

No.

**IN THE
SUPREME COURT OF THE UNITED STATES**

People for the Ethical Treatment of Animals, Inc. and Angela Scott,
individually, also known as Angela G. Cagnasso,
Respondents,

v.

Tonia Haddix,
Petitioner.

On Application to Stay an Order of the
United States Eastern District Court of Missouri

**EMERGENCY APPLICATION FOR A STAY PENDING THE
FILING AND DISPOSITION OF A PETITION FOR A WRIT OF
CERTIORARI**

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To the HONORABLE BRETT M. KAVANAUGH, Associate Justice of the Supreme Court of the United States and the Circuit Justice for the Eight Circuit:

For the foregoing reasons, Petitioner Tonia Haddix requests and believes this Court should grant the Emergency Stay pending her petition for certiorari as no conceivable harm would come to the respondents.

I. OPINIONS BELOW

The opinion of the district court is not reported and was a minute order issued in the U.S. District Court for the Eastern District of Missouri, case no. 4:16-cv-02163. *See* ECF No. 320. Petitioner appealed the order to the United States Court of Appeals for the Eighth Circuit, case no. 21-2604, and filed an emergency motion to stay the trial court's order. On July 26, 2021, the Eighth Circuit issued an order denying Petitioner's emergency motion. A true and correct copy of the Eighth Circuit's order is attached hereto as Exhibit A.

II. JURISDICTION

On July 23, 2021, Petitioner filed with the Eighth Circuit an emergency motion to stay an order of District Court of the Eastern District of Missouri issued on July 21, 2021 pending the appeal of that order. On July 26, 202, the Eight Circuit issued an order denying Petitioner's emergency motion. This order consisted of just seven words: "The Emergency motion for stay is denied." Absent a stay by this Court, the trial court's order will be executed on [protected under seal].

This Court has jurisdiction to recall and enter a stay of the order issued by the District Court for the Eastern District of Missouri's pending review on a writ of certiorari. *See* 28 U.S.C. §§ 1254(1), 2101(f).

III. STATEMENT OF THE CASE

A. Factual Background and Procedural History

This citizen's suit under the Endangered Species Act¹ commenced on December 30, 2016 because PETA sought to take numerous chimpanzees—including Crystal and Mikayla—away from one of Ms. Haddix's acquaintances. ECF No. 1. On December 8, 2018, Crystal, Mikayla, and several other chimps were signed over Ms. Haddix. (Affidavit of Tonia Haddix ¶10.) Ms. Haddix was joined as a crossclaim defendant on March 18, 2020. ECF No. 226. She was unrepresented in this litigation until July 12, 2021. ECF No. 317-1 at 2; ECF No. 317-3 at 1. At first, this was by choice; later, it was because all the attorneys she spoke with refused to take her case. ECF No. 317-1 at 2.

In September 2020, Ms. Haddix and PETA entered into a consent decree. *See* ECF No. 274. Pursuant to the consent decree, Ms. Haddix

¹ 16 U.S.C. § 1531 et seq.

would retain ownership and custody of Crystal and Mikayla, *id.* at 4, and that a PETA-sponsored facility would take ownership and custody of four other chimpanzees (the Four Chimpanzees), *id.* at 2. Ms. Haddix was required to construct a night house and Primadome² for Crystal and Mikayla, which had to be completed in six months. *Id.* at 5. The consent decree also provided that PETA's facility would construct facilities for the Four Chimpanzees, *id.* at 2, but PETA's facility had no specific deadline. The consent decree also provided that if Ms. Haddix defaulted, PETA could take Crystal and Mikayla away. *Id.* at 6.

