



Happy the elephant denied
habeas corpus rights

Description

The Nonhuman Rights Project vows to fight on to secure her freedom

By Irwin Rapoport

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On **June 14**, the **New York Court of Appeals** denied habeas corpus rights to **Happy the elephant**, a sentient creature kept in a 1.1-acre enclosure at the **Bronx Zoo** in New York City. The majority ruling for the court recognized that Happy, a 51-year-old Asian elephant taken from her family in 1971, is property and belongs to the zoo.

Happy's case was mentioned in the April 7 *Westmount Magazine* article [The passing of elephant Shirley: why her life mattered](#).

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The case – THE NONHUMAN RIGHTS PROJECT, INC. on behalf of HAPPY, Petitioner, v. JAMES J. BREHENY, in his official capacity as 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 (Appellate Case No. 2020-02581) – was heard on May 18, 2022, in Albany, New York.

The [Nonhuman Rights Project](#) representing Happy is seeking habeas corpus rights for the intelligent and sentient creature. Elephants are social animals, like humans, and live in herds consisting of family and friends led by matriarchs. The goal is to secure Happy's freedom via recognition for her as an autonomous individual and send her to [The Elephant Sanctuary](#) in Tennessee or the [Performing Animal Welfare Society Sanctuary](#) in California to live the rest of her life with other elephants in sprawling locations where they can wander to their heart's content and be elephants. NhRP attorney **Monica Miller** pleaded Happy's case in court, while NhRP attorney **Elizabeth Stein** is Happy's New York counsel. Here is the [link](#) for the court's decision which had five

justices voting in favour of the majority and two dissenting.



Attorneys Elizabeth Stein (L) and Monica Miller head to court – Image: courtesy of the Nonhuman Rights Project

“We applaud the powerful dissents by the Honorable **Judges Jenny Rivera and Rowan D. Wilson**,” said the Nonhuman Rights Project in a statement, “which we see as a tremendous victory in a national and global struggle for nonhuman animal rights which we’ve only just begun. They follow similarly supportive arguments made by the **Honorable Judge Eugene M. Fahey** in our chimpanzee rights cases before he retired from the Court in January of 2022.”

“Judges Rivera, Wilson, and Fahey join a growing body of judges from around the world who are considering and recognizing nonhuman animals as rights-holders, and we look forward to citing these dissents in our elephant rights case already underway in California and in the new cases we’ll file across the U.S. and in other countries in the coming months,” it added. “We have persuaded three judges on New York’s highest court since 2018; we know we’ll persuade more.”

Many are extremely saddened and disappointed by the June 14 ruling.

“At the same time, this is not just a loss for Happy, whose freedom was at stake in this case and who remains imprisoned in a Bronx Zoo exhibit,” said the Nonhuman Rights Project. “It’s also a loss for everyone who cares about upholding and strengthening our most cherished values and principles of justice – autonomy, liberty, equality, and fairness – and ensuring our legal system is free of arbitrary reasoning and that no one is denied basic rights simply because of who they are.”

In his dissenting opinion, Justice Wilson wrote: “When the majority answers, ‘No, animals cannot have rights,’ I worry for that animal, but I worry even more greatly about how that answer denies and denigrates the human capacity for understanding, empathy and compassion.”

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– Nonhuman Rights Project

The Nonhuman Rights Project put forward a principled and passionate case for Happy. Here is the [link](#) for the oral arguments.

“With the support of diverse, renowned experts in law, philosophy, religion, elephant cognition, social justice, and more, we sought Happy’s legal personhood and right to liberty under New York common law, which is judge-made law that’s meant to evolve with the times,” said the NhRP. “We lament that the Court chose not to do its clear common law duty in this case by bringing Happy’s legal status into the 21st century. In this respect, the majority of the Court appears to be out of touch with the times and has demonstrated a deep misunderstanding of what Happy’s case is about.”

“The fact remains that Happy deserves to live freely and with peace and dignity in the vastly larger, more natural environment of a sanctuary designed to respect elephant autonomy,” said the NhRP. “Judge Rivera is right when she wrote in her dissent that ‘a gilded cage is still a cage. Happy may be a dignified creature, but there is nothing dignified about her captivity.’ That’s why we’ll continue our grassroots campaign for her release at the same time as we consider our legal options and next steps in New York. We’ll provide further analysis of the decision and dissents in the coming days.”



Happy the lonely elephant – Image: Gigi Glendinning



The battle for Happy's freedom and, by extension, other autonomous beings trapped in horrific conditions is far from over and the Nonhuman Rights Project is counting on the continued support of its many followers and contributors.

"What's clear right now is that these dissents, as well as the fact that Happy had a hearing in the highest court of the state in which she's been imprisoned for half a century, offer tremendous hope for a future where elephants no longer suffer as Happy has and where nonhuman rights are protected alongside human rights," said the NhRP. "This is the first time the highest court of an English-speaking jurisdiction has heard a case demanding a legal right for a nonhuman animal. It will be far from the last. To everyone in New York and around the world who've joined us in calling for Happy's right to liberty, thank you for helping us build this future, step by step, case by case, for as long as it takes for Happy and for all autonomous beings who are deprived of their freedom."

Lauren Choplin, the Nonhuman Rights Project's Communications Director, spoke with us to provide more information about Happy's case and plight and the plans to secure her freedom.

WM: Who is Happy, how did she end up in the Bronx Zoo, and how would you describe her living conditions?

