

The Nonhuman Rights Project's Struggle to Gain Legal Rights and Personhood for Nonhuman Animals

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The Nonhuman Rights Project

NONHUMAN RIGHTS PROJECT



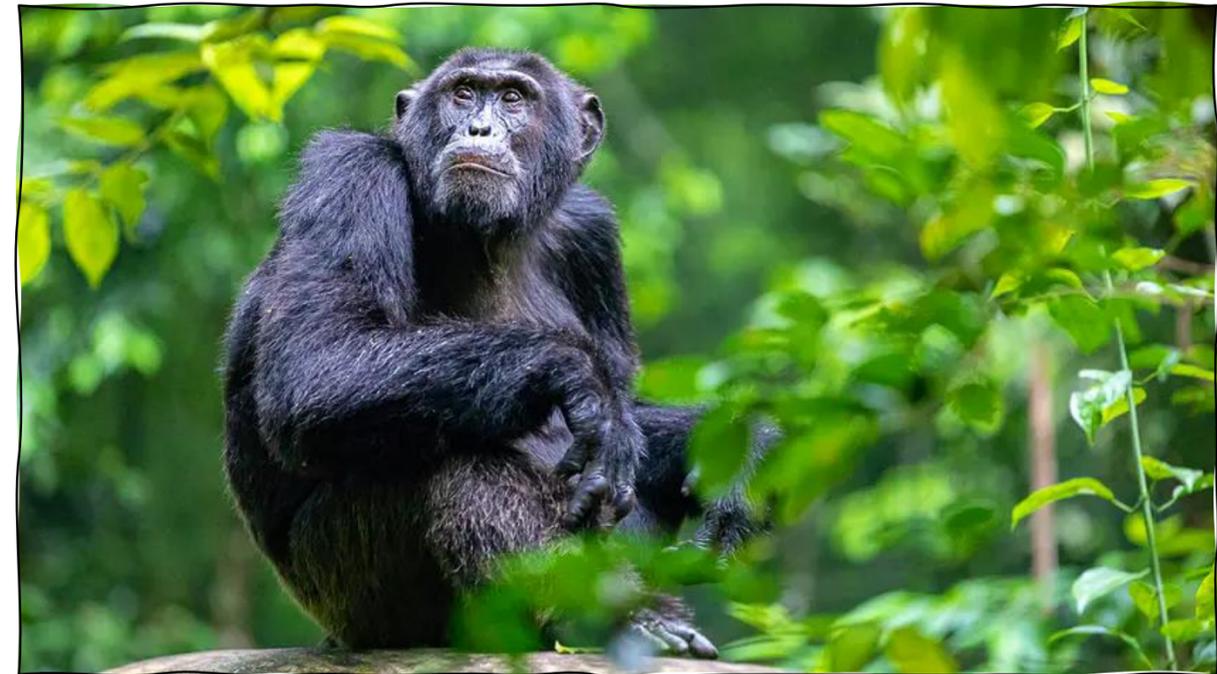


NONHUMAN RIGHTS PROJECT



A unique and vital mission

The Nonhuman Rights Project is the only civil rights organization in the United States dedicated solely to securing rights for nonhuman animals.



Our mission is to change the legal status of at least some nonhuman animals from mere legal “things,” which lack the capacity to possess any legal right, to legal “persons,” who possess such fundamental rights as bodily integrity and bodily liberty and other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them.



Welfare vs. Rights



Still prioritizes the interests of humans.



Prioritizes animals' own interests.





12/2/13

Tommy

The Nonhuman Rights Project's first client.



12/3/13

Hercules and Leo
Two former research subjects and the first nonhuman animals to have a habeas corpus hearing.



12/5/13

Kiko

A former animal "actor," partially deaf from past physical abuse.



11/13/17

Beulah, Karen, and Minnie
Torn from their families and forced to perform for humans for decades.



10/2/18

Happy

First elephant to pass mirror self-recognition test; held alone at the Bronx Zoo.



Our current plaintiffs are members of species who have been scientifically proven to be autonomous: currently, great apes, elephants, dolphins, and whales.

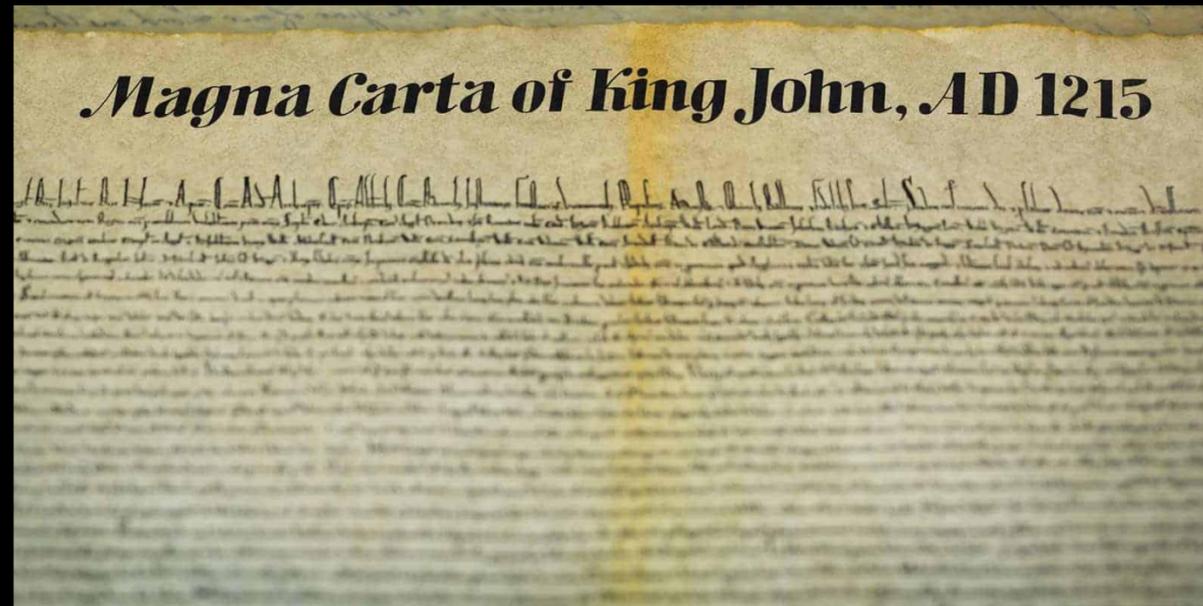


In December 2013, the NhRP filed the world's first common law habeas corpus petition on behalf of a nonhuman animal when we filed on behalf of Tommy, a chimpanzee we found alone in a cage in a shed on a trailer lot in upstate New York.



