

ANIMAL PERSONHOOD: THE QUEST FOR RECOGNITION

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INTRODUCTION

Courts around the world have discussed nonhuman animal personhood in different types of procedures. This paper examines twenty-seven such cases, most of which are writs of *habeas corpus* (*HCW*) filed on behalf of specific animals incarcerated in a zoo or laboratory in the hope that a court will find that the animal's imprisonment is unlawful and order their transfer or release. To date, there has only been one successful *HCW* case, regarding a chimpanzee named Cecilia in Argentina.² Cecilia lived alone in a concrete cage at the notorious Mendoza Zoo for many years, until, following her trial, a court ordered her transfer to Brazil's Great Ape Sanctuary, where Cecilia currently resides with other chimpanzees.³ The remaining legal cases this paper will discuss are either administrative, criminal, or copyright proceedings in nature, where the topic of an animal's legal personhood has been an issue.

This paper examines the arguments for legal personhood that have been employed in court, teases out the trends that emerge from this historical analysis, and presents the reader with three difficult dilemmas. The first argument pertains to the pros and cons of employing legal or political means; the second argument examines the relative advantages

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¹ For the sake of brevity, this paper will refer to nonhuman animals simply as “animals.”

² Tercer Juzgado de Garantías de Mendoza [J.G.Men.] [Third Criminal Court of Mendoza], 3/11/2016, “Presentación Efectuada Por AFADA Respecto del Chimpancé ‘Cecilia’ Sujeto No Humano,” [Expte. Nro.] P-72.254/15, (Arg.).

³ Pablo Giuliano, *El Santuario de los Primates de Brasil, la Ventana a la Libertad de Cecilia y Otros Chimpancés Rescatados*, TELAM AGENCIA NACIONAL DE NOTICIAS (Argentina), (Apr. 8, 2017), <https://cablera.telam.com.ar/cable/489433/el-santuario-de-los-primates-de-brasil-la-ventana-a-la-libertad-de-cecilia-y-otros-chimpances-rescatados>.

of *HCW* versus other legal strategies; and the third argument explores whether legal practitioners should attempt certain cases with a very low probability of success.

This article is organized chronologically, rather than by animal species or country, to shed light on the evolution of courts' treatment of animal legal personhood cases. In the beginning, these cases were mainly dismissed *in limine* and some judges even considered them to be frivolous, but in recent years judges have begun holding hour-long hearings to examine the merits of the case. Interestingly, neither an animal's species nor its genetic closeness to humans are decisive for the success of a case, as one might initially presume. It is true that the *HCW* on behalf of the chimp Cecilia has been the only successful *HCW* case so far, in the sense that a higher court did not reverse it. However, other cases can be considered successful because they have reached higher courts, judges have shown a willingness to hear the merits of such cases, and the cases have received copious amounts of media attention. For example, a lawsuit filed on behalf of Chucho, an Andean bear, reached Colombia's Constitutional Court and the judge presiding over the lawsuit filed in New York on behalf of Happy the elephant "regretted" being unable to recognize her as a legal person. In other lower-profile animal cruelty cases, such as in the case filed on behalf of Poli the dog, judges have declared animals to be nonhuman persons with certain basic rights.⁴

The paper proceeds as follows. Section I explains the very first case, an *HCW* filed on behalf of all imprisoned birds that were sold, used, hunted, or poached in Brazil. Section II details the cases that occurred between 2005 and 2011, which were mainly about chimpanzees and were still so rare that only one per year took place. Section III parses out the period between 2013 and 2015, during which there was a "personhood boom" and such cases became far more common—involving not only chimpanzees, but other species as well. Section IV covers the cases filed between 2016 and 2018, including a deeper discussion of Cecilia's successful case. Section V walks readers through the fascinating case of Chucho, the Andean bear, which reached the Colombian Constitutional Court. Finally, Section VI explores three cases that took place in Uttarakhand, Haryana, and New Delhi in India, as well as one case that took place in Islamabad, Pakistan, which led to the relocation of elephant Kaavan to a Cambodian sanctuary thanks to the help from Free the Wild, Cher's animal protection NGO. The final section offers a systematic conclusion.

⁴ Primer Juzgado Correccional de la Ciudad de General San Martín [J.C.Gral.S.M.] [First Criminal Court of General San Martín], 20/4/2015, "F. c/ Sieli Ricci, Mauricio Rafael p/ Maltrato y Crueldad Animal," La Ley [L.L.] 7.363 No. 36.598 (Arg.).

I. THE PIONEERS: CAGED BIRDS (BRAZIL, 1972)

In 1972, a Brazilian animal protection association filed a *HCW* on behalf of all imprisoned birds that were sold, used, hunted, or poached in the country.⁵ The writ stated that any natural or legal person who prevented a bird from flying without a reasonable justification was in violation of birds' freedom of flight.⁶

The court rejected the *HCW*, holding that such lawsuits could only be filed on behalf of humans.⁷ The court also stated that the writ had to be filed on behalf of an identified person, whereas the petitioner had filed it on behalf of all caged birds, adding that the objective of an *HCW* is to protect people against abuses from public authorities rather than private individuals.⁸ Finally, the court declared that animals are "things" not subject to any rights.⁹

The animal protection association appealed this ruling. However, the Supreme Federal Court dismissed the appeal and affirmed that the *HCW* only protects human beings whose right to freedom is illegally violated by public authorities. The court added that animals are objects of law, so they cannot stand in a legal relationship as subjects of rights.¹⁰

Some have interpreted this pioneer case as a metaphor directed against the dictatorship of Humberto de Alencar Castelo Branco, who ruled Brazil between 1964 and 1985, rather than as a genuine attempt to obtain the recognition of legal personhood for animals.¹¹ This case is noteworthy for two reasons: first, because it was highly progressive for its time, and second, because it set forth the various arguments that could be employed against animal *HCWs*. These arguments focus on the fact that *HCWs* only protect against public authorities and offer no protections or relief from the actions of individuals; reject *HCWs* filed on behalf of a class of animals requiring cases to relate to specific animals; state that birds (and animals generally) are not human, which is not a legal argument *per se*; and finally, that only humans can have legal personhood, which is false: throughout history, the law has granted the status of legal personhood to various non-human entities.¹²

⁵ S.T.F., No. 50.343, Relator: Des. Djaci Falcão, 3/10/1972, DIÁRIO DA JUSTIÇA [D.J.], 10.11.1972, 807 (Braz.), pg. 808.

⁶ *Id.* at 808-09.

⁷ *Id.* at 813.

⁸ *Id.* at 809-812.

⁹ *Id.* at 812.

¹⁰ *Id.* at 814.

¹¹ Facebook Interview with Daniel Braga Lourenço, Professor of Law & Animal Ethics Expert, Centro Universitário Faculdade Guanambi, (Nov. 22, 2019).

¹² See generally 20 MICH. L. REV. 527 (1921-1922) (ships); see also Bryant Smith, *Legal Personality*, 37 YALE L. J. 283 (1928) (idols); see also Patrick William Duff, *The Personality of an Idol*, 3 CAMBRIDGE. L. J. 42 (1927) (also idols); George F.

II. THE FIRST CHIMPANZEES: 2005-2011

a. *Suiça the Chimpanzee (Brazil, 2005)*

Suiça lived alone in Getúlio Vargas Zoo in Salvador, Brazil.¹³ She had previously lived with a chimpanzee named Geron, who died from cancer on March 19, 2005.¹⁴ Heron de Santana Gordilho and Luciano Santana, public prosecutors, filed a *HCW* on behalf of Suiça to the Ninth Criminal Trial Court on September 19, 2005.¹⁵ The prosecutors argued that Suiça was kept in an unsuitable enclosure that affected her right to movement and that she was kept in cruel and inhumane solitary confinement.¹⁶ The prosecutors requested that the court grant the *HCW* preliminarily because the legal requirements were fulfilled: *fumus boni iuris* and *periculum in mora*.¹⁷ They asked the court to order Suiça's transfer to the Great Ape Sanctuary in Sorocaba, Brazil.¹⁸

The judge, Edmundo Lucio da Cruz, admitted the writ, but did not grant it immediately due to its complexity.¹⁹ Instead, Judge Cruz granted the respondent, Thelmo Gavazza, Director of the Biodiversity, Environmental and Hydrological Resource Department (the governmental agency responsible for the zoo), 72 hours to present his counter-arguments.²⁰ Gavazza filed a petition requesting an extension of the deadline by another 72 hours, which Judge Cruz granted.²¹

Deiser, *The Juristic Person - I*, 57 U. PA. L. REV. 131 (1908) (corporations); Jeffrey Nesteruk, *Persons, Property, and the Corporation: A Proposal for a New Paradigm*, 39 DEPAUL L. R. 543 (1990) (also corporations); Randall S. Abate & Jonathan Crowe, *From Inside the Cage to Outside the Box: Natural Resources as a Platform for Nonhuman Animal Personhood in the U.S. and Australia*, 5 GLOBAL J. ANIMAL L. 54 (2017) (rivers); Teresa Vicente Giménez, *De la Justicia Climática a la Justicia Ecológica: Los Derechos de la Naturaleza*, 11 REV. CATALANA DE DRET AMBIENTAL 1 (2020) (rivers).

¹³ See Valdelane Azevedo Clayton, *A Habeas Corpus on Behalf of a Chimpanzee*, MSU ANIMAL LEGAL & HISTORICAL CTR, 1, 2, [https://www.animallaw.info/sites/default/files/Habeas Corpus on Behalf of a Chimp Rev2.pdf](https://www.animallaw.info/sites/default/files/Habeas%20Corpus%20on%20Behalf%20of%20a%20Chimp%20Rev2.pdf) (last visited Nov. 20, 2019) (based on the English translation of the *HCW* prepared by Valdelane Azevedo).

¹⁴ Heron de Santana Gordilho, *La Teoría Brasileña del Habeas Corpus para los Grandes Primates*, 1(11) CONPEDI L.R. 320, 333 (2015).

¹⁵ Clayton, *supra* note 13, at 2.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 17.

¹⁸ *Id.* at 17.

¹⁹ See Carlos de Paula, *Suica - Habeas Corpus*, MSU ANIMAL LEGAL & HISTORICAL CTR, <https://www.animallaw.info/case/suica-habeas-corpus> (last visited Nov. 20, 2019) (based on the English translation of the judgment prepared by Carlos de Paula).

²⁰ *Id.*

²¹ *Id.*

Unfortunately, on September 28, 2005, the day the court was supposed to decide the case, the respondent informed the court that Suiça had died the day before in the zoo. As a result, the judge dismissed the case explaining that he had granted the second 72-hour extension because the defendant was a governmental agency rather than the police, the usual defendants in *HCW* cases, and because he believed that the government needed time to gather information as the petitioners had.²² The judge also added that the news of Suiça's death surprised him, as he had visited her at the zoo the week before and she did not seem ill.²³ Evidence has since emerged indicating that Suiça was poisoned. Her killers were never found.²⁴

Even though this case ended tragically, it is notable, because it was the first time that an animal was granted legal standing to claim her right to freedom in a court: Judge Cruz was willing to admit the *HCW* and hear the case, rather than declare it inadmissible on procedural grounds.²⁵ Upon the conclusion of Suiça's case, Judge Cruz stated:

I am sure that with the acceptance of the debate, I caught the attention of jurists from all over the country, bringing the matter to discussion. Criminal Procedure Law is not static, rather subject to constant changes, and new decisions have to adapt to new times. I believe that even with "Suiça's" death the matter will continue to be discussed, especially in Law school classes, as many colleagues, attorneys, students and entities have voiced their opinions, wishing to make those prevail.²⁶

Suiça's story sparked conversations regarding the rights of animals among legal experts in Brazil. Her case is remembered as the first instance a court recognized an animal as a subject who can claim her rights in court. Suiça's legacy lives on as the debate on legal personhood for animals in Brazil and around the world continues.

²² *Id.*

²³ *Id.*

²⁴ Pedro Pozas Terrados, *Por Parte del Proyecto Gran Simio, se presenta un Habeas Corpus a un Chimpancé en Brasil*, GREAT APE PROJECT (Feb. 25, 2010), <https://www.projetogap.org.br/es/noticia/por-parte-del-proyecto-gran-simio-se-presenta-un-habeas-corporis-a-un-chimpance-en-brasil/> (last visited Nov. 29, 2019).

²⁵ Heron de Santana Gordilho, *Animal Standing and the Habeas Corpus Theory for the Great Apes*, 3(4) REV. JUR. LUSO-BRAS. 713, 736 (2017).

²⁶ de Paula, *supra* note 19.

b. Hiasl the Chimpanzee (Austria, 2007)

There has only been one case in Europe where the personhood of an animal has been debated in judicial proceedings: Matthias Hiasl Pan, a chimpanzee. In the article, *Trial on Personhood for Chimp "Hiasl"* co-authors Martin Balluch and Eberhart Theuer, prominent Austrian animal rights activists, document the facts of this case in great detail.²⁷ Hiasl was born in Sierra Leone in 1981.²⁸ In 1982, he was abducted by poachers and sold to Dr. Sitter, a wild animal trader, who caught several baby chimps in order to sell them to various people and companies in Austria who wanted to use them for experimentation or exhibition in zoos.²⁹ In this case, the company Immuno had purchased Hiasl and Rosi, a female baby chimp, for AIDS and hepatitis research.³⁰

The baby chimps arrived at the Vienna Airport on April 29, 1982.³¹ A day before their arrival, Austria signed the Convention on International Trade in Endangered Species (CITES), meaning the chimps did not have the necessary documents to legally enter Austria.³² Accordingly, on May 6, 1982, the court seized Hiasl and Rosi, as well as Henry, a baby chimpanzee bought by the zoo dealer Walter Ullrich, and placed all three chimpanzees in the care of a Viennese animal shelter.³³ A caretaker from the shelter raised the chimpanzees at home with his family.³⁴

On July 14, 1983, the court ruled that Immuno was not entitled to legal possession of Hiasl and Rosi, because it had breached the CITES regulation.³⁵ Immuno appealed the decision, which the court rejected on October 10, 1983.³⁶ As a result, the laboratory took the case to the High Court, which, on April 10, 1984, ruled in favor of Immuno and ordered the animal shelter to release the chimpanzees to Immuno.³⁷

On November 20, 1984, the Mayor of Vienna issued an order instructing the animal shelter to comply with the court's ruling and hand the chimpanzees over to Immuno.³⁸ Agents of Immuno visited the animal shelter on November 29, 1984 to remove the chimps, but their efforts

²⁷ Martin Balluch & Eberhart Theuer, *Trial on Personhood for Chimp "Hiasl,"* 24(4) ALTEX, 335 (2007).

²⁸ *Id.* at 335.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 336.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

were stopped by animal rights activists.³⁹ As a result, Immuno initiated legal proceedings against the state to request the use of physical force to remove the chimpanzees on July 10, 1985.⁴⁰

On December 10, 1986, the High Court decided in favor of Immuno and ordered the government to enforce the ruling.⁴¹ On March 23, 1987, the government gave the animal shelter fourteen days to hand over the chimpanzees to Immuno, which the animal shelter again refused to comply with. Rather than use force to remove the chimpanzees, the government initiated its own legal proceedings against the animal shelter on June 11, 1987.⁴² The Provincial Court of Civil Law in Vienna held a hearing on February 18, 1988, where the shelter argued that it had a legal obligation to protect animals from suffering that it would breach if it gave the chimpanzees to Immuno.⁴³ The court stated that animals are “things” and have no interests and that only Immuno had an interest in this case as the owner of the chimpanzees.⁴⁴ The animal shelter appealed the ruling, as the shelter and animal activists alike feared that Immuno would infect Hiasl and Rosi with the same or similar diseases it had previously infected other Immuno chimpanzees with.

During this time, the Austrian Parliament added Section 285 (a) to the Austrian Civil Code, which states that animals are not things and unless other laws rule differently, are subdued to the rules of property.⁴⁵ Despite this favorable legal amendment, on September 27, 1989, the court insisted on its ruling that animals are things, have no value in themselves, and that Immuno should take possession of the chimpanzees.⁴⁶

Immuno was eventually taken over by a different company named Baxter, which decided to stop experiments on chimpanzees in 1999 and donated Hiasl and Rosi to the animal shelter three years later.⁴⁷ In 2005, the Austrian Parliament unanimously voted to ban all experimentation on apes.⁴⁸ As of January 1, 2006, it is illegal to conduct experiments on great apes and gibbons in Austria.⁴⁹

³⁹ *Id.*

⁴⁰ *Id.* (on December 16, 1985, Mr. Ullrich, the zoo dealer, sold Henry to the animal shelter. From there, Henry was transferred to the Heidelberg Zoo on December 10, 1986, as the animal shelter lacked the appropriate facilities to house him. Henry died at the zoo).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*; ALLGEMEINES BÜRGERLICHES GESETZBUCH [ABGB] [CIVIL CODE] § 285(a) (Austria) <https://www.jusline.at/gesetz/abgb/paragraf/285>.

⁴⁶ Balluch & Theuer, *supra* note 27, at 336.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

According to Balluch and Theuer, the animal shelter underwent a bankruptcy procedure in 2006, as Hiasl and Rosi's care cost around ten thousand euros a month. The bankruptcy placed Hiasl and Rosi in danger of being deported or transferred to a zoo, circus, or laboratory abroad to raise money for the creditors.⁵⁰ The President of the Animal Rights Association (ARA), received a large anonymous donation with the condition that he could only use the money if Hiasl were appointed a legal guardian who could receive the money and decide with the President what to do with it.⁵¹

The ARA initiated legal proceedings to appoint a guardian before the District Court in Mödling on February 6, 2007.⁵² Experts such as Stefan Hammer, a civil rights and constitutional law professor at the University of Vienna; Eva-Maria Maier, a philosophy professor at the University of Vienna; Volker Sommer, an anthropology professor at the University of London; and Dr. Signe Preuschoft, a biologist and chimpanzee expert at the University of Zurich; supported the petition.⁵³ Two hearings took place during this judicial procedure. At the first hearing, the court stressed that Hiasl lacked the necessary documents to prove his identity, which the ARA refuted by presenting witnesses of Hiasl's arrival in Austria and continued identity thereafter.⁵⁴ At the second hearing, the ARA and the judge debated the required conditions needed to qualify for a legal guardian.⁵⁵ Ultimately, the court found that Hiasl was neither threatened nor intellectually disabled and dismissed the petition.⁵⁶

The ARA appealed, arguing that though Hiasl was not intellectually disabled, he was traumatized and had lived an unnatural life in captivity that required him to have a guardian to protect his interests.⁵⁷ The ARA also explained that the bankruptcy proceedings were threatening Hiasl's interests and stressed the fact that Hiasl would lose the donation without a legal guardian to act on his behalf.⁵⁸ The court rejected the ARA's appeal on May 9, 2007 after determining that the ARA had no legal standing to appeal and dismissed the case on procedural grounds without ever addressing the fundamental issue of the case: whether Hiasl is a person or not.⁵⁹

⁵⁰ *Id.* at 337.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 337, 339.