Ms. Haddix spent over \$87,000 constructing a night house, which was completed on March 14, 2021. (Haddix Decl. ¶2;) ECF No. 317-1 at 2. Ms. Haddix also owned a Primadome that satisfied the requirements of the consent decree. (Haddix Decl. ¶3.) PETA convinced her that her Primadome was insufficient, (*Id.* ¶6,) but agreed that she could build a substitute structure, ECF No. 317-1 at 3. Her contractor was prepared to build the Primadome substitute, but Missouri's harsh winter weather prevented him from constructing it within the required timeframe. *Id.*

² A Primadome is a fully enclosed outdoor primate enclosure.

Seizing on the consent decree’s technical provisions, PETA moved to place Ms. Haddix in contempt. *See* ECF Nos. 287, 292. At one of the resulting hearings, held on March 25, 2021, the district court “strongly recommend[ed]” that Ms. Haddix get an attorney. ECF No. 297 at 28:13–14. In a colloquy with the court, Ms. Haddix expressed a desire to modify or vacate the consent decree. *Id.* at 31:12. The court responded with: “You better get a lawyer. You need a lawyer. . . . I strongly advise you to get a lawyer You need a lawyer to find out your legal rights.” *Id.* at 31:13–19.

Ms. Haddix was unable to secure counsel before the next hearing, held on April 7, 2021 hearing. At its commencement, Ms. Haddix informed the court that she was seeking counsel and asked for a continuance so that she could continue searching. ECF No. 302 at 2:22–24. Throughout the hearing, the court repeatedly stressed that Ms. Haddix needed counsel. *See, e.g., id.* at 12:2–7 (“I still think that you should get a lawyer. . . . I still think you definitely need a lawyer.”); *id.* at 25:24–25 (“Now here’s what you need to do. You need to get a lawyer.”); *id.* at 30:8–11 (“You have some rights under the agreement. That's why if you get a lawyer, . . . we can come up with a way to get it moving back

on track.”); *id.* at 32:25–33:1 (“Well, I think you need a lawyer so you’re not also adding perjury to your problems.”); *id.* at 35:10–12 (“And you ought to get a lawyer, please, within . . . fourteen days.”). However, the court denied the continuance. *Id.* at 12:4–5.

Ms. Haddix continued searching for counsel, but to no avail. When all attorneys in her vicinity refused to represent her, she contacted attorneys throughout the State of Missouri. ECF No. 317-1 at 2. Yet none agreed to represent her. *Id.* She then expanded her search to attorneys outside of the state, yet this was equally unavailing. *Id.*

On May 13, 2021, Ms. Haddix filed a “[r]equest for clarification of contempt compliance,” ECF No. 305 at 1, in which she again informed the trial court that she “contact[ed] multiple attorneys to represent [her] in this case with no one willing to do so,” *id.*

Ms. Haddix continued to seek counsel. However, in total, approximately eighty-five attorneys refused to represent her. ECF No. 317-1 at 1.

On June 10, 2021, PETA moved for a third time to hold Ms. Haddix in contempt. ECF No. 308. The hearing was ordered for July 14, 2021 (the July 14 Hearing). ECF No. 309 at 1.

Mr. Pierce was the first attorney who was willing to represent Ms. Haddix. ECF No. 317-1 at 2. She retained Mr. Pierce on July 12, 2021. *Id.*; ECF No. 317-3 at 1.

Because counsel had been retained less than two days before the hearing, Ms. Haddix moved to continue the July 14 Hearing for 30 days. ECF No. 317 at 4. Once again, the court refused to stay the proceedings. ECF No. 324 at 12:2. The court ordered that Crystal and Mikayla be removed on [protected under seal]. ECF No. 323 at 1. Counsel for Ms. Haddix moved to stay that order. ECF No. 324 at 18:12. The court denied the request, *id.* at 28:5–6, and stated that Ms. Haddix could file an emergency motion with this Court if she so desired, *id.* at 28:4–5.

IV. REASON FOR GRANTING THE STAY

“To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v.*

Perry, 558 U.S. 183, 190 (2010). Here, Ms. Haddix is able to satisfy this standard this Court has created.