What is common law habeas corpus?





Habeas corpus is one of the oldest “tools” in the common law, dating to near the time of the Magna Carta (1215).

Habeas corpus was created to protect the autonomy of “persons” and historically was used to contest private and unlawful detention (i.e., it could be invoked to get the state involved in setting an innocent “person” free, including by force if necessary).



What is legal personhood?



The key word is “person”:

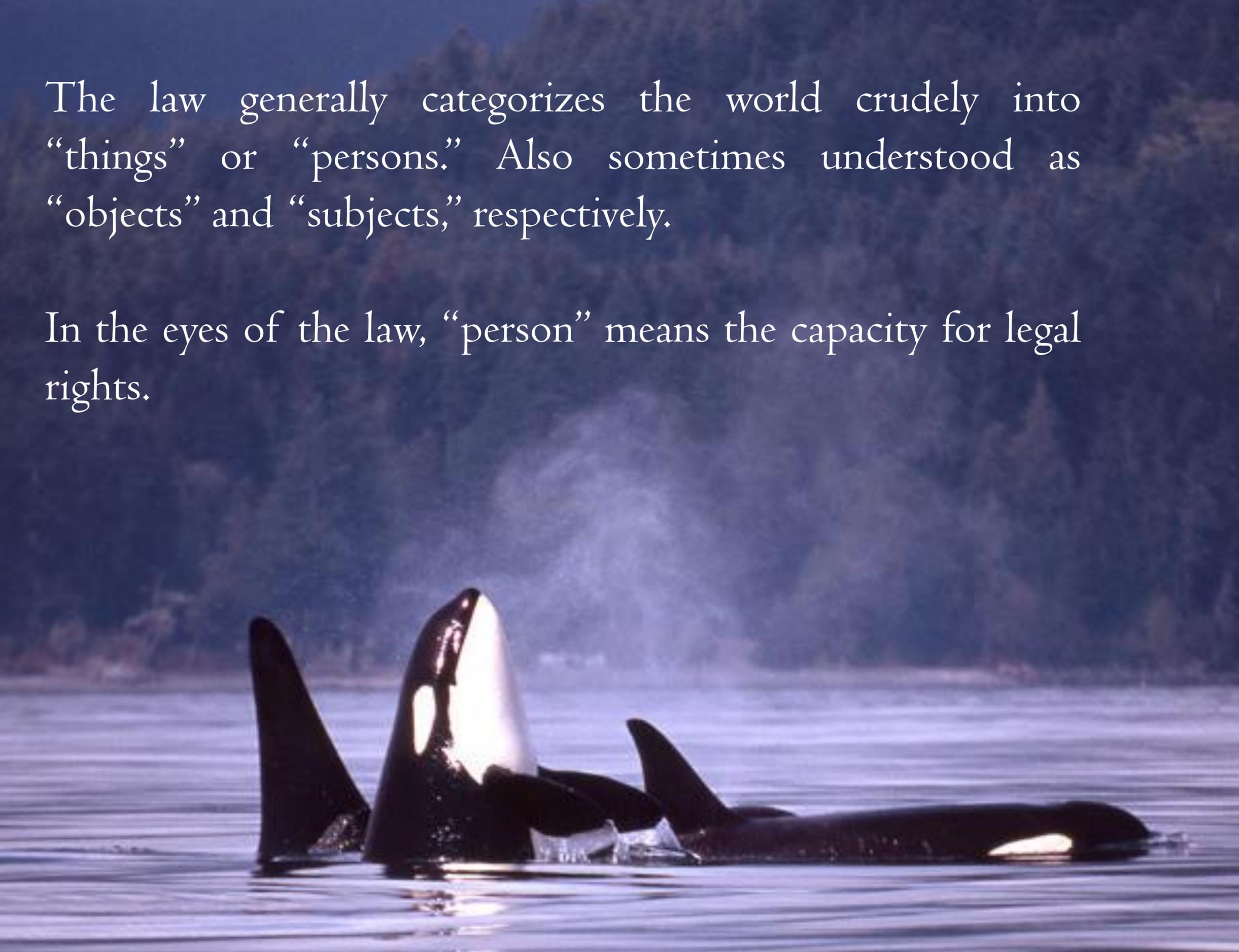
Who counts as one?

Why does it matter?



The law generally categorizes the world crudely into “things” or “persons.” Also sometimes understood as “objects” and “subjects,” respectively.

In the eyes of the law, “person” means the capacity for legal rights.



Under the law, “person” has never been and still is not a question of biology; rather it’s a matter of public policy.

After hundreds of years of struggle, it is now the birthright of every human being to be a person, before that most humans were things or otherwise treated as less than persons.

For hundreds of years before that, corporations and ships, among other nonhuman entities, were already being treated as “persons.”



A “person” can have a theoretically infinite number of rights, while a “thing” is incapable of having any rights, even those which protect her most fundamental interests.

Currently, virtually every nonhuman animal in the world is a legal thing.

How can a legal thing become a legal person?



We build our cases around those principles that judges claim to believe in, including liberty, equality, and autonomy.

Autonomy is one of the most important principles in our court cases, and drives much of the scientific evidence we submit, including scientific affidavits from some of the world's leading experts in nonhuman animal cognition.



Science shows beyond doubt that we are not the only species who have and value our autonomy.

A primary stated purpose of the law is to protect autonomy.

We argue autonomy is a *sufficient but not necessary* basis for personhood and rights.





