56. Accordingly, this case is not, and cannot be, frivolous and the Court must therefore issue the writ.

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); Steven M. Wise, *A New York Appellate Court Takes a First Swing at Chimpanzee Personhood: And Misses*, 95 DENV. L. REV. 265 (2017); David J. Wolfson, *Steven M. Wise: Rattling the Cage-Toward Legal Rights for Animals*, 6 ANIMAL L. 259, 262 (2000); Amanda Wurah, *We Hold These Truths to Be Self-Evident, That All Robots Are Created Equal*, 22 J. FUTURE STUD. 61 (2017); James Yeates & Julian Savulescu, *Companion Animal Ethics: A Special Area of Moral Theory and Practice?*, 20 ETHICAL THEORY & MORAL PRACTICE 347 (2017); Richard York, *Humanity and Inhumanity: Toward a Sociology of the Slaughterhouse*, 17 ORGANIZATION & ENV'T 260 (2004); ; 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); 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); 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).

[14] A spreadsheet containing the full list of 2,095 media items covering this case between the period of March-October, 2017 is available for download at: https://www.nonhumanrights.org/content/uploads/Media-Coverage-Tommy-Kiko-Appellate-Hearing-Raw-Data.csv (last accessed February 15, 2018).

ii. *A court could resolve the issues in a different manner.*

57. The Petition independently passes muster under the second *Lozoda* criteria. For, not only *could* a court resolve the issues in a different manner, but they *have*, as set forth above.

iii. *The questions are adequate to deserve encouragement to proceed further.*

58. Finally, while it is not necessary for the NhRP to satisfy all three *Lozoda* criteria, it is significant that the NhRP meets the final criteria too. Not only are the questions presented adequate to deserve encouragement to proceed further, but numerous legal academics, writers, and judges have long been debating them, *supra.*

59. 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.

60. The novelty of the NhRP's claim is an insufficient ground to deny Beulah, Minnie, and Karen habeas corpus relief. *See, e.g.*, *United States ex rel. Standing Bear v. Crook*, 25 F. Cas. 695, 697 (D. Neb. 1879) (that no Native American had previously sought relief pursuant to the Federal Habeas Corpus Act did not foreclose a Native American from being characterized as a "person" and being awarded the requested habeas corpus relief); *Somerset*, Lofft 1, 98 Eng. Rep. 499 (that no slave had ever been granted a writ of habeas corpus was no obstacle to the court granting one to the slave petitioner); *see also Lemmon*, 20 N.Y. 562.

61. The novelty of the NhRP's claim makes it more meritorious rather than less, as a case of first impression necessarily deserves to proceed further. *See, e.g.*, *Little v. Commissioner of Correction*, 177 Conn. App. 337, 349 (2017) ("Because such a question has not yet been addressed by any appellate court of this state, we conclude that the petitioner's claims are adequate to deserve encouragement to proceed further."); *State v. Obas*, 147 Conn. App. 465, 475 (2014); *Rodriguez v. Commissioner of Correction*, 131 Conn. App. 336, 347 (2011) ("Because such a question has not yet been addressed by any appellate court of this state, we conclude that the . . . claim raised by the petitioner is adequate to deserve encouragement to

proceed further"), *aff'd*, 312 Conn. 345 (2014); *Small v. Commissioner of Correction*, 98 Conn. App. 389, 391-2 (2006) ("No appellate case has decided those precise issues . . . The questions, therefore, . . . deserved encouragement to proceed further").

62. The principles underlying the Connecticut cases concerning human petitioners are directly applicable to the case at bar, and no Connecticut case has held otherwise. Indeed, other than the first NhRP petition that was dismissed (erroneously) on standing grounds, no case has been brought before in Connecticut seeking the application of the common law of habeas corpus to any nonhuman animal, let alone an autonomous nonhuman animal such as an elephant.

63. As it is not necessary for this Court to find that Beulah, Minnie, and Karen are "persons" for purposes of *issuing* the writ, this Court must issue it if there is a *possibility* that they *could be* "persons" under Connecticut common law solely for the purpose of obtaining the legal right to bodily liberty protected by the writ of habeas corpus (see *Somerset*, *supra*; *Stanley*, *supra*). To dismiss this case as frivolous on its face, therefore, this Court would have to find, among other things, that it is impossible, under any circumstances, for autonomous nonhuman animals to have any legal rights under Connecticut law. Yet the Connecticut pet trust statute already confers personhood rights upon nonhuman animals. (Mem. at 23-24). Moreover, the Petition presents a serious, complex, well-researched claim that is supported by cases from other jurisdictions that have already granted the relief requested, numerous complex and relevant expert opinions, and substantial and broad academic support.