According to Balluch and Theuer, the ARA appealed to the Provincial Court in Wiener Neustadt on May 22, 2007.⁶⁰ The court rejected the appeal on September 5, 2007, again on procedural grounds, stating that the law only allowed the legal guardian or person for whom the legal guardian is being appointed to appeal.⁶¹ The ARA appealed this finding to the Austrian Supreme Court for Civil and Criminal Matters on September 26, 2007, where it argued that the lower court had based its dismissal on a law that only applied *after* a legal guardian had been appointed.⁶² The ARA further noted that the court had previously allowed close relatives to appeal on behalf of an intellectually disabled person and therefore, Hiasl's close friends should likewise have the ability to appeal on his behalf, as Hiasl had lost all his close relatives when he was abducted.⁶³ Finally, the ARA argued that it had legal standing because it had an interest in using the donated money, which would only be possible if Hiasl were appointed a legal guardian.⁶⁴ The Supreme Court again failed to address the question of whether Hiasl was a person and dismissed the case, citing the ARA's lack of standing.⁶⁵

The case was then taken to the European Court of Human Rights, based on a violation of the right to a fair trial.⁶⁶ Paula Stibbe, who had worked with Hiasl in a behavioral enrichment project for many years, presented an additional appeal against the Supreme Court's ruling.⁶⁷ However, the European Court of Human Rights dismissed the case on the grounds of its lack of subject matter jurisdiction.⁶⁸

Balluch and Theuer argue that Article 16 of the Civil Code, which states that all humans are persons, also includes chimpanzees.⁶⁹ Balluch and Theuer maintain that this language extends to chimpanzees because the meaning of the word "human" must be understood in biological terms, as the law does not recognize instances of artificial intelligence as persons, but does recognize intellectually disabled humans as such.⁷⁰ Balluch and Theuer further debate whether Neanderthals, *Homo*

⁶⁰ *Id.* at 339.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 340.

⁶⁴ *Id.*

⁶⁵ Martin Balluch & Eberhart Theuer, *Hiasl: The Whole Story. Trial on Personhood for Chimpanzee Hiasl*, VEREIN GEGEN TIERFABRIKEN (Jan. 18, 2008), <https://vgt.at/en/work-pan.php>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Anne Peters, *Liberté, Égalité, Animalité: Human-Animal Comparisons in Law*, 5(1) *TRANSNAT.'L ENV.'T L.* 25, 44 (2016).

⁶⁹ Balluch & Theuer, *supra* note 27, at 337, [ABGB] [CIVIL CODE] § 16 (Austria) <https://rdb.manz.at/document/ris.n.NOR12017706>.

⁷⁰ Balluch & Theuer, *supra* note 27, at 337.

habilis, *Homo erectus*, and *Homo florensis* would be counted as humans according to the language of Article 16 and point out that human rights charters usually accord fundamental rights to members of the human family.⁷¹ They argue that this concept should be interpreted scientifically, according to the Linnaean classification, which states that *homo sapiens* and chimpanzees belong to the same biological family.⁷² Even if the word “human” were to be interpreted narrowly, many experts maintain that chimpanzees and bonobos should still be included due to their genetic similarities.⁷³

Balluch and Theuer further state that while Article 16 of the Civil Code states that all humans are persons, it differentiates between the concepts of “human” and “person,” recognizing that not only humans are persons.⁷⁴ Unfortunately, Article 16 does not provide a definition for “person,” so the authors resort to the philosophical foundations of the Civil Code.⁷⁵ The ability to reason stands out from the enlightenment period and Kant’s work.⁷⁶ According to Balluch and Theuer, this ability includes abstract thoughts, the ability to think in terms of cause and effect, and the ability to put oneself in another’s position, which is also known as “the theory of mind.”⁷⁷ Chimpanzees have a theory of mind, and in particular Hiasl has passed the mirror test, uses tools, and deceives others.⁷⁸ The authors stress that there is practically no ability that is traditionally considered human that chimpanzees lack and conclude that Hiasl qualifies as a human according to the language Article 16 of the Civil Code and as a person according to the philosophical foundations of this law.⁷⁹

Ultimately, none of the Austrian courts analyzed the fundamental question of whether Austrian Civil law recognized Hiasl’s personhood; every court involved in Hiasl’s case dismissed the matter on procedural grounds. As some of the other cases on nonhuman animal legal personhood will show, this has been an unfortunate trend in courts. However, this was still an unprecedented case that caught the media’s attention around the world.⁸⁰

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* (referring only to the genus *Homo* and discounting *Homo pan*).

⁷⁴ *Id.* at 338; § 16 ABGB, *supra* note 69.

⁷⁵ Balluch & Theuer, *supra* note 27, at 338.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 338-39; *see also* [ABGB] [CIVIL CODE] § 16, *supra* note 69.

⁸⁰ DEBORAH CAO, ANIMALS ARE NOT THINGS: ANIMAL LAW IN THE WEST 2 (2007).

c. *Lili and Debby Megh, Chimpanzees (Brazil, 2008)*

According to the *HCW* filed by Marcia Miyuki Oyama Matsubara, the chimpanzees known as Lili and Debby Megh were born in the Fortaleza Zoo and seized by the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), because the zoo lacked the necessary environmental permits.⁸¹ The chimpanzees were donated to Rubens Fortes, who transferred them to a sanctuary in Ubatuba.⁸² IBAMA questioned the animals' donation, and so Fortes initiated legal proceedings to keep the chimpanzees.⁸³ There was also a problem with the location of the sanctuary, since it was located within ten kilometers of a state park where constructions are banned.⁸⁴

Fortes built another sanctuary in Ibiúna, São Paulo.⁸⁵ The Federal Regional Court of the Third Region later ordered that the chimpanzees be reintroduced into nature.⁸⁶ Considering that Brazil is not the natural habitat for chimpanzees and that both Lili and Debby Megh were born in captivity, it is very likely that the enforcement of such a ruling would have led to the chimpanzees' deaths.⁸⁷

Therefore, Fortes filed a *HCW* on behalf of the chimpanzees to the Superior Tribunal Court of Justice of Brasília where he requested the court protect Lili and Debby Megh's right to life by keeping them in the sanctuary.⁸⁸ In September 2008, the *HCW* was suspended by the petition of Herman Benjamin, a judge who wished to study the case in greater detail.⁸⁹ However, the chief judge assigned to the case, Rapporteur Castro Meira, dismissed the case in December 2008, reasoning that the Brazilian Constitution clearly states that *HCW* only protects human beings.⁹⁰ The chief judge also held that there was no unlawful incarceration in this case, but rather an order to release the animals into nature.⁹¹ In August 2012, Castro Meira accepted Fortes' withdrawal of the writ because the

⁸¹ Heron Santana Gordilho, *Animal Rights in Brazil: Habeas Corpus for Chimpanzees*, 1(3) F. ANIMAL L. STUD. 1, 8 (2010) (Lili was born on May 17, 2004, and Debby was born on October 17, 2005).

⁸² Sandro Cavalcanti Rollo, *O Habeas Corpus Para Além da Espécie Humana*, PONTÍFICA U. CATH. DE SÃO PAULO 1, 178 (2016), <https://tede2.pucsp.br/handle/handle/7055>.

⁸³ *Id.*

⁸⁴ *Id.* at 179.

⁸⁵ Marcia Miyuki Oyama Matsubara, *Ordem de Habeas Corpus em Favor das Chimpanzés "Lili" e "Megh,"* 3(4) REVISTA BRASILEIRA DE DIREITO ANIMAL. 359, 362 (2008).

⁸⁶ *Id.* at 363.

⁸⁷ Gordilho, *supra* note 81, at 8.

⁸⁸ Rollo, *supra* nota 82, at 179.

⁸⁹ *Id.* at 181.

⁹⁰ *Id.* at 180.

⁹¹ *Id.* at 182.

chimpanzees' situation had been formalized.⁹² While Lili and Debby Megh were moved to a sanctuary, it was not because of a *HCW*, but rather because of parallel, administrative procedures that resulted in the zoo's closure.

d. Jimmy the Chimpanzee (Brazil, 2009)

The Roman García Circus brought Jimmy the chimpanzee to Brazil as an infant, he drank from a bottle, used a diaper, and slept on a bed in a trailer.⁹³ Jimmy worked in this circus for many years, where they forced him to balance on a wire and ride a bicycle around the stage.⁹⁴ When this circus closed in 1987, he was sold to the Circus D'Italia, where he was forced to continue working for thirteen years.⁹⁵ When this second circus closed in 2000, he was donated to ZONIT, which was the zoo of Niteroi, a city located in the State of Rio de Janeiro.⁹⁶ At the zoo, Jimmy lived alone and became famous because he enjoyed painting.⁹⁷

In 2009, the International and Brazilian divisions of the Great Ape Project filed a *HCW* in Niteroi, arguing that Jimmy had lived alone in a small cage for more than ten years and that the zoo was not in compliance with the minimum conditions to house animals.⁹⁸ The Criminal Chamber of the Rio de Janeiro State Court of Justice was supposed to deliver its judgment on December 16, 2010, but one of the judges asked for a revision.⁹⁹ On April 19, 2011, the court rejected the *HCW* arguing that Jimmy was not human and that the Superior Federal Court, rather than a State Court, was the proper venue to hear the case.¹⁰⁰

⁹² *Id.* at 181.

⁹³ Silvia Rogar, *Como es la Vida del Chimpancé que se Convirtió en Pintor y ha Sido Objeto de una Disputa Judicial para Salir del Zoológico de Niteroi e ir para un Santuario en S. Paulo (Brasil)*, REVISTA DE DIARIO O GLOBO (Dec. 19, 2010), <https://www.projetogap.org.br/es/noticia/la-historia-del-chimpance-jimmy/>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Heron de Santana Gordilho, *Habeas Corpus em Favor de Jimmy, Chimpanzé preso no Jardim Zoológico de Niterói - Rio de Janeiro*, 6(5) REVISTA BRASILEIRA DE DIREITO ANIMAL. 337, 341 (2010) (Jimmy was 26 years old when the writ was filed).

⁹⁹ Pedro A. Ynterian, *Habeas Corpus de Jimmy: Postergado el Juicio*, GREAT APE PROJECT (Dec. 17, 2010), <https://www.projetogap.org.br/es/noticia/habeas-corpus-de-jimmy-postergado-el-juicio/>.

¹⁰⁰ Pedro A. Ynterian, *Caso Jimmy: Repercusiones en la Prensa y la Situación Actual*, GREAT APE PROJECT (Apr. 27, 2011), <https://www.projetogap.org.br/es/noticia/caso-jimmy-repercusiones-en-la-prensa-y-la-situacion-actual/> (the judges debated the case for more than three hours, which was interpreted as a sign of the doubts it caused the judges).

At the same time, the Great Ape Project informed IBAMA about the deplorable conditions of the zoo.¹⁰¹ IBAMA investigated and found that the zoo mistreated the animals and was not in compliance with the regulations for housing animals.¹⁰² IBAMA further discovered that animals who had been confiscated and given to the zoo by police officers had mysteriously disappeared.¹⁰³ Following its investigation, IBAMA filed a petition to the Federal Court which requested the zoo's closure and the confiscation of all the animals.¹⁰⁴ The Federal Court granted the petition and Jimmy was transferred to the Great Ape Sanctuary.¹⁰⁵

As in the prior case, Jimmy was transferred to the sanctuary due to a parallel administrative procedure initiated against the zoo, which managed to close it despite the judges' denial of *HCW*.¹⁰⁶ This demonstrates that parallel administrative procedures that seek to close the facility where the mistreated animal at issue is confined are useful backups to *HCW*, should the latter procedure fail.

*e. Tilikum, Katina, Corky, Kasatka, and Ulises, Orcas
(United States, 2011)*

In 2012, PETA, in conjunction with some marine mammal experts and former trainers, filed a lawsuit asking a federal court to declare the five orcas that lived in SeaWorld to be slaves and their condition a violation of the Thirteenth Amendment of the United States Constitution.¹⁰⁷ PETA explained that the language of the Thirteenth Amendment, which prohibits slavery, does not refer to any type of person or a specific victim.¹⁰⁸ This case marks the first attempt to obtain the recognition of legal rights for animals on a constitutional basis; although the petition was not a *HCW*, it resembled one in various ways.¹⁰⁹

¹⁰¹ Pedro A. Ynterian, *Las Primeras 48 Horas de Jimmy*, GREAT APE PROJECT (Jul. 15, 2011), <https://www.projetogap.org.br/es/noticia/las-primeras-48-horas-de-jimmy/>.

¹⁰² Ynterian, *supra* note 100.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Pedro Pozas Terrados, *El Chimpancé Jimmy Descansa en el Santuario del Proyecto Gran Simio de Brasil*, PROYECTO GRAN SIMIO (Aug. 9, 2011), <http://proyectogransimio.blogspot.com/2011/08/el-chimpance-jimmy-descansa-en-el.html>.

¹⁰⁶ Ynterian, *supra* note 100.

¹⁰⁷ PETA, *PETA Sues SeaWorld for Violating Orcas' Constitutional Rights* (Oct. 25, 2011), <https://www.peta.org/blog/peta-sues-seaworld-violating-orcas-constitutional-rights/>; *see also* U.S. CONST. amend. XIII.

¹⁰⁸ *Id.*

¹⁰⁹ Greg Miller, *Judge Dismisses PETA's Constitutional Argument to Free SeaWorld Orcas*, SCIENCE (Feb. 9, 2012), <https://www.sciencemag.org/news/2012/02/judge-dismisses-petas-constitutional-argument-free-seaworld-orcas>.

SeaWorld argued that the Thirteenth Amendment applies only to “humans,” and Judge Jeffrey Miller dismissed the case on February 8, 2012, ruling that the Thirteenth Amendment only applies to “persons.”¹¹⁰ Steven Wise, president and founder of the NhRP, stated that it has been a mistake to file this lawsuit because its likely failure could be used as a legal precedent against animal personhood in the future.¹¹¹ Great care is needed, thus, not to make things worse for animals. Animals generally may be harmed by unsuccessful legal battles through the creation of negative legal precedents. Yet, individual animals may also be greatly harmed by legal proceedings that are likely to succeed, as one way to stop promising cases is to kill the plaintiff, as occurred in Suiça’s case.

III. THE PERSONHOOD BOOM: 2013-2015

a. Toti the Chimpanzee (Argentina, 2013)

Toti was born in captivity in Cutini Zoo in Buenos Aires, Argentina on August 29, 1990.¹¹² In 2008, at the age of eighteen, he was transferred to Córdoba Zoo in Argentina, where he mostly lived alone.¹¹³ In December 2013, when Toti was twenty-three, the Great Ape Project filed a *HCW* on his behalf to the Court of Control No. 4 of Córdoba to request Toti’s transfer to the Sorocaba Great Ape Sanctuary in Brazil.¹¹⁴ The Great Ape Project argued that the zoo was going to transfer Toti to Bubalcó Zoo in the south of Argentina in exchange for a white tiger, which would harm Toti due to the weather and inadequate enclosure¹¹⁵

On December 26, 2013, the court rejected the *HCW in limine*, stating that the *HCW*’s function is to protect a persons’ right to freedom and that the law refers to human persons.¹¹⁶ The court further stated that chimpanzees are not human and that animals cannot be persons.¹¹⁷ Finally, the court added that any discussion related to the legal status of apes required debate and evidence, which exceeded the purpose and

¹¹⁰ *Id.*

¹¹¹ See Steven M. Wise, *PETA’S Slavery Lawsuit: A Setback for Animal Rights*, NONHUMAN RIGHTS BLOG (Nov. 10, 2011), <https://www.nonhumanrights.org/blog/petas-slavery-lawsuit-a-setback-for-animal-rights/>.

¹¹² Pedro A. Ynterian, *Se Desvenda el Misterio: Quién es Toti?*, GREAT APE PROJECT (Feb. 18, 2014), <https://www.projetogap.org.br/es/noticia/se-desvenda-el-misterio-quien-es-toti/>.

¹¹³ Juzgado de Control 4 de Córdoba [J.C.Cor.] [Court of Control No. 4], 26/12/2013, “Hábeas Corpus Presentado por Juárez, María Alejandra—Representante Argentina del Proyecto Gran Simio [PSG],” No. 293 (Arg.).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

brevity of the *habeas corpus* procedure.¹¹⁸ The Great Ape Project filed an appeal that was also dismissed, a finding that the Supreme Court of Justice ultimately upheld.¹¹⁹

At the end of 2013, Toti was transferred to Bubalcó Zoo, located in Río Negro in Argentinean Patagonia.¹²⁰ He was locked up alone in a small cage and lost most of his hair due to severe depression.¹²¹ Therefore, the AFADA (*Asociación de Funcionarios y Abogados por los Derechos de los Animales*, in English, Association of Public Officials and Attorneys for Animal Rights) filed another *HCW* in the Federal Court No. 2 of Corrientes.¹²² On January 31, 2014, the Federal Court declared itself incompetent.¹²³ Jimmy's case was sent to the Investigating Court No. 2 of General Roca, which rejected the case *in limine*.¹²⁴ This writ was also declared inadmissible by the Superior Court of Justice.¹²⁵

Toti's case is an example of courts' unwillingness to step away from the humanity argument and deeply analyze legal personhood, which is unfortunately common in many courts around the world. However, the AFADA and Río Negro's public prosecutor (*Ministerio Público de la Defensa*) filed another *HCW* on Toti's behalf on November 6, 2020 to the Family Court No. 11 of General Roca.¹²⁶ Judge Moira Revsin conducted an on-site inspection of Toti and his enclosure on November 18, 2020.¹²⁷ The judge was especially interested in learning about

¹¹⁸ *Id.*

¹¹⁹ Héctor Brondo, *Programa de ONU, a Favor del Traslado del Chimpancé Toti a Brasil*, LA VOZ, (Dec. 18, 2014), <https://www.lavoz.com.ar/ciudadanos/programa-de-onu-favor-del-traslado-del-chimpance-toti-brasil>.

¹²⁰ Héctor Brondo, *Aumenta la Preocupación por la Salud del Chimpancé Toti*, LA VOZ (Dec. 8, 2014), <https://www.lavoz.com.ar/ciudadanos/aumenta-la-preocupacion-por-la-salud-del-chimpance-toti>.

¹²¹ *Id.*

¹²² Héctor Brondo, *Admiten Apelación del Habeas Corpus por Toti*, LA VOZ (Feb. 5, 2014), <http://www.lavoz.com.ar/ciudadanos/admiten-apelacion-del-habeas-corpus-por-toti-3#comentarios>.

¹²³ Héctor Brondo, *La Corte Suprema Rechazó el Habeas Corpus por el Chimpancé Toti*, LA VOZ (Oct. 4, 2014), <https://www.lavoz.com.ar/ciudadanos/la-corte-suprema-rechazo-el-habeas-corpus-por-el-chimpance-toti>.

¹²⁴ *STJ Confirma Rechazo de Habeas Corpus para un chimpancé*, AGENCIA DIGITAL DE NOTICIAS (Argentina) (Aug. 16, 2014), <https://www.adnrionegro.com.ar/2014/08/stj-confirma-rechazo-de-habeas-corpus-para-un-chimpance/>.

¹²⁵ Matías Werner, *Un Hábeas Corpus para un Chimpancé Llegó a la Corte y Volvió Enseguída*, DIARIO JUDICIAL (Oct. 3, 2014), <https://www.diariojudicial.com/nota/35168>.

