

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 41<sup>st</sup> JUDICIAL CIRCUIT  
*MENOMINEE COUNTY*

*Nonhuman Rights Project, Inc., on behalf of  
Prisoner A (aka Louie), Prisoner B, Prisoner C,  
Prisoner D, Prisoner E, Prisoner F, and  
Prisoner G (“DeYoung Prisoners”)*

Petitioner

Case No.

**Complaint for Writ of Habeas Corpus**

v.

*DeYoung Family Zoo, LLC and Harold L.  
DeYoung*

Hon.

Respondents.

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**Exhibit 2:** Declaration of William McGrew, Ph.D., dated August 22, 2023 (“McGrew Decl.”)

**Exhibit 3:** Affidavit of Jennifer Fugate, Ph.D., dated November 10, 2023 (“Fugate Aff.”)

**Exhibit 4:** Declaration of Tetsuro Matsuzawa, Ph.D., dated November 10, 2023 (“Matsuzawa Decl.”)

**Exhibit 5:** Declaration of Christophe Boesch, Ph.D., dated November 10, 2023 (“Boesch Decl.”)

**Exhibit 6:** Affidavit of Mary Lee Jensvold, Ph.D., dated November 21, 2023 (“Jensvold Aff.”)

**Exhibit 7:** Affidavit of Jake Davis, dated November 20, 2023 (“Davis Aff.”).<sup>1</sup>

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<sup>1</sup> Mr. Davis’s affidavit contains a thumb drive with 17 video clips, labeled Exhibit A, and 8 photographs under Exhibit B.

**“Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed.”**

*-Justice Barbara Jaffe, New York Supreme Court, New York County (2015)<sup>1</sup>*

**“The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it.”**

*-Judge Eugene Fahey, New York Court of Appeals (2018)<sup>2</sup>*

**“This Court is extremely sympathetic to Happy's plight and the NhRP's mission on her behalf. It recognizes that Happy is an extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytic abilities akin to human beings.”**

*- Justice Alison Y. Tuitt, New York Supreme Court, Bronx County (2020)<sup>3</sup>*

**“[W]e should recognize Happy’s right to petition for her liberty not just because she is a wild animal who is not meant to be caged and displayed, but because the rights we confer on others define who we are as a society.”**

*-Judge Rowan D. Wilson, New York Court of Appeals (2022)<sup>4</sup>*

**“I conclude that history, logic, justice, and our humanity must lead us to recognize that if humans without full rights and responsibilities under the law may invoke the writ to challenge an unjust denial of freedom, so too may any other autonomous being, regardless of species. Such an autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life.”**

*- Judge Jenny Rivera, New York Court of Appeals (2022)<sup>5</sup>*

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<sup>1</sup> *Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 772-73 (Sup. Ct. 2015).

<sup>2</sup> *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1058 (2018) (Fahey, J., concurring).

<sup>3</sup> *The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735, at \*10 (N.Y. Sup. Ct. 2020)

<sup>4</sup> *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 626 (2022) (Wilson, J., dissenting).

<sup>5</sup> *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 628-29 (2022) (Rivera, J., dissenting).

## **COMPLAINT FOR WRIT OF HABEAS CORPUS**

Pursuant to Michigan common law, Chapter 43 of the Michigan Compiled Laws, and Subchapter 3.300 of the Michigan Court Rules, Petitioner, the Nonhuman Rights Project, Inc. (“NhRP”), hereby submits this Complaint for Writ of Habeas Corpus (“Complaint”) on behalf of seven chimpanzees (“DeYoung Prisoners”) who are illegally imprisoned and restrained of their liberty at the DeYoung Family Zoo (“DFZ”) in Wallace, Michigan by Respondents DeYoung Family Zoo, LLC and Harold L. DeYoung (collectively, “Respondents”), and in support thereof, states as follows:

### **PRELIMINARY STATEMENT**

1. This pure common law case presents a question of first impression in Michigan and an opportunity for the Court to affirm our own humanity: “Can a nonhuman animal be entitled to release from confinement through the writ of habeas corpus?” *Nonhuman Rights Project, Inc, on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1056 (2018) (Fahey, J., concurring).

2. The Complaint seeks to remedy a severe and unjust deprivation of bodily liberty. Chimpanzees are extraordinarily cognitively complex autonomous beings whose interest in exercising their autonomy is as fundamental to them as it is to us. Yet the DeYoung Prisoners, seven chimpanzees illegally imprisoned at a roadside zoo, cannot meaningfully exercise their autonomy at DFZ and as a consequence suffer physically and psychologically.

3. The Complaint establishes that these prisoners are illegally imprisoned under Michigan common law and are thus entitled to immediate release. As supported by the robust scientific evidence, NhRP respectfully requests that they be set free to a chimpanzee sanctuary accredited by the Global Federation of Animal Sanctuaries (“GFAS”), which would allow them to exercise their autonomy and extraordinary cognitive complexity to the greatest extent possible.