V. ARGUMENT

A. Ms. Haddix was denied due process of law guaranteed to her by the Fifth Amendment to the U.S. Constitution.

The Federal Rules of Appellate Procedure permit parties to petition for panel rehearing. Fed. R. App. P. 40. However, “[t]he petition **must** state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended.” *Id.* Rule 40(a)(2) (emphasis added).

This Court has endorsed the view that there are three “basic requisites of due process when applied to [orders issued pursuant to] judicial proceedings”: (1) the issuing court must have subject matter jurisdiction; (2) the party or parties bound by the order must have received notice of the proceeding; and (3) the parties must have been afforded an opportunity to present every available defense.” *State of Kansas ex rel. Beck v. Occidental Life Ins. Co.*, 95 F.2d 935, 937 (10th Cir. 1938), *cert. denied*, 305 U.S. 603 (1938).

Here, Ms. Haddix was denied her right to due process by the United States Court of Appeals for the Eighth Circuit because it issued an order without setting forth the basis for the order. Because the court's reasoning is entirely unstated, Ms. Haddix has no basis upon which to state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended. Therefore, the Eighth Circuit has prevented Ms. Haddix from availing herself of a procedural device afforded to her as of right by Rule 40.³ In so doing, the Eighth Circuit effectively foreclosed an opportunity for Ms. Haddix to present an otherwise available defense. Accordingly, the court failed to afford to Ms. Haddix one of the basic requisites of due process.

B. This Motion Complies With 28 U.S.C. § 2101(f)

A motion for a stay addressed to this Court in which a final judgment or decree of any court that is subject by review of the United States Supreme Court on a writ of certiorari may be stayed for a

³ It hardly needs to be stated, but Rule 40 does not entitle a party to panel rehearing as of right, and Ms. Haddix does not so argue. However, nothing in the text of Rule 40 suggests any limitation on the right of a party to *petition* for panel rehearing.

reasonable time to enable the party seeking certiorari with this Court time to prepare such writ. 28 U.S.C. § 2101(f).

Here, Ms. Haddix moved for a stay during the July 14 Hearing, which the district court denied. The court did not clearly explicate its reasoning for the denial. However, the court's contemporaneous statements suggest that the stay was denied because the motion for continuance was filed not long before the hearing sought to be continued. *See* ECF No. 324 at 28:3–14. The district court may also have believed that this motion was more appropriately addressed to the Eighth Circuit. *See id.* at 28:4–5, 11–12 (“If you want to file a motion -- emergency motion to stay with the Court of Appeals, you may do so.”).

Ms. Haddix then moved for an emergency stay in the Eighth Circuit Court of Appeals on July 24, 2021. The Eighth Circuit denied the motion. [CITE]. However, the court did not provide its reasoning therefor. *See* [insert]

C. Ms. Haddix Will Be Irreparably Injured If the Stay Is Denied

“The irreparable harm analysis turns on the nature of the injury likely to result from the challenged action.” *Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Parson*, 1 F.4th 552, 562

(8th Cir. 2021). An injury is irreparable when it is one for which money damages alone could not provide adequate relief. *Hinz v. Neuroscience, Inc.*, 538 F.3d 979, 986 (8th Cir. 2008).

In the instant case, several affiants agree that Crystal and Mikayla will be at a high risk of being injured or killed by other chimpanzees if they are brought to the Primate Center. (See Affidavit of Emily Sue Savage-Rumbaugh); ECF No. 317-2. Dr. Savage-Rumbaugh is one of the world's foremost experts on chimpanzees. (See Savage-Rumbaugh Decl., Ex. A at 1–39 (Dr. Savage-Rumbaugh's Curriculum Vitae).) She has interacted extensively with Crystal and Mikayla, and has observed Ms. Haddix interacting with the two chimps. (Savage-Rumbaugh Decl. ¶¶17–19.) Dr. Savage-Rumbaugh explains that adolescent female chimps raised primarily with humans—such as Crystal and Mikayla—are likely to be injured, raped, or killed by unfamiliar chimpanzees. (*Id.* ¶¶9, 10, 12, 13, 20.) Further, female chimpanzees suffer “severe psychological stress” when placed among unfamiliar chimpanzees, which can cause them to “simply stop[] eating and die[] of depression.” (*Id.* ¶¶8, 11, 13, 15.)