¹²⁶ *La Jueza Encargada del Caso de Toti Realiza una Visita Sorpresa al Zoo Bubalcó donde se Encuentra Cautivo el Chimpancé Toti*, GREAT APE PROJECT (Nov. 19, 2020), <https://proyectogransimio.org/noticias/ultimas-noticias/la-jueza-encargada-del-caso-de-toti-realiza-una-visita-sorpresa-al-zoo-bubalco-donde-se-encuentra-cautivo-el-chimpance-toti>.

¹²⁷ *Habeas Corpus en Favor del Chimpancé Toti*, MINISTERIO PÚBLICO PODER

Toti's diet, environmental enrichment, veterinary attention, as well as the exact size of his cage to understand Toti's situation in the zoo.¹²⁸ Although the ruling is pending, unlike the past courts that dismissed Toti's *HCW*, Judge Revsin has shown a willingness to hear the case and personally determine what Toti's current condition is at the zoo. Hopefully, determining Toti's condition at the zoo will not confuse the judge to think this case is an animal welfare case when the purpose of the *HCW* is to obtain Toti's recognition as a nonhuman person and his consequent release to a sanctuary.

b. Tommy the Chimpanzee (United States, 2013)

According to the Nonhuman Rights Project (NhRP), Tommy was born in the early 1980s and raised by Dave Sabo, the former owner of Sabo's Chimps, a company that provided chimps for movies.¹²⁹ Tommy was used to portray Goliath, a cigarette-smoking chimp, in the 1987 film *Project X*.¹³⁰ There were allegations of trainers beating the chimpanzees during the making of this movie.¹³¹ Sabo died in 2008, so the Laverys became Tommy's owners.¹³² The NhRP found him caged, alone in a shed on a trailer lot in Gloversville, New York with nothing but a television and a stereo for company.¹³³

The NhRP filed a *HCW* in the New York Supreme Court of Fulton County on December 2, 2013, requesting the recognition of Tommy's legal personhood and right to bodily liberty, and his transfer to a sanctuary.¹³⁴ On December 3, 2013, the court rejected the *HCW*, but the judge offered his support to the NhRP venture.¹³⁵

On January 10, 2014, the NhRP filed a Notice of Appeal with the New York State Supreme Court, Appellate Division, Third Judicial Department, and filed an appellate brief against the lower court's

JUDICIAL DE RÍO NEGRO (Nov. 18, 2020), <https://ministeriopublico.jusrionegro.gov.ar/nota/4405/habeas-corpus-en-favor-del-chimpance-toti.html>.

¹²⁸ *Id.*

¹²⁹ *The NhRP's First Client*, NONHUMAN RIGHTS PROJECT, <https://www.nonhumanrights.org/client-tommy/> (last visited Nov. 25, 2019).

¹³⁰ *Id.*

¹³¹ *People in the News*, AP NEWS (May 4, 1987), <https://apnews.com/6531233292123c550b0e82eda85c03d9>.

¹³² *The NhRP's First Client*, *supra* note 129.

¹³³ Chris Churchill, *Advocate: Rights or Not, Caged Chimp Deserves Better*, TIMES UNION (Dec. 7, 2013), <https://www.timesunion.com/local/article/Advocate-Rights-or-not-caged-chimp-deserves-5044847.php>.

¹³⁴ *The NhRP's First Client*, *supra* note 129.

¹³⁵ Transcript of Hearing at 27, *Nonhuman Rights Project v. Lavery*, No. 2013-02051 (N.Y. Sup. Ct. Fulton County, Dec. 3, 2013), <https://www.nonhumanrights.org/content/uploads/Fulton-Cty-hearing-re.-Tommy-12-2-13.pdf>.

ruling.¹³⁶ During May 2014, the NhRP also renewed its offer to settle the case and help the Laverys transfer Tommy to a sanctuary.¹³⁷ In May 2014, the NhRP requested a preliminary injunction to prevent the Laverys from transferring Tommy to another state.¹³⁸ The Third Judicial Department granted the NhRP's motion for a preliminary injunction.¹³⁹ On October 8, 2014, the Third Judicial Department heard oral arguments and on December 4, 2014 the court ruled that Tommy was not a person protected by the *HCW* because he could not bear duties.¹⁴⁰

The NhRP filed a motion to appeal to the Court of Appeals, the highest court in New York, which the Third Judicial Department denied, so on February 23, 2015, the NhRP filed its motion directly with the Court of Appeals.¹⁴¹ Several scholars and legal advocacy organizations filed *amicus curiae* briefs in support of the NhRP's motion to appeal, but on September 1, 2015, the Court of Appeals denied the motion.¹⁴²

On December 4, 2015, the NhRP filed a new *HCW* on behalf of Tommy with the New York State Supreme Court of New York County, which especially focused on the fact that the capacity to bear duties is merely a sufficient condition for legal personhood, rather than a necessary one; and that chimpanzees bear duties within their communities.¹⁴³ The court denied this second *HCW* because the Third Judicial Department had already denied it and the petition lacked new allegations. Consequently, the NhRP filed an appeal with the New York Supreme Court, Appellate Division, First Judicial Department.¹⁴⁴ During this time, Tommy was moved from the state of New York.¹⁴⁵ Supporters of the NhRP's motion continued to file *amicus curiae* briefs. However, detractors, such as Professor Richard L. Cupp, Jr., also filed *amicus curiae* briefs against the NhRP, which the NhRP requested leave to file a reply to.¹⁴⁶ However, because there usually are no replies to *amicus curiae* briefs, the First Judicial Department denied the leave.¹⁴⁷ In a joint hearing for Tommy and Kiko held on March 16, 2017, the NhRP argued against the claim that legal personhood requires the capacity to bear duties.¹⁴⁸

¹³⁶ *The NhRP's First Client*, *supra* note 129.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Nonhuman Rights Project v. Lavery, No. 518336, at 4 (N.Y. Sup. Ct. Appellate Div. Third Jud. Dep., Dec. 4, 2014), <https://www.nonhumanrights.org/content/uploads/Appellate-Decision-in-Tommy-Case-12-4-14.pdf>.

¹⁴¹ *The NhRP's First Client*, *supra* note 129.

¹⁴² *Id.* (such as Laurence H. Tribe and the Center for Constitutional Rights).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

The NhRP also informed the First Judicial Department about a mistake regarding the definition of “legal person” in Henry Campbell Black’s *Law*, the most widely used legal dictionary in the U.S, in March 2017. The source Black cited does not state that a person is a being that the law recognizes as capable of “rights *and* duties,” but rather of “rights *or* duties,” so the source the Third Judicial Department relied upon in their decision did not support its denial of acknowledging Tommy’s legal personhood.¹⁴⁹ The NhRP filed a supplemental motion requesting leave to file the NhRP’s letter to Black’s *Law* noting the mistake as well as the reply from the editor-in-chief of the dictionary, who stated that they would correct the next edition; however, the First Judicial Department denied the supplemental motion.¹⁵⁰

On June 8, 2017, the First Judicial Department ruled that the NhRP could not seek a second *HCW*, so the NhRP filed a motion for permission to appeal to the Court of Appeals, which the First Judicial Department denied. The NhRP filed the same motion directly with the Court of Appeals, which the Court of Appeals denied on May 8, 2018, although Judge Eugene M. Fahey issued a concurring opinion that indicated some judges disagreed with the allegation that chimps were mere things, but were not willing to recognize them as persons either:¹⁵¹

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, 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.

This case triggered a renewed debate on chimpanzee legal personhood around the world, including discussion in major media outlets¹⁵² and in

¹⁴⁹ JOHN SALMOND & PATRICK JOHN FITZGERALD, *SALMOND ON JURISPRUDENCE* 299 (Patrick John Fitzgerald, ed., 12th ed. 1966).

¹⁵⁰ The NhRP’s First Client, *supra* note 129.

¹⁵¹ *Id.*

¹⁵² See, eg. Jon Kelly, *The Battle to Make Tommy the Chimp a Person*, BBC (Oct. 9, 2014), <https://www.bbc.com/news/magazine-29542829>; Barbara J. King, *Humans, Chimps and Why We Need Personhood for All*, TIME (Oct. 27, 2014, 2:23 PM EDT), <https://time.com/3541747/humans-chimps-rights-personhood/>; Jeff Sebo, *Should Chimpanzees Be Considered ‘Persons’?*, N.Y. TIMES (Apr. 7, 2018), <https://www.nytimes.com/2018/04/07/opinion/sunday/chimps-legal-personhood.html>; Karin

Chris Hegedus and Donn Alan Pennebaker's documentary *Unlocking the Cage* (2016).¹⁵³

c. Kiko the Chimpanzee (United States, 2013)

The Presti family keep primates, including a male chimpanzee named Kiko, as part of their non-profit Primate Sanctuary in Niagara Falls.¹⁵⁴ Kiko is partially deaf, due to the physical abuse he suffered on *Tarzan in Manhattan's* (1989) movie set when he was owned by an exotic animal collector and trainer and caged alone.¹⁵⁵

On December 3, 2013, the NhRP filed a *HCW* in the New York State Supreme Court of Niagara County requesting Kiko's move to a sanctuary, which was rejected on December 9, 2013, by Judge Boniello, who did not want to take this "leap of faith" on what he deemed a legislative rather than a judicial matter.¹⁵⁶ The NhRP appealed, and the Fourth Judicial Department denied the petition, arguing that the *HCW* challenges an illegal confinement, whereas the NhRP requested a change in the conditions of confinement.¹⁵⁷ The NhRP filed a motion seeking permission to appeal, but the Fourth Judicial Department denied it on March 20, 2015. Consequently, the NhRP filed a motion to appeal directly to the Court of Appeals, which also denied it.¹⁵⁸

The NhRP then filed a second *HCW* in the New York State Supreme Court of New York County.¹⁵⁹ The court denied it, so the petitioner filed an appeal in the New York Supreme Court, Appellate Division, First Judicial Department, on May 26, 2016. After being denied the right to appeal, the First Judicial Department recognized that the NhRP had a right to appeal.¹⁶⁰ Similar to Tommy's case, Kiko's case was supported by scholars and legal advocacy organizations and opposed by others through *amicus curiae* briefs.¹⁶¹

Brulliard, *A Judge Just Raised Deep Questions About Chimpanzees' Legal Rights*, WASH. POST (May 9, 2018, 7:02 PM), [washingtonpost.com/news/animalia/wp/2018/05/09/a-judge-just-raised-some-deep-questions-about-chimpanzees-legal-rights](https://www.washingtonpost.com/news/animalia/wp/2018/05/09/a-judge-just-raised-some-deep-questions-about-chimpanzees-legal-rights).

¹⁵³ UNLOCKING THE CAGE (Pennebaker Hegedus Film & HBO Documentary Films 2016).

¹⁵⁴ *A Former Animal "Actor," Partially Deaf from Past Physical Abuse*, Nonhuman Rights Project, <https://www.nonhumanrights.org/client-kiko/> (last visited May 21, 2020).

¹⁵⁵ *Id.*

¹⁵⁶ Transcript of Oral Argument at 15, *Nonhuman Rights Project v. Presti*, 124 A.D.3d 1334 (2013) (No. 151725).

¹⁵⁷ *A Former Animal "Actor," Partially Deaf from Past Physical Abuse*, *supra* note 154.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

The joint hearing for Tommy and Kiko took place on March 16, 2017.¹⁶² At the hearing, the NhRP argued against the claim that legal personhood requires the capacity to bear duties, explaining that many humans who are considered legal persons are incapable of bearing duties and that chimpanzees bear duties within their communities.¹⁶³ The First Judicial Department ruled that the NhRP could not file a second *HCW* on behalf of Tommy and Kiko on June 8, 2017 and denied the motion to appeal.¹⁶⁴

d. Hercules and Leo, Chimpanzees (United States, 2013)

Hercules and Leo are two male chimpanzees who lived in the New Iberia Research Center (NIRC) at the University of Louisiana, Lafayette.¹⁶⁵ In 2009, when they were one year old, NIRC leased them to Stony Brook University's Department of Anatomical Sciences.¹⁶⁶ There, Hercules and Leo were kept in a basement lab, forced to undergo general anesthesia, and had electrodes inserted into their muscles as part of a research project on how humans evolved into walking upright.¹⁶⁷

The NhRP filed a *HCW* in New York State Supreme Court of Suffolk County, which requested the recognition of Hercules' and Leo's legal personhood and right to bodily liberty, as well as their transfer to a sanctuary.¹⁶⁸ The court denied the *HCW* without a hearing, so on January 10, 2014 the NhRP filed an appeal with the Appellate Division of New York State Supreme Court, which dismissed it as well.¹⁶⁹

On March 19, 2015, the NhRP presented the case again in the New York Supreme Court of New York County because the law in New York state allows the writ to be filed more than once.¹⁷⁰ In April, Justice Jaffe issued Hercules and Leo's *HCW* and an order to show cause, which required the New York Attorney General's office to represent Stony Brook in court.¹⁷¹ The NhRP celebrated this progress because it was the first time in history that a court had granted a hearing to determine the lawfulness of an animal's detention.¹⁷²

¹⁶² *Id.*

¹⁶³ Transcript of Oral Argument, *supra* note 156.

¹⁶⁴ *A Former Animal "Actor," Partially Deaf from Past Physical Abuse*, *supra* note 154.

¹⁶⁵ *Two Former Research Subjects and the First Nonhuman Animals to Have a Habeas Corpus Hearing*, Nonhuman Rights Project, <https://www.nonhumanrights.org/hercules-leo/> (last visited Nov. 25, 2019).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

The New York Attorney General filed a response to the *HCW*, through a motion to move the case to Suffolk County, and an affidavit from the head of Stony Brook's animal care committee.¹⁷³ The hearing took place on May 27, 2015, and the parties debated the substantive issues of the case for two hours.¹⁷⁴ The NhRP considered this hearing a victory, but on July 30, 2015, Justice Jaffe denied the *HCW* because she was bound to follow the Appellate Division of the New York State Supreme Court's decision in Tommy's case.¹⁷⁵ While Justice Jaffe recognized that efforts to extend legal rights to chimpanzees as understandable, she noted the reluctance of courts to embrace change.¹⁷⁶

The court also recognized that the NhRP had standing to bring an action directly on behalf of a nonhuman animal, without alleging any injury to human interests.¹⁷⁷ As the NhRP explains, lack of standing is the most common reason that courts dismiss animal welfare cases.¹⁷⁸ Justice Jaffe also argued that being a person is a question of public policy and principle, not biology.¹⁷⁹ During 2015, Stony Brook decided it would no longer use Hercules and Leo in research.¹⁸⁰ NIRC returned them to Louisiana, where they remained until they were finally transferred to Project Chimps Sanctuary, two and a half years later.¹⁸¹

Though the court eventually dismissed this case, the fact that the judge held a hearing and discussed the substantive issues with both parties was an achievement in itself. Courts often dismiss such cases on procedural grounds to avoid addressing an animal's personhood. Moreover, as in Lili, Debby, and Jimmy's cases, it was external factors (the lab decided to stop using these chimps), not the *HCW*, that secured the rescue.

e. Arturo the Polar Bear (Argentina, 2014)

Arturo was born in 1985, and arrived at Mendoza Zoo in Argentina at the age of eight.¹⁸² Arturo was famously known in the media

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Nonhuman Rights Project v. Stanley, No. 152736/15, slip op. at 15 (N.Y. Sup. Ct., July 30, 2015).

¹⁷⁷ *Id.* at 12.

¹⁷⁸ *A Former Animal "Actor," Partially Deaf from Past Physical Abuse*, *supra* note 154.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Muere Arturo, el Último oso Polar de Argentina (y 'El Animal Más Triste del Mundo')*, LA VANGUARDIA (July 5, 2016), <https://www.lavanguardia.com/natural/20160705/402979840737/muerte-oso-polar-arturo-zoo-mendoza-argentina.html>.

as the saddest animal in the world after he became severely depressed when his partner, Pelusa, a female bear from Germany, died.¹⁸³ During the summer of 2014, the refrigeration system used to cool Arturo's cage broke, and many visitors witnessed how he desperately rambled around his cage.¹⁸⁴ In 2014, several NGOs asked for his transfer to the Assiniboine Park Zoo in Canada.¹⁸⁵ However, the zoo's veterinary committee decided it was too dangerous for him to travel, due to his advanced age.¹⁸⁶

The AFADA filed a *HCW* on his behalf in 2014, which was denied by the court *in limine*, because it considered the writ inadmissible on procedural grounds.¹⁸⁷ Arturo died in Mendoza on July 3, 2016, at the age of 30.¹⁸⁸

This case ended tragically because Arturo suffered greatly until his death, but it triggered a debate regarding the closure of Mendoza Zoo,¹⁸⁹ and led to the zoo's definite closure in early 2017. This was the first bear *HCW*, and the third non-chimp and nonhuman *HCW* (after the birds' and the orcas' cases).

f. Monti the Chimpanzee (Argentina, 2014)

Monti arrived at San Francisco de Asis Zoo in Santiago del Estero after being abandoned by a circus because of his epilepsy.¹⁹⁰ Alone in a small cage for over forty-five years, Monti suffered irreversible physical and psychological damage,¹⁹¹ but he is nonetheless the chimpanzee who has survived captivity the longest in Argentina.¹⁹²

¹⁸³ *La Muerte de Arturo, un Oso Polar, Desata la Polémica en Argentina*, EL PERIÓDICO (July 5, 2016), <https://www.elperiodico.com/es/extra/20160705/muerte-oso-polar-arturo-desata-polemica-argentina-5248142>.

¹⁸⁴ Gustavo Federico de Baggis, *Arturo, Sandra, Poli y Cecilia: Cuatro Casos Paradigmáticos de la Jurisprudencia Argentina*, 8(3) FORUM OF ANIMAL LAW STUDIES 1, 2 (2017).

¹⁸⁵ Más de 300.000 Personas Quieren Rescatar a "Arturo" del Zoo de Mendoza, LA VANGUARDIA (July 19, 2014), <https://www.lavanguardia.com/vida/20140719/54411260564/mas-de-300-000-personas-quieren-rescatar-a-arturo-del-zoo-de-mendoza.html>.

¹⁸⁶ de Baggis, *supra* note 184, at 3.

¹⁸⁷ *Id.*

¹⁸⁸ Arturo, *supra* note 182.

¹⁸⁹ de Baggis, *supra* note 184, at 16.

¹⁹⁰ *La Justicia Debate si los Chimpancés Pueden Considerarse "Personas no Humanas"*, INFOBAE (Sept. 7, 2014), <https://www.infobae.com/2014/09/07/1593097-la-justicia-debate-si-los-chimpances-pueden-considerarse-personas-no-humanas/>.