Choplin: Happy is an approximately 51-year-old Asian elephant who lost her family, her home and her freedom when she was a year old. Captured from the wild in Thailand, Happy and six other elephant calves were imported to the U.S. in 1972 and first wound up at a safari in California. All the elephants were named after the dwarves in *Snow White and the Seven Dwarves*. Soon after, Sleepy died, and Happy, Grumpy, Sneezy, Doc, Dopey, and Bashful were moved to another safari in Florida. Five years later, Happy and Grumpy were sent from Florida to the Bronx to be part of the Bronx Zoo's elephant exhibit. There, the Bronx Zoo displayed them to zoo visitors and compelled them to perform tricks, give rides, and participate in "elephant extravaganzas," including tug-of-war contests with zoo patrons.

'In 2006... Happy became the first elephant in the world to pass the mirror self-recognition test, considered to be a key identifier of self-awareness, which is intimately related to autobiographical memory in humans and central to autonomy...'

– Lauren Choplin, Communications Director, the Nonhuman Rights Project

In 2002, the Bronx Zoo euthanized Grumpy, who by then had been Happy's companion for three decades, including 25 years spent in the Bronx Zoo, after two other elephants, Patty and Maxine, attacked her. Following Grumpy's death, the Bronx Zoo introduced Happy to a younger elephant, Sammy. According to a zookeeper at the time, Happy "stepped into a mother role with Sammy, so it worked out really well."

In 2006, just after Happy became the first elephant in the world to pass the mirror self-recognition test, considered to be a key identifier of self-awareness, which is intimately related to autobiographical memory in humans and central to autonomy, the Bronx Zoo euthanized Sammy because she was suffering from kidney failure. Happy now spends her days standing in the small barren yard, corrals, and barn that comprise the Bronx Zoo elephant exhibit.

I'll just add that we have never alleged her imprisonment violates any animal welfare laws, which don't reach the issue of her imprisonment itself.



Happy the elephant Freedom Rally in 2019 – Image: Lukas Greyson

WM: After reading the ruling, how would you describe the feelings of the team fighting for Happy's freedom?

Choplin: The decision is disappointing but not necessarily surprising given the thousands of years nonhuman animals have been things with no rights. We're thrilled about the dissents. They're a sign of how far we've come in such a short time, and we can cite them in other cases. More than anything else, we feel as resolute as ever to keep advancing the law for Happy and other nonhuman animals as well as deeply grateful for our supporters who understand the ups and downs of our long-term legal fight and are with us for the long haul.

WM: What were some of the arguments put forward by the Bronx Zoo, and what were some of the justifications raised by the majority ruling? Did the justices, in your view, knowingly avoid obvious points and questions?

Choplin: The Bronx Zoo claimed, against all evidence, that Happy is happy where she is and that she should remain a rightless thing because only humans can be legal persons with rights. While the Court expressed some sympathy for Happy, unfortunately, it appears to have taken up the wildly wrong reasoning of a prior decision in our cases that held only humans can be persons with rights because only humans can bear duties. We can only speculate as to what the judges were thinking but they definitely had to ignore a mountain of supporting evidence, case law, and expert opinions to rule against us.

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– Lauren Choplin, Communications Director, the Nonhuman Rights Project



WM: Did the court have the authority, regardless of whether it denied or backed the habeas corpus argument, to insist that the Bronx Zoo send Happy to one of the two elephant sanctuaries in the United States?

Choplin: No, the Court had to answer the question presented, which was whether Happy had a legal right.

WM: What is the next step in the fight to secure Happy's habeas corpus rights and free her from the Bronx Zoo?

Choplin: We're still analyzing the decision and considering our next steps, legally and otherwise, but no matter what, we'll continue to fight for Happy's release to a sanctuary, and we'll continue to need the help of those who care about elephants in New York and beyond.

WM: This battle may have been lost, but many want to help out, be it in terms of offering legal help, financial contributions, organizing rallies and petitions, and offering their expertise as naturalists and wildlife researchers. How can these people pitch in, and with who should they get in touch?

Choplin: We welcome support from members of the public in all the forms it can take! Anyone interested in helping out can email us any time at info@nonhumanrights.org

To learn more about the Nonhuman Rights Project visit nonhumanrights.org

Update

The **Nonhuman Rights Project** is calling on the public to complete an action alert to urge the **Wildlife Conservation Society's ex-officio trustees** to use their positions to help **#FreeHappy** and **#FreePatty**, the other elephant the Bronx Zoo forces to live alone, by publicly **calling on the Bronx Zoo to close their elephant exhibit** and **send the elephants to a sanctuary** (note: WCS manages the Bronx Zoo). To complete the alert go to:

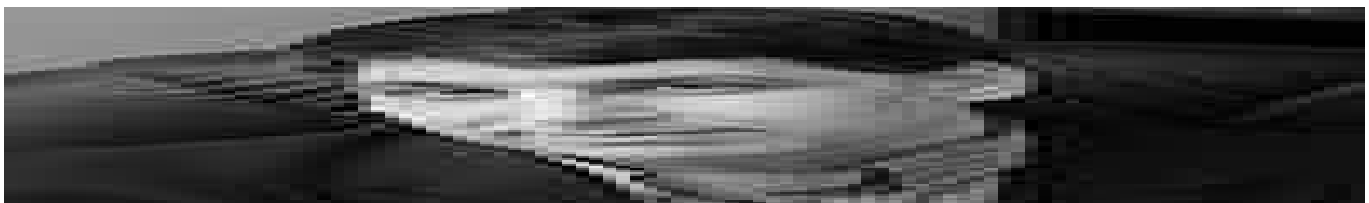
nonhumanrights.org/blog/help-freehappy-freepatty

Feature image: Happy the elephant in her Bronx Zoo enclosure, by Gigi Glendinning

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Irwin Rapoport is a freelance journalist.



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