“Isn't it incumbent upon the judiciary to at least consider whether a class of beings may be granted a right or something short of a right, under the habeas statute?” – Justice Barbara Jaffe



Meet the Chimps That Lawyers Argue Are People

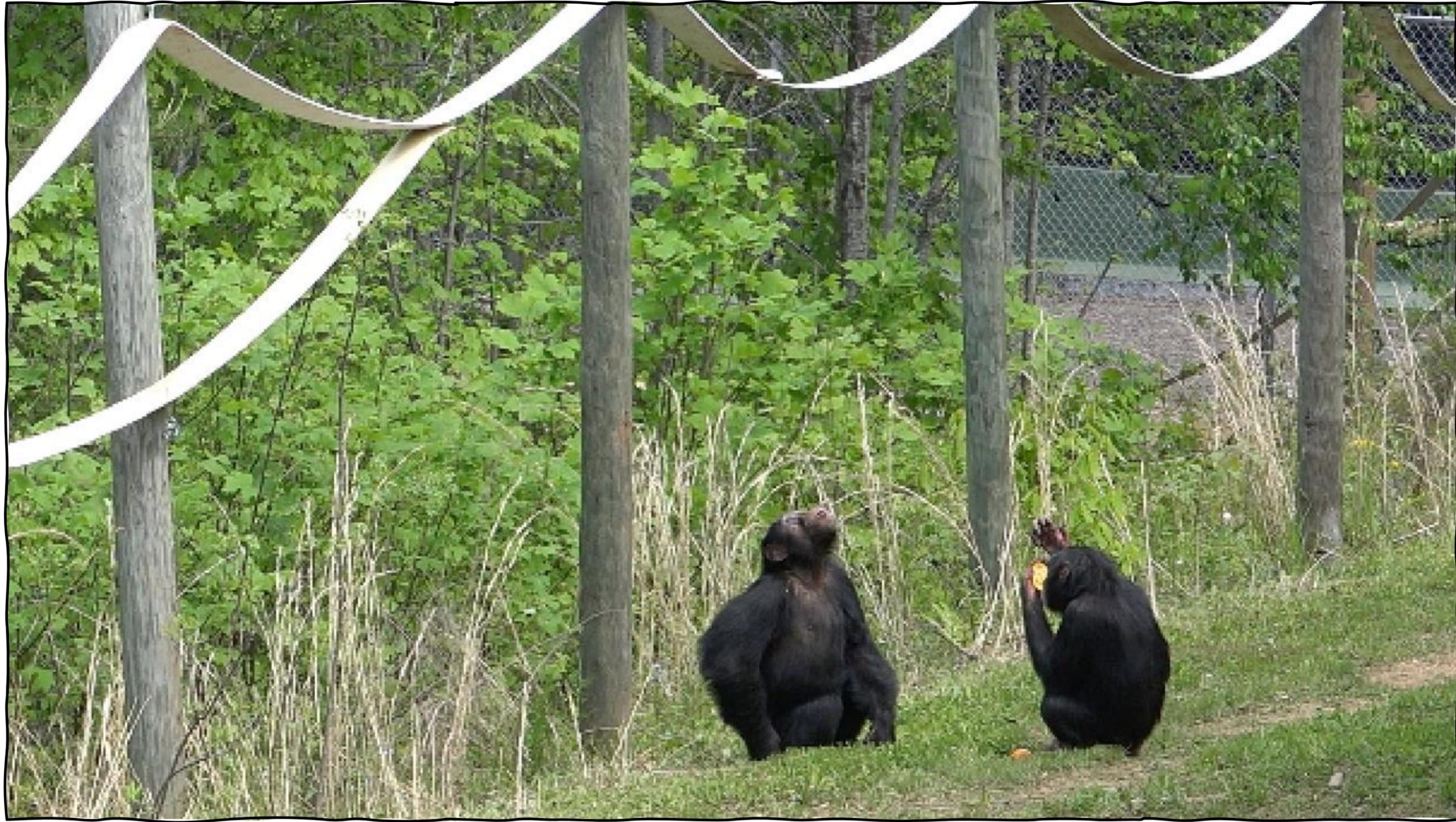
In a new study, chimpanzees were trained to walk upright. The fine print:
They're also plaintiffs in a landmark lawsuit.

BY BRANDON KEIM, FOR NATIONAL GEOGRAPHIC



PUBLISHED OCTOBER 8, 2015 • 4 MIN READ







Tommy's first case began in December 2013 and ended in an appeal decision in 2014 stating that rights require a correlative ability to bear "social duties and responsibilities," and that chimpanzees lack it.

Kiko's first case began in December 2013 and ended in an appeal decision in 2015 stating that seeking transfer to sanctuary was not an appropriate use of habeas corpus since we were not seeking "immediate release."



On May 8, 2018, Judge Eugene Fahey of the New York Court of Appeals issued an opinion in *Nonhuman Rights Project v. Lavery*, which begins:

“The inadequacy of the law as a vehicle to address some of the most difficult ethical dilemmas is on display in this matter.”

**State of New York
Court of Appeals**

This opinion is uncorrected and subject to revision before publication in the New York Reports.

Motion No. 2018-268
In the Matter of Nonhuman Rights Project, Inc.,
on Behalf of Tommy,
Appellant,

v.
Patrick C. Lavery, &c., et al.,
Respondents.

In the Matter of Nonhuman Rights Project, Inc.,
on Behalf of Kiko,
Appellant,

v.
Carmen Presti et al.,
Respondents.

Decided May 8, 2018:
Motion for leave to appeal denied. Chief Judge DiFiore
and Judges Rivera, Fahey, Garcia and Wilson concur, Judge
Fahey in an opinion. Judges Stein and Feinman took no part.

FAHEY, J. (concurring):

The inadequacy of the law as a vehicle to address some of our most difficult ethical dilemmas is on display in this matter.

