

Colombia's 'Cocaine Hippos' Are Not Persons Under US Law

By **Phil Goldberg** (November 10, 2021)

File this story under: Don't believe everything you see on the internet. Over the past few weeks, a press release from the Animal Legal Defense Fund seems to have led news organizations from CBS News to the Huffington Post to report that Pablo Escobar's "cocaine hippos" are the first animals ever to be recognized as legal persons by U.S. courts.

It is a fanciful story that simply is not true — even according to the ALDF's own briefing in the matter.

It all started with Escobar, the "King of Cocaine," who was the infamous leader of Colombia's Medellin drug cartel in the 1980s, and owned four hippopotamuses. After Colombian police killed Escobar in 1993, the hippos were left on his property, and found their way to the Magdalena River.

There are now dozens of them living on the river's banks. The local authorities are looking to control this hippo population, and a Colombian lawyer filed a lawsuit in Colombia on behalf of "the Community of Hippopotamuses Living in the Magdalena River" to stop any attempts to euthanize them. Colombia — not the U.S. — provides the hippos with the legal rights to bring this lawsuit.

In the Colombia case, the lawyer thought it would be useful to depose two people in Ohio who studied ways to control hippo populations through nonlethal methods. That lawyer worked with the ALDF to file an application in the U.S. District Court for the Southern District of Ohio last month, asking the court in an expedited fashion to approve their subpoenas for the depositions.

The ALDF filed the application in the hippopotamuses' name, as they are the plaintiffs in the Colombia case — but repeatedly told the federal court that granting its subpoenas had nothing to do with establishing animals as legal persons in the U.S.[1]

Specifically, the ALDF said the court could grant the subpoenas under the controlling federal statute "even if [the hippos] would not be recognized as persons in our domestic legal system for other purposes, as in the case of foreign sovereigns and estates." [2] The "U.S. courts do not interfere with a foreign legal system's conclusion as to who qualifies as a litigant in that country." [3]

A magistrate granted the application in perfunctory fashion, just as the ALDF asked. It issued the order the same day the group filed the petition, the three-line order included no discussion on animal personhood, and there was no hearing or opposition. [4] Legally, this was a nonevent.

Even still, the ALDF spun the granting of subpoenas for the hippos' Colombia case as recognition that the hippos were legal persons here. It issued a press release saying "Animals Recognized as Legal Persons for the First Time in U.S. Court." What's clear is that the federal court in Ohio never said that, but why let the facts get in the way of a good press release?

The truth is that it is disingenuous for the ALDF to broadly claim a federal court recognized



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animals as legal persons when it told the court that granting its subpoenas was not about broadly recognizing the hippos as legal persons. In fact, the ALDF insisted throughout its brief that this application was solely about allowing a litigant in a foreign country the ability to enforce subpoenas in the U.S., regardless of who that litigant was or whether that litigant would be considered proper in the U.S.

But the ALDF is also smart. In today's media environment, repeating information regardless of its truthfulness can make it factual in many people's minds.

To be sure, animals are not legal persons in the U.S. For decades, the ALDF and other animal rights groups, including the Nonhuman Rights Project and People for the Ethical Treatment of Animals, have tried to change this law.

They have filed habeas corpus petitions to free animals in zoos.[5] They have equated animal ownership with slavery, saying owning animals violates the involuntary servitude provision of the 13th Amendment.[6]

In 2015, PETA filed a case for a chimpanzee, *Naruto v. Slater*, in the U.S. District Court for the Northern District of California, claiming that the chimp qualified as a person under federal copyright law.[7] And the groups have asked courts to recognize expanded damages in animal injury cases.[8]

Across these areas of law, federal and state courts have remained remarkably consistent. They have properly honored the role of animals in society, including as cherished family pets — but have uniformly rejected efforts to leverage our affinity for animals into new legal rights.

What they have found is that giving legal rights to animals is not automatically the pro-animal position — and the groups do not necessarily speak for the animals they purport to represent. Indeed, animal rights often are at odds with animals' welfare.

Nearly a decade ago, Joyce Tischler, a founder of the ALDF, cautioned that "not every animal lawyer has greeted [the animal rights approach] with enthusiasm," with some urging students and practitioners "to step away from the focus on animal rights and instead work for progressive welfare reforms ... [which] has gained a good deal of traction." [9] Courts and legislatures have recognized this same dichotomy.

Courts also have been suspicious of the groups' claims that they are acting in the animals' best interests — not for their own institutional benefits. In *Naruto*, the U.S. Court of Appeals for the Ninth Circuit found that PETA treated the chimpanzee as "an unwitting pawn" in PETA's ideological goals.[10] In *Nonhuman Rights Project Inc. v. Breheny*, a case before the New York Court of Appeals, the NRP is seeking to remove Happy the elephant from the only home it has ever known, where it has lived for more than 40 years.[11]

As the Connecticut Court of Appeals explained in 2019, in denying a habeas petition in *Nonhuman Rights Project Inc. v. R.W. Commerford & Sons Inc.*, changing the categorization of animals to persons in any context would "upend" the legal system.[12]

Under current law, animal welfare is the priority, with legislatures and courts consistently and rightfully protecting animals from cruelty and abuse. That makes sense, but it does not make animals legal persons — nor does a three-line order allowing a couple of subpoenas in a foreign case.

Given the ALDF's decadeslong quest to establish a beachhead for legal personhood, it is not surprising the group would make mountains out of grains of sand. Kudos to them on faking out the American media.

But some will try to leverage the approval of the ALDF's subpoenas in other court proceedings — including the current habeas corpus petition in New York. Hopefully, these courts will be more discerning than the media. It just takes reading the ALDF's own words.

Clarification: This article has been updated to clarify the scope of the ALDF's argument to the court.

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[1] Animal Legal Defense Fund Memorandum of Points and Authorities, In re Community of Hippopotamuses Living in the Magdalena River, No. 1:21-mc-23 (S.D. Ohio filed Oct. 15, 2021).

[2] Id. at 8.

[3] Id. at 7.

[4] Order, In re Community of Hippopotamuses Living in the Magdalena River, No. 1:21-mc-23 (S.D. Ohio Oct. 15, 2021).

[5] See, e.g., Nonhuman Rights Project Inc. v. R.W. Commerford & Sons Inc., 216 A.3d 839 (Conn. Ct. App. 2019); People ex rel. Nonhuman Rights Project Inc. v. Lavery, 124 A.D. 3d 148 (N.Y. 3d Dep't 2014); Rowley v. City of New Bedford, 159 N.E.3d 1085 (Mass. Ct. App. 2020) (unpublished).

[6] See Tilikum v. SeaWorld Parks & Entm't Inc., 842 F. Supp. 2d 1259 (S.D. Cal. 2012).

[7] Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018).

[8] See, e.g., Strickland v. Medlen, 397 S.W.3d 184 (Tex. 2013); McDougall v. Lamm, 48 A.3d 312 (N.J. 2012); Rabideau v. City of Racine, 627 N.W.2d 795 (Wis. 2001).

[9] See Joyce Tischler, A Brief History of Animal Law, Part II, 5 Stan. J. of Animal L. & Pol. 27, 52 (2012).

[10] Naruto v. Slater, 888 F.3d 418, 421 n.3 (9th Cir. 2018).

[11] Nonhuman Rights Project Inc. v. Breheny, 189 A.D.3d 583 (Dec. 17, 2020).

[12] Nonhuman Rights Project Inc. v. R.W. Commerford & Sons Inc., 216 A.3d 839, 844 (Conn. Ct. App. 2019).