4. Six of the world's most renowned experts on chimpanzee cognition and behavior have submitted affidavits and declarations ("Expert Affidavits and Declarations")<sup>6</sup> in support of the DeYoung Prisoners' freedom. The expert submissions demonstrate not only that chimpanzees possess the autonomy and self-determination that allow them to choose how they will live their own emotionally, socially, and intellectually rich lives, but also that DFZ is an unacceptable place for such cognitively complex beings.

5. Pursuant to MCL 600.4316 and MCR 3.303 (D), this Court must issue an order to show cause and allow the case to proceed to a hearing on the merits.<sup>7</sup> Not doing so would be a "refusal to confront a manifest injustice." *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring).

6. The seven affidavits and declarations attached to this Complaint are incorporated herein by this reference.

### **SUMMARY OF THE ARGUMENT**

7. The common law right to bodily liberty protected by habeas corpus is "the basic right of freedom from unlawful detention." *Goetz v. Black*, 256 Mich. 564, 567 (1932). "The earliest colonists brought [habeas corpus] to this country as a part of the common law, and it became, and ever since remained, the law of the land." *Id.*

8. This Court's jurisdiction over the common law writ includes a duty to extend the protections of habeas corpus in accordance with current science, changing societal norms and

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<sup>6</sup> MCL 600.2184 provides that "if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration," with exceptions that do not apply here.

<sup>7</sup> The standard for obtaining a habeas corpus "writ" and "order to show cause" are the same. *See* MCL 600.4316 ("Any court or judge empowered to grant the writ of habeas corpus shall, upon proper application, *grant the preliminary writ (or an order to show cause)* without delay, unless the party applying therefor is not entitled to the writ.") (emphasis added). As NhRP does not seek to have the DeYoung Prisoners brought into court, NhRP seeks the issuance of an order to show cause. *See* MCL 600.4325.

public policy, as well as the fundamental common law principles of justice, liberty, and equality. *See Beech Grove Inv. Co. v. C.R. Comm'n*, 380 Mich. 405, 430 (1968) (“‘The common law does not consist of definite rules which are absolute, fixed, and immutable like the statute law, but it is a flexible body of principles which are designed to meet, and are susceptible of adaptation to, among other things, new institutions, public policies, conditions, usages and practices, and changes in mores, trade, commerce, inventions, and increasing knowledge, as the progress of society may require. So, changing conditions may give rise to new rights under the law, and, also, where the reason on which existing rules of the common law are founded ceases, the rules may cease to have application.’”) (citation omitted).

9. The Complaint respectfully requests that this Court: a) issue an order to show cause requiring Respondents to file an answer justifying their imprisonment of the DeYoung Prisoners; b) recognize the DeYoung Prisoners’ common law right to bodily liberty protected by habeas corpus; c) find the DeYoung Prisoners’ imprisonment illegal; and d) order the DeYoung Prisoners released and relocated to a GFAS-accredited chimpanzee sanctuary.<sup>8</sup>

10. The Complaint establishes that the DeYoung Prisoners’ imprisonment violates their common law right to bodily liberty protected by habeas corpus, specifically by depriving them of the ability to meaningfully exercise their autonomy and extraordinary cognitive complexity, including the freedom to be chimpanzees. The violation of the chimpanzees’ common law right to bodily liberty renders their imprisonment illegal.

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<sup>8</sup> “If an order to show cause is issued, it must be answered as provided in subrule (N), and the hearing must be held at the time and place specified in the order.” MCR 3.303 (K)(2). Subrule (N) provides that an answer must state plainly and unequivocally “whether the defendant then has, or at any time has had, the prisoner under his or her control and, if so, the reason.”

11. As the Complaint adheres to the pleading requirements set forth in MCR 3.303 (C), this Court must “grant . . . an order to show cause” without delay. MCL 600.4316. *See also* MCR 3.303 (D) (“On the filing of the complaint, the court may issue . . . an order to show cause why the writ should not be issued, unless it appears that the prisoner is not entitled to relief.”). In issuing an order to show cause, this Court need not make an initial determination that the chimpanzees have the common law right to bodily liberty protected by habeas corpus, for as in other habeas corpus cases, this Court need only assume without deciding that they possess this right.

12. Whether the DeYoung Prisoners have “the right to liberty protected by habeas corpus” is a question of “precise moral and legal status.” *Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring). “Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional question, but a deep dilemma ethics and policy that demands our attention.” *Id.* at 1058. The Court should not approach this case by asking “whether a chimpanzee fits the definition of a person.” *Id.* at 1057.<sup>9</sup>

13. The Expert Affidavits and Declarations demonstrate that chimpanzees are autonomous and self-determining beings who possess complex cognitive abilities on par with humans.<sup>10</sup> Chimpanzees possess a sense of self, make choices, plan for the future, exhibit empathy and compassion, and grieve the loss of loved ones.<sup>11</sup> They are aware of past pains and pleasures, and when an anticipated future event is painful—including a never-ending imprisonment—they

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<sup>9</sup> Upon recognizing that the DeYoung Prisoners have the common law right to bodily liberty, they are necessarily “persons” for purposes of habeas corpus (*infra* § V.A).

