STATE OF NEW YORK
SUPREME COURT COUNTY OF FULTON

In the Matter of a Proceeding under Article 70 of the CPLR for a Writ of Habeas Corpus, THE NONHUMAN RIGHTS PROJECT, INC., on behalf of TOMMY, Petitioners, v. PATRICK C. LAVERY, individually and as an officer of Circle L Trailer Sales, Inc., DIANE LAVERY, and CIRCLE L TRAILER SALES, INC., Respondents.	**VERIFIED PETITION** Index No.:

PETITIONERS, by their attorneys ELIZABETH STEIN, ESQ. and STEVEN M. WISE, ESQ. (subject to *pro hoc vice* admission) allege as follows:

PRELIMINARY STATEMENT

1. This petition is for a common law writ of habeas corpus pursuant to CPLR Article 70. It is an attempt to extend existing New York common law for the purpose of establishing the legal personhood of Petitioner, a chimpanzee known as Tommy, and granting him immediate release from illegal detention. Common law courts, whose decisions are a part of New York law, have issued writs of habeas corpus for slaves who were not legal persons at the time so that the issue of personhood and the legality of confinement could be resolved. New York statutory and common law do not limit legal personhood to homo sapiens and have already conferred legal personhood status on non-human domestic animals who are the beneficiaries of trusts. Courts also

have routinely extended rights to non-human entities such as corporations. The affidavits submitted in support of this Petition establish that chimpanzees possess such complex cognitive abilities as autonomy, self-determination, self-consciousness, awareness of the past, anticipation of the future and the ability to make choices; display complex emotions such as empathy; and construct diverse cultures. The possession of these characteristics is sufficient to establish common law personhood and the consequential fundamental right to bodily liberty. The accompanying affidavits and memorandum of law establish that extending legal personhood to Petitioner is strongly supported by law, science and history.

2. New York law permits any person unlawfully detained or any person acting on his behalf to seek a writ of habeas corpus and require the detainees to demonstrate the basis for the detention and denial of liberty.

3. This Petition asks this Court to issue a writ recognizing that Tommy is not a legal thing to be possessed by Respondents, but rather is a cognitively complex autonomous legal person with the fundamental legal right not to be imprisoned.

4. Within the past eight months, Reba, Charlie and Merlin, three of the seven chimpanzees believed by Petitioner The Nonhuman Rights Project, Inc. ("NhRP") to be imprisoned in New York, have died.

5. While there are grave concerns about Tommy's health and well-being, this Petition does not seek the immediate production of Tommy to the Court or his placement in a temporary home as there are no adequate facilities in close proximity to the Court. However, this Petition seeks a determination forthwith that Tommy's detention is unlawful and demands Tommy's immediate release to a primate sanctuary that is a member of the North American Primate Sanctuary Alliance ("NAPSA") and that has been selected by NAPSA for the purpose of providing

Tommy with the specialized care necessary to satisfy his complex social and physical needs for the duration of his life. As provided in ¶21 below, attached hereto as an Exhibit is an Affidavit from Sarah Baeckler Davis, Executive Director of NAPSA ("Baeckler Davis Affidavit").

Parties

6. Petitioner NhRP is a tax exempt Sec. 501(c)(3) not-for-profit corporation organized under the laws of the State of Massachusetts, with its primary place of business located in Coral Springs, Florida.

7. Petitioner Tommy is an adult male chimpanzee, who, upon information and belief, is 26 years old and is currently being held captive by Respondents at 3032 State Highway 30, Gloversville, New York.

8. Upon information and belief, Respondents Patrick and Diane Lavery are the owners of the real property located at 3032 State Highway 30, Gloversville, New York.

9. Respondents are detaining Tommy in solitary confinement in a small, dank, cement cage in a cavernous dark shed on the 3032 State Highway 30 property.

Venue

10. Petitioner Tommy is being detained in Fulton County which is the proper venue for this Petition pursuant to CPLR §7002(b).

Standing

11. Pursuant to CPLR §7002(a) a petition for a writ of habeas corpus may be brought by "one acting on...behalf" of "[a] person illegally imprisoned or otherwise restrained in his liberty within the state."