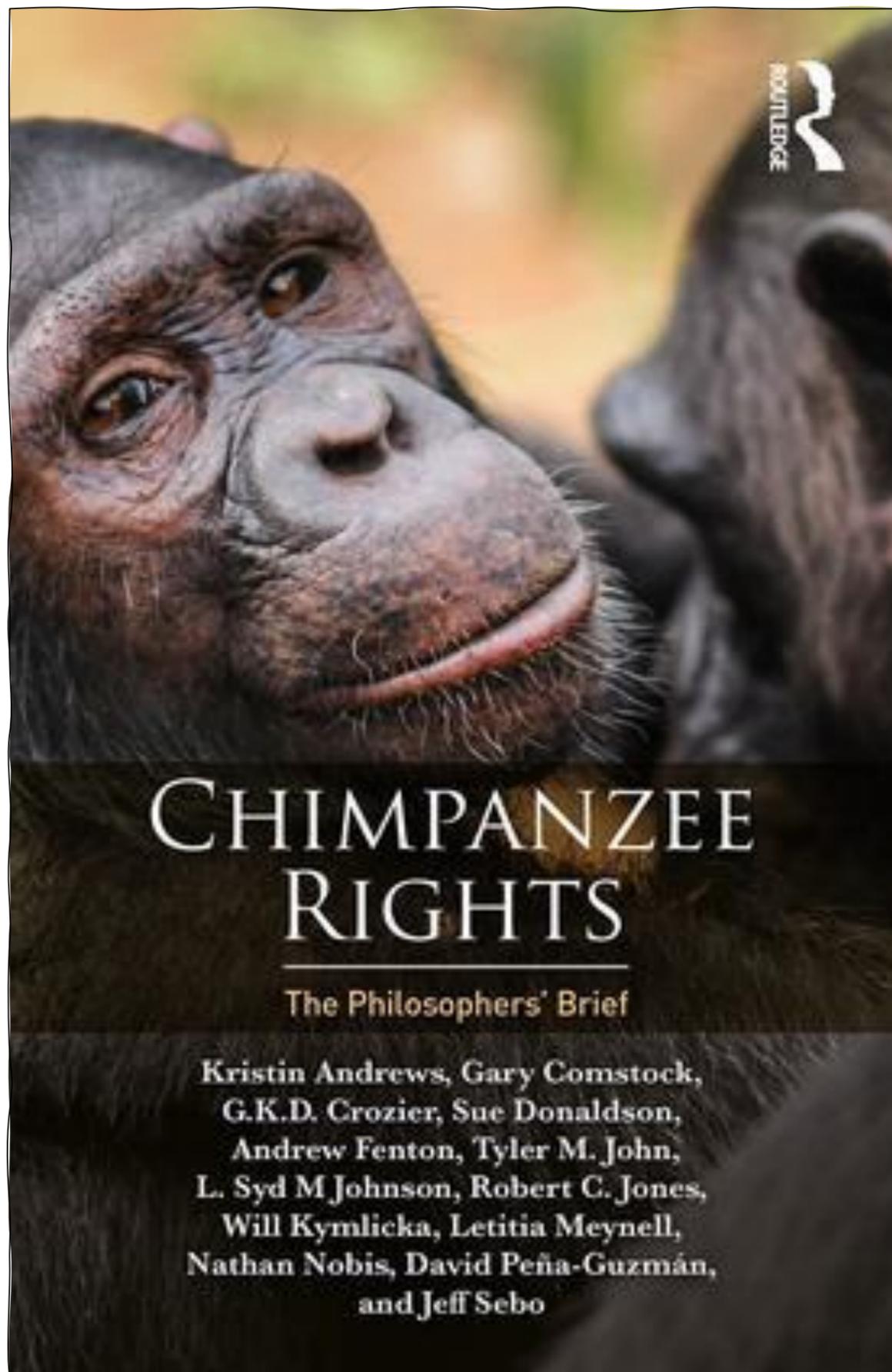


However, I write to underscore that denial of leave to appeal is not a decision on the merits of petitioner's claims. The question will have to be addressed eventually. Can a non-human animal be entitled to release from confinement through the writ of habeas corpus? Should such a being be treated as a person or as property, in essence a thing?

227 AD2d 969 [4th Dept 1996]). In short, being a "moral agent" who can freely choose to act as morality requires is not a necessary condition of being a "moral patient" who can be wronged and may have the right to redress wrongs (see generally Tom Regan, *The Case for Animal Rights* 151-156 [2d ed 2004]).

Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery, 31 N.Y.3d 1054 (May 8, 2018) ("*Tommy*") (Fahey, J., concurring)





“We write as a diverse group of philosophers who share the conviction that if the concept of ‘personhood’ is being employed by the courts to determine whether to extend or deny the writs of habeas corpus, they should employ a consistent and reasonable definition of ‘personhood’ and ‘persons.’ We believe that the previous judgements offered by the Third, Fourth, and First Departments of the Appellate Division of the New York Supreme Court applied inconsistent definitions of ‘personhood.’”