<sup>10</sup> As chimpanzees and humans share close to 99% of their DNA, their brains are very similar. (Matsuzawa Decl. ¶ 13).

<sup>11</sup> Remarkably, chimpanzees seem to have a sense of spirituality. In a video on Dr. Goodall’s YouTube page (see here: <https://bit.ly/47XC8DE>), she describes a rhythmic dance before a waterfall as a display of spirituality, triggered by the same feelings of “awe” and “wonder” that humans feel.

suffer just as humans do. As complex autonomous beings, the scientific evidence is indisputable that chimpanzees suffer physically and psychologically when placed in an environment that does not allow them to exercise their autonomy and engage in species-specific behavior.

14. Based on the indisputable scientific evidence, together with decades of firmly settled common law principles, this Court must recognize the DeYoung Prisoners' common law right to bodily liberty protected by habeas corpus (*infra* § V.C-D). To deny these chimpanzees this right because they are not human would be arbitrary and anachronistic, contrary to the fundamental common law principles of justice, liberty, and equality.

15. Upon recognition of the DeYoung Prisoners' common law right to bodily liberty protected by habeas corpus, this Court must conclude that their imprisonment at DFZ is illegal because it violates their right by depriving them of the ability to meaningfully exercise their autonomy and extraordinary cognitive complexity. Accordingly, the DeYoung Prisoners are entitled to relief.

16. This Court must order the DeYoung Prisoners released and relocated to an environment that will allow them to exercise their autonomy and extraordinary cognitive complexity to the greatest extent possible, where the complex social, emotional, and physical needs of chimpanzees can be met—namely, a GFAS-accredited chimpanzee sanctuary. This relief is akin to the relief accorded to minors and others who require care after release on habeas corpus.

17. In issuing an order to show cause, this Court will join a growing body of judges who have taken seriously the notion that the protections of habeas corpus can extend to nonhuman animals. Specifically:

18. In 2013, NhRP filed the first ever habeas corpus petition on behalf of a nonhuman animal in the U.S., specifically a chimpanzee named Tommy (who died in 2022 while imprisoned

at DFZ – footnote 15, *infra*). The trial court justice was so impressed that he stated to the New York Times: “Ultimately, I felt that they had the right to make a record so that they could appeal. I thought, Here’s this group of lawyers, living and dying this, they deserve due process, and they deserve to be told just how impressed at least I was by the effort they’re making on behalf of animals.” Charles Siebert, *Should a Chimp Be Able to Sue Its Owner?* N.Y. TIMES (April 23, 2014), <https://bit.ly/3QFIctd>.

19. In 2015, a New York trial court became the first court in the U.S. to apply habeas corpus law to a nonhuman animal when it issued an order to show cause for two chimpanzees, Hercules and Leo. *See generally Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 748 (N.Y. Sup. Ct. 2015). In a lengthy opinion lauding NhRP’s arguments, the court declared: “Efforts to extend legal rights to chimpanzees . . . may [someday] succeed.” *Id.* at 772-73.

20. In 2018, Judge Eugene Fahey of the New York Court of Appeals—New York’s highest court—wrote in a concurring opinion that the issue of “whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching,” and “there is no doubt that [a chimpanzee] is not merely a thing.” *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring).

21. In 2018, a New York trial court issued an order to show cause for an elephant imprisoned at the Bronx Zoo—the world’s first habeas corpus order to show cause for an elephant.<sup>12</sup> Following a transfer of venue, the court concluded: “This Court agrees that Happy [the elephant] is more than just a legal thing, or property. She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty.” *The Nonhuman*

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<sup>12</sup> See Mallory Diefenbach, *Orleans County issues first habeas corpus on behalf of elephant*, The Daily News (Nov. 21, 2018), <https://bit.ly/3AwkCWV>.



*Rights Project v. Breheny*, 2020 WL 1670735 at \*1, \*10 (N.Y. Sup. Ct. 2020) (hereafter *Breheny (Trial Court)*).

22. In 2022, the highest court of an English-speaking jurisdiction heard NhRP’s appeal for Happy. *See Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555 (2022). The now Chief Judge, Rowan Wilson, and Judge Jenny Rivera, of the New York Court of Appeals, found that the common law writ of habeas corpus was available for Happy to challenge her unjust imprisonment at the Bronx Zoo. *Id.* at 577-626 (Wilson, J., dissenting); *id.* at 626-42 (Rivera, J., dissenting).