12. For the past 17 years, Petitioner NhRP has worked to change the status of such nonhuman animals as chimpanzees from legal things to legal persons.

13. NhRP has established a trust pursuant to Section 7-8.1 of the Estates, Powers, and Trusts Law ("EPTL") for the care of Petitioner Tommy as a named beneficiary. A copy of the trust document is annexed hereto as **"Exhibit A – Trust"**.

14. As a named beneficiary of the trust, Tommy is a legal person.

Jurisdictional Statement Pursuant to CPLR §7002(c)

15. Upon Petitioner NhRP's best knowledge and belief, the cause or pretense of Tommy's detention is that Respondents' claim he is their property.

16. No court or judge of the United States has exclusive jurisdiction to order Tommy's release.

17. Petitioner NhRP asserts that Tommy is a legal person under the common law of the State of New York and pursuant to EPTL § 7-8.1. Petitioner NhRP will demonstrate that under New York law, Tommy, as a legal person, is entitled to the common law right to bodily liberty. Petitioner NhRP asserts that Tommy's detention by Respondents constitutes an unlawful deprivation of his right to bodily liberty and that he is entitled to test the legality of this detention through the issuance of a common law writ of habeas corpus by this Court.

18. No appeal has been taken from any order by virtue of which Petitioner Tommy is detained.

19. No previous application for the writ asked for herein has been made.

Related Cases

20. In conjunction with the filing of this Petition, NhRP will file similar petitions for writs of habeas corpus in Niagara and Suffolk Counties seeking identical relief on behalf of chimpanzees unlawfully detained in those counties.

Tommy Possesses Attributes Sufficient to Establish Legal Personhood

21. Attached hereto are affidavits setting out necessary facts for the Court to consider and opinions from some of the most renowned primatologists in the world. These affidavits include:

(a) Affidavit of Steven M. Wise, dated December 2, 2013; Attached as Exhibit **"Wise Affidavit"**.

(b) Affidavit of Sarah Baeckler Davis, dated November 26, 2013; Attached as Exhibit **"Baeckler Davis Affidavit"**.

(c) Affidavit of James R. Anderson, dated November 20, 2013; Attached as Exhibit **"Anderson Affidavit"**.

(d) Affidavit of Christophe Boesch, dated November 19, 2013; Attached as Exhibit **"Boesch Affidavit"**.

(e) Affidavit of Jennifer M.B. Fugate, dated November 22, 2013; Attached as Exhibit **"Fugate Affidavit"**.

(f) Affidavit of Mary Lee Jensvold, dated November 21, 2013; Attached as Exhibit **"Jensvold Affidavit"**.

(g) Affidavit of James King, dated November 21, 2013; Attached as Exhibit **"King Affidavit"**.

(h) Affidavit of Tetsuro Matsuzawa, dated November 23, 2013; Attached as Exhibit **"Matsuzawa Affidavit"**.

(i) Affidavit of William C. McGrew, dated November 21, 2013; Attached as Exhibit **"McGrew Affidavit"**.

(j) Affidavit of Mathias Osvath, dated November 19, 2013; Attached as Exhibit **"Osvath Affidavit"**.

(k) Affidavit of Emily Sue Savage-Rumbaugh, dated November 22, 2013; Attached as Exhibit **"Savage-Rumbaugh Affidavit"**.

The Affidavits of Anderson, Boesch, Fugate, Jensvold, King, Matsuzawa, McGrew, Osvath and Savage-Rumbaugh submitted in support of this Petition, as summarized below, demonstrate that chimpanzees possess the complex cognitive abilities that are sufficient for common law personhood and the common law right to bodily liberty, as a matter of liberty, as a matter of equality, or both, as argued in the attached *Memorandum in Support of Petition for Writ of Habeas Corpus*. The most important cognitive ability is "autonomy," which the other cognitive abilities support. These include, but are not limited to, the possession of an autobiographical self, episodic memory, self-determination, self-consciousness, self-knowing, self-agency, referential and intentional communication, language planning, mental time-travel, numerosity, sequential learning, meditational learning, mental state modeling, visual perspective-taking, understanding the experiences of others, intentional action, planning, imagination, empathy, metacognition, working memory, decision-making, imitation, deferred imitation, emulation, innovation, material, social, and symbolic culture, cross-modal perception, tool-use, tool-making, cause-and-effect.