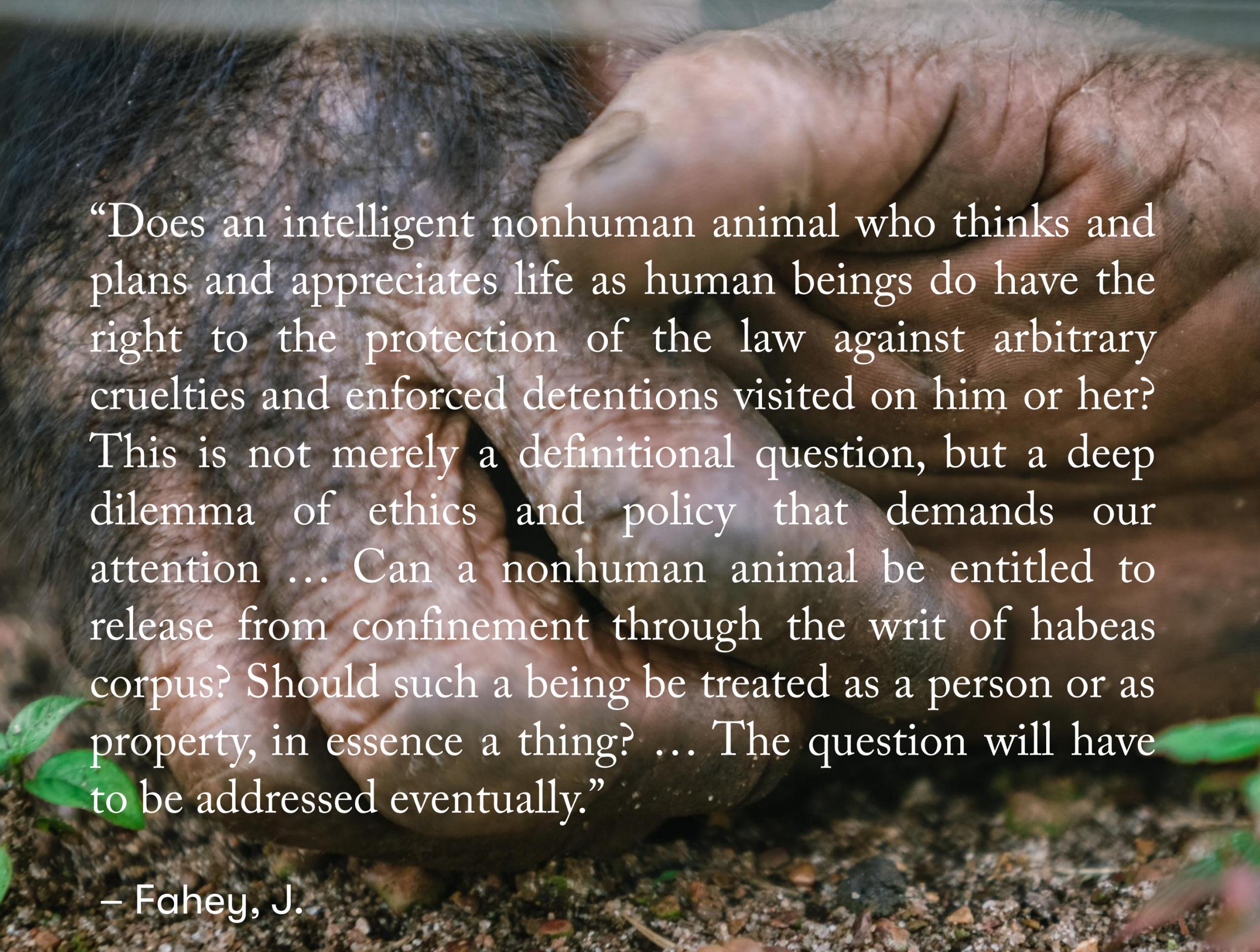
“Moreover, the amici philosophers with expertise in animal ethics and related areas draw our attention to recent evidence that chimpanzees demonstrate autonomy by self-initiating intentional, adequately informed actions, free of controlling influences.” – Fahey, J. concurring.



“The better approach in my view is to ask not whether a chimpanzee fits the definition of a person or whether a chimpanzee has the same rights and duties as a human being, but instead whether he or she has the right to liberty protected by habeas corpus. That question, one of precise moral and legal status, is the one that matters here. Moreover, the answer to that question will depend on our assessment of the intrinsic nature of chimpanzees as a species. . . . 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. Whether a being has the right to seek freedom from confinement through the writ of habeas corpus should not be treated as a simple either/or proposition. The evolving nature of life makes clear that chimpanzees and humans exist on a continuum of living beings. Chimpanzees share at least 96% of their DNA with humans. They are autonomous, intelligent creatures. To solve this dilemma, we have to recognize its complexity and confront it.”

– Fahey, J.



A close-up photograph of a person's hand gently holding a pig's snout. The pig's skin is dark and wrinkled, and the person's hand is light-skinned. The background is blurred, showing some green foliage and a dark, textured surface.

“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? This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention ... Can a nonhuman 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? ... The question will have to be addressed eventually.”

– Fahey, J.