## **I. Parties**

### **A. The DeYoung Prisoners**

23. Upon information and belief, there are seven chimpanzees imprisoned at DFZ.<sup>13</sup> They are herein identified as Prisoner A (aka Louie), Prisoner B, Prisoner C, Prisoner D, Prisoner E, Prisoner F, and Prisoner G.<sup>14</sup> Upon information and belief, the facts pertaining to each prisoner are as follows.<sup>15</sup>

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<sup>13</sup> A USDA inspection report of DFZ, dated March 29, 2023, indicates there are seven chimpanzees at the zoo. USDA-APHIS Records I at 42, <https://bit.ly/3sy6cH2>. The USDA attempted to conduct an inspection of DFZ on August 30, 2023, but an inspection could not be conducted since a representative for the zoo was not available. <https://bit.ly/3R2ROyn>.

<sup>14</sup> In response to FOIA requests, NhRP has received no records indicating that these chimpanzees are not currently at the zoo.

<sup>15</sup> Less than a week before the filing of the Complaint, NhRP finally received USDA records (after years of requesting them) that an adult male chimpanzee named Tommy had died at DFZ in early 2022. USDA-APHIS Records II at 80, <https://bit.ly/4a3bUkM>. Tommy was the subject of NhRP’s first historic habeas lawsuit in 2013, when he was imprisoned in a cement cage in Gloversville, New York. *See generally* Charles Siebert, *Should a Chimp Be Able to Sue Its Owner?* N.Y. TIMES (April 23, 2014), <https://bit.ly/3QFIctd>. In his cage, Tommy existed alone in a prison filled with “rancid milk-musk odor,” “some plastic toys and bits of soiled bedding,” and “visible light [that] emanated from a small portable TV on a stand outside his bars.” *Id.* NhRP filed two habeas lawsuits on behalf of Tommy in New York, resulting in a historic and remarkable opinion authored by Judge Fahey of the New York Court of Appeals. *See generally Tommy*, 31 N.Y.3d 1054 (Fahey, J., concurring). In 2015, Tommy was transferred to DFZ where he remained a prisoner until his death. NhRP is profoundly saddened that it was not able to file this lawsuit in time to seek Tommy’s freedom.

## **1. Prisoner A (aka Louie)**

24. Prisoner A is an approximately 13-year-old male chimpanzee named Louie who has been imprisoned at DFZ since 2010 when he was 6 weeks old.<sup>16</sup> For at least the first two years of his life, Louie was exploited for profit and used as a prop in photo opportunities. Videos and photos show Louie often on a fixed leash being made to interact with children and other zoo patrons in various ways.<sup>17</sup>

25. From 2010 until at least January 2018, Louie was housed without the companionship of other chimpanzees. In 2017, a long-time zoo patron filed a complaint with the USDA stating that Louie was being held “in a solitary cage on a cement pad.”<sup>18</sup>

## **2. Prisoners B and C**

26. Prisoner B is an adult female chimpanzee who has been imprisoned at DFZ since at least 2017.<sup>19</sup> She was previously held captive at the Missouri Primate Foundation near Festus, MO, which is a now-defunct chimpanzee breeding facility used as a primary source of chimpanzees sold within the exotic animal trade and entertainment industry.<sup>20</sup> In August 2017, while imprisoned at DFZ, Prisoner B gave birth to a female chimpanzee.<sup>21</sup>

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<sup>16</sup> USDA-APHIS Records I at 55, <https://bit.ly/3sy6cH2>.

<sup>17</sup> See <https://bit.ly/47BG2SU>; <https://bit.ly/47ZmSpH>; <https://bit.ly/46FurB4>; <https://bit.ly/3NcynCh> <https://bit.ly/3QULVmQ>; and <https://bit.ly/3RmNv2k>.

<sup>18</sup> USDA-APHIS Records II at 159, <https://bit.ly/4a3bUkM>.

<sup>19</sup> USDA-APHIS Records I at 18 and 281, <https://bit.ly/3sy6cH2>.

<sup>20</sup> The Missouri Primate Foundation had been repeatedly cited for violations of the Animal Welfare Act. See PETA, *Factsheet on Missouri Primate Foundation*, <https://bit.ly/3Gp5qiL>.

<sup>21</sup> USDA-APHIS Records I at 281.

27. Prisoner C is an approximately 6-year-old female chimpanzee born at DFZ in 2017. Prisoner C is the daughter of Prisoner B, but was removed from the latter's care as an infant by Respondents.<sup>22</sup>

### **3. Prisoners D-G**

28. Prisoner D is an adult female chimpanzee who has been imprisoned at DFZ since at least 2017.<sup>23</sup> She was previously held captive at the Missouri Primate Foundation.

29. Prisoner E is an adult male chimpanzee who has been imprisoned at DFZ since at least 2017.<sup>24</sup> He was previously held captive at the Missouri Primate Foundation.

30. Prisoner F is a male chimpanzee who has been imprisoned at DFZ since at least 2017.<sup>25</sup> He was previously held captive at the Missouri Primate Foundation.

31. Prisoner G is a male chimpanzee who has been imprisoned since at least 2017.<sup>26</sup> He was previously held captive at the Missouri Primate Foundation.<sup>27</sup>

### **B. Petitioner Nonhuman Rights Project, Inc.**

32. Petitioner NhRP is a 501(c)(3) non-profit corporation incorporated in the State of Massachusetts, with a primary address at 611 Pennsylvania Avenue SE #345, Washington, D.C. 20003. NhRP is the only civil rights organization in the United States dedicated solely to securing

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 18.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 282.