¹⁹¹ *Id.*

¹⁹² *Id.*

In June 2014, the AFADA filed a *HCW* on his behalf.¹⁹³ In November 2014, the judge named a commission of experts that included biologists, veterinarians, and a psychiatrist to determine if Monti could travel to the Great Ape Sanctuary in Sorocaba, Brazil.¹⁹⁴ The zoo was in the process of closure.¹⁹⁵ The court took too long to rule and on February 3, 2015, Monti died of cardiac arrest, after five decades of intense suffering.¹⁹⁶

g. Toto the Chimpanzee (Argentina, 2014)

In 1979, Toto arrived in Argentina and subsequently lived in a small cage in Concordia's *El Arca Enrimir Zoo*.¹⁹⁷ The AFADA filed a *HCW* in the Criminal Court of Concordia on July 7, 2014, requesting the recognition of Toto's personhood and his right to life, freedom and physical and psychological integrity, and his transfer to a sanctuary.¹⁹⁸ The case was dismissed *in limine* on December 23, 2014.¹⁹⁹ On April 13, 2016, after 37 years of suffering alone in a small cage, Toto passed away.²⁰⁰

h. Sandra the Orangutan (Argentina, 2014)

Sandra was born on February 14, 1986, at the Rostock Zoo in Germany.²⁰¹ Sandra and Max, a male orangutan, were sent to Buenos

¹⁹³ Rollo, *supra* note 82, at 185.

¹⁹⁴ Pedro A. Ynterian, *Monti: en la Antesala de la Libertación*, GREAT APE PROJECT (Oct. 29, 2014), <https://www.projetogap.org.br/es/noticia/monti-en-la-antesala-de-la-libertacion/>.

¹⁹⁵ *Id.*

¹⁹⁶ *Adiós a "Monti": Murió Ayer el Emblemático Mono del Zoológico Municipal*, EL LIBERAL (Feb. 4, 2015, 10:52 AM), <https://www.elliberal.com.ar/noticia/170287/adios-monti-murio-ayer-emblematico-mono-zoologico-municipal>.

¹⁹⁷ *Tras 37 Años de Cautiverio, Murió el Chimpancé "Toto" en el Zoo de Concordia*, ELONCE (Apr. 27, 2016), <https://www.elonce.com/secciones/sociedad/459935-tras-37-anos-de-cautiverio-murin-el-chimpancn-quottotoquot-en-el-zoo-de-concordia.htm>.

¹⁹⁸ *Inédito Habeas Corpus para Liberar un Chimpancé de Zoo Concondiense*, UNO ENTRE RÍOS (July 8, 2014), <https://www.unoentrierios.com.ar/la-provincia/inedito-habeas-corpus-liberar-un-chimpance-zoo-concondiense-n930006.html#fotogaleria-id-873908>.

¹⁹⁹ *Triste, Solitario y Final*, DIARIO JUNIO (Apr. 28, 2016), <https://www.diariojunio.com.ar/noticia.php?noticia=76151>.

²⁰⁰ *Tras 37 Años de Cautiverio, Murió el Chimpancé "Toto" en el Zoo de Concordia*, *supra* note 197.

²⁰¹ *Sandra*, CTR. GREAT APES, <https://www.centerforgreatapes.org/meet-apes/orangutans/sandra/> (last visited Feb. 28, 2021).

Aires in 1994.²⁰² She lived alone in the zoo until she was finally transferred to a Florida sanctuary, the Center for Great Apes, in September 2019,²⁰³ having completed quarantine in the Sedgwick County Zoo in Kansas.²⁰⁴

In November 2014, the AFADA filed a *HCW* in Buenos Aires⁷ Investigating Court No. 47, requesting Sandra's transfer to the Great Ape Sanctuary in Sorocaba, Brazil, arguing that her arbitrary incarceration had damaged her physical and mental health.²⁰⁵ Judge Berdi3n de Crudo rejected the writ.²⁰⁶ The AFADA appealed to the Sixth Chamber of the Criminal Court of Appeals, which also rejected it.²⁰⁷ The AFADA filed a cassation appeal against this ruling, and the Second Chamber of the Federal Criminal Cassation Court stated as an *obiter dictum* that Sandra is a subject of rights through a "dynamic legal interpretation," and ordered the case to be sent to a competent Criminal Court.²⁰⁸ Argentinian courts always considered animals to be things, not subjects of rights, and this judgment, even if it lacked arguments, set an important precedent.²⁰⁹ It was the first time a court in Argentina had recognized that a *HCW* could be filed on behalf of an animal.²¹⁰

On March 16, 2015, the AFADA filed a protective action²¹¹ on Sandra's behalf against the government of Buenos Aires and the zoo.²¹²

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Fernanda Jara, *La nueva vida de la orangutana Sandra en el santuario de Estados Unidos donde ya est1 rodeada con animales de su especie*, INFOBAE (Nov. 7, 2019), <https://www.infobae.com/sociedad/2019/11/07/la-nueva-vida-de-la-orangutana-sandra-en-el-santuario-de-estados-unidos-donde-ya-esta-rodeada-con-animales-de-su-especie/>.

²⁰⁵ Gustavo Federico de Baggis, *Solicitud de H1beas Corpus para la Orangut1n Sandra. Comentario a Prop3sito de la Sentencia de la C1mara Federal de Casaci3n Penal de la Ciudad Aut3noma de Buenos Aires, de 18 de Diciembre de 2014*, 6(1) FORUM OF ANIMAL LAW STUDIES 1, 2 (2015).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ C1mara Federal de Casaci3n Penal [C.F.C.P.] [Federal Criminal Cassation Court], Second Chamber, 18/12/2014, "Orangutana Sandra s/ Recurso de Casaci3n s/ Habeas Corpus," No 2603/14 (Arg.), <http://www.saij.gov.ar/camara-federal-casacion-penal-federal-ciudad-autonoma-buenos-aires-orangutana-sandra-recurso-cadacion-habeas-corpus-fa14261110-2014-12-18/123456789-011-1624-1ots-eupmocsollaf?&o=2&f=Total%7CTipo%20de%20Documento%7CFecha%7CTema%5B%2C1%5D%7COrganismo%5B%2C1%5D%7CAutor%5B%2C1%5D%7CEstado%20de%20Vigencia%5B%2C1%5D%7CJurisdicci3n%5B%2C1%5D%7CTribunal%5B%2C1%5D%7CPublicaci3n%5B%2C1%5D%7CColecci3n%5B%20tem%5B%2C1%5D&t=954>.

²⁰⁹ de Baggis, *supra* note 205, at 5.

²¹⁰ *Id.* at 6.

²¹¹ In Argentina, this is called *acci3n de amparo*.

²¹² Graciela Regina Adre, *El Amparo en la Justicia Argentina. ¿La V1a*

This action sought to protect a person's fundamental rights, except their right to freedom, which is protected by the *HCW*. It might seem strange of the AFADA to file this action instead of pursuing the *HCW*. This decision was likely based on selecting the action that would obtain Sandra's liberation to a sanctuary the fastest. This was the first time that a protective action was filed on behalf of an animal in Argentina.²¹³

The AFADA argued that Sandra's rights to freedom, physical and psychological integrity were being violated and requested her release to a sanctuary, arguing that she was a subject of certain fundamental rights that should be protected by this action.²¹⁴ Judge Liberatori held several hearings and admitted the participation of experts through Skype hearings and *amicus curiae* briefs during the proceedings.²¹⁵ On October 21, 2015, Judge Liberatori granted the action.²¹⁶ She stated that Sandra is a nonhuman person, and thus a subject of rights. She also recognized that Sandra has her own rights as a sentient being. However, the court stated that the zoo and the city of Buenos Aires could exercise their rights regarding Sandra, albeit in a non-abusive manner.²¹⁷

This statement in the judgment could have had dangerous consequences for Sandra's well-being because it allowed the zoo and the government to continue exercising their rights over Sandra, which they had already exercised, affecting her physical and mental health negatively. The judgment should have prohibited any conduct or action by the zoo and government that contradicted her recognition as a nonhuman person, and that was not strictly related to protecting and improving Sandra's life while she waited for her transfer to a sanctuary. However, the judge decided that experts should determine what conditions Sandra should live in, because this exceeded the court's mandate. Consequently, she did not order Sandra's immediate transfer to a sanctuary, leaving her fate in the hands of a group of experts: Dr. Miguel Rivolta, Héctor Ferrari, and Dr. Gabriel Aguado. In sum, this

Idónea para el Reconocimiento de los Derechos de los ANH?, 9(4) FORUM OF ANIMAL LAW STUDIES 138, 143 (2018).

²¹³ *Id.* at 138.

²¹⁴ *Id.* at 143.

²¹⁵ *Id.* at 144.

²¹⁶ Juzgado Contencioso Administrativo y Tributario No. 4 de la ciudad de Buenos Aires [J.C.A.T.] [Court for Contentious-Administrative and Tax Proceedings No. 4 of the city of Buenos Aires], 21.10.2015, "Asociación de Funcionarios y Abogados por los Derechos de los Animales y otros c. GBCA sobre amparo," No. A2174-2015/0 (Arg.), 9, MSU ANIMAL LEGAL & HISTORICAL CTR., https://www.animallaw.info/sites/default/files/Sandra_%E2%80%99CASOCIACION%20DE%20FUNCIONARIOS%20Y%20ABOGADOS%20POR%20LOS%20DERECHOS%20DE%20LOS%20ANIMALES%20Y%20OTROS%20CONTRA%20GCBA%20SOBRE%20AMPARO%E2%80%9D.pdf (last visited Mar. 30, 2021).

²¹⁷ *Id.*

ruling did not immediately recognize Sandra's right to freedom by ordering her transfer to a sanctuary, nor did it improve her enclosure or conditions at the zoo.²¹⁸

The zoo and the government appealed, arguing that the AFADA lacked standing and the protective action was an inappropriate course of action to examine Sandra's situation in the zoo.²¹⁹ The AFADA also appealed, arguing that the lower court had all the necessary information to decide what conditions Sandra should live in.²²⁰ On June 14, 2016, the higher court confirmed the ruling and ordered the government to carry out improvements in Sandra's cage and daily activities.²²¹ Most importantly, the court stated that scholars currently disagree on whether animals are subjects of rights, so it revoked this part from the lower court's ruling.²²² The court concluded that Sandra should be adequately treated, and the decision to transfer her to a sanctuary depended on the government, because none of the expert reports had advised that this be done.²²³

Sandra is currently living in the Center for Great Apes in Florida.²²⁴ In 2016, the zoo announced it was going to close and become *Ecoparque*, so the animals were transferred elsewhere.²²⁵ After some struggle between *Ecoparque*, the AFADA, and Judge Liberatori, the judge finally chose Florida's Center for Great Apes over Brazil's Great Ape Sanctuary.²²⁶ Sandra became famous around the world as the first animal to be recognized as a person by a court, even though this recognition was later reversed by a higher court.²²⁷ Moreover, although the Federal Criminal Cassation Court merely stated as an *obiter dictum* that Sandra is a subject of rights, this nonetheless set a positive legal precedent for Poli the dog and Cecilia the chimpanzee.

²¹⁸ Adre, *supra* note 212, at 145.

²¹⁹ *Orangutana Sandra-Sentencia de Cámara- Sala I del Fuero Contencioso Administrativo y Tributario CABA*, Animal Legal & Hist. Ctr., 1, 4, <https://www.animallaw.info/case/%E2%80%99Casociaci%C3%B3n-de-funcionarios-y-abogados-por-los-derechos-de-los-animales-y-otros-c-gcba-s-amparo> (last visited Feb. 20, 2021).

²²⁰ *Id.*

²²¹ *Id.* at 24.

²²² *Id.* at 25.

²²³ *Id.* at 24.

²²⁴ *Sandra*, *supra* note 201.

²²⁵ Enric González, 'Sandra', *la Orangutana que se Convertió en 'Persona'*, *EL PAÍS* (June 23, 2019), https://elpais.com/elpais/2019/06/17/eps/1560778649_547496.html.

²²⁶ *Id.*

²²⁷ *Orangutana Sandra-Sentencia de Cámara- Sala I del Fuero Contencioso Administrativo y Tributario CABA*, *supra* note 219.

i. Poli the Dog (Argentina, 2015)

Poli was a stray dog living in Palmira, Mendoza province, Argentina.²²⁸ On January 4, 2013, a man tied Poli to the rear bumper of his van due to her barking, dragging her along the road at twenty to fifty kilometers per hour.²²⁹ Two witnesses ran after the van and called the police, who took Poli to a veterinarian, identified the man, and arrested him.²³⁰ Poli's four legs and abdominal area were severely injured.

Animal cruelty is a criminal offence in Argentina, so on April 20, 2015, the First Criminal Court of San Martín approved the agreement between the Public Prosecutor, the complainant, Asociación Mendocina de Protección, Ayuda y Refugio del Animal (AMPARA), an animal protection NGO that cared for Poli after the accident, and the defendant. The defendant agreed to six months of conditional imprisonment and the obligation to give the complainant 120 kilograms of dog food.²³¹

According to Judge Darío Dal Dosso, because the criminal law protects animals as right holders, dogs are sentient beings, and considering the cognitive and emotional capacities of some animals, dogs are nonhuman persons with fundamental rights, like the right not to be tortured or mistreated.²³²

This case is unique for two reasons: there was no *HCW*, but the judge nonetheless deemed the dog a subject of rights and a nonhuman person; and the case derived from a cruelty offence, but the judge based his verdict on the Federal Criminal Cassation Court in Sandra's case.²³³

j. Naruto the Crested Black Macaque (United States, 2015)

This famous case started in the Tangkoko Reserve, on the island of Sulawesi, Indonesia in 2011, when Naruto, a female crested black macaque (*Macaca nigra*) took several selfies using David Slater's camera, a British wildlife photographer.²³⁴ These selfies started two disputes. The first dispute started when Slater licensed the selfies to an agency which published them in the British media at the start of July 2011. On July 9, 2011, Wikimedia Commons uploaded the selfies, considering them to be public domain, as Naruto could not hold copyright because she is not

²²⁸ de Baggis, *supra* note 184, at 5.

²²⁹ Primer Juzgado Correccional de la Ciudad de General San Martín [J.C.Gral.S.M.] [First Criminal Court of General San Martín], *supra* note 4.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ de Baggis, *supra* note 184, at 6.

²³⁴ See Monkey 'Selfie' Picture Sparks Wikipedia Copyright Row, ITV (Aug. 6, 2014), <https://www.itv.com/news/2014-08-06/wikipedia-refuses-to-delete-photos-as-monkey-owns-it/>.

human.²³⁵ Techdirt Blog defended the same position and also posted the photographs.²³⁶ Slater argued that he had a valid copyright claim because he was the one who travelled to Indonesia, earned the macaques' trust, and set up his camera on a tripod in order to obtain a selfie picture.²³⁷ In December 2014, the United States Copyright Office stated that works created by nonhumans are not copyrightable, and gave the examples of photographs taken by monkeys and paintings by elephants.²³⁸

The second dispute was triggered when Slater included the photographs in his book *Wildlife Personalities*, published by the company Blurb. On September 21, 2015, PETA filed a lawsuit against Slater and Blurb, requesting that the District Court for the Northern District of California assign Naruto copyrights to the pictures and appoint PETA to administer the proceeds from the photos for the benefit of Naruto and other crested black macaques in the Tangkoko Reserve.²³⁹ PETA filed the lawsuit as Naruto's next friend, arguing that she could not bring the action due to inaccessibility and incapacity, and thus needed a representative.²⁴⁰ Blurb responded that a crested black macaque cannot own a copyright, and that PETA had filed the lawsuit on behalf of the wrong crested black macaque, as PETA was representing a six-year-old male crested black macaque, whereas the pictures were taken by a female macaque.²⁴¹ On January 6, 2016, the judge heard oral arguments, and on January 28 the

²³⁵ See Louise Stewart, *Wikimedia Says When a Monkey Takes a Selfie, No One Owns It*, NEWSWEEK (Aug. 21, 2014), <https://www.newsweek.com/lawyers-dispute-wikimedias-claims-about-monkey-selfie-copyright-265961>.

²³⁶ See, Mike Masnick, *Monkey Business: Can A Monkey License Its Copyrights To A News Agency?*, TECHDIRT (July 7, 2011, 7:32 AM), <https://www.techdirt.com/articles/20110706/00200314983/monkey-business-can-monkey-license-its-copyrights-to-news-agency.shtml>; see also Mike Masnick, *Monkeys Don't Do Fair Use; News Agency Tells Techdirt To Remove Photos*, TECHDIRT (July 12, 2011, 11:08 AM), <https://www.techdirt.com/articles/20110712/01182015052/monkeys-dont-do-fair-use-news-agency-tells-techdirt-to-remove-photos.shtml>.

²³⁷ See *Photographer 'Lost £10,000' in Wikipedia Monkey 'Selfie' Row*, BBC, (Aug. 7, 2014), <https://www.bbc.com/news/uk-england-gloucestershire-28674167>; Chris Cheesman, *Photographer Goes Ape Over Monkey Selfie: Who Owns the Copyright?*, AMATEUR PHOTOGRAPHER, (Aug. 7, 2014), <https://www.amateurphotographer.co.uk/latest/photo-news/photographer-goes-ape-over-monkey-selfie-who-owns-the-copyright-5054>.

²³⁸ U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 101 (3d ed. 2014), 68, <https://www.copyright.gov/comp3/docs/compendium-12-22-14.pdf> (last visited May 21, 2020).

²³⁹ Complaint at 2, *Naruto v. Slater*, No. 15-CV-04324-WHO, 2016 WL 362231 (N.D. Cal. Jan. 28, 2015), <https://www.mediapeta.com/peta/PDF/Complaint.pdf>.

²⁴⁰ *Id.* at 3.

²⁴¹ David Kravets, *Will The Real Monkey Who Snapped Those Famous Selfies Please Stand Up?*, ARS TECHNICA (Nov. 10, 2015, 8:18 PM), <https://arstechnica.com/tech-policy/2015/11/will-the-real-monkey-who-snapped-those-famous-selfies-please-stand-up/>.

court dismissed the case, arguing that the Copyright Act does not confer animals standing and that animals cannot own copyrights.²⁴² The court also stated that the claim on animals' right to own copyrights should be addressed by Congress and the President, not by the courts.²⁴³

The judge claimed that U.S. courts "have repeatedly referred to 'persons' or 'human beings' when analyzing authorship under the Act."²⁴⁴ Therefore, the judge did not recognize Naruto as a legal person. In the judge's defense, PETA did not argue that Naruto is a legal person. In fact, PETA only argued that Naruto took the photographs autonomously while operating Slater's camera, and that she understood the relationship between pressing the shutter release, the noise it makes, and the change in her reflection in the camera lens.²⁴⁵ PETA's reference to Naruto's autonomy calls to mind the argument about practical autonomy that Steven Wise and the NhRP set forth in their *HCW*.²⁴⁶ However, unlike the NhRP, PETA lacked a strong and explicit argument on behalf of Naruto's legal personhood, at least within the scope of the Copyright Act. This argument would have explained why Naruto is one of those beings that can create works of art and own a copyright, and would have aimed to convince the judge that not only human beings and corporations can own copyright. Unfortunately, even though it seems that PETA wanted the court to recognize Naruto as a legal person within the scope of the Copyright Act, it did not make this argument, nor did it present the necessary evidence; leaving the court with no other option than to dismiss the case.²⁴⁷

On March 20, 2016, PETA filed a notice to appeal to the Ninth Circuit Court of Appeals.²⁴⁸ On July 12, 2017, the court held an oral

²⁴² *Naruto v. Slater*, No. 15-CV-04324-WHO, 2016 WL 362231 at *1 (N.D. Cal. Jan. 28, 2016), *aff'd*, 888 F.3d 418 (9th Cir. 2018).

²⁴³ *Id.* at 6.

²⁴⁴ *Id.* at 5.