C. The relief sought is available.

64. The third and final requirement of Conn. Practice Book § 23-24 is met, as the relief sought by the NhRP, that is, release of the elephants from Respondents' detention, is available.

65. The Petition asks this Court to: (a) issue the writ of habeas corpus and require Respondents to file a return pursuant to Conn. Practice Book § 23-21 *et seq*. including, *inter alia*, setting forth the facts claimed to justify the denial of liberty and detention of Beulah, Minnie, and

Karen; and (b) order the immediate release of Beulah, Minnie, and Karen from such unlawful detention.

66. For the safety of the elephants as well as the public, Beulah, Minnie, and Karen cannot be released into the wilds of Africa or Asia or onto the streets of Connecticut. This Court has the authority however to release them to the Performing Animal Welfare Society Sanctuary ("PAWS") near Sacramento, California, which has agreed to provide permanent sanctuary for them.[15]

67. 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.

68. 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. (Stewart Aff. ¶4). 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. /

69. 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. (Stewart Aff. ¶6).

70. 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

[15] Submitted with this Verified Petition in the accompanying Appendix of Expert Affidavits is an affidavit from Ed Stewart, Co-Founder and President of PAWS. Affidavit of Ed Stewart ["Stewart Aff."] ¶2.

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. (Stewart Aff. ¶8).

71. The fact that this Petition does not seek Beulah, Minnie, and Karen's 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). (For further discussion, see Mem. at 25-26).

IV. Statement pursuant to Conn. Practice Book § 23-22

A. Cause and Pretense of Illegal Confinement

72. Upon the NhRP's best knowledge and belief, the cause or pretense of Beulah, Minnie, and Karen's detention 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.

73. If this Court finds that Beulah, Minnie, and Karen are "persons" within the meaning of the common law, then their detention 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. See also State v. Oquendo*, 223 Conn. 635, 650 (1992) ("no man can be restrained of his liberty; be prevented from removing himself from place to place, as he choses; be compelled to go to a place contrary to his inclination, or be in any way imprisoned, or confined, unless by virtue of the express laws of the land.") (quoting Zephaniah Swift, *A Digest of the Laws of Connecticut* 180 (1795)); *id.* at 650 ("every detention is an imprisonment."). Stated differently, if Beulah, Minnie, and Karen are "persons" under the common law of Connecticut, then their detention by Respondents is *per se* unlawful.

74. This habeas corpus case is not an "animal protection" or "animal welfare" case, just as a habeas corpus case brought on behalf of a detained human would not be a "human protection" or "human welfare" case. *Lavery*, 124 A.D.3d at 149; *Stanley*, 16 N.Y.S.3d at 901. The issue before this Court, as it is in any habeas corpus action, is whether Beulah, Minnie, and Karen may be detained at all. 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).

75. 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, Minnie, and Karen's confinement underscore the need for immediate relief and the degree to which their bodily liberty and autonomy are impaired.

B. Prior Petitions and Appeals

76. One previous application for the writ of habeas corpus asked herein was filed on November 13, 2017 in the Judicial District of Litchfield at Torrington. On December 26, 2017, that court refused to issue the requested writ of habeas corpus on the grounds that the NhRP lacked standing.[16] The court also suggested, in the alternative, that the Petition was frivolous on

[16] *See* http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=13631754 ("Opinion").

its face as a matter of law. As set forth in ¶¶ 27-63, that judge was plainly wrong on both accounts.[17]

77. A timely "Motion to Reargue And Leave to Amend the Petition," was filed on January 16, 2018,[18] and was denied on February 28, 2018.[19]

78. A timely appeal has been taken from the December 26, 2017 and February 28, 2018 orders (filed March 26, 2018) and is pending. (AC 41464). Because Beulah, Minnie, and Karen are currently being deprived of their bodily liberty, the NhRP promptly filed this Petition to avoid any undue delay in securing their liberty while the appellate process is proceeding on the first petition.