Harm to Crystal or Mikayla will irreparably harm Ms. Haddix in several ways. *First*, Ms. Haddix will suffer severe emotional harm if

Crystal and Mikayla are injured or killed. *See Adams & Boyle, P.C. v. Slatery*, 956 F.3d 913, 927 (6th Cir. 2020) (emotional harms cannot be fully compensated by money damages). Ms. Haddix is their primary caregiver. (Haddix Decl. ¶10.) She has interacted with them on a daily basis for almost three years. (*id.* ¶13.) For example: they kiss and hug her through the walls of their enclosures, (*Id.* ¶17;) she talks to them, and they respond with their own vocalizations, (*id.* ¶15;) she runs along their enclosures and they chase after her, (*id.* ¶16;) they groom her, and press their backs up against the walls of their enclosure so that she can scratch their backs without violating the consent decree,⁴ (*id.* ¶17.) Because of this frequent and close contact, Ms. Haddix has developed a deep and abiding emotional bond with the chimps. (*Id.* ¶19.) Accordingly, she will suffer severe emotional trauma if they are injured or killed during the pendency of this appeal. (*See id.* ¶20.)

Second, Ms. Haddix will suffer irreparable financial harm if Crystal and Mikayla are injured or killed during the pendency of this appeal. *See Adams & Boyle, P.C.*, 956 F.3d at 927 (financial harms that cannot be remedied through a money damages award can form the basis for a

⁴ PETA insisted that Ms. Haddix be enjoined “from inserting any body part into an enclosure in which any chimpanzee is held.” ECF No. 274 at 7.

preliminary injunction). Ms. Haddix spent over \$87,000 constructing the night house. However, since the night house was constructed specifically for chimpanzees, it has no other use. Thus, if Crystal and Mikayla are injured or killed pending this appeal, Ms. Haddix's entire investment will, effectively, be made redundant. Since she cannot recover the construction costs, this will cause her irreparable financial harm.

Because Ms. Haddix is likely to suffer at least two distinct forms of irreparable harm if the district court's order is executed, this factor militates unequivocally in favor of granting the stay.

D. PETA Will Not Be Injured If the Stay Is Granted

PETA's asserted interest is to prevent Crystal and Mikayla from being harmed. This interest will best be furthered by keeping them with Ms. Haddix.

As Dr. Savage-Rumbaugh explained, "both Crystal and Mikayla will be at a very high risk of injury or death if they are removed from Ms. Haddix's custody, transferred to the Center for Great Apes, or introduced to unfamiliar chimpanzees. Accordingly, [she] strongly recommends against either removal of Crystal or Mikayla from Ms. Haddix's custody or transfer of Crystal or Mikayla to the Center for Great Apes." (Savage-

Rumbaugh Decl. ¶21.) This alone establishes that the trial court's order should be stayed.

Further, PETA's own conduct makes it abundantly clear that Crystal and Mikayla will not be harmed in Ms. Haddix's care. *First*, it is extremely telling that PETA agreed in the first instance that Ms. Haddix would retain ownership of both chimps. ECF No. 274 at 4. *Second*, pursuant to the consent decree, ownership and custody of the Four Chimpanzees were to be transferred to a PETA-sponsored facility. ECF No. 274 at 2. However, PETA insisted *in the consent decree* that "Haddix shall retain custody and ownership of the Four Chimpanzees . . . prior to [their] transfer" to PETA's facility. *Id.* Indeed, almost nine months after the consent decree was entered, Ms. Haddix asked PETA to schedule the transfer of the Four Chimps. (Haddix Decl., Ex. F at 2.) PETA replied that the facility was "not yet ready to accept the [Four Chimpanzees]," and refused to even discuss the date of the transfer. (*Id.* at 1.) (PETA noncommittally suggested that it would "inform [her] as soon as the transfer can be scheduled." (*Id.*))