²⁴⁵ *Naruto, et al. v. Slater*; (in a press release, Jeff Kerr, PETA's general counsel and part of Naruto's legal team, stated: "Despite this setback, we are celebrating that legal history was made in our unprecedented argument to a federal court that Naruto, a crested macaque monkey, should be the *owner* of property (specifically, the copyright to the famous 'monkey selfie' photos that he undeniably took), rather than a *mere piece of property himself*"); *UPDATE: 'Monkey Selfie' Case Brings Animal Rights Into Focus, PETA* (Jan. 6, 2016), <https://www.peta.org/blog/monkey-selfie-case-animal-rights-focus/>.

²⁴⁶ See Steven M. Wise, *Nonhuman Rights to Personhood*, 30 *PACE ENVTL. L. REV.* 1278, 1283 (2013).

²⁴⁷ *Nonhuman Rights Project Statement on Naruto v. Slater (the "Monkey Selfie" case)*, NONHUMAN RIGHTS BLOG (Apr. 24, 2018), <https://www.nonhumanrights.org/blog/nhrp-statement-monkey-selfie-case/>.

²⁴⁸ Mary Papenfuss, *Captivating Monkey Naruto Who Snapped Viral Selfies Filing Appeal for Right to Photos*, *INT'L BUS. TIMES* (Mar. 21, 2016, 06:36 GMT), <https://www.ibtimes.co.uk/captivating-monkey-naruto-who-snapped-viral-selfies-filing-appeal-right-photos-1550654>.

argument,²⁴⁹ and on August 4, 2017, all parties informed the court that they were going to settle the case outside the court, and asked the court not to rule on the case.²⁵⁰ On September 11, 2017, Slater, Blurb, and PETA reached an agreement. Slater agreed to donate twenty-five percent of any future revenue from the crested black macaque selfies to protect crested black macaques.²⁵¹ However, the court did not accept the settlement. The parties asked the court to dismiss the appeal and vacate the judgment, and asked for a vacatur.²⁵² In April 2018, the court denied the motions to vacate the case, and issued its ruling on behalf of Slater, arguing that animals cannot hold copyright claims, nor can animals be represented in court by a next friend. The court questioned whether PETA had any significant relationship to Naruto that would qualify it to act as a next friend.²⁵³

The judges repeatedly confused the concepts of a “human” and a “person,” using these terms as synonyms, and the concurring opinion claimed humans cannot know what animals want, so they cannot be appropriately represented in court by a next friend.²⁵⁴ The court forgot that many animals have complex cognitive abilities, and some of their interests can be easily presumed, much as we presume the interests of many humans that cannot express what they want due to age or disease, but are still represented in court.²⁵⁵ The court also considered PETA’s lawsuit to be frivolous, because the court considered it easy to conclude that animals do not have copyright ownership according to property law and the Copyright Act.²⁵⁶

²⁴⁹ United States Court of Appeals for the Ninth Circuit, Calendar for James R. Browning U.S. Courthouse, San Francisco, *Oral Argument Notice* (July 12, 2017), <https://www.ca9.uscourts.gov/calendar/view.php?caseno=16-15469> (last visited May 20, 2020).

²⁵⁰ David Kravets, *Monkey Selfie Animal Rights Brouhaha Devolves into a Settlement*, ARS TECHNICA (Aug. 5, 2017, 2:00 PM), <https://arstechnica.com/tech-policy/2017/08/monkey-selfie-animal-rights-brouhaha-devolves-into-a-settlement/>.

²⁵¹ Jon Fingas, *Monkey Selfie Copyright Battle Ends with a Settlement*, ENGADGET (Sept. 11, 2017), https://www.engadget.com/2017/09/11/monkey-selfie-rights-battle-ends-with-settlement/?guccounter=1&guce_referrer=aHR0cHM6Ly91bi53aWtpcGVkaWEub3JnLw&guce_referrer_sig=AQAAAAYwVCj662Qg7f00m2l6Vb1kQKWIQGD_qNk35QfVHLdI452BKHkLd2FvxL1QAznu6DriH6FgFlh9Le-CHY9X.

²⁵² Sophie Duffy & Dori Ann Hanswirth, *Monkey See, Monkey Do... Monkey Own? The Curious Case of Naruto v. Slater*, LEXOLOGY (Sept. 20, 2017), <https://www.lexology.com/library/detail.aspx?g=5deafb41-a767-4319-bf93-cff2bc5d726a>.

²⁵³ *Naruto v. Slater*, No. 16-15469 at 7 (9th Cir. 2018).

²⁵⁴ *Nonhuman Rights Project Statement on Naruto v. Slater (the “Monkey Selfie” case)*, *supra* note 247.

²⁵⁵ *Id.*

²⁵⁶ *Naruto*, No. 16-15469 at 20.

Finally, the court expressed serious concern about PETA's motivations, which seemed to promote their own interests, rather than to protect Naruto.²⁵⁷ The court claimed that to prevent a negative precedent against its institutional interests, PETA had filed a motion to dismiss Naruto's appeal and vacate the lower court's adverse judgment, reaching a settlement with the defendants.²⁵⁸ Naruto, the supposed plaintiff, did not appear as a party to the settlement; rather, PETA appeared to be settling its own claims, even though as a next friend it was not a party to the action.²⁵⁹

Even though this case was a defeat for the animal rights movement (especially considering that the court openly criticized PETA's motivations and actions), thanks to the selfies and both disputes, crested black macaques, a critically endangered species,²⁶⁰ became known worldwide, and animals' right to copyright over their works of art can be considered as another mechanism to argue for animal legal personhood in court.²⁶¹

In sum, between 2013 and 2015, the NhRP became the main legal advocate for animal personhood, which ceased to be associated exclusively with chimps and was extended to macaques, orangutans, bears, and even dogs in Latin America.

IV. THE FIRST SUCCESS: 2016-2018

a. Cecilia the Chimpanzee (Argentina, 2016)

Cecilia is a 35-year-old chimp, born in captivity.²⁶² She lived in Mendoza Zoo for more than twenty years, first with Charlie, who died in July 2014, and Xuxa, who died in January 2015, leaving Cecilia alone and depressed—roasting or freezing in a small, unprotected cement cage, without plants or anywhere to hide from visitors.²⁶³

The AFADA filed her *HCW* in the Third Court of Guarantees in Mendoza in 2016, proving she was living in deplorable conditions,

²⁵⁷ *Id.* at 40.

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 7 n.3 & 39 n.11.

²⁶⁰ See Jatna Supriatna & Noviar Andayani, *Macaca Nigra*, THE IUCN RED LIST OF THREATENED SPECIES (2008), <https://www.iucnredlist.org/species/12556/3357272> (last visited May 21, 2020).

²⁶¹ See Ephrat Livni, *A Monkey Lost His Copyright Case—But Made Strides Toward Getting Animals More Legal Rights*, QUARTZ (Apr. 26, 2018), <https://qz.com/1261828/the-monkey-selfie-case-demonstrates-nonhumans-can-make-constitutional-claims/>.

²⁶² Tercer Juzgado de Garantías de Mendoza, *supra* note 2.

²⁶³ *Id.* at 3.

as the judge could see during the judicial proceedings' inspection.²⁶⁴ The state attorney opposed the *HCW*, arguing that since Cecilia was not human, her incarceration was not illegal.²⁶⁵ However, during one of the hearings, the parties agreed to send Cecilia to the sanctuary.²⁶⁶ The judge in charge of this case, María Alejandra Mauricio, granted Cecilia the *HCW* on November 3, 2016.²⁶⁷ The judge declared that Cecilia is a nonhuman person and the subject of rights,²⁶⁸ and ordered her transfer before the start of autumn.²⁶⁹

The judge argued that Cecilia was owed protection (i) as an environmental collective good,²⁷⁰ (ii) as Argentinean wildlife, which is also protected by law,²⁷¹ (iii) as a zoo animal,²⁷² (iv) as a sentient being,²⁷³ and (v) as a great ape nonhuman person subject of rights, with the cognitive abilities of a four-year-old child.²⁷⁴ She also affirmed that the rights such animals might have should be determined by the state, not by judges.²⁷⁵ Finally, the court stated that the *HCW* is an adequate tool to assess the condition of incarcerated animals, as national and local Argentinean law does not provide other procedural mechanisms.²⁷⁶ In other words, as the judge was forced to rule on the case, she decided to accept the *HCW*.²⁷⁷ On April 6, 2017, Cecilia moved to Brazil's Great Ape Sanctuary.²⁷⁸

This is one of many cases in which *HCWs* have been supported with environmental considerations, as in Chucho the bear's case, discussed below. This is understandable, but it can leave members of non-threatened species insufficiently protected. Cecilia's case was easier than Sandra's because, despite the state's initial opposition, the parties reached an agreement and Cecilia was soon transferred to a sanctuary.

²⁶⁴ *Id.* at 42.

²⁶⁵ *Id.* at 6.

²⁶⁶ *Id.* at 9.

²⁶⁷ *Id.* at 44.

²⁶⁸ *Id.* at 36.

²⁶⁹ *Id.* at 45.

²⁷⁰ *Id.* at 19.

²⁷¹ *Id.* at 13.

²⁷² *Id.* at 19.

²⁷³ *Id.* at 35.

²⁷⁴ *Id.* at 33.

²⁷⁵ *Id.* at 37.

²⁷⁶ *Id.* at 44.

²⁷⁷ Francisco Capacete González, *Eficacia del Habeas Corpus Para Liberar a Una Chimpancé (Cecilia). Comentario a la Sentencia de 3 de Noviembre de 2016 del Tercer Juzgado de Garantías del Estado de Mendoza (Argentina)*, 7(3) FORUM OF ANIMAL LAW STUDIES, 1, 5 (2016).

²⁷⁸ Pedro A. Ynterian, *GAP Brasil: Cecilia ya Está Viniendo*, GREAT APE PROJECT (Apr. 4, 2017), <https://www.projetogap.org.br/es/noticia/gap-brasil-cecilia-ya-esta-veniendo/>.

b. *Beulah, Karen, and Minnie, Elephants (United States, 2017)*

Beulah and Minnie, Asian elephants, and Karen, an African elephant, were all born in the wild and imported to the United States between 1969 and 1984.²⁷⁹ Beulah was born in Myanmar in 1967,²⁸⁰ Karen was born in an unknown country in 1981,²⁸¹ and Minnie was born in Thailand in 1969.²⁸² They were all sold to Commerford Zoo between 1973 and 1984,²⁸³ a zoo that has been cited more than fifty times by the USDA for contravening the Animal Welfare Act.²⁸⁴

Since their importation to the U.S., they were used as attractions in petting zoos, circuses, fairs, parties, commercials, and even political gatherings.²⁸⁵ Beulah suffered from foot problems for many years,²⁸⁶ and died from blood poisoning caused by a uterine infection at the Big E fair in West Springfield on September 15, 2019.²⁸⁷ Karen died in March 2019.²⁸⁸ Commerford Zoo did not announce her death or explain what happened to her.²⁸⁹ The NhRP has stated that she died of kidney disease.²⁹⁰ Minnie is still alive and Commerford Zoo still forces her to work, even though she has attacked her handlers several times.²⁹¹ On November 13, 2017, the NhRP filed a *HCW* in Connecticut Superior Court, Litchfield County, requesting the recognition of the three elephants' legal personhood, right to bodily liberty, and their release to Paws Ark 2000, a natural habitat sanctuary.²⁹² On December 26, 2017, Judge James M. Bentivegna dismissed the petition because the NhRP

²⁷⁹ *Torn From Their Families and Forced to Perform for Humans for Decades*, Nonhuman Rights Project, <https://www.nonhumanrights.org/clients-beulah-karen-minnie/> (last visited Nov. 26, 2019).

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Minnie (Mignon) an Asian elephant at R.W. Commerford and Sons Traveling Petting Zoo (Robert Commerford)*, ELEPHANT ENCYCLOPEDIA, https://www.elephant.se/database2.php?elephant_id=704 (last visited Feb. 17, 2021).

²⁸³ *Torn From Their Families and Forced to Perform for Humans for Decades*, *supra* note 279.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ Courtney Fern, *How Elephants Beulah and Karen Died*, NONHUMAN RIGHTS BLOG (Feb. 19, 2020), <https://www.nonhumanrights.org/blog/how-elephants-beulah-and-karen-died/>.

²⁸⁸ *Torn From Their Families and Forced to Perform for Humans for Decades*, *supra* note 279.

²⁸⁹ *Id.*

²⁹⁰ Fern, *supra* note 287.

²⁹¹ *Torn From Their Families and Forced to Perform for Humans for Decades*, *supra* note 279.

²⁹² *Id.*

lacked a relationship with the detainees and it was seen as frivolous in Connecticut, where animal *HCWs* were unknown.²⁹³ As the NhRP argued, the case was novel, not frivolous.²⁹⁴

On January 16, 2018, the NhRP filed a motion to reargue, requesting the court to reverse its dismissal.²⁹⁵ Judge Bentivegna denied the motion and the request to amend the petition on February 27, 2018.²⁹⁶ The NhRP filed a notice of appeal and a motion for articulation with the Connecticut Appellate Court with the objective of clarifying the legal and factual basis for Judge Bentivegna's decisions.²⁹⁷ The judge only granted one of the sixteen requests for articulation and insisted that the petition was frivolous.²⁹⁸ Therefore, the NhRP filed a motion for review and a brief in the Appellate Court of Connecticut, requesting the revision of the lower court's dismissal.²⁹⁹ Supporters of the NhRP's petition filed *amicus curiae* briefs in the Appellate Court of Connecticut on November 13, 2018.³⁰⁰ The court scheduled a hearing on April 22.³⁰¹ During this hearing, the NhRP argued not only against the decision's lack of standing and frivolity, but also that elephants are legal persons entitled to *HCWs*.³⁰² The Appellate Court of Connecticut dismissed the case, so the NhRP filed a motion for *en banc* reconsideration, which was denied.³⁰³

On June 11, 2018, the NhRP filed a second *HCW* in Tolland County.³⁰⁴ In February 2019, Judge Shaban dismissed the petition, stating that it was the same as the first one.³⁰⁵ The NhRP argued that the petitions were different, and that the NhRP could bring a second petition since the first petition was not dismissed on its merits.³⁰⁶ Beulah died in the Big E fair in West Springfield in September, while Karen had already died in March.³⁰⁷ Thus, the NhRP requested the Connecticut Supreme Court to hear the appeal of the Appellate Court decision and

²⁹³ Lauren Choplin, *Update: Beulah, Karen, and Minnie Elephant Rights Lawsuit*, NONHUMAN RIGHTS BLOG (Dec. 28, 2017), <https://www.nonhumanrights.org/blog/update-elephant-rights-lawsuit-12-28-17/>.

²⁹⁴ *Id.*

²⁹⁵ *Torn From Their Families and Forced to Perform for Humans for Decades*, *supra* note 279.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

grant a temporary injunction to prevent Commerford Zoo from moving Minnie, but the court declined both petitions.³⁰⁸ Finally, the NhRP filed a supplemental brief on the issue of their standing to sue to the Appellate Court.³⁰⁹ On January 8, 2020, the court held oral arguments, and the NhRP insisted that the court was wrong to rule against the merits of the case without actually hearing them.³¹⁰ The Appellate Court denied Minnie's *HCW*, so the NhRP filed a motion requesting permission to appeal with the Connecticut Supreme Court, who declined the petition.³¹¹ Finally, on December 16, 2020, the NhRP announced that it had decided to end litigation in Connecticut given the courts' unwillingness to hear Minnie's case.³¹²

This case is relevant because it was the first elephant *HCW*. There is nothing frivolous about caring for elephants' suffering and exploitation; and yet frivolity was the inappropriate but recurrent argument for dismissing this *HCW*.

c. Martín, Sasha, and Kango, Chimpanzees (Argentina, 2017)

Martin, Sasha and Kango live in *Ecoparque*, a facility for native wildlife in Buenos Aires, located in the former Buenos Aires Zoo.³¹³ The AFADA filed a *HCW* on behalf of these three chimpanzees on November 28, 2017.³¹⁴ The chimpanzees were forty-nine, twenty and ten years old at the time the *HCW* was filed.³¹⁵ The AFADA requested the court recognize these chimpanzees as nonhuman subjects with rights and transfer them to a sanctuary in Brazil.³¹⁶

According to the AFADA's public release, the writ was rejected the same day by the Criminal Court;³¹⁷ the AFADA appealed, but the Court of Appeals confirmed the lower court's ruling.³¹⁸ The AFADA

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ Steven Wise, *NhRP Urges CT Appellate Court to Rehear Elephant Rights Case*, NONHUMAN RIGHTS BLOG (Jan. 10, 2020), <https://www.nonhumanrights.org/blog/nhrp-urges-connecticut-appellate-court-to-rehear-elephant-rights-case/>.

³¹² *Id.*

³¹³ *Presentaron un Hábeas Corpus a Favor de los Chimpancés del Ecoparque*, INFOBAE (Nov. 29, 2017), <https://www.infobae.com/sociedad/2017/11/29/presentaron-un-habeas-corpus-a-favor-de-los-chimpances-del-ecoparque/>.

³¹⁴ *Rechazan Habeas Corpus de los Chimpancés del Ecoparque—Argentina*, GREAT APE PROJECT (Dec. 6, 2017), <https://www.projetogap.org.br/es/noticia/rechazan-habeas-corpus-de-los-chimpances-del-ecoparque-argentina/>.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *AFADA ONG: Comunicado Sobre los Chimpancés del Ecoparque—Argentina* [AFADA ONG: Statement on the Chimpanzees of the Ecopark], GREAT

requested constitutional review of the case but the Court of Appeals declared it inadmissible on March 14, 2018.³¹⁹ Finally, the AFADA filed a complaint³²⁰ to the Superior Court of Justice,³²¹ which was also rejected.³²² The zoo explained that Martin was too old to travel, and that the family cannot be broken up by transferring only Sasha and Kangoo because the chimpanzees would become depressed.³²³ The family of chimpanzees continued to live together in Buenos Aires' zoo until Martin's death in February 2021 due to cardiorespiratory arrest.³²⁴ Though Martin's death is an unfortunate event, his advanced age can no longer serve as an argument against Sasha and Kangoo's transfer to a sanctuary.

APE PROJECT (Mar. 29, 2018), <https://www.projetogap.org.br/es/noticia/afada-ong-comunicado-sobre-los-chimpances-del-ecoparque-argentina/>.

³¹⁹ *Id.*

³²⁰ In Argentina, this is referred to as *recurso de queja*. See *id.*

³²¹ AFADA ONG, *supra* note 318.

³²² Nora Sánchez, "Personas No Humanas": *Qué Pasará con los Chimpancés del Ecoparque* [*'Non-Human People': What Will Happen to Ecopark Chimpanzees*], CLARÍN, (Jan. 4, 2019, 14:11 PM), https://www.clarin.com/ciudades/personas-humanas-pasara-chimpances-ecoparque_0_tnO3jMb2M.html.

³²³ See *id.*

³²⁴ *Muere el Chimpancé Martín en el Zoológico de Buenos Aires*, GREAT APE PROJECT (Feb. 10, 2021), <https://www.projetogap.org.br/es/noticia/muere-el-chimpance-martin-en-el-zoologico-de-buenos-aires/>.