79. "[A]bsent an explicit exception, an evidentiary hearing is always required before a habeas petition may be dismissed." *Mercer v. Comm'r of Corr.*, 230 Conn. 88, 93 (1994). Connecticut "'case law has recognized only one situation in which a court is not legally required to hear a habeas petition,' namely Practice Book § 23–29(3)," assuming the court has jurisdiction and the petition is not frivolous on its face. *Skakel v. Warden, State Prison*, 2013 WL 1943921, at *10 (Conn. Super. Ct. Mar. 1, 2013) (citing *Coleman v. Commissioner*, 137 Conn. App. 51, 57 (2012)). *See also Carpenter v. Comm'r of Corr.*, 274 Conn. 834, 840-41 (2005); *Mercer v. Comm'r of Corr.*, 230 Conn. 88, 93 (1994).

80. The Petition cannot be dismissed under Conn. Practice Book § 23-29(3) as improperly successive because the only previous petition filed on behalf of Beulah, Minnie, and Karen was dismissed on its face on standing grounds and without a hearing.

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[17] The NhRP's New York cases were dismissed on various grounds by three intermediate appellate courts. The NhRP insisted that each of the three courts had erred. In his recent concurring opinion for the New York Court of Appeals, Judge Fahey agreed that all three intermediate appellate courts had erred when they ruled that an entity must have the capacity to bear duties in order to have any legal rights, that nonhuman animals may be deprived of all rights simply because they are not human, and that habeas corpus may only be used to unconditionally release an individual from detention. *Tommy*, 2018 WL 2107087, at *1 (Fahey, J., concurring).

[18] *See* https://www.nonhumanrights.org/content/uploads/2018-01-16-Motion-to-Reargue.pdf

[19] *See* https://www.nonhumanrights.org/content/uploads/2018-02-27-Memo-of-Decision-re-Motion-to-Reargue-1.pdf

81. The res judicata doctrine in habeas cases bars relitigation of "claims that actually have been raised *and litigated* in an earlier proceeding." *Thorpe v. Commissioner of Correction*, 73 Conn. App. 773, 778-79 n.7 (2002) (emphasis added).[20] A successive petition cannot be dismissed pursuant to Conn. Practice Book § 23-29(3) if the petitioner did not have "a fair and full opportunity to litigate" in the earlier proceeding. *In re Ross*, 272 Conn. 653, 661 (2005).[21] "Implicit in this rule is that multiple habeas filings *must be entertained* unless the same claim is asserted" *and* that claim has actually been litigated. *Skakel v. Warden, State Prison*, 2013 WL 1943921, at *4–6 (Conn. Super. Ct. Mar. 1, 2013) (emphasis added). *E.g.*, *Harris v. Comm'r of Correction*, 108 Conn. App. 201, 211 (2008) (fourth habeas corpus petition was not impermissibly successive because his claims that his "prior habeas counsel were ineffective were neither raised nor litigated in any earlier proceedings").

82. Not only was the NhRP's first petition summarily dismissed without a "full and fair opportunity" to be litigated, it was dismissed on standing grounds specifically. (Opinion at 3-9). It is well settled "that the dismissal of an earlier action for lack of standing is not a judgment on the merits and does not have a res judicata effect." *United States Bank, N.A. v. Foote*, 151 Conn. App. 620, 626 (2014). Furthermore, because the judge dismissed the first petition on standing grounds, anything said relating to the merits of the petition, and specifically in terms of the frivolousness of the action, was mere *dictum*. *See Pierce v. Warden*, 2013 Conn. Super. LEXIS 2550, at *21-22 (Conn. Super. Ct. Nov. 6, 2013) ("Although the petitioner attempted to litigate his claim regarding the inclusion in the 1999 PSI report of the treatment information contained in the 1996 PSI report, Judge Espinosa's dismissal on lack of subject matter grounds is not a decision on the merits and the alternative ground that the claim must fail on the merits is *dictum*."); *see also Johnson v. Commissioner of Correction*, 258 Conn. 804, 813 (2002) ("Whenever a court finds that it has no jurisdiction, it must dismiss the case") (internal

[20] *Accord Fernandez v. Commissioner of Correction*, 86 Conn. App. 42, 45-46 (2004); *Cayer Enterprises, Inc. v. DiMasi*, 84 Conn. App. 190, 194 (2004).
[21] *See also Connecticut National Bank v. Rytman*, 241 Conn. 24, 43-44 (1997).

quotation marks omitted); *cf. Ajadi v. Comm'r of Corr.*, 280 Conn. 514, 535-36 (2006) ("a judgment rendered without subject matter jurisdiction is void.").