Clearly, this is not the behavior of an organization that genuinely believes the chimpanzees under Ms. Haddix's care are being "[held] in

barren and unsanitary enclosures,” “inhumanely deprived of [] social contact, physical space, and environmental enrichment,” or “denied an adequate diet and regular veterinary care.”⁵ ECF No. 226 at 2. If PETA had any real concerns about the quality of Ms. Haddix’s care, they would have immediately removed the Four Chimpanzees and temporarily boarded them elsewhere. In short, PETA’s own conduct shows that it has no legitimate qualms or complaints with Ms. Haddix or the care she provides. Accordingly, PETA cannot credibly assert that it will suffer any prejudice or injury if this stay is granted.

E. Ms. Haddix is likely to succeed on the merits of her appeal

1. Ms. Haddix should prevail based on the Eighth Circuit’s holding in *DiMercurio v. Malcom*

In *DiMercurio*, the plaintiff and two witnesses “key” to his case had scheduled a non-refundable overseas vacation. 716 F.3d 1138, 1139 (8th Cir. 2013). Without knowing this, the trial court sua sponte rescheduled the trial such that it would commence while the plaintiff and his witnesses was out of the country. *Id.* The plaintiff moved for a continuance, which was denied. *Id.* On the day of trial, plaintiff’s counsel

⁵ It is PETA, not Ms. Haddix, that denied chimpanzees regular veterinary care. (*See* Haddix Decl. ¶12.)

once again moved for a continuance, which was again denied. *Id.* The court then dismissed the case with prejudice, and the plaintiff appealed. *Id.*

The Eighth Circuit found that the trial court had abused its discretion. *Id.* It reasoned that denying the continuance—and the resulting dismissal of the plaintiff’s claim—was a “harsh sanction” that injured him and outweighed the cost and inconvenience that a delay would cause to the defendant and the trial court. *Id.* at 1141.

Here, Ms. Haddix is a defendant. Therefore, her existing property rights in Crystal and Mikayla are at stake in this litigation. For this reason alone the denial of her continuance request is far harsher than the one at issue in *DiMercurio*, where the plaintiff would have lost nothing more than an opportunity to litigate a legal claim. Courts have recognized that the positional difference between plaintiffs and defendants is itself a significant factor. *See, e.g., Bradford Elec. Light Co. v. Clapper*, 286 U.S. 145, 160 (1932) (explaining that a court may decline to enforce a foreign cause of action on public policy grounds because doing so “merely denies [the plaintiff] a remedy,” but that a court cannot similarly decline to enforce a foreign substantive defense because doing

so “subjects the defendant to irremediable liability.”). This distinction is equally relevant here: As noted above, the consequences of denying Ms. Haddix’s continuance request are more severe than those that required reversal in *DiMercurio*. Accordingly, the denial complained of here should be reversed for that reason alone.

2. **Ms. Haddix is likely to prevail under the Eighth Circuit’s general standard for reviewing denials of continuance requests**

Denial of a motion for continuance is reviewed for abuse of discretion. *Vasquez v. Colores*, 648 F.3d 648, 652 (8th Cir. 2011). Abuse of discretion is determined by looking at the particular circumstances of the case. *U.S. v. Vesey*, 330 F.3d 1070, 1072 (8th Cir. 2003). To determine whether the court below abused its discretion, the Eighth Circuit considers: (1) whether the movant is prejudiced by the denial, *Rydder v. Rydder*, 49 F.3d 369, 373 (8th Cir. 1995); (2) whether counsel had sufficient time to prepare for the hearing; and (3) whether counsel’s conduct showed that he was, in fact, well-prepared, *Vesey*, 330 F.3d at 1072. Ultimately, an appellate court’s task in examining the exercise of discretion for abuse is simply to view the immediate action against all the facts and circumstances of the case, and see whether it “compels the

conviction” that the trial court responsibly exercised its official conscience. *Grunewald v. Pac. R. Co.*, 331 F.2d 983, 986 (8th Cir. 1964).