22. Like humans, chimpanzees have a concept of their personal past and future and suffer the pain of not being able to fulfill their needs or move around as they wish; like humans they experience the pain of anticipating never-ending confinement (Affidavit of Mathias Osvath ("Osvath Aff."), at ¶7). Similarly, because chimpanzees have a self-concept, are aware of their past and see a future before them, they can re-experience past pains and pleasures, as well as

anticipate them. This implies that, like humans, they can experience pain over an event that has yet to occur (Osvath Aff. at ¶7; Affidavit of Mary Lee Jensvold ("Jensvold Aff."), at ¶10).

23. Humans and chimpanzees share those brain circuits involved in such complex cognitive abilities related to autonomy such as communication, language, insight, fore-planning, decision-making, the processing of complex social information, emotional learning, and awareness, as well as highly specific cell types involved in such higher-order thinking and brain functions (Affidavit of Tetsuro Matsuzawa ("Matsuzawa Aff."), at ¶¶10-11, ¶14; Affidavit of Jennifer M.B. Fugate ("Fugate Aff."), at ¶14).

24. Both human and chimpanzee brains are similar in terms of how their brains develop and mature, indicating that chimpanzees and humans pass through similar cognitive developmental stages, including the development of communication; both possess the brain asymmetry related to language capacities (Matsuzawa Aff. at ¶10, ¶12).

25. Both humans and chimpanzees exhibit developmental delay, a protracted period of brain development that plays a role in the emergence of such complex cognitive abilities as self-awareness, creativity, fore-planning, working memory, and decision making (Matsuzawa Aff. at ¶11).

26. The autonomous behavior of chimpanzees reflects their ability to choose, and is not based on reflexes, innate behaviors or on any conventional categories of learning such as conditioning, discrimination learning, or concept formation (Affidavit of James King ("King Aff."), at ¶¶11-12).

27. Chimpanzees possess a sense of self that developmentally emerges in a manner similar to humans and is highly stable over time. They recognize themselves in mirrors and on television and can use a flashlight to examine the interiors of their own throats in a mirror. Adult

chimpanzees recognize photographs of themselves as youngsters. The concept of self is an integral part of having goals and desires, intentionally acting to achieve those goals, and knowing whether they have succeeded. This sense of self is an integral part of self-determination and autonomous behavior (Matsuzawa Aff. at ¶15; Affidavit of James Anderson ("Anderson Aff."), at ¶12; Affidavit of Emily Sue Savage-Rumbaugh ("Savage-Rumbaugh Aff."), at ¶15).

28. A critical demonstration of autonomy is that chimpanzees, like humans, not only understand they exist through time, they engage in "mental time travel," which is the ability to recollect the past and plan for the future. "Mental time travel" is enabled through the "episodic system," by remembering events and anticipating the future. So-called "autonoetic consciousness," or "self-knowing consciousness," is a necessary correlate of their possessing an episodic system. It is autonoetic consciousness that gives us our autobiographical sense of self (Osvath Aff. at ¶12).

29. "Numerosity," which is the ability to understand numbers as a sequence of quantities, requires not only sophisticated working memory (in order to keep numbers in mind), but a conceptual understanding of a sequence, which is closely related to "mental time travel" and planning out the right sequence of steps towards a goal, two critical components of autonomy. Chimpanzees excel at understanding sequences of numbers and understand that Arabic symbols ("2", "5", etc.) represent discrete quantities (Matsuzawa Aff. at ¶19).

30. Chimpanzees demonstrate "episodic memory". They remember the "what, where and when" of events that occurred years ago, and can plan to act when they are in a different psychological state from the one in which they are when they plan (Osvath Aff. at ¶¶12-16; Anderson Aff. at ¶16).

31. Chimpanzees can delay a strong desire for a better future reward, generalize a novel tool for future use, select objects for a much-delayed future task, and do all of this while keeping in mind several elements of a situation. Part of being an autonomous individual is self-control. Chimpanzees, like humans, can delay gratification for a future reward; they possess a high level of self-control under many circumstances. Chimpanzees can select a tool they have never seen, guess its function, and use it later. This would be impossible without mentally representing the details of the future event. Chimpanzees plan for future exchanges with humans (Osvath Aff. at ¶14).