83. Even assuming, *arguendo*, that the judge in the prior proceeding had not dismissed the petition on standing grounds but solely on the ground it was frivolous, that dismissal would not have a preclusive effect on the present Petition, as the first was dismissed without issuance of the writ (or order to show cause), service of process, and without a hearing, and was therefore not "actually litigated." A "pretrial dismissal . . . is not the logical or practical equivalent of a full and fair opportunity to litigate." *State v. Ellis*, 197 Conn. 436, 469 (1985), *on appeal after remand sub nom. State v. Paradise*, 213 Conn. 388 (1990). In general, where a first habeas corpus petition is summarily dismissed without a hearing, a second petition asserting the same grounds cannot be dismissed as successive. *See Palmenta v. Warden*, 2006 WL 3833865, at *1 n.1 (Conn. Super. Ct. Dec. 14, 2006) (because "there was no hearing on the merits of that motion. . . . petitioner's claim was not actually litigated, [and] res judicata does not apply").[22] Importantly, the "application of the doctrine of claim preclusion to a habeas petition is narrower than in a general civil context because of the nature of the Great Writ." *Skakel*, 2013 WL 1943921, at *4–6. "'Unique policy considerations must be taken into account.'" *In re Ross*, 272 Conn. at 662 (quoting *Thorpe*, 73 Conn. App. at 779 n.7). "'Foremost among those considerations is the interest in making certain that no one is deprived of liberty.'" *Id.* (citation omitted).[23] "Given the narrowed application of the doctrine of res judicata in the habeas context,

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[22] *See also State v. Joyner*, 255 Conn. 477, 496 (2001) ("Although an inadequate cross-examination of the victim was consistent with the habeas court's findings, it was not cited by the habeas court explicitly. Furthermore, to read such a conclusion into the habeas court's decision would be contrary to the requirement that issues be actually litigated and determined for collateral estoppel to apply."); *Lorthe v. Comm'r of Correction*, 2013 WL 1849280, at *4 (Conn. Super. Ct. Apr. 10, 2013) ("the prior dismissal of a petition for writ of habeas corpus based solely on the granting of an *Anders* motion is not a determination on the merits of the claims within that petition such as would subject them to dismissal on grounds of res judicata when raised in a subsequent petition for writ of habeas corpus").

[23] *See also Johnson v. Commissioner of Correction,* 288 Conn. 53, 66-67 (2008); *Carter v. Comm'r of Correction*, 133 Conn. App. 387, 393 (2012) (in "'the habeas context, in the interest of ensuring that no one is deprived of liberty . . . the application of the doctrine of res judicata . . .

it would only seem logical that this line of reasoning [regarding an 'adequate opportunity to litigate' in the prior proceeding] would apply with even greater strength here." *Taylor v. Warden*, 2013 WL 3970244, at *5 (Conn. Super. Ct. July 16, 2013) (refusing to dismiss second habeas corpus petition on res judicata grounds where inmate had no "prior opportunity to litigate the claim of ineffective assistance" as the first was "dismissed pursuant to a pretrial motion.").

84. Lastly, a court may act "within its discretion in declining to dismiss the second petition because the language of § 23-29 is discretionary rather than mandatory." *In re Ross*, 272 Conn. at 667-69. *See* Conn. Practice Book § 23–29(3) ("The judicial authority *may,* at any time, . . . dismiss the petition, or any count thereof, if it determines that . . .") (emphasis added). In *James L. v. Comm'r of Correction*, 245 Conn. 132, 142 & n.11 (1998), the Court concluded that, even if the two petitions had presented identical grounds, the habeas court would have acted within its discretion in declining to dismiss the second petition because the language of § 23-29 is "discretionary rather than mandatory." The Court observed: "The language of this provision illustrates the common-law principle that the doctrines of res judicata and collateral estoppel, claim preclusion and issue preclusion, respectively, are ordinarily inapplicable in the habeas corpus context." *Id.*

85. Moreover, circumstances have changed in at least three ways since the first petition was dismissed. First, on May 8, 2018, Judge Fahey, of New York's Court of Appeals, penned a concurring opinion that admonished the courts in New York for declining to grant personhood to nonhuman animals for the purposes of habeas corpus solely because they are not human. *Tommy*, 2018 WL 2107087, at *1-2 (Fahey, J., concurring). In a case of first impression as this, the legal opinion of the first high court judge in the United States to offer an opinion on the eligibility of nonhuman animals for habeas corpus, although not binding, severely undermines the finding of the court that the first petition is frivolous.

[is limited] to claims that actually have been raised and litigated in an earlier proceeding.'") (citations omitted); *Kearney v. Commissioner,* 113 Conn. App. 223 (2009).