Martín, Sasha, and Kangoo's HCW was not the latest lawsuit that sought to obtain the recognition of animals as subjects of rights in Argentina. In July 2019, Greenpeace presented a protective action to the Supreme Court, on behalf of all the jaguars (*Panthera oncas*) that live in the Argentinean Gran Chaco area. This is the first case in Argentina where the petitioner has asked the court to recognize a whole species as subjects of rights. There are less than twenty jaguars left in the Gran Chaco area, mainly due to habitat loss. Greenpeace has also requested the court to order and ensure a "zero deforestation" policy in the jaguar's habitat. The Attorney General of the Nation has decided that the case falls within the jurisdiction of the Supreme Court. This case is not included above because it is still pending. *Greenpeace Se Presenta ante la Corte Suprema en Representación del Yaguareté* [Greenpeace appears before the Supreme Court on behalf of the jaguar], Greenpeace (Arg.), (July 19, 2019), <https://www.greenpeace.org/argentina/issues/bosques/1954/greenpeace-se-presenta-ante-la-corte-suprema-en-representacion-del-yaguarete/>; see generally [*Files Protective Action*], Greenpeace (Arg.) http://greenpeace.org.ar/pdf/2020/Amparo.pdf?_ga=2.185089513.193292613.1590163892-1644954814.1590163892 (last visited May 22, 2020); see also *Avanza en la Corte el Amparo para Proteger al Yaguareté* [Amparo to protect the jaguar advances in the Court], Greenpeace (Arg.), (Feb. 28, 2020), <https://www.greenpeace.org/argentina/issues/bosques/4095/avanza-en-la-corte-el-amparo-para-proteger-al-yaguarete/>. The AFADA has also filed a new HCW on behalf of Toti. See *La Asociación de Abogados AFADA de Argentina, en Colaboración con el Proyecto Gran Simio España, Presentan Habeas Corpus para Liberar al Chimpancé Toti*, GREAT APE PROJECT (Nov. 9, 2020), https://proyectogransimio.org/noticias/ultimas-noticias/la-asociacion-de-abogados-afada-de-argentina-en-colaboracion-con-el-proyecto-gran-simio-espana-presentan-habeas-corpus-para-liberar-al-chimpance-toti_

d. *Dog (Argentina, 2018)*

During July 2018, Judge Elisa Zilli from the Court of Guarantees No. 6 in Paraná, Argentina recognized a dog as a subject of rights in a criminal offense case.³²⁵ A minor was walking his dog when another dog came along, and the animals started to fight.³²⁶ A neighbor stabbed the minor's dog to death.³²⁷ It seems the court declared the dog a subject of rights when the court communicated the judgment without further argumentation.³²⁸ A local NGO association, *Amor Animal Paraná*, decided not to appeal the court's decision to disallow them from being complainants in the case in order to secure the declaration that the dog is a subject of rights.³²⁹

e. *Happy the Elephant (United States, 2018)*

Happy is a female Asian elephant born in the wild in 1971, who arrived at Bronx Zoo in 1977 after being relocated from Lion Country Safari, Inc.³³⁰ During the 1980s, the elephants that lived in the zoo were forced to perform tricks.³³¹ In 2005, Happy became the first elephant to pass the mirror test.³³² In 2006, "the zoo announced [that] it would end its captive elephant program once one or more elephants had died."³³³ Since 2006, Happy has lived alone in a 1.15-acre area.³³⁴

On October 2, 2018, the NhRP filed a *HCW* in the New York Supreme Court, Orleans County, requesting the court to recognize Happy's legal personhood and right to bodily liberty and order her transfer to a sanctuary.³³⁵ The Wildlife Conservation Society filed a Memorandum of Law in opposition to the order to show cause.³³⁶ On

³²⁵ *Un Fallo Judicial Declaró a los Animales 'Sujetos de Derecho' [A Court Ruling Declared the Animals 'Subjects of Law']*, PARALELO32 (July 20, 2018), <https://paralelo32.com.ar/un-fallo-judicial-declaro-a-los-animales-sujetos-de-derecho/>.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Happy an Asian elephant at Bronx Zoo*, ELEPHANT ENCYCLOPEDIA, https://www.elephant.se/database2.php?elephant_id=2446 (last visited Feb. 17, 2021).

³³¹ *First Elephant to Pass Mirror Self-recognition Test; Held Alone at the Bronx Zoo*, NONHUMAN RIGHTS PROJECT, <https://www.nonhumanrights.org/client-happy/> (last visited Nov. 26, 2019).

³³² *See generally* Charles Q. Choi, *Elephant Self-Awareness Mirrors Humans*, LIVE SCIENCE (Oct. 30, 2006), <https://www.livescience.com/4272-elephant-awareness-mirrors-humans.html>.

³³³ *First Elephant to Pass Mirror Self-recognition Test*, *supra* note 331.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

November 16, 2018, Judge Bannister issued an order to show cause, setting a hearing on December 14 to determine Happy's release. The NhRP stressed that this is the first time that a *habeas corpus* order has been issued to an elephant.³³⁷ On December 3, the zoo filed numerous documents opposing the *HCW*.³³⁸ December 14, 2018 was the first time that a US court heard arguments about elephants' legal personhood.³³⁹

Happy's case was sent to Bronx County.³⁴⁰ The Supreme Court of Bronx County scheduled a preliminary conference for August 15, 2019.³⁴¹ During this conference, the court determined that all motions would be argued before Justice Tuitt.³⁴² On September 23, 2019, the justice heard arguments for more than four hours, and scheduled a second hearing for October 21 regarding the pending motions and the merits of the *HCW*.³⁴³ Justice Tuitt granted the NhRP a temporary restraining order to prevent the zoo from taking Happy out of New York State before the hearing on October 21.³⁴⁴ On the day of the hearing, the arguments lasted four hours and focused on Happy's personhood.³⁴⁵ The judge scheduled another hearing for January 6, 2020, and ordered the zoo to maintain Happy's situation until the court decides on the NhRP's motion for preliminary injunction to keep Happy in the state until the case was decided.³⁴⁶ On January 6, Justice Tuitt heard the NhRP's arguments for more than three hours.³⁴⁷ On February 18, 2020, Justice Tuitt issued a decision denying the *HCW*, arguing that she was "regrettably" bound to the appellate courts' decisions on Tommy, Kiko, Leo and Hercules' cases.³⁴⁸ The NhRP appealed to the New York Supreme Court, Appellate Division, First Department, and after hearing the NhRP's arguments, the First Department denied Happy's *HCW*.³⁴⁹

Though the appeal was finally denied, the courts showed readiness to hear the substantive arguments related to Happy's personhood, and the lower court recognized that Happy is not a mere thing, but "an intelligent, autonomous being who should be treated with respect and

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ Reply Memorandum in Support of Supplemental Memorandum of Law Upon Transfer at 15, *Nonhuman Rights Project, Inc. v. Breheny*, 134 N.Y.S.3d 188 (2019) (No. 260441/2019).

³⁴⁹ *First Elephant to Pass Mirror Self-recognition Test*, *supra* note 331.

dignity, and who may be entitled to liberty.³⁵⁰ Between 2016 and 2018, there was only one successful case, i.e. Cecilia's, but judges have begun to think that elephants may be persons, and judges have shown a greater willingness to hear arguments and reconsider past practice.

V. ANDEAN BEARS IN COLOMBIA

a. *Chucho the Andean Bear (2017)*

Chucho is a 26-year-old Andean bear (*Tremarctos ornatus*), also known as a spectacled bear, living in Barranquilla Zoo in Colombia.³⁵¹ Andean bears are the only surviving species of bears native to South America, and the International Union for Conservation of Nature classifies them as vulnerable.³⁵² Andean bears survive mainly in Venezuela, Colombia, Ecuador, Peru, Bolivia, and Argentina.

Chucho and Clarita, his sister, were born in La Planada Natural Reserve, located in the municipality of Ricaurte, Nariño, Colombia.³⁵³ They lived there for four years, and were then transferred to Manzales' Río Blanco Reserve as part of a conservation program, although they did not reproduce because they were siblings.³⁵⁴ They lived in semi-captivity.³⁵⁵ The Manzales Water Company was in charge of managing the reserve and developing the conservation program for both bears.³⁵⁶ Clarita died from cancer on October 16, 2008.³⁵⁷ Chucho became very depressed.³⁵⁸

³⁵⁰ Reply Memorandum in Support of Supplemental Memorandum of Law Upon Transfer, *supra* note 348, at 16.

³⁵¹ Laura Andrés Tallardà, *¿Por Qué el Oso Chucho Está en el Centro del Debate por los Derechos de los Animales?*, LA VANGUARDIA (Aug. 14, 2019), <https://www.lavanguardia.com/natural/20190814/464042335609/oso-chucho-debate-derechos-animales-colombia.html>.

³⁵² See Ximena Vélez-Liendo & S. Shaenandhoa García-Rangel, THE IUCN RED LIST OF THREATENED SPECIES, <https://www.iucnredlist.org/species/22066/123792952> (last visited May 14, 2020).

³⁵³ Johana Rodríguez, *Ponencia aprobaría derecho a la libertad para el oso Chucho*, RCN RADIO (Jan. 17, 2020), <https://www.rcnradio.com/judicial/ponencia-aprobaria-derecho-la-libertad-para-el-oso-chucho>.

³⁵⁴ Milena Sarralde Duque, *Chucho, el Oso Que Abrió un Debate Sobre los Animales en Cautiverio*, EL TIEMPO (Aug. 3, 2019), <https://www.eltiempo.com/justicia/cortes/historia-del-oso-chucho-y-el-debate-sobre-derechos-de-los-animales-en-zoologicos-396846>.

³⁵⁵ *Animales no son Sujetos de Derechos: Corte en Caso de Oso Chucho*, EL TIEMPO (Jan. 23, 2020), <https://www.eltiempo.com/justicia/cortes/oso-chucho-corte-determino-que-los-animales-no-tienen-derechos-454718>.

³⁵⁶ Carlos Andrés Contreras López, *Derecho Animal en Colombia a partir de la Ley 1774 de 2016*, 2 REVISTA GENERAL DE DERECHO ANIMAL Y ESTUDIOS INTERDISCIPLINARIOS DE BIENESTAR ANIMAL 1, 28 (2018).

³⁵⁷ Sarralde, *supra* note 354.

³⁵⁸ *Id.*

The *Corporación Autónoma Regional de Caldas* (CORPOCALDAS), the environmental authority of that region, decided to transfer him to the zoo on June 14, 2017, after living in Río Blanco for 18 years.³⁵⁹

A local lawyer, Luis Domingo Gómez Maldonado, filed a *HCW* on June 16, 2017, and argued: (i) that Chucho had the right to return to his natural habitat, La Planada, a reserve protecting the Andean bear;³⁶⁰ (ii) that Section 3(a) of the Animal Protection Law 1774/2016 states that the eradication of captivity is one of the principles of animal protection in Colombia;³⁶¹ (iii) that environmental regulation in Colombia determines that humans must respect nature and all of its components, animals included;³⁶² and (iv) that Barranquilla is a coastal Caribbean city, scorching hot and extremely humid all year round, instead Nariño, Chucho's natural habitat, is a high-altitude, cold and rainy mountain range.³⁶³ The petitioner recognized that the Colombian legal system does not provide mechanisms to urgently seek the protection of animals in captivity, hence the *HCW*.³⁶⁴

The Civil Family Chamber of the Superior Court of the Judicial District of Manizales denied the petition on June 17, 2017, but the Supreme Court annulled the procedure due to procedural errors.³⁶⁵ The Superior Court of the Judicial District of Manizales conducted the procedures and decided the case again.³⁶⁶ The zoo argued that Chucho had always lived in captivity, depended on humans for food and water, and that unlike the zoo, Río Blanco lacked expert veterinary assistance.³⁶⁷

CORPOCALDAS presented similar arguments against the *HCW*, stressing that since Clarita's death, Chucho had become sedentary, passive, overweight, stressed, depressed, and had escaped several times from his enclosure, which evidenced a lack of safety and care for the bear.³⁶⁸ This situation was dangerous for Chucho and the nearby community.³⁶⁹

³⁵⁹ Tribunal Superior del Distrito Judicial de Manizales [T.S.D.J.Man.] [Superior Court of the Judicial District of Manizales], Sala Civ. Fam. julio 13, 2017, M.S: C. Cruz Valencia, Expediente 17001-22-13-000-2017-00468-00 (p. 132-33) (Colom.).

³⁶⁰ Gómez Hab. Corp. pg. 9, June 16, 2017.

³⁶¹ *Id.* at 3.

³⁶² *Id.* at 5-9.

³⁶³ *Id.* at 9-11.

³⁶⁴ *Id.* at 3.

³⁶⁵ Tribunal Superior del Distrito Judicial de Manizales [T.S.D.J.Man.] [Superior Court of the Judicial District of Manizales], Sala Civ. Fam. junio 17, 2017, M.S: C. Cruz Valencia, Expediente 17001-22-13-000-2017-00468-00 (p. 44), (Colom.).

³⁶⁶ Tribunal Superior del Distrito Judicial de Manizales [T.S.D.J.Man.] [Superior Court of the Judicial District of Manizales], *supra* note 359 at 130.

³⁶⁷ *Id.* at 133-34.

³⁶⁸ *Id.* at 135.

³⁶⁹ *Id.*

The Civil Family Chamber of the Superior Court of Manizales denied the petition on July 13, 2017.³⁷⁰ The decision was appealed by the plaintiff to the Civil and Agrarian Cassation Chamber of the Supreme Court of Justice.³⁷¹ The reporting judge, Villabona, overruled the judgment and granted the *HCW* on July 26, 2017.³⁷² He ordered the parties to transfer Chucho within thirty days to a place that better resembles his habitat, stating the Río Blanco Reserve should have priority.³⁷³

The zoo presented a protective action³⁷⁴ before the Labor Cassation Chamber of the Supreme Court of Justice. This court granted the action on August 16, 2017, and agreed with the plaintiff that the *HCW* violated fundamental rights, such as the right to due process and the right to defense.³⁷⁵ CORPOCALDAS argued that they had moved Chucho for his own sake, as he was fed dog food, lived alone, had no specialized veterinary care, and had escaped several times.³⁷⁶ CORPOCALDAS also argued that they had asked every Colombian environmental authority for a place for Chucho, and that only the zoo had proved to be appropriate.³⁷⁷

Luis Domingo Gómez Maldonado challenged this decision before the Criminal Cassation Chamber of the Supreme Court of Justice, which confirmed the decision on October 10, 2017.³⁷⁸ He argued the violation of his right to defense, on the basis of the court notifying the admission of the protective action on August 15, 2017, and ruling on August 16, 2017.³⁷⁹ He also claimed that the Labor Cassation Chamber did not recognize the Constitutional Court's opinion in prior jurisprudence against animals being left defenseless.³⁸⁰

³⁷⁰ *Id.* at 143.

³⁷¹ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Civ. julio 26, 2017, M.S: L. Tolosa Villabona, Expediente AHC4806-2017 (p. 4) (Colom.).

³⁷² *Id.* at 21.

³⁷³ *Id.*

³⁷⁴ This action is called *tutela* in Colombia: a constitutional action that seeks to protect people against the violation of their fundamental rights.

³⁷⁵ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Lab. agosto 16, 2017, M.P: F. Castillo Cadena, Expediente STL12651-2017 (No. 47924) (p. 127) (Colom.).

³⁷⁶ *Id.* at 117.

³⁷⁷ *Id.* at 118.

³⁷⁸ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Cas. Pen. octubre 10, 2017, M.P: F. Bolaños Palacios, Expediente STP16597-2017, (p. 31) (Colom.).

³⁷⁹ *Id.* at 11-12.

³⁸⁰ *Id.* at 12.

The Constitutional Court selected the case for revision.³⁸¹ This court has the faculty of revising protective action judgments according to Section 33 of Decree 2591/1991, which states that at least two judges can select the judgments that will be revised.³⁸² Judge Antonio José Lizarazo Ocampo insisted on the selection of the case for its novelty and the opportunity to expand the court's jurisprudence on animal rights on the basis of Section 51 of the Internal Regulation of the Constitutional Court.³⁸³ On January 26, 2018, the Selection Chamber bowed to this insistence and put Judge Diana Fajardo Rivera in charge of the revision.³⁸⁴ On August 8, 2019, the Constitutional Court held a hearing in which various experts were heard, such as Paula Casal, Carlos Contreras, Anne Peters, and Steven Wise.³⁸⁵ On January 22, 2020, the Constitutional Court rendered its verdict.³⁸⁶

In sum, two different actions were filed in this case.³⁸⁷ First, a *HCW* that was denied by the lower court and then granted by the higher court.³⁸⁸ Second, a protective action was filed against the court, which granted the *HCW* based on the violation of certain rights, and which was granted by the lower and higher courts, and was selected for revision

³⁸¹ The Colombian Constitutional Court is not the only court in Latin America that has selected an animal rights case for revision. On December 22, 2020, the Ecuadorian Constitutional Court selected a monkey *HCW* for revision. In 2019, a woman filed a *HCW* on behalf of a monkey named Estrellita (*Lagothrix lagotricha*). Estrellita was raised and lived with the woman's family for more than 18 years. The environmental authority confiscated Estrellita on September 11, 2019 and put her in quarantine at the local zoo. The lower court and the Court of Appeals denied the *HCW*. Even though Estrellita died on October 9, the case has continued and has been selected for revision by the Constitutional Court. *See* Corte Constitucional del Ecuador [C.C.E.] [Ecuadorian Constitutional Court], diciembre 22, 2020, J. R. Ávila & J. A. Grijalva, Caso 253-20-JH, (Ecu.).

³⁸² L. 2591, Noviembre 19, 1991, DIARIO OFICIAL [D.O.] pg. 6 (Colom.).

³⁸³ L. 5/1992, Corte Constitucional [Constitutional Court Agreement], octubre 21, 1992, DIARIO OFICIAL [D.O.] (Colom.), <https://www.ramajudicial.gov.co/web/corte-constitucional/portal/corporacion/corte/reglamento-interno>.

³⁸⁴ Corte Constitucional [C.C.] [Constitutional Court], febrero 8, 2018, Mónica Britto Vergara, T-6480577, (Colom.).

³⁸⁵ The author also participated in the hearing, by giving a presentation on legal personhood with Carlos Contreras. The public hearing can be watched online. *See* Corte Constitucional, Audiencia Pública "Oso Chucho", YOUTUBE (Aug. 8, 2019), https://www.youtube.com/watch?v=_X0BHUJWPwo.

³⁸⁶ Corte Constitucional [C.C.] [Constitutional Court], enero 23, 2020, M.P.: Luis Guillermo Guerrero Pérez, Expediente T-6.480.577, Sentencia SU-016/20, (No. 03, p. 2) (Colom.).

³⁸⁷ *See* Tribunal Superior del Distrito Judicial de Manizales [T.S.D.J.Man.] *supra* note 359; *see* Corte Suprema de Justicia [C.S.J.] [Supreme Court] *supra* note 375.

³⁸⁸ *See* Corte Suprema de Justicia [C.S.J.] [Supreme Court] *supra* note 371.

by the Constitutional Court.³⁸⁹ Therefore, this case has involved two of the highest courts in the country: the Supreme Court of Justice and the Constitutional Court. What follows is an account of the substantive aspects of this case, according to the proceedings followed in each Court.