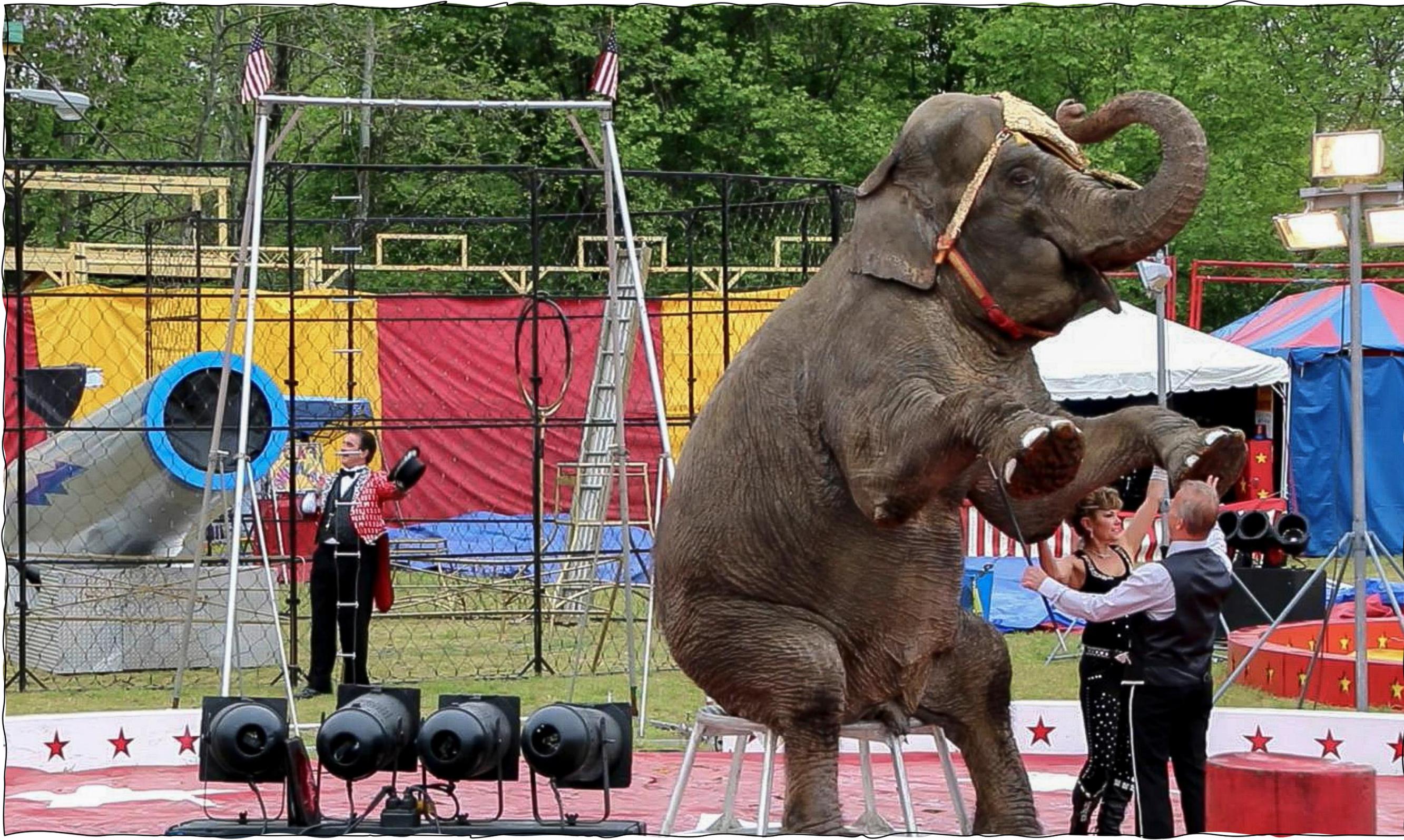


“The issue whether a nonhuman animal has a fundamental right to liberty” protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a ‘person,’ there is no doubt that it is not merely a thing.” – Fahey, J.



Beulah, Karen, and Minnie: Torn from their families and forced to perform for decades







Happy: First elephant to pass mirror self-recognition test; held alone at the Bronx Zoo





Armed with Judge Fahey's concurring opinion, as well as another recent case from an upstate New York appellate court referring to the personhood of nonhuman animals as a matter of "common knowledge" (*People v. Graves*), the NhRP filed a habeas petition for Happy on October 2, 2018.

This Court is extremely sympathetic to Happy's plight and the NhRP's mission on her behalf. It recognizes that Happy is an extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytic abilities akin to human beings. Notwithstanding, in light of the Appellate Division, Third Department's holding that animals are not "persons", this Court is also constrained to find that Happy is not a "person" entitled to the writ of habeas corpus. In *Lavery*, 31 N.Y.3d 1054 (2018), the NhRP motion for leave to appeal the Third Department decision to the Court of Appeals was denied. However, in a concurring opinion, Justice Fahey noted that the denial of leave to appeal was not a decision on the merits of the NhRP claim. He stated that "[t]he 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.* at 1057. Justice Fahey further noted that "[t]he 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 1059.

Conclusion

This Court agrees that Happy is more than just a legal thing, or property. She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty. Nonetheless, we are constrained by the caselaw to find that Happy is not a "person" and is not being illegally imprisoned. As stated by the First Department in *Lavery*, 54 N.Y.S.3d at 397, "the according of any fundamental legal rights to animals, including entitlement to habeas relief, is an issue better suited to the legislative process". The arguments advanced by the NhRP are extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit at the Bronx Zoo, to an elephant sanctuary on a 2300 acre lot. Nevertheless, in order to do so, this Court would have to find that Happy is a "person" and, as already stated, we are bound by this State's legal precedent.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX, PART 5

The Nonhuman Rights Project Index No. 2604
 on behalf of HAPPY -against- Hon. Alison
Bruce, James G. Justice Sup

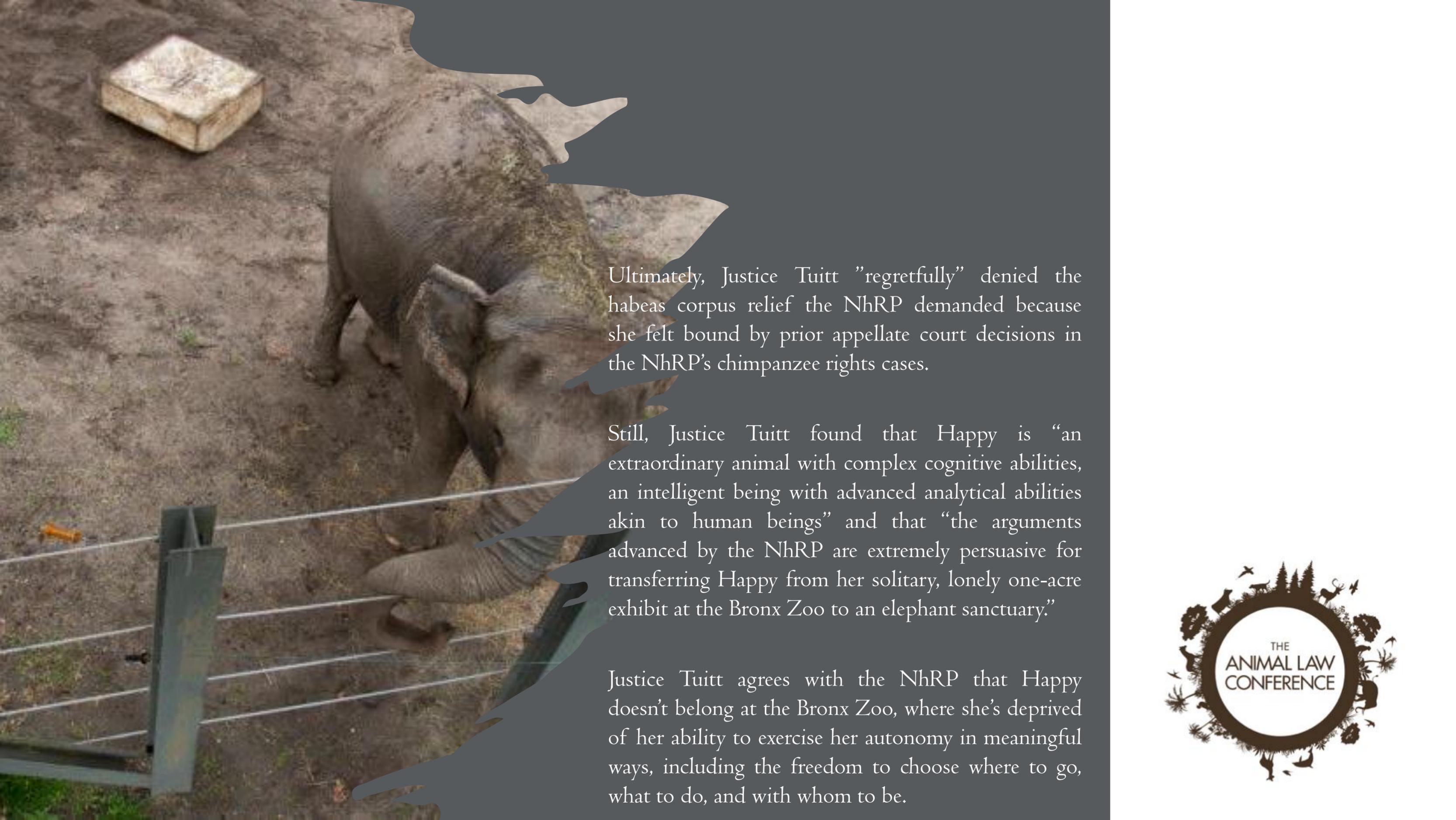
The following papers numbered 1 to 16 were read on this motion Seq. the
 for Miscellaneous relief noticed on various