32. Chimpanzees demonstrate "self-agency," the ability to distinguish actions and effects caused by oneself from events occurring in the external environment. Self-agency is a fundamental component of autonomy and purposeful behavior. These and many similar findings demonstrate that chimpanzees and humans share the fundamental cognitive processes underlying the sense of being an independent agent (Matsuzawa Aff. at ¶¶16-17).

33. Chimpanzees, like humans, possess material, social, and symbolic culture. Culture is behavior learned by watching others, represents something most individuals do, and is characteristic of a group or community. Culture is based on several high-level cognitive capacities, including imitation (the direct mimicking of bodily actions), emulation (learning about the results of someone else's actions, then achieving those results in another way) and innovation (producing novel ways to do things and combining known elements in new ways) all of which chimpanzees share with humans. All three types of culture presuppose a common set of mental abilities, the most important of which are imitation (which is an important hallmark of self-awareness) and emulation, both of which require the ability to learn by observation. Symbolic culture involves the use of arbitrary abstract symbolic gestures in the wild and language in some captive chimpanzees.

At least 40 unique chimpanzee cultures are spread across Africa (Affidavit of William McGrew ("McGrew Aff."), at ¶¶18-20, ¶¶22-24).

34. When imitated, both chimpanzees and young children tend to "test out" the behavior of the imitator by making repetitive actions and looking to see if the imitator does the same. This "contingency-checking" is similar to how a chimpanzee and toddler test whether an image in a mirror is herself, and is another hallmark of self-awareness. Chimpanzees are capable of "deferred imitation," copying actions they have seen in the extended past, which relies upon even more sophisticated capacities than direct imitation because the chimpanzees must remember the past action of another while replicating those actions in real time (McGrew Aff. at ¶24; Anderson Aff. at ¶¶17-18).

35. Not only do chimpanzees understand they have minds and reflect upon their own thoughts and states of knowledge, they may understand that others have minds, and those other minds know things they don't. That is, they demonstrate "theory of mind." They imitate the actions of others and anticipate others' intentions when watching a human or another chimpanzee try to complete a task. They know what others can and cannot see, and understand the visual perspective of another chimpanzee. They know when another's behavior is accidental or intentional. They use their knowledge of others' perceptions to deceive other chimpanzees and obtain hidden food or to hide themselves from other chimpanzees and humans. In situations where two chimpanzees compete for hidden food they use strategies and counter-strategies to throw each other "off the trail" and obtain the food for themselves. Both language-trained and wild chimpanzees adjust their gestures and gestural sequences to the attention state of the individual they are trying to communicate with, using visual gestures towards an attentive partner and tactile and auditory gestures more often toward inattentive partners. If the partner does not respond, they repeat the

gesture. This complexity in understanding others' minds is evidence that they are aware of their own mind and the minds of others. They have a capacity for empathy in that they can identify with and understand another's situation, feelings, and motives (Matsuzawa Aff. at ¶17; Anderson Aff. at ¶¶13-15; Jensvold Aff. at ¶11; Savage-Rumbaugh Aff. at ¶22, ¶31; Fugate Aff. at ¶14, ¶¶16-17).

36. Chimpanzees use their imaginations to engage in pretend play (Savage-Rumbaugh Aff. at ¶30).

37. Language in humans and chimpanzees is a volitional process that involves creating intentional sounds for the purpose of communication; it is a reflection of autonomous thinking and behavior. Chimpanzees exhibit referential and intentional communication. Their development of their use and understanding of sign language, along with their natural communicative gestures and vocalizations, parallels the development of language in children. This points to deep similarities in the cognitive processes that underlie communication in chimpanzees and humans. Both children and chimpanzees trained in the use of American Sign Language (ASL) and other symbolic methods of communication use their symbols to comment on other individuals and about past and future events. They can purposefully create declarative sentences. They discuss social situations with humans, such as where they want to go, who they want to be with, what they intend to do, what they want to eat, and how they feel; chimpanzees communicate what other chimpanzees want. They can state what they intend to do, in advance of acting, then carry out their stated actions, sometimes coordinating their actions, which requires them to form a thought and hold it in mind at least until agreement is reached. They point and vocalize when they want humans and other chimpanzees to notice something and will adjust their gesturing to insure they are noticed. In tasks requiring cooperation, chimpanzees recruit partners they know to be the most skilled and take