- i. Superior Court of the Judicial District of Manizales, Civil Family Chamber, Judgment on the Habeas Corpus Petition (July 13, 2017):

The Superior Court recognized that animal protection is a constitutional duty according to the Constitutional Court's jurisprudence.³⁹⁰ In this sense, Colombian case law acknowledges that animals are part of the environment, have dignity, and are objects of care.³⁹¹ The court also stated that according to the Constitution, the *HCW* is a fundamental right and constitutional action.³⁹²

Additionally, the court accepted that simply stating that the *HCW* can only be filed by or on behalf of a human being is insufficient, considering Colombian case law and the social pressure regarding the protection of animals.³⁹³ This argument is commonly used by courts to deny *HCWs* on behalf of animals.³⁹⁴ However, this argument does not prevent people from filing remedies that seek to protect human rights with the purpose of protecting animal rights.³⁹⁵

Finally, the Superior Court concluded that the *HCW* is a fundamental right, and that animals are not recognized as subjects of rights in Colombia.³⁹⁶ Therefore, they cannot be protected by a right that they are not entitled to. The court added that the adequate action for these cases is the *Acción Popular*, which is similar to American class actions in the sense that it seeks to protect the rights of groups of people affected by a particular damage, such as environmental damages or

³⁸⁹ Corte Constitucional [C.C.] [Constitutional Court], Sala. Prime. Selec. Tute., enero 22, 2018, A. Rojas Ríos & A. Linares Cantillo, T-6480577, (Colom).

³⁹⁰ Tribunal Superior del Distrito Judicial de Manizales [T.S.D.J.Man.] [Superior Court of the Judicial District of Manizales], *supra* note 359, at 137.

³⁹¹ *Id.* at 138.

³⁹² *Id.* at 137.

³⁹³ *Id.* at 139.

³⁹⁴ *See generally* S.T.F., No. 50.343, Relator: Des. Djaci Falcão, *supra* note 5, at 813 (as the pioneer caged birds case in Brazil shows).

³⁹⁵ *See generally* Azevedo, *supra* note 13 (Though the caged birds case was dismissed, it did not stop other Brazilian attorneys from filing a lawsuit on behalf of Suíça).

³⁹⁶ Tribunal Superior del Distrito Judicial de Manizales [T.S.D.J.Man.] [Superior Court of the Judicial District of Manizales], *supra* note 359, at 142.

damages caused by defective products,³⁹⁷ and allows the court to issue interim measures in cases where there is an urgent matter at stake.³⁹⁸ The court also stated that this type of action is better suited to analyze Chucho's welfare.³⁹⁹

In sum, the Superior Court's ruling determined that only persons are entitled to the *HCW*, and adhered to the traditional approach that considers animals to be objects of rights, even though the legal system recognizes them as sentient.⁴⁰⁰ In other words, this judgment amounts to arguing that animals in Colombia are "very special things."⁴⁰¹

ii. Supreme Court of Justice, Civil Chamber, Judgment on the Habeas Corpus Petition (July 26, 2017):

The court granted the *HCW* on the basis of Chucho's sentience, granting him the status of a subject of rights that ought to be protected, particularly in view of the rate at which humans are destroying the environment and native territory of this species.⁴⁰² The judge also argued that treating animals as things, rather than as subjects of rights, had clearly produced disastrous consequences, and that, like children, animals do not have to bear duties to be subjects of rights.⁴⁰³ The judge emphasized Chucho's membership of an endangered and protected species most likely to stress that Chucho deserves some legal protection and that recognizing him as a right-bearer was not that far-fetched.⁴⁰⁴

iii. Supreme Court of Justice, Labor Chamber, Judgment on the Protective Action (August 16, 2017):

The zoo filed a protective action based on the violation of the right to due process, defense and the principles of legality and contradiction against the second instance judgment in the *habeas corpus* proceedings.⁴⁰⁵ The court claimed that a *HCW* was not even appropriate

³⁹⁷ Ángela María Páez-Murcia, Everaldo Lamprea-Montealegre & Catalina, Vallejo-Piedrahita, *Medio Ambiente y Acciones Populares en Colombia: un Estudio Empírico*, 134 *VNIVERSITAS* 209, 212 (2017).

³⁹⁸ Tribunal Superior del Distrito Judicial de Manizales [T.S.D.J.Man.] [Superior Court of the Judicial District of Manizales], *supra* note 359, at 142.

³⁹⁹ *Id.* at 143.

⁴⁰⁰ *Id.* at 138.

⁴⁰¹ Contreras, *supra* note 356, at 25.

⁴⁰² Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala Civ., *supra* note 371, at 11.

⁴⁰³ *Id.* at 10 -11.

⁴⁰⁴ *Id.* at 17-19.

⁴⁰⁵ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala Cas. Lab., *supra* note 375, at 117.

for all legal persons, like corporations, so even granting Chucho personhood did not suffice for a *HCW*.⁴⁰⁶ In Colombian law, animals are normally considered “sentient beings,” an intermediate category between persons and things.⁴⁰⁷

The court acknowledged the current trend to expand legal personhood to animals, but stated that this had not yet happened in Colombia.⁴⁰⁸ The court also argued that the *HCW* is based on the *pro homine* principle, according to Section 1 of Law 1095 of 1996.⁴⁰⁹ This principle states that judges must choose the interpretation that is more favorable to human dignity.⁴¹⁰ Therefore, the court stated that the *HCW* can only be used to protect humans.⁴¹¹ Even though granting a *HCW* to an animal does not affect human dignity or human rights in any way, the court chose to stick to the letter of the law.⁴¹²

Finally, the court concluded that the *HCW* is not the appropriate mechanism to seek the protection of animals.⁴¹³ This court argued that there are other mechanisms to protect animals such as the *Acción Popular*, or the preventive apprehension mechanism regulated in Section 8 of Law 1774 of 2016.⁴¹⁴ However, the latter is contemplated for domesticated animals rather than wild animals. The court also added that using a petition of liberty for an animal that will live in semi-captivity was an oxymoron.⁴¹⁵

In this judgment, Judge Clara Cecilia Dueñas Quevedo clarified her vote.⁴¹⁶ She shared the decision and main arguments, but stated that the court had affirmed that in every legal system only human persons are entitled to the *HCW* even though this had not been proven.⁴¹⁷ On the contrary, the petitioner mentioned the case of Sandra the orangutan and the river Atrato in Colombia, in which Sandra was recognized as a subject of rights by a superior court.⁴¹⁸

⁴⁰⁶ *Id.* at 125.

⁴⁰⁷ *Id.* at 124.

⁴⁰⁸ *Id.*

⁴⁰⁹ L. 1095/06, noviembre 2, 2006, DIARIO OFICIAL [D.O.] (Colom.), http://www.secretariasenado.gov.co/senado/basedoc/ley_1095_2006.html (last visited May 20, 2020).

⁴¹⁰ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala Cas. Lab., *supra* note 375, at 124.

⁴¹¹ *Id.* at 125.

⁴¹² *Id.*

⁴¹³ *Id.* at 127-28.

⁴¹⁴ *Id.* at 126.

⁴¹⁵ *Id.* at 125.

⁴¹⁶ *Id.* at 171.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

iv. Supreme Court, Criminal Chamber, Judgment on the Protective Action (October 10, 2017):

This court confirmed the decision, arguing that the *HCW* can only be presented by a human person because it is based on the *pro homine* principle.⁴¹⁹ The court added that the fact that animal protection is acknowledged as a constitutional duty does not mean that animals have a fundamental right to welfare, but rather that humans have a duty to protect them.⁴²⁰ The court referred to Chucho's right to welfare, but the whole case is based on his right to bodily liberty.⁴²¹ Talking about welfare is confusing because welfare seeks to avoid the unnecessary suffering of the animals used in different activities, but does not necessarily recognize animals as legal persons. In fact, the zoo argued throughout the procedure that Chucho's welfare was being taken care of, but did not recognize him as a legal person nor as a subject of rights with the right to bodily liberty.⁴²²

v. Constitutional Court, Revision Proceedings, Judgment on the Protective Action (January 22, 2020):

On January 23, 2020, the Constitutional Court rendered its verdict.⁴²³ The court decided to confirm the protective action judgment; thus, it denied the *HCW*.⁴²⁴ According to the court's statement, the judges stated that the *HCW* is not the appropriate mechanism to resolve an animal welfare dispute because the writ seeks to protect persons against the illegal deprivation of their right to freedom, and that there are other mechanisms to protect animals, such as popular action.⁴²⁵ Hence, the judges have taken the term "person" to be a synonym for "human."⁴²⁶ The judges have also stated that animals are considered sentient beings and therefore, do not qualify for rights.⁴²⁷ The court designated Judge Luis Guerrero to write the judgment that denied the *HCW* and ordered Chucho to stay in the zoo.⁴²⁸ The judgment was finally published on March 11, 2021.⁴²⁹

⁴¹⁹ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala Cas. Pen., *supra* note 378, at 10.

⁴²⁰ *Id.* at 24.

⁴²¹ *Id.*

⁴²² See Corte Constitucional, *supra* note 384.

⁴²³ Corte Constitucional, *supra* note 386.

⁴²⁴ *Id.* at 2.

⁴²⁵ *Id.* at 2-3.

⁴²⁶ *Id.* at 6.

⁴²⁷ *Id.* at 2.

⁴²⁸ *Id.*

⁴²⁹ Corte Constitucional [C.C.] [Constitutional Court], enero 23, 2020,

However, Judge Fajardo proposed a ruling that would recognize Chucho as a subject of rights, including the right to freedom, and grant him the *HCW*.⁴³⁰ She also proposed the appointment of a committee to decide whether Chucho should live in the zoo or in a reserve.⁴³¹ If the committee chose the zoo, Chucho's enclosure should be adapted to ensure his right to life.⁴³² This proposal was supported by only two of the nine judges: Judge Diana Fajardo and Judge Alberto Rojas.⁴³³ By proposing this committee, Judge Fajardo has communicated her dissenting vote.⁴³⁴ She has stated that animals have intrinsic interests that are relevant to the law and must be protected as rights.⁴³⁵ She also argued that the *HCW* is an adequate mechanism to solve the dispute, because there is no other mechanism for these types of cases in Colombia.⁴³⁶ Judge Fajardo's dissent concluded that the Constitutional Court has remained locked in the formalist labyrinth of procedural law without being able to build effective protective mechanisms for animals.⁴³⁷ Judge Rojas's vote concluded that the court interpreted the concept of person restrictively because it considered "person" and "human" to be synonyms.⁴³⁸ He also stated that personhood is not a biological concept, but rather a legal fiction used to grant rights and duties to different entities.⁴³⁹ In sum, he claimed that a sentient animal can be considered a legal person.⁴⁴⁰

Chucho's legal ordeal has been a historic case, not only because a higher court granted a *HCW* to an Andean bear, but also because this debate has elicited contradictory opinions on legal personhood and animal rights from different chambers of the Supreme Court of Justice while also involving the Constitutional Court. Thus, such cases are dismissed at the lower court level, but Chucho's case reached the highest courts in the country.

Even though the Constitutional Court decided to deny the *HCW*, its active and serious role has been unique at a global level.⁴⁴¹ The court had no obligation to review the case, especially considering that it would have to review the judgment of one of the other highest courts

M.P: Luis Guillermo Guerrero Pérez, Expediente T-6.480.577, Sentencia SU-016/20 (Colom.), <https://www.corteconstitucional.gov.co/relatoria/2020/SU016-20.htm>.

⁴³⁰ Corte Constitucional, *supra* note 386, at 3.

⁴³¹ *Id.* at 5.

⁴³² *Id.*

⁴³³ *Id.* at 3-7.

⁴³⁴ *Id.* at 3.

⁴³⁵ *Id.*

⁴³⁶ *Id.* at 4.

⁴³⁷ *Id.* at 6.

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *See id.*

⁴⁴¹ Macarena Montes, *Legal Personhood: The Case of Chucho the Andean Bear*, 11 J. ANIMAL ETHICS. 36, 44 (2021).

in the country, i.e. the Supreme Court of Justice.⁴⁴² However, the court was more interested in reviewing such a novel case and expanding its jurisprudence on animal rights.⁴⁴³ Additionally, Judge Fajardo asked for reports from experts in animal law as soon as she received the case in 2018.⁴⁴⁴ She then held a hearing and invited many experts, not only from Colombia, but also from other countries, to give their opinions on the matter.⁴⁴⁵ She not only accepted presentations in person during the hearing, but was flexible enough to accept videos from the experts who lived abroad.⁴⁴⁶ It is important to note that the Constitutional Court is not required to hold a hearing during the review of a protective action, but nonetheless, Judge Fajardo considered expert interventions on animal rights and ethics before deciding the case.⁴⁴⁷

b. Remedios the Andean Bear (2019)

Luis Domingo Gómez Maldonado filed a *HCW* on behalf of Remedios, the Andean bear, with the Superior Court of Medellín.⁴⁴⁸ Remedios was born in the wild in Antioquia, but then got lost and separated from her family.⁴⁴⁹ A family of farmers rescued her when she was only two months old.⁴⁵⁰ On December 23, 2017, a group of biologists and veterinarians from the Metropolitan Area of Valle de Aburrá, experts from CES University, and public officials from *Corporación Autónoma Regional de Antioquia* (Corantioquia), the environmental authority of the region, removed her from the farm.⁴⁵¹ The government agency decided to transfer her to Santa Fe Zoo in Medellín because she was suffering from anemia due to an inappropriate diet.⁴⁵² The objective was to correct her eating habits and rehabilitate her natural behavior in order to reintroduce her into her natural habitat. However, almost two years later, she was still in captivity.⁴⁵³

⁴⁴² L. 2591, *supra* note 382.

⁴⁴³ See Corte Constitucional [C.C.] [Constitutional Court], *supra* note 389.

⁴⁴⁴ Corte Constitucional [C.C.] [Constitutional Court], octubre 4, 2018, M.S. Diana Fajardo Rivera, T-6480577, (Colom).

⁴⁴⁵ Corte Constitucional, *supra* note 385.

⁴⁴⁶ *Id.*

⁴⁴⁷ See *Módulo de Preguntas Frecuentes Realizadas por la Ciudadanía a la Corte Constitucional Historia y Aspectos Generales*, CORTE CONSTITUCIONAL, <https://www.corteconstitucional.gov.co/preguntasfrecuentes.php> (last visited Feb. 26, 2021).

⁴⁴⁸ *Futuro del Oso Remedios, en Manos de la Ley*, SEMANA SOSTENIBLE (Aug. 13, 2019), <https://sostenibilidad.semana.com/medio-ambiente/articulo/remedios-el-oso-de-anteojos-que-busca-su-libertad-por-habeas-corpous/45358>.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ *Id.*

The petitioner argued that Remedios's reintroduction was urgent because the longer she stayed at the zoo, the harder it would be for her to return to her natural habitat. The petitioner also argued that Remedios has a right to live in her natural habitat.⁴⁵⁴ He added that the Animal Protection Law in Colombia advocates for the eradication of captivity.⁴⁵⁵ He explained that the government agency had ignored the expert recommendations for her reintroduction and warned that the zoo was arranging to donate Remedios to a zoo in the United States.⁴⁵⁶ The objective of the *HCW* is to free Remedios as soon as possible.⁴⁵⁷

During the proceedings, the Superior Court of Medellín requested the zoo and government agencies to inform it about Remedios's captivity.⁴⁵⁸ The court finally denied the *HCW* because it decided that the zoo was not inflicting any suffering on Remedios.⁴⁵⁹ On the contrary, it considered the zoo to be taking care of her.⁴⁶⁰ The court also argued that the writ is a remedy that can only be used to protect human beings who are illegally incarcerated, not animals, even if animals are considered to be sentient.⁴⁶¹ The petitioner appealed to the Supreme Court of Justice.⁴⁶² The Labor Cassation Chamber denied the *HCW*, arguing that it can only be used to protect persons, and that *HCW* derives from human dignity, which animals lack.⁴⁶³

In sum, the Labor Cassation Chamber of the Supreme Court of Justice maintains the traditional approach that animals are not persons, which it used to grant the protective action against Chucho's *HCW*.⁴⁶⁴

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.* (referring to the provisions of Law 1774 of January 2016 of the Animal Protection Law).

⁴⁵⁶ *Id.*

⁴⁵⁷ *See generally id.*

⁴⁵⁸ *Piden Liberación Inmediata de "Remedios", una Osita de Anteojos*, EL ESPECTADOR (Aug. 13, 2019), <https://www.elespectador.com/noticias/judicial/piden-liberacion-inmediata-de-remedios-una-osita-de-anteojos/>.

⁴⁵⁹ *Remedios, el Oso de Anteojos, Continuará en el Zoológico de Medellín*, SEMANA SOSTENIBLE (Aug. 15, 2019), <https://sostenibilidad.semana.com/medio-ambiente/articulo/remedios-el-oso-de-anteojos-continuara-en-el-zoologico-de-medellin/45387>.

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Corte Suprema Reitera que Habeas Corpus es Para Humanos, No para Animales*, EL ESPECTADOR (Aug. 23, 2019, 3:29 PM), <https://www.elespectador.com/noticias/judicial/corte-suprema-rechaza-pedido-de-liberacion-del-oso-remedios-articulo-877505>.

⁴⁶³ *Id.*

⁴⁶⁴ *See* Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala Cas. Lab., *supra* note 375.

VI. ANIMALS IN SOUTH ASIA

a. Animals in Uttarakhand (India, 2018)

On July 4, 2018, the Uttarakhand High Court recognized animals as legal persons.⁴⁶⁵ Justices Rajiv Sharma and Lokpal Singh recognized the entire animal kingdom as legal persons, with rights and duties, and gave guidelines for preventing cruelty to animals.⁴⁶⁶ The Court also declared Uttarakhand's residents to be persons *in loco parentis*, enabling residents to act as guardians of the animals.⁴⁶⁷ According to the Telegraph, animals would be considered juridical persons.⁴⁶⁸ The Court also argued that Article 21 of the Indian Constitution protects the right to life, which includes other forms of life, such as the animal kingdom.⁴⁶⁹ Scholars have considered this interpretation to be revolutionary because it shifts the understanding of Article 21 from anthropocentrism to ecocentrism.⁴⁷⁰

This case started as an animal welfare petition concerning the health of transport animals used on the route from Banbasa Uttarakhand to Nepal.⁴⁷¹ The petitioner requested the court to order the vaccination and medical checkup of the horses before entering Indian territory.⁴⁷² The court ordered the State to ensure the medical examination of all animals on their way in or out of India and from or to Nepal.⁴⁷³ The court also banned the use of spike sticks and harnesses that can harm animals.⁴⁷⁴

This ruling caught the media's attention because it declared all animals to be legal persons.⁴⁷⁵ However, it seems like more of a symbolic

⁴⁶⁵ Jayanta Boruah, *Uttarakhand High Court's Decision: "Entire Animal Kingdom as Legal Entity, With Rights, Duties & Liabilities of a Living Person,"* 32 LEX TERRA 22, 22 (2018), <http://www.nluassam.ac.in/docs/lex%20terra/Lex%20Terra%20Issue%2032.pdf>.

⁴⁶⁶ *Id.* at 22-23.

⁴⁶⁷ *Id.* at 23.