<sup>26</sup> *Id.*

<sup>27</sup> Unlike DeYoung Prisoners B and D-G, the six surviving chimpanzees at Missouri Primate Foundation were released to accredited sanctuaries upon its closure. PETA, *Victory! After Years of Dedicated Effort, PETA Secures a New Life for Exploited Chimpanzees* (July 29, 2021), <https://bit.ly/4a1neOl>.

legal rights for nonhuman animals. Since 1995, NhRP has worked to obtain legal rights for autonomous nonhuman animals such as chimpanzees and elephants.

### **C. Respondents DeYoung Family Zoo, LLC and Harold DeYoung**

33. Respondents DeYoung Family Zoo, LLC and Harold DeYoung have a principle address at N5406 County Road 577, Wallace, MI 49893. Harold DeYoung is the founder and owner of DFZ, and he is the Resident Agent for the DeYoung Family Zoo, LLC, according to Michigan's Department of Licensing and Regulatory Affairs.

## **II. The Expert Scientific Facts**

### **A. Introduction**

34. Chimpanzees are autonomous and self-determining beings. They recall their past and anticipate their future, and when their future is imprisonment, they suffer the pain of being unable to fulfill their goals or move around as they wish, much in the same way as human beings.

35. As demonstrated in the accompanying Expert Affidavits and Declarations, chimpanzees possess numerous cognitively complex abilities. These include, but are not limited to, the possession of autonomy and self-determination, as well as numerous advanced cognitive abilities related to autonomy and self-determination including: self-awareness; self-monitoring; self-reflection; self-agency; episodic memory; referential and intentional communication; mental time-travel; numerosity; sequential learning; meditational learning; creativity; mental representation; mental state modeling; visual perspective-taking; object manipulation; anticipating the intentions of others; purposeful vocalizations; analogical reasoning; understanding the experiences of others; intentional action; planning; imagination; empathy; metacognition; working memory; decision-making; imitation; deferred imitation; emulation; innovation; material, social,

and symbolic culture; cross-modal perception; tool-use; tool-making; understanding causation; and an awareness of and response to death, including grieving behaviors.

36. Dr. Jane Goodall is a premier expert on chimpanzee behavior, intelligence and emotions, and is celebrated for her world-renowned research on wild chimpanzees in Gombe National Park and elsewhere. Writing to this Court about chimpanzees, Dr. Goodall remarked: “Theirs is a highly complex society. Their life in the wild provides them with a continually changing environment, both socially and physically, and they are confronted by many challenges, including finding food and maintaining or improving their position in their community.” (Goodall Decl. ¶ 15).

37. Yet, as the experts make clear, the “rich and complex life of chimpanzees in the wild is not possible in captivity.” (McGrew Decl. ¶ 40). “[E]fforts can be made to offer captive apes as much opportunity as possible to live good and happy lives,” and “[a]nything short of that entails misery, even in the best zoos.” *Id.* The “best conditions are found in sanctuaries, which are basically retirement homes.” *Id.*

38. In light of their autonomous nature, confining chimpanzees in non-species specific living conditions is devastating to their physical and psychological well-being. (Boesch Decl. ¶ 14). Chimpanzees in captive environments who are unable to exercise their autonomy can suffer severe physical and psychological harm, including stereotypical and abnormal behaviors, aberrant self-directed behaviors (such as self-manipulation, self-scratching, self-grasping, and self-injurious behavior), increased aggression, decreased exploration, low dominance rank, and reduced or abnormal sexual behaviors. (Jensvold Aff. ¶ 12).

39. As set forth below (*infra* § II.D), DFZ is a completely unacceptable place for chimpanzees. The DeYoung Prisoners should be set free to a GFAS-accredited chimpanzee

sanctuary (as recommended by the expert testimony) so that they can exercise their autonomy and have their complex physical and psychological needs met. (Jensvold Aff. ¶ 98) (Matsuzawa Decl. ¶ 34) (McGrew Decl. ¶ 40).

## **B. Chimpanzees are autonomous, extraordinarily cognitively complex beings**

40. There is ample proof from studies of chimpanzee behavior, both in the wild and in captivity, that chimpanzees are autonomous beings with a highly complex cognitive nature. (Goodall Decl. ¶ 16). There is ample evidence for cognitive similarities between humans and chimpanzees in the domains of mental representation, intentionality, imagination, and mental state modeling – all fundamental components of autonomy. (Jensvold Aff. ¶ 27).