86. Second, on February 23, 2018, the NhRP received the support of the Philosophers' *Amicus Brief* filed in the New York Court of Appeals[24] which Judge Fahey found persuasive on the issue of whether legal rights should be extended to nonhuman animals in the context of common law habeas corpus. *Tommy*, 2018 WL 2107087, at *1 (concurring).

87. Third, after the first petition was denied, the Colombian Supreme Court had also designated its part of the Amazon rainforest as "as an entity subject of rights," in other words, a "person."[25]

88. The foregoing changes in the legal landscape make it plain that the present petition should not be dismissed as successive.

V. Statement of Facts based on Expert Affidavits

89. Submitted with this Verified Petition in the accompanying Appendix of Expert Affidavits are the following affidavits, including four affidavits from five of the world's most renowned experts on the cognitive abilities of elephants ("Expert Scientific Affidavits"), as well as one legal affidavit. In total, 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

(g) Affidavit of Mark Dubois, Esq.

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[24] https://www.nonhumanrights.org/content/uploads/In-re-Nonhuman-Rights-v.-Lavery-Proposed-Brief-by-PHILOSOPHERS-74435.pdf.

[25] *See* STC4360-2018 (2018-00319-01), http://www.cortesuprema.gov.co/corte/index.php/2018/04/05/corte-suprema-ordena-proteccion-inmediata-de-la-amazonia-colombiana/, *excerpts available at* https://www.dejusticia.org/wp-content/uploads/2018/04/Tutela-English-Excerpts-1.pdf?x54537 (last accessed May 4, 2018).

90. Expert Affidavits (b) through (e) demonstrate that 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.

91. 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.[26]

92. Many of these capacities have been considered — erroneously — as uniquely human; each is a component of autonomy.[27] African and Asian elephants are autonomous, as they exhibit "self-determined behaviour that is based on freedom of choice. As a psychological

[26] 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.
[27] 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."[28]

93. Elephants possess the largest absolute brain of any land animal.[29] Even relative to their body sizes, elephant brains are large.[30]

94. 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.*).[31] Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species).[32] This means an elephant's brain can be more than twice as large as is expected for an animal of its size.[33] 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.[34]

95. A large brain allows greater cognitive skill and behavioral flexibility.[35] Typically, mammals are born with brains weighing up to 90% of the adult weight.[36] This figure drops to about 50% for chimpanzees.[37] At birth, human brains weigh only about 27% of the adult brain weight and increase in size over a prolonged childhood period.[38] This lengthy period of brain development (termed "developmental delay") is a key feature of human brain evolution.[39] 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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[28] Bates & Byrne Aff. ¶30, ¶60; McComb Aff. ¶24, ¶31, ¶54; Poole Aff. ¶22, ¶53; Moss Aff. ¶18; ¶48.
[29] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[30] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[31] 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.
[32] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[33] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[34] Bates & Byrne Aff. ¶32; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[35] Bates & Byrne Aff. ¶¶32-33; McComb Aff. ¶26; Poole Aff. ¶24; Moss Aff. ¶20.
[36] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[37] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[38] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[39] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.

planning, decision making and social interaction.[40] 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.[41] This similar developmental delay in the elephant brain is likewise associated with the emergence of analogous cognitive abilities.[42]

96. Physical similarities between human and elephant brains occur in areas that link to the capacities necessary for autonomy and self-awareness.[43] Elephant and human brains share deep and complex foldings of the cerebral cortex, large parietal and temporal lobes, and a large cerebellum.[44] 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.[45]

97. Elephant brains hold nearly as many cortical neurons as do human brains, and a much greater number than do chimpanzees or bottlenose dolphins.[46] 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.[47] 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.[48] Elephant

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[40] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[41] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[42] Bates & Byrne Aff. ¶33; McComb Aff. ¶27; Poole Aff. ¶25; Moss Aff. ¶21.
[43] Bates & Byrne Aff. ¶34; Poole Aff. ¶26; McComb Aff. ¶28; Moss Aff. ¶22.
[44] Bates & Byrne Aff. ¶34; McComb Aff. ¶28; Poole Aff. ¶26; Moss Aff. ¶22.
[45] Bates & Byrne Aff. ¶34; McComb Aff. ¶28; Poole Aff. ¶26; Moss Aff. ¶22.
[46] 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.
[47] Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[48] 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.[49]

98. 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.[50] 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.[51] 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.[52]

99. Elephants have extensive and long-lasting memories.[53] 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.[54] Each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average of 14 families in the population.[55] 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.[56] 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.[57]

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[49] Bates & Byrne Aff. ¶35; McComb Aff. ¶29; Poole Aff. ¶27; Moss Aff. ¶23.
[50] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[51] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[52] Bates & Byrne Aff. ¶36; McComb Aff. ¶30; Poole Aff. ¶28; Moss Aff. ¶24.
[53] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[54] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[55] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[56] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.
[57] Bates & Byrne Aff. ¶54; McComb Aff. ¶48; Poole Aff. ¶49; Moss Aff. ¶42.