- a. **Ms. Haddix was prejudiced by the trial court’s refusal to continue the July 14 Hearing**
 - i. **Ms. Haddix was prejudiced because she was forced to proceed in this litigation *pro se***

In *Conrod v. Davis*, the trial court permitted the plaintiff’s attorney to withdraw, after which the plaintiff continued to litigate *pro se*. 67 F.3d 303 (Table), 1995 WL 564558, at *1 (8th Cir. Sept. 25, 1995). Before trial, the plaintiff obtained new counsel. *Id.* He moved for a continuance so that his attorney could prepare. *Id.* The trial court denied the continuance, the jury entered a defense verdict, and the plaintiff appealed. *Id.*

The Eighth Circuit reversed, holding that “the district court abused its discretion in denying [the plaintiff] a continuance to enable his counsel to prepare.” *Id.* Though the opinion was somewhat laconic, the court found it particularly significant that (1) the plaintiff had been forced to proceed *pro se* (2) “in this factually and legally complex [] action.” *Id.*

This reasoning applies equally here. *First*, as described in detail above, Ms. Haddix searched for counsel throughout the country, but was

unable to secure representation until July 12, 2021. *See supra* at 5–6. Moreover, as a defendant, she was compelled to participate in the litigation. Thus, she was forced to proceed *pro se*.

Second, this litigation is factually and legally complex. The trial court record in this case is extensive, comprising over 300 entries and over 5500 pages. It requires an understanding of the Endangered Species Act, its implementing regulations, and the case law interpreting the two. Moreover, as the parties entered into a consent decree, this case also requires an understanding of the principles of contract law. Ms. Haddix—who has no legal training, and has never before been involved in litigation—lacks all of these things.

The trial court clearly recognized this: When Ms. Haddix informed the court that she wanted to contest the consent decree, the court immediately said “You better get a lawyer. You need a lawyer. . . . [If] you're going to seek to vacate [the consent decree] in some way, . . . you need a lawyer to find out your legal rights.” ECF No. 297 at 31:13–19. This necessarily assumes that Ms. Haddix could not possibly find or assert her legal rights while proceeding *pro se*. Accordingly, the district court here made the same error as did the court below in *Conrod*.

ii. The refusal prejudiced Ms. Haddix by preventing her from presenting necessary evidence

To show that denial of a continuance was prejudicial, a party need only show that it prevented her from presenting necessary evidence. *Comcast of Ill. X v. Multi Vision Elecs., Inc.*, 491 F.3d 938, 946 (8th Cir. 2007).

Here, denial of the continuance prevented counsel from identifying and presenting evidence which would establish that Ms. Haddix had, in fact, performed her obligations under the consent decree. Indeed, had the continuance been granted counsel would have been able to present the court with photographs of the fully-constructed night house, and an invoice showing that its construction had been paid in full.

Counsel also needed time to investigate and obtain evidence that would establish Ms. Haddix's allegations that PETA obtained the consent decree—and Ms. Haddix's default—through improper or unconscionable means. For example, the consent decree required Ms. Haddix to provide PETA with “contractor's construction plans” for the Primadome. ECF No. 274 at 5. However, Primadomes are almost entirely prefabricated, and final assembly is done onsite by the manufacturer. (Haddix Decl. ¶¶4–5.)

Therefore, it is unlikely that any contractor's plans would exist for the Primadome. This strongly suggests that it is impossible for Ms. Haddix to perform the "contractor's construction plans" clause, which suggests that the consent decree is unconscionable.