⁴⁶⁸ See Saptarshi Ray, *Animals Accorded Same Rights as Humans in Indian State*, TELEGRAPH (July 5, 2018, 10:00 AM), <https://www.telegraph.co.uk/news/2018/07/05/animals-accorded-rights-humans-indian-national-park/>.

⁴⁶⁹ Boruah, *supra* note 465.

⁴⁷⁰ *Id.*

⁴⁷¹ See generally *Order of the Uttarakhand High Court Regarding Protection and Welfare of Animals*, INDIA ENVTL. PORTAL (Apr. 7, 2018), <http://www.indiaenvironmentportal.org.in/content/457750/order-of-the-uttarakhand-high-court-regarding-protection-and-welfare-of-animals-04072018/>.

⁴⁷² *Id.*

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ See *Uttarakhand HC Declares Animals to be 'Legal Persons'*, HINDU (July 5, 2018), <https://www.thehindu.com/news/national/uttarakhand-hc-declares->

declaration than an actual recognition of animal rights because the court was ordering the state to implement and comply with animal welfare legislation.⁴⁷⁶ Additionally, the court did not mention what rights or duties animals would be entitled to or how animal legal personhood would be implemented, nor has this been regulated by the State.⁴⁷⁷ Furthermore, it is curious that the court stated that animals would also bear duties when this is not a necessary condition for legal personhood.⁴⁷⁸

b. Animals in Haryana (India, 2019)

The High Court of Punjab and Haryana recognized the entire animal kingdom as legal entities having a distinct *persona* with rights, duties, and liabilities in the State of Haryana on May 31, 2019.⁴⁷⁹ This case was triggered by an incident involving twenty-nine cows transported in deplorable conditions for more than six hundred kilometers from Uttar Pradesh to Haryana.⁴⁸⁰ Following the Uttarakhand ruling, the court declared Haryana's citizens to be persons *in loco parentis* enabling them to act as guardians for animals.⁴⁸¹

Justice Rajiv Sharma, one of the judges who participated in the Uttarakhand ruling, ruled that animals should be healthy, comfortable, well-nourished, safe, able to express innate behavior and free from pain, fear, and distress—thus referring to the five freedoms, which are basic standards of animal welfare.⁴⁸² The judge also added that animals are entitled to justice, and that humans cannot treat them as objects,⁴⁸³ such as animals used to pull heavy carts, stating that people must respect the maximum load.⁴⁸⁴

Like the Uttarakhand judgment, this ruling is also a symbolic declaration, because it attempted to improve animal welfare in India, rather than recognizing animals as legal persons entitled to basic rights such as bodily liberty.

animals-to-be-legal-persons/article24335973.ece; Neeraj Santoshi, *Uttarakhand HC Declares Animal Kingdom a Legal Entity With Rights of a 'Living Person'*, HINDUSTAN TIMES (July 5, 2018), <https://www.hindustantimes.com/india-news/animal-kingdom-isn-t-property-has-rights-of-a-living-person-uttarakhand-hc/story-xKH5maDn53kaou4blnaxeP.html>.

⁴⁷⁶ See generally *Order of the Uttarakhand High Court Regarding Protection and Welfare of Animals*, *supra* note 471.

⁴⁷⁷ See generally *id.*

⁴⁷⁸ SALMOND & FITZGERALD, *supra* note 149.

⁴⁷⁹ *Karnail Singh and Others v. State of Haryana*, AIR 2019 (P&H) 1, 104 (India).

⁴⁸⁰ *Id.* at 1-5.

⁴⁸¹ *Id.*

⁴⁸² *Id.* at 30.

⁴⁸³ *Id.* at 97.

⁴⁸⁴ *Id.* at 13.

c. Laxmi the Asian Elephant (India, 2020)

At the beginning of January 2020, the Supreme Court dismissed the first *HCW* filed on behalf of an elephant in India.⁴⁸⁵ Laxmi had appeared in the news some months before, because the Delhi Police had arrested a mahout called Saddam for allegedly stealing and hiding her.⁴⁸⁶ The police found Laxmi and took her to a rehabilitation center.⁴⁸⁷ Therefore, Saddam filed a *HCW* asking the court to release Laxmi from her illegal detention at the rehabilitation center.⁴⁸⁸ His attorney, Wills Mathews, argued that since animals have a right to life, as the Supreme Court had ruled in 2014,⁴⁸⁹ a *HCW* could be filed by a mahout to locate elephant Laxmi.⁴⁹⁰ Chief Justice Bobde asked if Laxmi is a citizen of India and how a *HCW* could apply to animals.⁴⁹¹ The Court also claimed that granting the *HCW* would allow villagers to present the writ on behalf of their cattle.⁴⁹² Finally, the Court asked the attorney if he had a document to show the legal right of possession of Laxmi.⁴⁹³ In sum, this case seems to be more of a dispute for Laxmi's custody than a trial for the recognition of her legal personhood and basic rights.

d. Animals in Islamabad's Marghazar Zoo (Pakistan, 2020)

On April 25, 2020, the Higher Court of Islamabad decided a case involving animals living in deplorable conditions at Marghazar Zoo.⁴⁹⁴ Justice Minallah referred to animals in zoos as inmates⁴⁹⁵ and

⁴⁸⁵ Dhananjay Mahapatra, *Is Elephant a Citizen, Asks CJI, Hearing Habeas Corpus Plea*, TIMES OF INDIA (Jan. 10, 2020, 09:25 IST), <https://timesofindia.indiatimes.com/city/delhi/tusker-cant-be-rescued-via-habeas-corpus-sc/articleshow/73179887.cms>.

⁴⁸⁶ Ashish Tripathi, *Mahout's Elephant Custody Bid Via Habeas Corpus Failed*, DECCAN HERALD (Jan. 9, 2020, 23:17 IST), <https://www.deccanherald.com/national/north-and-central/mahouts-elephant-custody-bid-via-habeas-corpus-failed-793006.html>.

⁴⁸⁷ *Id.*

⁴⁸⁸ Press Trust of India, *Lakshmi's Mahout Fails to Get Custody as Apex Court Refuses to Entertain Plea*, HINDU (Jan. 10, 2020, 02:04 IST), <https://www.thehindu.com/news/cities/Delhi/lakshmi-mahout-fails-to-get-custody-as-apex-court-refuses-to-entertain-plea/article30528476.ece>.

⁴⁸⁹ Animal Welfare Board of India v. A. Nagaraja and Ors, (2014), 5 SCJ 1, 37 (India).

⁴⁹⁰ Mahapatra, *supra* note 485.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ Tripathi, *supra* note 486.

⁴⁹⁴ See Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad, etc., (2020) W.P. No. 1155/2019 PLD (ISL) 1, 4 (Pak.).

⁴⁹⁵ *Id.* at 12.

claimed that animals are not mere property,⁴⁹⁶ but subjects of rights: “Do the animals have legal rights? The answer to this question, without any hesitation, is in the affirmative.”⁴⁹⁷

Recognizing that zoos are not appropriate places for elephants and that zoos around the world are phasing them out,⁴⁹⁸ Judge Minallah ordered Kaavan, an Asian elephant, to be transferred to a sanctuary.⁴⁹⁹ Kaavan had spent more than thirty years chained in a small enclosure at the zoo, with serious health issues and an inadequate diet.⁵⁰⁰ He had been kept in isolation for more than eight years since his companion, Saheli, died in 2012, and suffered severe stereotypical behavior and neurological problems due to his captivity.⁵⁰¹ Free the Wild, an organization whose mission is to transfer animals in captivity into sanctuaries or better equipped zoos,⁵⁰² filed the legal action on Kaavan’s behalf and transferred him to the Cambodia Wildlife Sanctuary.⁵⁰³

The court also decided to relocate the rest of the animals kept at the zoo to sanctuaries.⁵⁰⁴ The court specifically mentioned two brown bears that had been kept in a small concrete enclosure with no shade, whose health and welfare had been severely neglected.⁵⁰⁵ Additionally, the court referred to a marsh crocodile that was ill and kept in a small enclosure where he could barely move.⁵⁰⁶ This is the first examined case where a reptile has been considered a subject of legal rights and where an order has been issued to relocate a reptile to a sanctuary.⁵⁰⁷ Finally, the judge also mentioned other animals that were suffering at the zoo, such as lions, birds, wolves, and ostriches.⁵⁰⁸ The judge ordered that the board constituted under the Wildlife Ordinance 1979 take over management of the zoo until all the animals had been relocated.⁵⁰⁹ The court explicitly prohibited the board from keeping any new animals in the zoo until

⁴⁹⁶ *Id.* at 57.

⁴⁹⁷ *Id.* at 59.

⁴⁹⁸ *Id.* at 12.

⁴⁹⁹ *Id.* at 62.

⁵⁰⁰ *See id.* at 10-11.

⁵⁰¹ *Id.* at 11.

⁵⁰² *About Us, FREE THE WILD*, <https://www.freethewild.org/about> (last visited Feb. 27, 2021).

⁵⁰³ *Islamabad High Court Recognized the Rights of Nonhuman Animals*, GLOBENEWSWIRE (May 21, 2020, 19:59 ET), <https://www.globenewswire.com/news-release/2020/05/21/2037371/0/en/Islamabad-High-Court-Recognizes-the-Rights-of-Nonhuman-Animals.html>.

⁵⁰⁴ *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad*, *supra* note 494, at 62.

⁵⁰⁵ *Id.* at 14.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.* at 14, 15, 59, 62, & 63.

⁵⁰⁸ *Id.* at 15-16.

⁵⁰⁹ *Id.* at 62.

an international agency specializing in zoological gardens had certified that the zoo can ensure the behavioral, social, and physiological needs of the animals.⁵¹⁰

Finally, the court ordered the board to inspect other zoos in Islamabad,⁵¹¹ and recommended that the federal government include teachings on the importance of caring for animals, their welfare, and wellbeing in the Islamic studies curriculum⁵¹² and recommended the media to educate and inform the general public on the treatment of animals.⁵¹³

CONCLUSION

a. Case Frequency

As this historical account shows, legal personhood for animals has come a long way in recent decades. Initially, there was one case a year at the most, usually regarding a chimpanzee. Now we see several a year, regarding different species. Since 2013 there have been twenty-one cases. The list of animals now includes thirty-three mammals, including one polar bear, one orangutan, one crested black macaque, two dogs, two Andean bears, five elephants, five orcas, and sixteen chimps, as well as, the animals of India, and the animals in Islamabad's Marghazar Zoo, including a crocodile and countless birds.

As the frequency of cases has increased, the attitude of judges has also begun to change. The opinion that these lawsuits are ridiculous and frivolous, as stated in Minnie and Naruto's cases, has been replaced by long deliberations at higher courts, as in the cases of Sandra, Chucho, Uttarakhand, Haryana, and Marghazar Zoo. Moreover, courts have started to recognize that they can no longer simply dismiss a *HCW* because the animal is not human, considering social pressure and the evolution of case law on animal protection, as indicated by Chucho's case.

b. Species Membership

Reflecting on the development of the twenty-seven cases discussed here, only 25.9 percent of these cases were dismissed strictly because the animal was not human, while 51.8 percent of the cases analyzed legal personhood or directly considered the animal to be a legal person or a subject of rights, and 14.8 percent were dismissed on procedural grounds; leaving another 7.4 percent that do not fit into any

⁵¹⁰ *Id.* at 63.

⁵¹¹ *Id.*

⁵¹² *Id.* at 64.

⁵¹³ *Id.*

of these categories. Surprisingly, dismissal strictly based on membership of the human species did not emerge as a major argument.

Additionally, the success of such cases does not depend on the animals' species or genetic closeness to humans or cognitive abilities, but instead on other factors such as strategy, the technical aspects of a *HCW*, and the judge's empathy towards animals, willingness to hear a novel case, and general philosophical outlook on law. If such cases depended strictly on cognitive abilities or genetic closeness, then chimps would be the most successful species in courts, but in fact only one chimp case has been successful. The other *habeas corpus* cases that were granted by a court, but later reversed, involve an orangutan—the great ape that is genetically most distant from humans—and an Andean bear. Beyond *habeas corpus* cases, there have been two successful dog cases (perhaps because everybody knows what dogs are like), two cases in India where all animals were recognized as legal persons to promote and guarantee animal welfare, and a case in Islamabad where all animals mistreated in the zoo were recognized as subjects of rights and are currently waiting to be relocated to sanctuaries. Furthermore, both dog cases might suggest that this species could be a candidate in legal personhood lawsuits, considering their close relationship to humans,⁵¹⁴ which could generate more empathy in judges who share their lives with dogs.

c. Political Strategy

In some of the examined cases—both *HCWs* and other types of lawsuits—judges have argued that a petition to recognize animals as legal persons should be made to Congress and not the judiciary, as occurred in Kiko and Naruto's cases.

As mentioned in Tillikum's case, the objective of these lawsuits is to make things better for animals, not worse. However, there is a dilemma when deciding whether to fight for animal personhood in court. On the one hand, when a certain case has a low chance of success, there is a risk of creating a negative precedent, which can harm the animal plaintiff, as well as other animals in similar conditions. This is especially problematic in common law countries. On the other hand, a case with a high chance of success could lead to the animal in question being killed, as in Suiça's case. The political struggle for a bill on animal personhood does not face this dilemma, because a bill would not target an individual animal, but instead one or more species.

⁵¹⁴ See *The Truth About Dog People: New Survey and Infographic Tell All*, ROVER, <https://www.rover.com/blog/the-truth-about-dog-people-infographic/> (last visited May 26, 2020); *Nationwide Survey Reveals Dogs Are More Than "Man's Best Friend"*, SPOT ON (June 4, 2019), <https://spotonfence.com/blogs/events-updates/spoton-survey-reveals-dogs-are-part-of-family>.

However, the fact that several animals have died during related lawsuits—such as Suiça, Monti, Beulah, and Karen—or a couple of years after the case ended—such as Arturo, Toto, Tillikum, and Kasatk—shows that these cases are truly urgent. All these animals suffered greatly from physical and psychological illness due to captivity and isolation. Therefore, in most cases, there is no time to start a political process in Congress. Political strategies for animal personhood might be a good option in the long run, but they may not be enough to help animals that are currently suffering the consequences of captivity.

Furthermore, seeking a bill on animal personhood is not only a slow endeavor, but a difficult one, due to all the lobbies that would oppose it. Hence, animal rights advocates are forced to seek help from courts, and mainly do so through *HCWs*. Some might argue that all the judicial defeats prove that this option is even harder than the political endeavor. However, judges have started to accept the *HCW* as an adequate legal action, because there are no other available mechanisms for requesting the animal's freedom, and judges are obliged to solve the case, as demonstrated by Cecilia's case, as well as by Judge Fajardo's dissent in Chucho's case.

d. Legal Strategies

Animal rights advocates must take into account that some courts mistakenly consider the terms “human” and “person” to be synonyms, as Judge Rojas's dissent in Chucho's case highlighted. Additionally, some courts confuse these legal attempts to obtain the recognition of the animal in question as a legal person with animal welfare disputes, as Chucho's case also shows. Moreover, some courts seem to fear the effects that they believe their judgment might cause in other activities that use animals, rather than focusing on the specific animal plaintiff. For example, the judges in Laxmi's case stated that granting the *HCW* would allow villagers to present the writ on behalf of their cattle. Therefore this “judicial fear” affects the animal plaintiff's chances of being recognized as a legal person with certain basic rights.⁵¹⁵

Even if it were true that the *HCW* presents this peculiar difficulty, it is not the only mechanism to argue for an animal's legal personhood in court. Naruto's case shows that a similar lawsuit could lead to the recognition of personhood in a limited area of the law, such as copyright ownership. Both dog cruelty cases show that criminal court judges are inclined to recognize animal legal personhood on their own motion, to stress how much the animal suffered and the seriousness of the offence. Similarly, the Uttarakhand, Haryana, and Marghazar Zoo cases

⁵¹⁵ See Montes, *supra* note 441.

show that breaching animal welfare regulations and keeping animals in deplorable conditions has also led judges to recognize animals as legal persons, or as subjects of rights. In this sense, having different strategies is positive, as there is uncertainty about which approach has more chance of succeeding in a particular country considering its legal system, judicial structure, history and development of animal protection, among other circumstances. Nonetheless, advocates must bear in mind that animals in zoos and labs are physically and psychologically fragile, so any administrative procedure or other type of lawsuit that might take years, as suggested by Chucho's case, could take too long, and the animal could die in the meantime.

There is always a risk of creating a negative precedent when deciding to litigate, particularly in animal rights and legal personhood cases that are generally novel issues for courts, even though these cases are becoming more common. The point of contention is how animal advocates should act in view of certain cases with a very low probability of success. On the one hand, as Steve Wise noted in Tilikum's case, presenting such a case was likely to generate negative precedents, and thus make any eventual success less likely.⁵¹⁶ On the other hand, going ahead despite the low probability of success a case might have, according to some, has had several beneficial consequences. For example:

- 1) Several animals still relocated to sanctuaries despite the *habeas corpus* failing, such as Lili, Debby Megh, Jimmy, Hercules, and Leo. Sandra also moved to a sanctuary even though a higher court reversed Judge Liberatori's judgment. Hence, even failed cases—legally speaking—have served to pressure governments, zoos, and labs to relocate the animals. If the purpose of these lawsuits is to make things better for animals, then these cases may be rightfully considered as victories.
- 2) Even fragments of judgments that were inconsequential or unsuccessful can be exported to other cases with a positive effect. For example, *obiter dictum* declarations in judgments can still influence other national or international judgments. In fact, the Federal Criminal Cassation Court's judgment in Sandra's case inspired the judge in Poli's case in Argentina, as well as the judge in the Marghazar Zoo case in Pakistan. Furthermore, overturned rulings are still quoted as exemplary cases around the world,

⁵¹⁶ Wise, *supra* note 111.

like when the Marghazar Zoo judgment mentioned Judge Liberatori's decision that recognized Sandra as a nonhuman person with basic rights. The Marghazar Zoo judgment even mentions cases that have not yet ended as examples of jurisprudence on animal rights, such as Happy's case.

- 3) Partly as a result of this phenomenon, animal legal personhood has become increasingly supported by judges, well-prepared attorneys, renowned academics and scientists from around the world, showing that these cases are neither ridiculous nor frivolous, which normalizes the topic among the general public.
- 4) Impact on the media, and the general public's growing familiarity with the possibility of animal personhood, as well as the general public's emotional involvement with specific individuals like Sandra, Tillikum, and Chucho, mobilizes courts and governments to act.

In sum, this account of case law on animal legal personhood allows us to reach several conclusions regarding different aspects of the twenty-seven cases discussed here. First, attempts to accord rights to animals or achieve the recognition of legal personhood have greatly increased in number, in the variety of species and countries involved, and in their ability to reach higher courts. Second, given the fame obtained by the successful chimpanzee *HCW*, one would have expected species membership and genetic closeness to humans to play a crucial role. However, neither of these has emerged as a determining factor in the rulings. In practice, the legal philosophy of those involved and the severity of the animal suffering have played more significant roles than proximity to humans. Third, this analysis reveals the horns of three dilemmas. The first concerns the pros and cons of employing legal or political means, the second concerns the relative advantages of *HCW* versus other legal strategies, and the third concerns whether legal practitioners should attempt certain cases with a very low probability of success.