100. 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).[58] Younger matriarchs under-reacted to hearing roars from male lions, elephants' most dangerous predators.[59] 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.[60] 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.[61]

101. Further demonstration of elephants' long-term memory emerges from data on their movement patterns.[62] African elephants move over very large distances in their search for food and water.[63] 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.[64] Viljoen (1989) showed that elephants in the same region visited water holes approximately every four days, though some were more than 60 km apart.[65]

102. 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.[66] These remarkable feats suggest exceptional cognitive mapping skills that rely upon the long-term memories of older individuals

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[58] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[59] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[60] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[61] Bates & Byrne Aff. ¶55; McComb Aff. ¶49; Poole Aff. ¶50; Moss Aff. ¶43.
[62] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[63] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[64] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[65] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[66] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.

who may have traveled that same path decades earlier.[67] Thus, family groups headed by older matriarchs are better able to survive periods of drought.[68] 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.[69]

103. 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.[70] Shannon *et al.* (2013) demonstrated that South African elephants who experienced trauma decades earlier showed significantly reduced social knowledge.[71] As a result of archaic culling practices, these elephants had been forcibly separated from family members and subsequently taken to new locations.[72] Two decades later, their social knowledge and skills and decision-making abilities were impoverished compared to an undisturbed Kenyan population.[73] Disrupting elephants' natural way of life has substantial negative impacts on their knowledge and decision-making abilities.[74]

104. Elephants demonstrate advanced working memory skills.[75] Working memory is the ability to temporarily store, recall, manipulate and coordinate items from memory.[76] Working memory directs one's attention to relevant information, utilized in reasoning, planning, coordination, and execution of cognitive processes through a "central executive."[77] Adult human working memory has a capacity of around seven items.[78] When experiments were conducted

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[67] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[68] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[69] Bates & Byrne Aff. ¶56; McComb Aff. ¶50; Poole Aff. ¶51; Moss Aff. ¶44.
[70] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[71] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[72] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[73] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[74] Bates & Byrne Aff. ¶57; McComb Aff. ¶51; Poole Aff. ¶52; Moss Aff. ¶45.
[75] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[76] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[77] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[78] 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.[79] 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.[80]

105. Elephants display a sophisticated categorization of their environment on par with humans.[81] 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.[82] 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.[83] 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").[84]

106. 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.[85] With access only to these visual cues, the elephants showed

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[79] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[80] Bates & Byrne Aff. ¶58; McComb Aff. ¶52; Poole Aff. ¶53; Moss Aff. ¶46.
[81] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[82] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[83] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[84] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[85] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.

significantly greater, sometimes aggressive, reactions to red garments than white.[86] 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.[87]

107. McComb *et al.* further demonstrated that these same elephants distinguish human groups based on voices.[88] 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.[89] 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."[90] 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.[91]

108. Human speech and language reflect autonomous thinking and intentional behavior.[92] Similarly, elephants vocalize to share knowledge and information.[93] Male elephants primarily communicate about their sexual status, rank and identity, whereas females and dependents emphasize and reinforce their social units.[94] 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.[95] 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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[86] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[87] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[88] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[89] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[90] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[91] Bates & Byrne Aff. ¶59; McComb Aff. ¶53; Poole Aff. ¶54; Moss Aff. ¶47.
[92] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[93] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[94] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[95] 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.[96]

109. Elephant vocalizations are not merely reflexive; they have distinct meanings to listeners and communicate in a manner similar to the way humans use language.[97] Elephants display more than two hundred gestures, signals and postures that they use to communicate information to their audience.[98] 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.[99]

110. Elephants use specific calls and gestures to plan and discuss a course of action.[100] 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.[101] 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.[102] These calls and gestures carry specific meanings not only to elephant listeners, but to experienced human listeners as well.[103] 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.[104]

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[96] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[97] Bates & Byrne Aff. ¶50; McComb Aff. ¶44; Poole Aff. ¶42; Moss Aff. ¶38.
[98] Poole Aff. ¶43; Bates & Byrne Aff. ¶52; McComb Aff. ¶46; Moss Aff. ¶40.
[99] Bates & Byrne Aff. ¶52; McComb Aff. ¶46; Poole Aff. ¶43; Moss Aff. ¶40.
[100] Poole Aff. ¶44.
[101] Poole Aff. ¶44.
[102] Poole Aff. ¶45.
[103] Poole Aff. ¶45.
[104] Poole Aff. ¶45.