41. Autonomy in humans and nonhuman animals is defined as self-determined behavior that is based on freedom of choice. As a psychological concept it implies that the individual is directing their behavior based on some non-observable, internal cognitive process, rather than simply responding reflexively. Although we cannot directly observe these internal processes in other beings, we can explore and investigate them by observing, recording and analyzing their behavior. (Fugate Aff. ¶ 11) (McGrew Decl. ¶ 14) (Jensvold Aff. ¶ 11) (Boesch Decl. ¶ 11) (Matsuzawa Decl. ¶ 12) (Goodall Decl. ¶ 16).

### **1. Genetic Similarities to Humans**

42. The chimpanzee is humankind's closest living relative, and *vice versa*. (McGrew Decl. ¶ 12). Chimpanzees resemble humans in many genetic, physiological, anatomical and behavioral ways. (McGrew Decl. ¶ 13). For instance, their blood is interchangeable with human blood, such that a transfusion from a human being could save a chimpanzee's life or vice versa. *Id.* The volume of the chimpanzee brain is comparable in size to that of the most recent (but extinct) member of the human evolutionary lineage, *Homo floresiensis*, which lived as recently as 18,000

years ago. *Id.* Chimpanzee performance on intelligence tests is equivalent to that of 3-4 year-old human children, especially in physical intelligence, such as object manipulation. *Id.*

43. As chimpanzees and humans share close to 99% of their DNA, their brains are very similar. (Matsuzawa Decl. ¶ 13). Several shared characteristics in the brain are relevant to such capacities as self-awareness and autonomy as well as general intelligence. *Id.* Both chimpanzees and humans: (1) have larger brains than expected for their body size, which means chimpanzees and humans have evolved to possess above-average mental abilities compared to other species of the same body size; (2) share similar circuits in the brain that are involved in language and communication; and (3) share several highly specific cell types that are thought to be involved in higher-order thinking. *Id.* Chimpanzee and human brains also share several important functional characteristics related to the sense of self. *Id.* Finally, both human and chimpanzee brains are similar in terms of how the brain develops and matures, indicating that chimpanzees and humans go through similar cognitive developmental stages. *Id.*

44. Developmental delay (a long protracted period of brain development over many years) is a key feature of human brain evolution and is thought to play a role in the emergence of complex cognitive abilities, such as self-awareness, creativity, foreplanning, working memory, decision making, and social interaction. (Matsuzawa Decl. ¶ 14). Delayed development of the brain, and specifically the prefrontal cortex, provides a longer period in which this part of the brain may be shaped by experience and learning. *Id.*

45. Likewise, chimpanzee brains exhibit a very similar level of developmental delay in the prefrontal cortex, leading to the neuroanatomical basis for such high-level capacities as self-awareness, forethought, decision-making, and working memory in chimpanzees. (Matsuzawa Decl. ¶ 14). Consistent with these similar functions in humans and chimpanzees, chimpanzee

infants share some common mental features and patterns with human infants. *Id.* These features include how mothers and infants interact and use social smiling and mutual gazing as ways of strengthening their bond, as well as how and when they first start to manipulate objects, which is related to their shared capacity for tool-making and use. *Id.*

46. One of the hallmarks of sophisticated communication and even language-like capacities is brain asymmetry. (Matsuzawa Decl. ¶ 15). In humans, the left and right parts of the brain have different shapes which are related to language capacities as well as with handedness. *Id.* Studies of the anatomy of the brain reveal that chimpanzees possess very similar patterns of asymmetry. *Id.* Furthermore, chimpanzees exhibit population-level right-handedness in captivity as well as in patterns of tool use in the wild. *Id.*

47. Human and chimpanzee brains both possess a specialized type of cell – known as a spindle cell – in the same area of the brain. (Matsuzawa Decl. ¶ 16). This area, known as the anterior cingulate cortex is involved in emotional learning, the processing of complex social information, decision-making, awareness, and, in humans, speech initiation. *Id.* Therefore, the presence of spindle cells in both chimpanzees (and other great apes) and humans strongly suggests they share a number of these higher-order brain functions. *Id.*

## **2. Self-awareness**

48. Central to autonomy are self-awareness and self-reflection. (Matsuzawa Decl. ¶ 20). The concept of self is an integral part of the ability to have goals and desires, intentionally act towards those goals and desires, and understand whether those goals and desires are satisfied or not. *Id.* There is robust evidence that chimpanzees possess a sense of self. *Id.* They have the ability to recognize themselves in mirrors and show several capacities that stem from being self-aware, such as metacognition, that is, the ability to think about and reflect upon one's thoughts and



memories. *Id.* Like human children, chimpanzees know when they have enough visual information to complete a task and they also know that they could be wrong about the information they have and, again like human children, will check if they are uncertain. *Id.*

49. Chimpanzees and humans share the fundamental cognitive processes underlying the sense of being an independent agent. (Matsuzawa Decl. ¶ 21); *accord* (Boesch Decl. ¶ 15). The ability to distinguish actions and effects caused by oneself from events occurring in the external environment is called “self-agency” and is a fundamental component of autonomy and purposeful behavior. (Matsuzawa Decl. ¶ 21). Chimpanzees can distinguish between the movement of an object, e.g., a computer cursor controlled by themselves, and motion caused by someone else. *Id.*

50. Self-aware, autonomous individuals understand that they exist through time, that is, they have an autobiographical self. (Boesch Decl. ¶ 15). Chimpanzees clearly possess an autobiographical self, as they are able to prepare for the future and can remember highly specific elements of past events over long periods of time. *Id.* As in humans, the capacity for self-recognition in adult chimpanzees is highly stable across time, with some decline in old age. (Jensvold Aff. ¶ 46).