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that ~~this motion~~ order to
causes, verified petition, and relat
motions are decided in accordance
annexed memorandum decision

Motion is Respectfully Referred to Justice:
 Dated: _____





Ultimately, Justice Tuitt “regretfully” denied the habeas corpus relief the NhRP demanded because she felt bound by prior appellate court decisions in the NhRP’s chimpanzee rights cases.

Still, Justice Tuitt found that Happy is “an extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytical abilities akin to human beings” and that “the arguments advanced by the NhRP are extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit at the Bronx Zoo to an elephant sanctuary.”

Justice Tuitt agrees with the NhRP that Happy doesn’t belong at the Bronx Zoo, where she’s deprived of her ability to exercise her autonomy in meaningful ways, including the freedom to choose where to go, what to do, and with whom to be.





On July 10, 2020, the NhRP files an appeal asking the New York Supreme Court, Appellate Division, First Department to recognize Happy's common law right to bodily liberty.

In October of 2020, the NhRP argued virtually before the First Department intermediate appellate court in Happy's case. The proceedings were live-streamed, and the video is available on the Court's YouTube channel.

On December 17, 2020, the First Department issues its decision, denying habeas corpus relief to Happy.



1 Mo. No. 2021-136 Motion for leave to appeal granted.
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

On January 27, 2021, the NhRP files a motion urging the Court of Appeals—New York’s highest court—to hear arguments in support of Happy’s right to liberty. Approval from at least two of the seven New York Court of Appeals judges (one of whom is Judge Eugene M. Fahey) is needed for the motion to be granted.

On May 4, 2021, The Court of Appeals grants the NhRP’s motion for permission to appeal. This marks the first time in history that the highest court of any English-speaking jurisdiction will hear a habeas corpus case brought on behalf of someone other than a human being.



PRELIMINARY STATEMENT

There is no dispute that the Bronx Zoo, the home for Happy the Elephant (“Happy”) for the last 40 years, is one of the most highly regarded zoos in the world. There is no dispute that Happy is cared for there by well-trained large animal veterinarians (A. 331, ¶¶ 9-13) and by animal keepers who treat Happy with respect and kindness (A. 331, ¶¶ 7, 10; A. 337, ¶¶ 23-25). **Indeed, there is no dispute that Happy is not a “thing”** and is not treated as such at the Bronx Zoo, but instead is an ambassador for her species who is respected and cared for by a knowledgeable and skilled staff.

If either side is treating Happy as a “thing,” it is the Nonhuman Rights Project (“NRP”). That is, NRP is using Happy the same way they have used other animal “clients”—none of whom asked for NRP’s intervention—to try to upend centuries of habeas corpus law and impose its own world view that certain (or perhaps all) animals should not be cared for in zoos.¹ Having unilaterally determined that Happy must be transferred to another facility

As Respondents agree that Happy is not a “thing,” they concede that Happy is a “person,” because one is either a “person” or a “thing.” Their arguments against Happy’s personhood are therefore moot. The answer to the question of whether this Court must recognize Happy’s common law right to bodily liberty protected by habeas corpus will depend on the intrinsic nature of elephants as a species. *See Matter of Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054, 1059 (2018) (Fahey, J., concurring) (“Tommy”) (The question is “not whether a chimpanzee fits the definition of a person or whether a chimpanzee has the same rights and duties as a human being, but instead whether he or she has the right to liberty protected by

habeas corpus. . . . [T]he answer to that question will depend on . . . the intrinsic nature of chimpanzees as a species.”). Based on the factual determinations made by the Trial Court, this Court must resolve that question in Happy’s favor.