Relatedly, Ms. Haddix owned a Primadome and planned on using it to perform her obligation under the consent decree. (Haddix Decl. ¶¶3–5.) However, PETA insisted that she provide the "contractor's plans" for the Primadome, even after Ms. Haddix told PETA that they did not exist. (*Id.* at ¶5.) Because of this, Ms. Haddix decided to build an entirely new structure. (*Id.*) However, Missouri's harsh winter prevented the substitute structure from being constructed.

Moreover, PETA claimed that it needed the contractor's plans to "to confirm that the structure was planned or built" in accordance with the consent decree's specifications. *See* ECF No. 317-1 at 16. But this is false. Primadomes are manufactured to standard dimensions, even the smallest of which satisfy the requirements of the consent decree. (Haddix Decl. ¶4.) Therefore, PETA did not need contractor's plans: the very fact that Ms. Haddix owned a fully-constructed Primadome proved that it satisfied the dimensional requirements set forth in the consent decree.

Ms. Haddix completed the night house timely, and could have had her Primadome dismantled and reassembled adjacent to the night house in a matter of days. Indeed, to ensure her performance of the consent decree, she planned on doing just that. However, she was dissuaded by PETA's insistence on the non-existent and superfluous contractor's plans. Therefore, PETA obtained Ms. Haddix's default through improper means.

If the district court had granted the continuance, counsel would have had time to discover the foregoing and seek to vacate the consent decree. Accordingly, denial of the continuance prejudiced Ms. Haddix. This factor strongly supports the conclusion that the court below abused its discretion.

b. Counsel for Ms. Haddix had almost no time to prepare for the July 14 Hearing

In analyzing this factor, the court should consider both the complexity of the case and the length of time between retention of counsel and the hearing for which the continuance was requested. *See, e.g., United States v. Joos*, 638 F.3d 581, 587 (8th Cir. 2011) (“The court appointed [defense] counsel nearly twelve weeks prior to [] trial, which was sufficient time to prepare for the two count criminal case.”) In *U.S.*

v. Haine, the defendant, a convicted felon, was indicted after his parole officer found him in possession of drugs and a firearm. 920 F.2d 552, 553 (8th Cir. 1990). Upon the defendant's motion, the court appointed counsel, who had over two days to prepare for trial. *Id.* The court declined to further continue the trial to give the defense additional time to prepare. *Id.* The defendant appealed his conviction, arguing that the court abused its discretion by denying the continuance request. *Id.*

On appeal, the Eighth Circuit affirmed. *Id.* at 555. The court reasoned that two days was sufficient time to prepare for trial because “[t]he case was not complex and involved very few exhibits” and because defense counsel “was able to interview all three of the potential defense witnesses before the trial began.” *Id.*

The instant case is distinguishable in several respects. *First*, unlike *Haine*, minimal preparation time prevented Ms. Haddix's counsel from speaking with relevant witnesses. When the danger to Crystal and Mikayla was raised at the July 14 Hearing, counsel could only obtain a supporting affidavit from the chimps' veterinarian. *See* ECF No. 317-2. PETA and the court both dismissed his affidavit because he had relatively few interactions with the chimps and because he was not an

expert in primate behavior. *See* ECF No. 324 at 29, 30:12–20. Were the continuance granted, Ms. Haddix would be able to present the affidavit of Dr. Savage-Rumbaugh. Since she is a world-renowned primate expert and has spent a great deal of time with Crystal and Mikayla, her affidavit could not be so easily dismissed.

Second, unlike *Haine*, the instant case is quite complex. At the time Ms. Haddix retained counsel, the docket contained 315 entries totaling over 5600 pages. ECF No. 317-3 at 1. Thus, counsel needed more than thirty-six hours to prepare. *Cf. U.S. v. Keiser*, 578 F.3d 897, 902 (8th Cir. 2009) (three months was sufficient time for counsel to review “lengthy transcripts and voluminous discovery”).

