

Supreme Court of the State of New York

Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Gesmer, Kern, Oing, Moulton, JJ.

12680

In re NONHUMAN RIGHTS PROJECT, INC., on
Behalf of HAPPY,
Petitioner-Appellant,

Index No. 260441/19
Case No. 2020-02581

-against-

JAMES J. BREHENY, etc., et al.,
Respondents-Respondents.

PROTECT THE HARVEST AND ALLIANCE OF MARINE
MAMMAL PARKS & AQUARIUMS, PROFESSOR
RICHARD L. CUPP, JR., GARY COMSTOCK, PH.D.,
G.K.D. CROZIER, PH.D., ANDREW FENTON, PH.D.,
TYLER JOHN, L. SYD M. JOHNSON PH.D., ROBERT
C. JONES, PH.D., LETITIA MEYNELL, PH.D.
NATHAN NOBIS, PH.D., DAVID PEÑA-GUZMÁN,
PH.D., JAMES ROCHA, PH.D., BERNARD ROLLIN,
PH.D., JEFF SEBO, PH.D., JUSTIN MARCEAU,
SAMUEL WISEMAN AND PROFESSOR LAURENCE H.
TRIBE,
Amici Curiae.

Elizabeth Stein, New Hyde Park, and Steven M. Wise, Carol Springs, FL of the bar of the State of Massachusetts, admitted pro hac vice, of counsel, for appellant.

Phillips Lytle LLP, Buffalo (Kenneth A. Manning of counsel), for respondents.

Kelley Drye & Warren, LLP, New York (Bezalel A. Stern of counsel), for Protect the Harvest and Alliance of Marine Mammal Parks & Aquariums, amici curiae.

Jessica A. Kulpit, Buffalo, for Richard L. Cupp, Jr., amicus curiae.

Amy Trakinski, New York, for Gary Comstock, Ph.D., G.K.D. Crozier, Ph.D., Andrew Fenton, Ph.D., Tyler John, L. Syd M. Johnson Ph.D., Robert C. Jones, Ph.D., Letitia Meynell, Ph.D. Nathan Nobis, Ph.D., David Peña-Guzmán, Ph.D., James Rocha, Ph.D., Bernard Rollin, Ph.D., Jeff Sebo, Ph.D., amici curiae.

Chaffetz Lindsey LLP, New York (David M. Lindsey of counsel), for Justin Marceau, Samuel Wiseman, amici curiae.

Richman Law Group, New York (Jay Shooster of counsel), for Professor Laurence H. Tribe, amicus curiae.

Order, Supreme Court, Bronx County (Alison Y. Tuitt, J.), entered on or about February 19, 2020, which granted respondents' motion to dismiss the petition for a writ of habeas corpus on behalf of Happy, an elephant, unanimously affirmed, without costs. The Clerk is directed to enter judgment dismissing the proceeding brought pursuant to CPLR article 70.

The common-law writ of habeas corpus does not lie on behalf of Happy, the elephant at issue in this proceeding (see *Matter of Nonhuman Rights Project, Inc. v Lavery*, 152 AD3d 73 [1st Dept 2017], *lv denied* 31 NY3d 1054 [2018]). We decline to overrule any of our alternative holdings in *Lavery*, which petitioner erroneously refers to as “dicta.” Under *Lavery*, the writ of habeas corpus is limited to human beings (see *id.* at 76-78). A judicial determination that species other than homo sapiens are “persons” for some juridical purposes, and therefore have certain rights, would lead to a labyrinth

of questions that common-law processes are ill-equipped to answer. As we said in *Lavery*, the decisions of whether and how to integrate other species into legal constructs designed for humans is a matter “better suited to the legislative process.” (*id at 80*).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 17, 2020

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court