111. Elephant group defensive behavior is highly evolved and involves a range of different tactical maneuvers adopted by different elephants.[105] 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.[106] This particular elephant attack is a powerful example of elephants' use of empathy, coalition and cooperation.[107] 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.[108] 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."[109] "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.[110]

112. 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.[111] 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."[112]

113. In planning and communicating intentions regarding a movement, elephants use both vocal and gestural communication.[113] 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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[105] Poole Aff. ¶45.
[106] Poole Aff. ¶45.
[107] Poole Aff. ¶45.
[108] Poole Aff. ¶45.
[109] Poole Aff. ¶45.
[110] Poole Aff. ¶45.
[111] Poole Aff. ¶36.
[112] Poole Aff. ¶36.
[113] 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."[114] The elephant will also use intention gestures — such as "foot-swinging" — to indicate her intention to move.[115] 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.[116] Sometimes such negotiation leads to disagreement that may result in the group splitting and going in different directions for a period of time.[117] 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.[118] 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."[119]

114. 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.[120] 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.[121]

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[114] Poole Aff. ¶46.
[115] Poole Aff. ¶46.
[116] Poole Aff. ¶46.
[117] Poole Aff. ¶46.
[118] Poole Aff. ¶46.
[119] Poole Aff. ¶46.
[120] Poole Aff. ¶46.
[121] Poole Aff. ¶46.

115. Elephants can vocally imitate sounds they hear, from the engines of passing trucks to the commands of human zookeepers.[122] 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.[123] 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.[124] 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.[125]

116. As do humans, Asian elephants exhibit "mirror self-recognition" (MSR) using Gallup's classic "mark test."[126] 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.[127] 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").[128]

117. MSR is significant because it is a key identifier of self-awareness.[129] Self-awareness is intimately related to autobiographical memory in humans and is central to

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[122] Bates & Byrne Aff. ¶51; McComb Aff. ¶45; Poole Aff. ¶47; Moss Aff. ¶39.
[123] Bates & Byrne Aff. ¶51; McComb Aff. ¶45; Poole Aff. ¶47; Moss Aff. ¶39.
[124] Bates & Byrne Aff. ¶53; McComb Aff. ¶47; Poole Aff. ¶48; Moss Aff. ¶41.
[125] Bates & Byrne Aff. ¶40, ¶53; McComb Aff. ¶34, ¶47; Poole Aff. ¶32, ¶48; Moss Aff. ¶28, ¶41.
[126] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26. African elephants have not yet been tested.
[127] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[128] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[129] 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.[130] 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.[131]

118. One who understands the concept of dying and death must possess a sense of self.[132] Both chimpanzees and elephants demonstrate an awareness of death by reacting to dead family or group members.[133] Having a mental representation of the self, which is a pre-requisite for mirror-self recognition, likely confers an ability to comprehend death.[134]

119. 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").[135] They have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead individuals.[136] 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").[137]

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[130] "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.
[131] Bates & Byrne Aff. ¶38; McComb Aff. ¶32; Poole Aff. ¶30; Moss Aff. ¶26.
[132] Poole Aff. ¶31; Bates & Byrne Aff. ¶39; Moss Aff. ¶27.
[133] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[134] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[135] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[136] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[137] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.

120. Wild African elephants have been observed to cover the bodies of their dead with dirt and vegetation.[138] 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.[139] Indeed, the general demeanor of elephants attending to a dead elephant is one of grief and compassion, with slow movements and few vocalizations.[140] 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").[141]

121. 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.[142] The accumulation of dung around the site attests to the extended time that visiting elephants spend touching and contemplating the bones.[143] 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.[144] The tusks are of particular interest and may be carried and deposited many hundreds of meters from the site of death.[145]

122. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities.[146] Empathy is defined as identifying with and understanding another's experiences or feelings by relating personally to their situation.[147]

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[138] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[139] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[140] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[141] Bates & Byrne Aff. ¶39; McComb Aff. ¶33; Poole Aff. ¶31; Moss Aff. ¶27.
[142] Poole Aff. ¶31.
[143] Poole Aff. ¶31.
[144] Poole Aff. ¶31.
[145] Poole Aff. ¶31.
[146] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[147] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.