### **3. Understanding others’ minds**

51. Not only do chimpanzees reflect upon their thoughts and states of knowledge but they also understand the minds and experiences of others. (Matsuzawa Decl. ¶ 22). For instance, chimpanzees can not only imitate the actions of others but anticipate the intentions of others when watching a human or another chimpanzee try to complete a task. *Id.* Chimpanzees know what others can and cannot see and when another’s behavior is accidental or intentional. *Id.* Chimpanzees use their knowledge of others’ perceptions tactically to deceive other chimpanzees

and obtain hidden food. This kind of complexity in understanding others' minds is key evidence that chimpanzees are aware of their own minds and those of others. *Id.*

#### **4. Planning for the future (mental time travel)**

52. Chimpanzees possess the sophisticated cognitive capacity for “mental time travel,” (Jensvold Aff. ¶ 17), which is “thinking about something in the future.” (Matsuzawa Decl. ¶ 24). A wealth of experimental evidence shows that chimpanzees plan for the future. (Boesch Decl. ¶ 16).

53. Chimpanzees can even communicate about past and future events. In fact, language-trained chimpanzees have been found to make more statements about what they intend to do in the future compared with human children. (Jensvold Aff. ¶ 17).

54. Chimpanzees are not only able to mentally prepare for an upcoming event and alter the future but they are able to use intentional deception in the process. (Boesch Decl. ¶ 16). The planning for future use of tools and objects has been demonstrated experimentally, as well as documented in a long-term observational study of spontaneous tool use and innovation in a captive chimpanzee. *Id.* In one study, a male chimpanzee in a zoo collected and stowed away sharp stones in his display area for use as projectiles thrown at visitors. *Id.* The chimpanzee also engaged in deceptive behavior by stashing the stones in a “calm manner” so as not to be noticed. *Id.* Intentional deception is a hallmark of the ability to take the perspective of and model mental states in others. (Boesch Decl. ¶ 16). *Accord* (Jensvold Aff. ¶ 41) (“chimpanzees are not only able to prepare for an upcoming event, but are also able to mentally construct a new situation which will alter the future”).

55. Just as they can mentally run through steps in their mind to plan for future actions, chimpanzees can remember and mentally re-experience events in the past (also known as episodic

memory). (Boesch Decl. ¶ 17). Chimpanzees can use information about tools they recall from an event that occurred only four times three years earlier. (Boesch Decl. ¶ 17). They can also make complex decisions about which food items to choose based on perishability by keeping in mind two food items presented separately one hour apart. *Id.*

56. Chimpanzees living in a forest retain knowledge of good sources of food using spatial memory. (Boesch Decl. ¶ 20). Dr. Boesch's observations strongly suggest that, when foraging, the chimpanzees are using sophisticated Euclidean mental spatial maps based on long-term episodic memories. *Id.*<sup>28</sup> These findings not only provide evidence of complex mental representational abilities in chimpanzees but also the use of long-term knowledge from specific memories within the context of an autobiographical sense of their own experiences over time. *Id.*

57. Part of being an autonomous individual is self-control. Chimpanzees, like humans, can delay gratification for a future reward; they possess a high level of self-control under many circumstances. (Jensvold Aff. ¶ 42). Self-control depends upon the episodic system—basically, the perceptual simulations made possible by episodic memory function as a motivational “brake” on current drives in favor of delayed rewards. *Id.* Delayed gratification is only available to humans and nonhumans with a sufficiently sophisticated sense of self and autobiographical memory. *Id.*

58. Chimpanzees can delay a strong current drive for a better future reward, generalize a novel tool for future use, select objects for a much-delayed future task, and do all of this while keeping in mind several different elements of a situation. (Jensvold Aff. ¶ 43). In a series of experiments, it was demonstrated that chimpanzees can disregard an immediate small piece of food in favor of a tool that would allow them to get a larger piece of food in the future. *Id.*

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<sup>28</sup> In an observational study of several female chimpanzees in the Taï Forest, Dr. Boesch's team discovered that, during their travels, they visited specific abundantly fruiting trees in a very deliberate and goal-directed manner, rather than through haphazard discovery. (Boesch Decl. ¶ 18).