appropriate turns when requesting and giving help to a partner. They communicate intentionally and purposefully when they want to inform naïve chimpanzees about something, such as a predator. Chimpanzee communication is also based on conversational interaction in which each participant exchanges turns communicating in a give-and-take manner and participants respond appropriately to the communicative actions of each other. Chimpanzees understand that conversation involves turn-taking and mutual attention. If they wish to communicate with a human whose back is turned they will make attention-getting sounds. If the human is turned to them, they switch to conversational sign language with few sounds (Jensvold Aff. at ¶¶9-11; Anderson Aff. at ¶15; Savage-Rumbaugh Aff. at ¶¶16 -21, ¶22, ¶24).

38. Chimpanzees demonstrate that they can learn abstract symbols for hundreds of items, events, and locations, without being taught, solely through observation, which they intentionally use in practical situations, remember for decades, and master a syntax (Savage-Rumbaugh Aff. at ¶¶19-21).

39. When humans feel a conversation has broken down, they repeat their utterance and add information to the original utterance. Signing chimpanzees conversing with humans respond the same way, reiterating, adjusting, and shifting the signs they make to create conversationally appropriate rejoinders; their reactions to and interactions with a conversational partner resemble patterns of contingency in conversation, which is a key demonstration of volitional and purposeful communication and thought. ASL-using chimpanzees demonstrate contingent communication with humans at the same level as young children (Jensvold Aff. at ¶11). Similarly, chimpanzees who have learned other forms of symbolic communication monitor the listener and make judgments about what he is understanding in order to proceed with the conversation (Savage-Rumbaugh Aff. at ¶22).

40. Both chimpanzees trained and untrained to engage in signed conversation string together multiple gestures to create gesture sequences. They may combine gestures into long series, within which gestures overlap, be interspersed with bouts of response waiting, or be exchanged back and forth between individuals. Both ASL-trained and wild chimpanzees adjust their gestures and gestural sequences to the attention state of the individual they are trying to communicate with, using visual gestures towards an attentive partner and tactile and auditory gestures more often toward inattentive partners. If the partner does not respond, they repeat the gesture (Jensvold Aff. at ¶11).

41. In a manner similar to children ages two through seven, sign language-trained chimpanzees exhibit a volitional use of language by engaging in "private speech," that is, signing to themselves. Private speech is part of the normal development of communication, self-guidance, self-regulation of behavior, planning, pacing, and monitoring skills and helps control and regulate their emotions and thoughts by focusing them on their own concerns and providing a buffer from external distractions. It is also related to more creative and imaginative play (Jensvold Aff. at ¶¶12-15).

42. "Sequential learning" is the ability to encode and represent the order of discrete items occurring in a sequence. It is critical for speech and language processing, the learning of action sequences, or any task that requires putting items into an ordered sequence. Chimpanzees can count or sum up arrays of real objects or Arabic numerals and display the concepts of ordinality and transitivity (the logic that if A = B and B = C, then A = C) when engaged in numerical tasks, which demonstrates a real understanding of the ordinal nature of numbers. They understand proportions (e.g., 1/2, 3/4, etc). They can learn to name (using a symbol-based computer keyboard) the number, color and type of an object shown on the screen. They can use a computer touch screen

to count from 0 to 9 in sequence. They have counted to 21. They have an understanding of the concept of zero and use it appropriately in ordinal context. They display "indicating acts" (pointing, touching, rearranging) similar to what human children display when counting up a sum. Just as human children touch each item when counting an array of items, chimpanzees do the same thing, demonstrating similarity in the way numbers and sequences are conceptualized in chimpanzees and humans (Matsuzawa Aff. at ¶¶19-20; Savage-Rumbaugh Aff. at ¶¶27-28).