Finally, Ms. Haddix’s counsel had around 25 percent less time to prepare than did the *Haine* defendant’s. Accordingly, this factor strongly supports the conclusion that the court below abused its discretion.

c. Counsel for Ms. Haddix was not, in fact, prepared for the July 14 Hearing

At the July 14 Hearing, the court began its colloquy with Ms. Haddix’s counsel with “[y]ou’re coming in at the last moment.” ECF No. 324 at 3:21. Counsel explained that he was retained less than two days prior and was still “trying to get [his] mind . . . around [] a very extensive

file.” *Id.* at 4:5–6. Counsel was unable to answer numerous questions from the court. *See, e.g., id.* at 5:1–2, 15–17; 13:15–17; 15:10–12; 16:10–12. Clearly, the court’s refusal to continue the hearing did, in fact, prevent counsel from adequately preparing. *Cf. Joos*, 638 F.3d at 587 (concluding that defense counsel was prepared for trial because counsel had three months to prepare, and because trial transcript reflected that counsel “made timely objections during witness testimony, cross examined government witnesses, and entered exhibits on [the defendant’s] behalf.”); *Keiser*, 578 F.3d at 902 (concluding defense counsel was prepared because counsel had been retained for almost three months and filed a “detailed sentencing memorandum” before the hearing). Accordingly, this factor strongly supports the conclusion that the court below abused its discretion.

d. In sum, the foregoing factors firmly establish that Ms. Haddix’s appeal is likely to succeed on the merits

Each of the factors convincingly establishes that the court below abused its discretion. Therefore, Ms. Haddix is likely to succeed on the merits. This factor militates strongly in favor of granting the stay.

F. The Public Interest Strongly Favors Granting the Stay

The public interest at stake in this case is set forth by the Endangered Species Act. The Act's preamble declares "the policy of Congress . . . to conserve endangered species," 16 U.S.C. § 1531(c)(1), that one purpose of the ESA is to provide for "the conservation of [] endangered species," *id.* § 1531(b), and that "the United States has pledged itself as a sovereign state . . . to conserve" wildlife facing extinction, *id.* § 1531(a)(4).

Here, the policies of the ESA will best be served by granting the stay because, as explained above, staying the trial court's order is the course of action that is most likely to preserve the health, safety, and lives of Crystal and Mikayla during the pendency of this appeal. (*See Savage-Rumbaugh Decl.*) Accordingly, the public interest factor militates strongly in favor of staying the district court's order.

G. Each of the Factors Strongly Supports Staying the Trial Court's Order

Each of the foregoing factors unequivocally militates in favor of granted the stay requested by Ms. Haddix. Accordingly, this Court should stay the district court's order.

VI. CONCLUSION

For all of the foregoing reasons, this Court should grant Ms. Haddix's motion and stay the district court's order pending this appeal.

Respectfully submitted,

PIERCE BAINBRIDGE, PC

/s/ John M. Pierce

John M. Pierce

Attorneys for Petitioner Tonia Haddix

Date: July 27, 2021

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, the foregoing document was filed with the Court's CM/ECF system which will provide notice on all counsel deemed to have consented to electronic service. All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing document by mail on this date.

CERTIFICATE OF COMPLIANCE

This document certifies that this brief was completed using Microsoft Word Software, Times New Roman font, in 14–point type. It contains 5157 pages. The brief complies with the length requirements of this Court.

This document further certifies that the author of this brief has complied with all applicable honor code requirements, including the requirement that the author may not consult briefs or memoranda prepared on behalf of parties or amici to this case.

EXHIBIT A

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-2604

People for The Ethical Treatment of Animals, Inc. and Angela Scott, individually, also known as
Angela G. Cagnasso

Appellees

v.

Tonia Haddix

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:16-cv-02163-CDP)

ORDER

The emergency motion for stay is denied.

July 26, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans