

Court of Appeals  
*of the*  
State of New York

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In the Matter of a Proceeding under Article 70 of the  
CPLR for a Writ of Habeas Corpus and Order to Show  
Cause, THE NONHUMAN RIGHTS PROJECT, INC.,  
on behalf of Happy,

*Petitioner-Appellant,*

– against –

JAMES J. BREHENY, in his official capacity as the Executive  
Vice President and General Director of Zoos and Aquariums of the  
Wildlife Conservation Society and Director of the Bronx Zoo and  
WILDLIFE CONSERVATION SOCIETY,

*Respondents-Respondents.*

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**BRIEF FOR *AMICI CURIAE* BUDDHIST SCHOLARS**

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motion *pro hac vice*)  
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Date Completed: October 7, 2021

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## I. Interest of Amici Curiae

We the undersigned submit this brief as three Buddhist scholars with expertise in ethics, Buddhist ethics, bioethics, theology, comparative religions and more.<sup>1</sup> We have an interest in advancing Buddhist thought into western culture and law where the treatment of animals and their status in the law is a matter of grave moral concern. Buddhism would have similarly objected to prior historical inequalities and injuries when they were used to discriminate against sentient beings on the basis of race or gender, as it objects to the treatment of sentient beings, like the female elephant, Happy. Happy's confinement can only be justified based upon a perception that one sentient life is more worthy of moral consideration than another.

Legal judgments contain, as they have historically contained, moral judgments as well. The law does not operate in a moral vacuum. This legal moment for Happy represents a great opportunity to consider the treatment of sentient beings from a cross-cultural and more moral perspective than we have

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<sup>1</sup> *Amici Curiae* have authored significant books and articles in the Study of Religions, Ethics and Philosophy of Religion and Buddhism including, *Popularizing Buddhism: Preaching as Performance in Sri Lanka* (Albany, NY: State University of New York Press, 2006), and the editor of several volumes including, *Buddhism, Conflict and Violence in Modern Sri Lanka* (London and New York: Routledge, 2006), and *Justice and Statecraft: Buddhist Ideals Inspiring Contemporary World* (Kelaniya: Nagananda International Buddhist University, 2017), and the book chapters, "Śrī Pāda Sacred to Many: Sufi Mystics on Pilgrimage to Adam's Peak" (2018: 40–69) and "When Buddhism Meets Cosmopolitanism: An Education for Global Citizenship" (2013: 11–24).

done before, so as to avoid perpetuating a great moral wrong merely because it has been a habit of the law.

## **II. Summary of the Argument**

Our central argument is that Happy is a sentient being. As a sentient being, she should not be held captive in a zoo. This state of being represents suffering (Pāli *dukkha*) and is against the treatment of all beings that is prescribed in foundational Buddhist texts all of which consider Happy a sentient being worthy of compassion (Sanskrit *karuṇā*) and kindness. Happy belongs at minimum in a sanctuary and not a cage where her emotional, physical, and psychological state suffer from captivity as much as any other living being so confined would also suffer. Happy is forced to live in this artificial and confined state not as a punishment for any wrong she has done, but because she represents an economic opportunity. All forms of Buddhism recognize all beings like Happy as sentient beings and call for compassionate treatment and kindness towards them.

We have observed the courts grapple with various ideas of personhood to determine if a being is or is not worthy of *habeas corpus* relief. Historically, it was considered radical to grant women the right of *habeas corpus* or people of a different race. From a Buddhist ethical perspective, however, there is no question that the being of Happy, the female elephant, is a sentient being as much as any and every human being is a sentient being.

While societies have historically viewed and continue to view certain life primarily in economic terms, to Buddhism, *all* sentient life is deserving of respect because it is a unique form of life. The recognition of animals as sentient beings is central to Buddhist teachings and ethics. Sentient beings have the ability to experience and suffer pain. It is well known that elephants have complex social bonds, that they experience emotions like grief, empathy and happiness, and even practice altruism. Elephants are elevated and venerated in Buddhist and Sri Lankan folklore for being wise, compassionate and capable of advanced thought.<sup>2</sup> In Buddhism this is not surprising as all beings are equal and indistinguishable in their essential nature, and have the prospect of being awakened sooner or later, in this life or next lives.

### **III. Argument**

#### **a. Non-human animals are sentient beings**

In the sixth century BCE, two extraordinarily peaceful religions formed in India at almost the same time. They both recognized non-human animals as sentient beings and proscribed their killing: Jainism and Buddhism. Jainism extended the idea of doing no harm to plants, considering them also sentient. Buddhism by contrast, stopped at non-human animals.

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<sup>2</sup> Deegalle, Mahinda. "Śrī Pāda Sacred to Many: Sufi Mystics on Pilgrimage to Adam's Peak." *Multiculturalism in Asia*, Edited by Imtiyaz Yusuf (Bangkok: Mahidol University and Konrad Adenauer Stiftung, 2018), pp. 50–59.

There are by varying accounts, between 500 million–1.6 billion Buddhists in the world and several schools of Buddhist thought. While there is some disagreement among Buddhist schools of thought about what Buddha actually said, it is universally accepted among all schools of Buddhism that the First Precept of Buddhism, teaches its practitioners, to do no harm to any living being. This doctrine of abstention from taking any form of life is the central pillar of the philosophy of *Ahiṃsā* (non-violence or non-injury) in Sanskrit and means doing no harm to other living things.

This philosophy of non-violent life is based on two principles. The first of these is the belief in an extended and extensive form of life that goes through the process of rebirth (or reincarnation). Every other living thing, whether human or non-human, may have the possibility of having been in the past, or becoming in the future, a person's mother or father or any other relations. Buddhism holds that each one of us, has been reborn multiple times in a seemingly unending cycle of birth, death and rebirth traditionally identified as *samsāra*. By not treating an animal with compassion and kindness, a person would in a real sense be mistreating their own deceased mother or father. There is a continuity and connection between all life in Buddhism.

This fundamental continuity with some discontinuity among all forms of life in Buddhist thought, happens through the process of birth and rebirth that is

subject to the quintessential Buddhist philosophical teaching of impermanence (P. *anicca*). It is this continuity that also equates all animal life, whether human or non-human, as sentient life.

In Buddhism, the highest and more spiritually, and intellectually privileged form of rebirth is to be born a human because humans are capable of achieving the religious ultimate *nibbāṇa* (awakening) or Buddhahood. But this does not mean that Buddhism discriminates between sentient beings on the basis of a moral worth.

According to the *Jātaka* Stories, which tell the tales of the historical Buddha's past lives, it is not the status of being born a human or non-human animal, as if one is higher or lower than the other, that determines a being's next existence, but its actions. In these *Jātaka* stories, animals are often shown to be more moral and spiritually evolved than their human counterparts. The Buddha himself was said to be born as an elephant in a prior life (*Chaddanta Jātaka*, no. 514).<sup>3</sup> In stories of the Buddha's birth and rebirth, he is born many times as a sentient non-human animal. In other Buddhist stories, an elephant, Pārileyya, and the Buddha live together in the forest enjoying its solitude (*Vinaya* I.352f). The

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<sup>3</sup> Tricycle, Jataka Tale: The Elephant, March 1, 2011. <https://tricycle.org/trikedaily/jataka-tale-elephant/> Accessed October 7, 2021.



elephant takes care of the Buddha during his stay in the forest, and upon the elephant's death based on his good deeds, he becomes reborn as a god.

The second principle of the First Precept is expressed in the Buddhist scripture *Udāna* (Utterances) which is part of the Pāli Canon of Theravāda Buddhism. The second principle directs that people care for and feel for others just as they would feel for themselves. This is expressed in the following words attributed to the Buddha, “Since to others, to each one for himself, the self is dear, therefore let him who desires his own advantage not harm another.”<sup>4</sup>

Buddhism teaches that all animals are capable of experiencing suffering (physical and emotional)-be they human animals or non-human animals. Since the capacity for suffering is the same between all animals, our moral obligation not to inflict unnecessary suffering on humans, should be expanded to animals. “All animals tremble at violence; life is dear to all. Putting oneself in the place of another, one should not harm or cause another to harm.” (Dhammapada 130)<sup>5</sup>

It is wrong, given the universal nature of suffering for all things that live, to benefit from another's suffering. But this is more than a negative prescription. In Buddhism, the call to develop infinite compassion means to strive to become

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<sup>4</sup> Edward Conze, *Buddhism: Its Essence and Development*. New York: Dover Publications, Inc., 2003, pp.61.

<sup>5</sup> *The Dhammapada*, translated from Pali by the Venerable Ananda Maitreya, revised by Rose Kramer. Berkley: Parallax Press, 1995, pp. 37-38.

more and more sensitive to suffering and with this heightened vision—to alleviate it.

**b. Non-distinction between human animals and non-human animals**

In its broadest sense, Buddhism does not believe in speciesism. The idea of regarding all sentient beings (all living things) with the same loving kindness (P. *mettā*) as that to which one would hold most dear, is a fundamental and often repeated prescription in Buddhism. In Buddhism, the *Metta Sutta* (*Suttanipāta* vv. 143–152)<sup>6</sup> directs that loving kindness be extended in thought and deed to all living things, without qualification, “Just as a mother would protect her only child at the risk of her own life, even so towards all beings one should cultivate a boundless heart (*mānasaṃ aparimānaṃ*, v. 7).<sup>7</sup> “Just as a mother would protect her son, her only son, with her own life, so one should develop towards all beings a state of mind without boundaries.”<sup>8</sup>

What is absent from Buddhism, as contrasted with many other religions and

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<sup>6</sup> The Pāli text of the *Metta Sutta* can be found in the *Suttanipāta*, ed. Dines Andersen and Helmer Smith. Oxford: Oxford University Press, 1990, pp. 25–26.

<sup>7</sup> Deegalle, Mahinda. “When Buddhism Meets Cosmopolitanism: An Education for Global Citizenship.” *International Symposium on Education and Global Citizenship*, The 10th International Celebration of United Day of Vesak, Bangkok, Thailand, 21–22 May 2013, pp. 20. A detailed analysis of the *Metta Sutta* including a translation of the verses can be found on pp. 18–22.

<sup>8</sup> Bodhi Bhikkhu, *Suttanipata: An Ancient Collection of the Buddha’s Discourses Together with its Commentaries*, Translated from Pali. Somerville, MA: Wisdom Publications, 2017, pp. 180.

philosophies, is any distinction in this prescribed conduct based on a hierarchy of species or distinction between and among sentient beings. According to Buddhism, all beings/all animals are not just equal, they the same on the path of spiritual awakening in that they possess a Buddha-nature, which is the capacity to become an awakened/enlightened being.<sup>9</sup>

Buddhism does not differentiate between human and non-human beings.<sup>10</sup>

### **c. Applying the argument above to Happy's case**

The trial court noted that the experts agree that Happy would be much better able to flourish in a sanctuary rather than continuing to live in forced captivity in the Bronx Zoo. We argue that Happy is a sentient being who suffers in her forced captivity and Buddhism would dictate that we ought to show compassion for her.

Even a cursory observation of elephants at a sanctuary like the David Sheldrick Wildlife Trust, shows elephants as social beings with rich emotional lives and personalities.<sup>11</sup> What elephants have in the wild, where they are able to

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<sup>9</sup> The Dalai Lama, On Buddha Nature, The Buddha Blog, PBS.org 2010, <https://www.pbs.org/thebuddha/blog/2010/Mar/9/dalai-lama-buddha-nature/>. Accessed October 5, 2021

<sup>10</sup> There is some nuance to this statement. In Buddhism, all sentient beings, wander in the cycle of births and deaths (*saṃsāra*). Nevertheless, Buddhism sees human life as rare and fortunate, and the only existence that effectively can prepare for the awakening. From a *saṃsāric* perspective, though humans and non-human animals are in the same boat, humans have immense potential for freedom and the capacity to understand. Killing a human being is a graver offence than another animal, but killing an elephant is far worse in *karmic* terms than killing a fish.

<sup>11</sup> The David Sheldrick Wildlife Trust, 2021. <https://www.sheldrickwildlifetrust.org/>. Accessed October 5, 2021

traverse hundreds of miles and follow ancient migratory routes, or even in sanctuaries, cannot be replicated in the glorified cages that are zoos.

We have a moral duty to treat Happy just as we would treat a person most dear to us. We would never want a loved one, who committed no crime, to be made to serve a life sentence in confinement just because it was profitable to someone else. According to Buddhist teachings, it is wrong for us to value our own freedom from being held in a cage and ignore the imprisonment of another sentient being like Happy.

In the time Buddhism was born in ancient India, animal sacrifices were precept and practice. A mandatory requirement for currying favor with the gods of the Vedic tradition and one celebrated by the state. This did not stop the Buddha from speaking out against it. The consideration of morals is an important check against law and practice because it has been right where the latter has so often been wrong.

To allow Happy to be held in captivity for economic gain, debases her life and ours. Life has value in Buddhism that is far beyond pecuniary metrics. Elephants have an exalted place in living Buddhist communities. But beyond that, Happy is a sentient being who we know, not being able to live freely as she would in a sanctuary, is suffering. To see this suffering creates a moral obligation to alleviate it. Buddhism asks us to have infinite compassion and to not do harm. In

this instance, for the court to do nothing, is to perpetuate and participate in a great harm.

On the other hand to act with kindness toward her, as we should towards every other living being, is to act according to our own Buddha nature—our best self. How we treat Happy is important as she could herself be someone who we once knew, or from whom we came, or even a potential “incarnation” on the path of perfection (P. *pāramitā*) to become a future Buddha. Treating her well, creates our own good future because every good action leads to a good outcome for the doer, and vice versa.

But this issue is the issue of justice before the Court in this case. Is Happy the kind of being that can be locked up merely as a means to an end? The answer, according to Buddhism, is resoundingly “NO.”

To allow her captivity to continue is to fail to have compassion for her suffering, to not show kindness but instead to be complicit in harming her. We have a moral responsibility to stop this great harm and we respectfully implore that this Court do what is moral and just by this long suffering being.

Dated: October 7, 2021

Respectfully submitted by:

A handwritten signature in blue ink, appearing to be 'R. Tanaka', written over a horizontal line.

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**NEW YORK STATE COURT OF APPEALS  
CERTIFICATE OF COMPLIANCE**

Pursuant to the Rules of the Court of Appeals (22 NYCRR) §§ 500.1 (j), 500.13 (c) (1) and (3), and 500.23 (a) (1) (i), I hereby certify that:

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Dated: October 7, 2021

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