43. Not only do chimpanzees understand numbers and sequences, but their working memory of numbers, that is, their short-term memory and ability to keep several items in mind at the same time, and temporarily store, manipulate and recall numbers, objects, names, etc. compares to that of adult humans. The chimpanzees' extraordinary working memory capability underlies such mental skills as mental representation, attention, and sequencing (Matsuzawa Aff. at ¶20).

44. Chimpanzee social life is cooperative and collaborative. Chimpanzees ostracize chimpanzees who violate social norms. They appear to have moral inclinations, and a level of moral agency that reflects moral imperatives and self-consciousness which represents a purposeful and well-coordinated social system (McGrew Aff. at ¶¶26-27).

45. Chimpanzees demonstrate an awareness of death, which is one of the consequences of self-awareness, as well as compassion, bereavement-induced depression, and an understanding of the distinction between living and non-living, in a manner similar to humans. Chimpanzees, like humans, feel grief and compassion when dealing with mortality (Anderson Aff. at ¶19).

46. Chimpanzees exhibit other capacities that stem from self-awareness. These include "metacognition." This is the ability to reflect upon one's own thoughts and to understand what one does and does not know (Matsuzawa Aff. at ¶15). Chimpanzees possess a capacity for tool-making. This implies complex problem-solving skills and an understanding of means-ends relations and

causation. It requires making choices, often in a specific sequence towards a predefined goal, which is a key aspect of intentional action (chimpanzees generally demonstrate an ability to infer causation). Chimpanzees make and use compound tools that require them to utilize two or more objects towards a single goal, use "tool sets," which requires them to use two or more tools in an obligate sequence to achieve a single goal, and "tool kits," which is a unique set of about 20 different tools chimpanzees use for various functions in their daily lives. This sequencing and mental representation demonstrates intentionality and self-regulation (McGrew Aff. at ¶¶15-21; Anderson Aff. at ¶16; Fugate Aff. at ¶17).

47. Chimpanzees are quite competent at "cross-modal perception." They can take in information in one modality such as vision or hearing, then internally translate that information into another modality. They can also take in symbolically encoded information and translate it into any non-symbolic mode. When shown a picture of an object, they can retrieve that object by touch alone. They can retrieve the correct object by touch when shown only the symbol representing that object. They can match faces, even photographs of faces, to voices, even recordings of voices (Savage-Rumbaugh Aff. at ¶25; Fugate Aff. at ¶¶15-16).

48. Chimpanzees engage in "mediational learning." They are able to "figure out" rules that allow them to solve new problems based on past information which they collate over multiple trials and reflect upon. This requires an ability to compute relationships among a variety of things and events. They understand they are positing predictive or cause-and-effect relationships about tasks they work on and that they have control over what they do and what will happen (Savage-Rumbaugh Aff. at ¶29).

49. As demonstrated in the accompanying expert affidavits, Tommy is an autonomous being who is entitled to the protections afforded by New York law for legal persons and is entitled to petition this Court for his liberty.

WHEREFORE, Petitioners respectfully demand the following relief:

A. Issuance of the attached writ demanding Respondents demonstrate forthwith the basis for the detention and denial of liberty of Petitioner Tommy;

B. Upon a determination that Petitioner Tommy is being illegally detained, ordering his release and transfer forthwith to the primate sanctuary selected by the North American Primate Sanctuary Alliance;

C. Awarding Petitioner NhRP the costs and disbursements of this action; and

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

Dated: December 2, 2013
New Hyde Park, New York

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VERIFICATION

The undersigned, is an attorney admitted to practice in the courts of New York State, is the attorney of record for the Petitioners The Nonhuman Rights Project, Inc. and Tommy, in the within action; deponent has read the foregoing Verified Petition and is familiar with the contents thereof; the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent and not by the Petitioner The Nonhuman Rights Project, Inc. because the Petitioner does not reside nor maintain its office in the county where your deponent maintains her office. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are based upon a review of the facts, pleadings and proceedings in this matter, as well as conversations with the Petitioner.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

ELIZABETH STEIN

Sworn to before me this
29 day of December, 2013

Notary Public

JESSICA R. VIGARS
Notary Public, State of New York
No. 02VI6272274
Qualified in Albany County
Commission Expires November 13, 2014