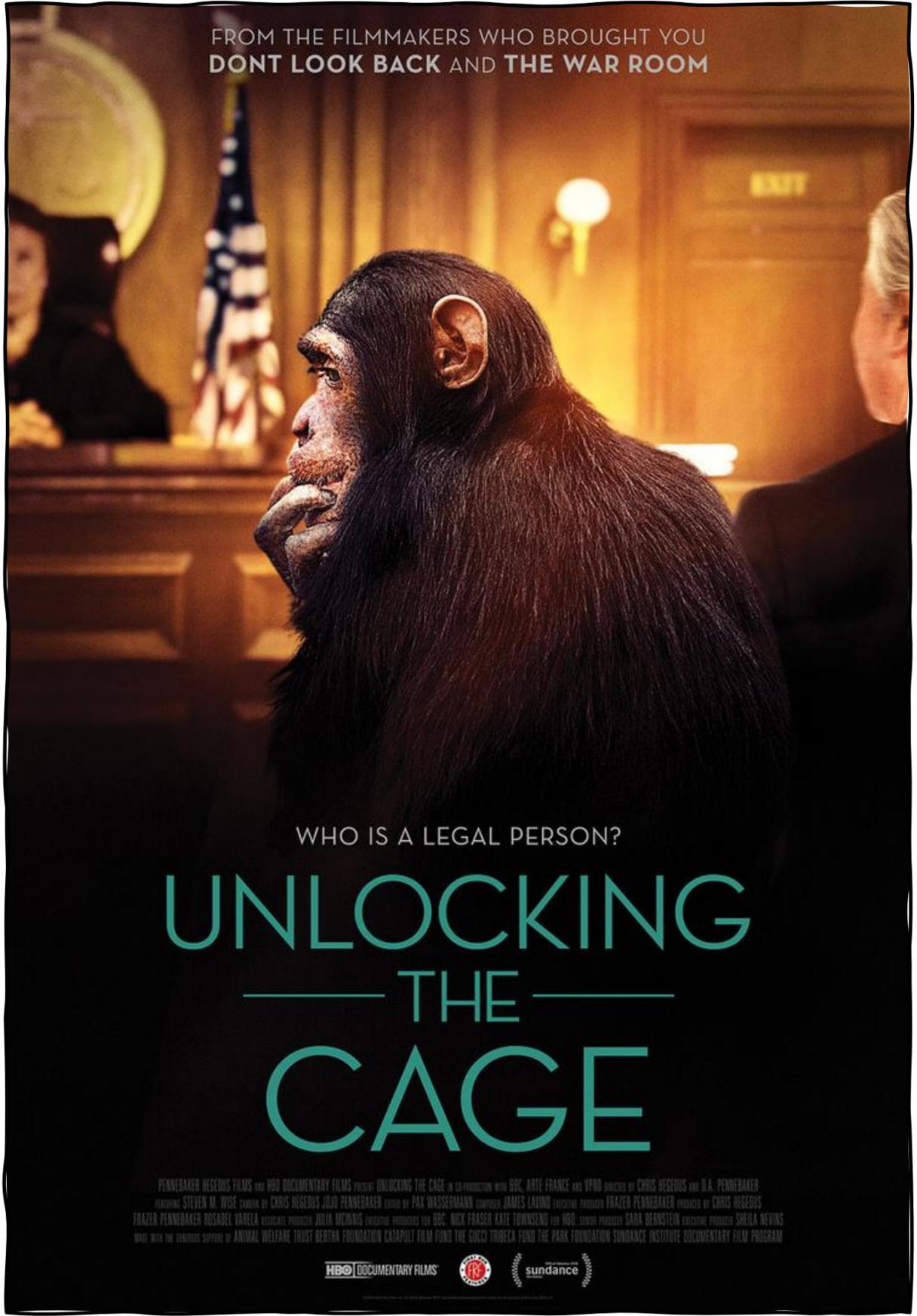
JIM BREHENY
DIRECTOR OF THE BRONX ZOO

“The Nonhuman Rights Project is exploiting the Bronx Zoo elephants to advance their own failing cause in the courts as they put forth ludicrous legal arguments and lies about our elephants, facilities and staff.”

Elephants are particularly unhappy in zoos, given their great size, social nature and cognitive complexity. Many suffer from arthritis and other joint problems from standing on hard surfaces; elephants kept alone become desperately lonely; and all zoo elephants suffer mentally from being cooped up in tiny yards while their free-ranging cousins walk up to 50 miles a day. Zoo elephants tend to die young. At least 20 zoos in the United States have already ended their elephant exhibits in part because of ethical concerns about keeping the species captive.

Modern Zoos Are Not Worth the Moral Cost by Emma Marris





Our work is the subject of the 2016 Pennebaker Hegedus/HBO documentary film "Unlocking the Cage," which has been seen by millions around the world and was nominated for a News and Documentary Emmy for Best Social Justice Documentary.



International Work and Developments

We work with lawyers in over a dozen countries assisting them finding ways to work within their legal systems to create meaningful rights for nonhuman animals in their countries.

In 2014, the Indian Supreme Court recognized the personhood (if not the rights) of all nonhuman animals in the country.

In Argentina in 2016, a court declared Cecilia, a chimpanzee, a “nonhuman legal person” and order her sent to a sanctuary.

In 2020, the Islamabad High Court in Pakistan recognized the legal rights of Kaavan, “The World’s Loneliest Elephant.”

Around the world, rivers, national parks, and recently in Colombia the Amazon rainforest have been declared “legal persons” with rights.



International Work and Developments

In December 2020, the Selection Court of Ecuador's highest court—the Constitutional Court of Ecuador—ruled that it will hear an appeal from the denial of a writ of habeas corpus for a monkey, stating that it “may develop case law determining the scope of a motion for habeas corpus with respect to the protection of other living beings, and if these can be considered as subjects entitled to rights covered by the laws of nature.” *Selection Court of the Constitutional Court of Ecuador re: Case No.253-20-JH* at para. 9 (December 22, 2020). The Court has agreed to accept an amicus curiae brief from the Nonhuman Rights Project and Harvard Law School's Animal Law & Policy Program.

On September 14, 2021, sixteen Mexican senators presented two initiatives to change the legal status of animals from beings considered legal “things” to subjects of rights (i.e., legal “persons”). The proposals would also provide for “any person” with an interest in protecting these rights to bring suit on behalf of the nonhuman animals. The initiatives conclude with language that states, “all nonhuman animals should receive dignified and respectful treatment.”





“How should we relate to beings who look into mirrors and see themselves as individuals, who mourn companions and may die of grief, who have a consciousness of ‘self?’ Don’t they deserve to be treated with the same sort of consideration we accord to other highly sensitive beings: ourselves?”

NhRP Founding Board Member Dr. Jane Goodall



Kindly consider joining our email list to support our work!

Sign up at nonhumanrights.org

jdavis@nonhumanrights.org

