May 28, 2015

Court of Appeals

FOR THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK EX REL.

THE NONHUMAN RIGHTS PROJECT, INC. on behalf of TOMMY,

Appellant,

-v-

PATRICK C. LAVERY, individually and as an office of Circle L Trailer Sales, Inc., DIANE LAVERY and CIRCLE L TRAILER SALES, INC.,

Respondents.

LETTER BRIEF OF AMICUS CURIAE CENTER FOR CONSTITUTIONAL RIGHTS IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

Rachel Meeropol
Baher Azmy
Center for Constitutional Rights
666 Broadway, 7th Fl.
New York, NY 10012
(212) 614-6432

1. The Center for Constitutional Rights ("CCR") is a national not-for-profit legal, educational, and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Since 2002, CCR has played a leading role in litigation and advocacy efforts in the United States and internationally to defend the rights of individuals detained by the U.S. government at Guantánamo Bay. In the course of that work – including in multiple cases in the U.S. Supreme Court – CCR has developed significant expertise in the history and purpose of both the statutory and common law right to habeas corpus.

2. CCR's work on behalf of the Guantánamo detainees began in early 2002, immediately after individuals were taken to the U.S. Naval Base at Guantánamo for purposes of indefinite, *incommunicado* detention and in an avowed desire to evade the jurisdiction of U.S. courts and application of U.S. or international law.

3. Specifically, in 2002, CCR filed the first habeas corpus petitions on behalf of detainees held in Guantánamo Bay. In seeking to dismiss those petitions, the government argued that because the detainees were "aliens" detained "outside the United States," U.S. courts had no jurisdiction to consider their habeas corpus petitions. However, in the landmark case brought by CCR in 2004, *Rasul v.* Bush, 542 U.S. 466 (2004), the United States Supreme Court held that the

habeas corpus statute, which was based on centuries-old common law habeas principles reflecting the writ's equitable and flexible nature, reached Guantánamo Bay and the prisoners therefore were entitled to file habeas petitions to challenge the legal and factual basis of their detention.

4. For the next several years, the U.S. Congress sought unsuccessfully to undo *Rasul* and strip away judicial power to hear detainee challenges to the legality of their detention. Congress enacted the Detainee Treatment Act of 2005, Pub. L. No. 109–148, §1005(e), 119 Stat. 2680, 2741, in part to strip courts of jurisdiction over detainee cases, but that effort was rejected by the Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006). Congress again responded by enacting the Military Commission Act of 2006, Pub. L. No. 109-366, § 7(a), 120 Stat. 2600, 2635, which included another jurisdiction-stripping provision. That provision was likewise invalidated by the Supreme Court in another case in which CCR was co-counsel, *Boumediene v. Bush*, 553 U.S. 723 (2008).

5. *Boumediene* held that the detainees' access to the courts in order to challenge their detention is rooted in the Constitution and therefore cannot be stripped away by congressional legislation. The decision likewise emphasized that for hundreds of years the writ was an inherently flexible judicial tool, necessarily so in order to foil attempts of government officials to evade its reach, and that it's equitable nature was likewise designed to ensure that all manner of

confinement could be subject to judicial scrutiny to ensure its compliance with the law. In the years since *Boumediene* held that courts have jurisdiction to hear habeas petitions, CCR has worked alongside many other lawyers to seek individual judicial relief under habeas corpus for men detained in Guantánamo.

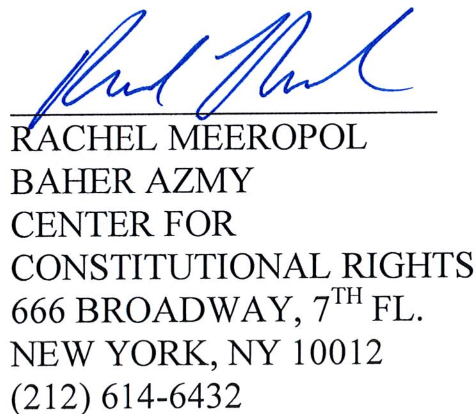
6. While the detention of human beings at Guantánamo and the detention of Tommy the chimpanzee in New York present factually and legally distinct questions, CCR would welcome the opportunity to share its significant habeas expertise should the Court of Appeals grant the current motion. Specifically, CCR can speak to the historical, common law understanding of the writ, and the important distinction (that the lower court confused) between a court's *jurisdiction* or power to hear habeas petitions and whether the law or facts compel *granting* relief contemplated by the writ – release. It is of no small import to the question presented here, that the writ of habeas corpus had been used numerous times historically in American and the U.K. to adjudicate petitions brought by (and to ultimately liberate) slaves, whose captors claimed authority to hold them as property.

7. CCR agrees with appellants that Tommy's case presents a novel question of significant importance, both in terms of the legal precedent it will set and as a matter of social justice and public policy. Just as the courts scrutinized the President's claimed authority to create a prison outside the law where human

beings could be detained and abused without the scrutiny of the judicial branch – an inquiry that itself turned on the common law use of the writ to adjudicate slave petitions for freedom – the New York Court of Appeals should take this opportunity to carefully scrutinize the Respondent's legal authority to detain a non-human individual under the many relevant lines of legal precedent and scientific evidence recognizing a Chimpanzee's capacity for autonomy and self-determination before summarily denying habeas personhood to Tommy

8. Given the complicated and important questions raised by Tommy's case, CCR respectfully urges the Court to grant leave for appeal.

Dated: May 28, 2015
New York, New York



RACHEL MEEROPOL
BAHER AZMY
CENTER FOR
CONSTITUTIONAL RIGHTS
666 BROADWAY, 7TH FL.
NEW YORK, NY 10012
(212) 614-6432