123. Empathy is an important component of human consciousness and autonomy and is a cornerstone of normal social interaction.[148] 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.[149] Thus, empathy is a component of "theory of mind."[150]

124. 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").[151] 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.[152]

125. 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.[153]

126. 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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[148] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[149] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[150] Bates & Byrne Aff. ¶40; McComb Aff. ¶34; Poole Aff. ¶32; Moss Aff. ¶28.
[151] Bates & Byrne Aff. ¶41; McComb Aff. ¶35; Poole Aff. ¶33; Moss Aff. ¶29.
[152] Poole Aff. ¶33; Bates & Byrne Aff. ¶41; McComb Aff. ¶35; Moss Aff. ¶29.
[153] 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").[154]

127. 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.[155] 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.[156]

128. 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.[157]

129. 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").[158] In a further example of the ability to understand goal directedness of

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[154] Bates & Byrne Aff. ¶42.
[155] Poole Aff. ¶34.
[156] Poole Aff. ¶34.
[157] Bates & Byrne Aff. ¶42; McComb Aff. ¶36; Poole Aff. ¶34; Moss Aff. ¶30.
[158] 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.[159] 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.[160]

130. 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.[161] 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").[162]

94. Captive African elephants attribute intentions to others, as they follow and understand human pointing gestures.[163] 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").[164] Attributing intentions and understanding another's reference point is central to both empathy and "theory of mind."[165]

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[159] Poole Aff. ¶34.
[160] Poole Aff. ¶34.
[161] Poole Aff. ¶34.
[162] Poole Aff. ¶34.
[163] Bates & Byrne Aff. ¶43; McComb Aff. ¶37; Poole Aff. ¶35; Moss Aff. ¶31.
[164] Bates & Byrne Aff. ¶43; McComb Aff. ¶37; Poole Aff. ¶35; Moss Aff. ¶31.
[165] 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"[166] 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.[167] 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.[168] 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.[169]

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.[170] 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.[171]

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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[166] 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.
[167] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.
[168] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.
[169] Bates & Byrne Aff. ¶44; McComb Aff. ¶38; Poole Aff. ¶36; Moss Aff. ¶32.
[170] Bates & Byrne Aff. ¶45; McComb Aff. ¶39; Poole Aff. ¶37; Moss Aff. ¶33.
[171] 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").[172] 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.[173]

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.[174] 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.[175] Such intentional, goal-directed action forms the foundation of independent agency, self-determination, and autonomy.[176]

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.[177] 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.[178] 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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[172] Bates & Byrne Aff. ¶46; McComb Aff. ¶40; Poole Aff. ¶38; Moss Aff. ¶34.
[173] Bates & Byrne Aff. ¶46; McComb Aff. ¶40; Poole Aff. ¶38; Moss Aff. ¶34.
[174] Poole Aff. ¶39; Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Moss Aff. ¶35.
[175] Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Poole Aff. ¶39; Moss Aff. ¶35.
[176] Bates & Byrne Aff. ¶47; McComb Aff. ¶41; Poole Aff. ¶39; Moss Aff. ¶35.
[177] 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.
[178] 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").[179] 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.[180]

100. Asian elephants demonstrate the ability to understand goal-directed behavior.[181] 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.[182] 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.[183] 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).[184]

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 unlawfully detained elephants in Respondents' custody;

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[179] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36.
[180] Bates & Byrne Aff. ¶48; McComb Aff. ¶42; Poole Aff. ¶40; Moss Aff. ¶36.
[181] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[182] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[183] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.
[184] Bates & Byrne Aff. ¶49; McComb Aff. ¶43; Poole Aff. ¶41; Moss Aff. ¶37.

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

C. Awarding Petitioner 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:_____

David Zabel, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
Tel: 203-368-0211
Fax: 203-394-9901
Email: dzabel@cohenandwolf.com
Juris No. 010032

Steven M. Wise, Esq.
Subject to *pro hac vice* admission
Attorney for Petitioner
5195 NW 112th Terrace
Coral Springs, Florida 33076
(954) 648-9864
swise@nonhumanrights.org

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 8 day of June, 2018.

Notary Public
~~Commissioner of the Superior Court~~

KAREN O. RHODEN
Notary Public, State of New York
Qualified in Kings County
No. 01RH6176226
My Commission Expires 10/29/19.