Chimpanzees can even select a tool which they had never seen before, but which function they could guess, and use it in the future on a reward apparatus. This ability to perceive the function of a novel tool in the future would be impossible without mentally representing the details of the future event. *Id.*

59. Chimpanzees possess an episodic system similar to humans. (Jensvold Aff. ¶ 45). Because chimpanzees have a self-concept and are aware of their past and see a future ahead of them, they can re-experience past pains and pleasures as well as anticipate such emotions. *Id.* This in turn implies that they likely can, just as humans, be in pain over an anticipated future event that has yet to occur. *Id.* Chimpanzees also suffer the pain of not being able to fulfill one's goals or move around as one wants; like humans, they might experience the pain of anticipating a never-ending situation. *Id.*

## **5. Communication**

60. Language is a volitional process in humans that involves creating intentional sounds for communication and is, therefore, a reflection of autonomous thinking and behavior. (Matsuzawa Decl. ¶ 17). Findings regarding functional aspects of the chimpanzee brain demonstrate volitional control over their vocalizations as well. *Id.* Chimpanzees produce certain sounds to capture the attention of an inattentive audience or to inform others about the presence of various items, such as food or a play object or tool. *Id.*

61. Chimpanzee communication skills are rich. (Fugate Aff. ¶ 22). *See also* (Matsuzawa Decl. ¶ 17). During social interactions, chimpanzees exchange emotional information mainly through vocalizations, facial expressions, gestures, and bodily postures, and the ability to exchange such information reveals the highly cognitively complex and autonomous nature of chimpanzees. (Fugate Aff. ¶ 12).

62. Chimpanzees have approximately 20-30 different facial expressions and their vocalizations have been divided into several categories based on morphology and apparent function. (Fugate Aff. ¶ 14). Chimpanzee vocalizations and facial expressions can be controlled and regulated and changed based on context and audience. (Fugate Aff. ¶ 17).

63. Not only do chimpanzees create purposeful vocalizations (Matsuzawa Decl. ¶ 17), they share components of at least three basic cognitive abilities with humans, including: 1) analogical reasoning (using relational devices, like symbols, to organize information at a higher level); 2) shared mental states (understanding that others have minds and goals and intentions and false beliefs); and 3) causal inference (an ability to intuit hypothetical or causal forces). (Fugate Aff. ¶ 21). The complex nature of chimpanzee auditory and visual communicative expressions likely evolved to increase the rates of affiliative behavior between individuals that promote social bonding similar to that in humans. (Fugate Aff. ¶ 16).

64. Several independent lines of evidence suggest that many facial expressions are shared across humans and chimpanzees. (Fugate Aff. ¶ 14). For instance, the facial musculature which forms the structure of facial expressions is essentially the same in humans and chimpanzees. *Id.* With few exceptions, the facial expressions of humans and chimpanzees can be compared directly. *Id.* Many of the expressions in chimpanzees and humans are displayed in similar circumstances, suggesting a common function or meaning. (Fugate Aff. ¶ 15). Since chimpanzees live in complex social groups, they must possess well-developed emotional processing skills in order to be able to interpret the many different meanings associated with facial expressions used in different emotional contexts. *Id.*<sup>29</sup>

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<sup>29</sup> These facial expressions reflect the motivations and tendencies towards certain actions in the individual given a set of social and environmental conditions. (Fugate Aff. ¶ 15). Some of the basic categories include the “silent bared teeth display,” which is typically used as a signal of antagonistic intent by the sender and shows remarkable homology with a human smile. *Id.* Other categories include

65. Recent studies of wild chimpanzees reveal their rich repertoire of voices and vocal communication. (Matsuzawa Decl. ¶ 18). A 2022 study showed that bark vocalizations produced before hunt initiation are reliable signals of behavioral motivation. *Id.* Barks are associated with greater hunter recruitment and more effective hunting, with shorter latencies to hunting initiation and prey capture. *Id.* Wild chimpanzees also engage in gestural communication. For example, they use ‘directed scratches’ to request grooming of specific body areas, which involves one chimpanzee making a relatively loud and exaggerated scratching movement on a part of his body. The use of such gestures specifies an area of the body to be groomed and to depict a desired future action. (Matsuzawa Decl. ¶19).

## **6. American Sign Language (ASL)**

66. Chimpanzees who have acquired comprehension and production of ASL provide a unique window into the minds of chimpanzees because ASL provides a way for them to express themselves in a manner that humans understand well. (Jensvold Aff. ¶ 13). Chimpanzees’ use and understanding of sign language, along with their natural communicative gestures and vocalizations, parallels the development of language in human children, and point to deep similarities in the cognitive processes that underlie communication in chimpanzees and humans. (Jensvold Aff. ¶ 13).

67. Purposeful communication is based on conversational interaction in which each of the participants exchange turns communicating in a give-and-take manner and respond

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the chimpanzee “play” display, used almost exclusively during play and to initiate play and which may be accompanied by laughter; “pouts and whimpers,” which are used to get something that is desired but not obtainable and may be used by infants during weaning and to seek reassurance and during begging; the “pant hoot” display, which is used for extreme excitement and in bluff displays and in reuniting. *Id.* Finally, the large class of “screams” includes many acoustically distinct and perhaps functionally distinct calls, all united in their general function of fighting, separated by victim and attacker. *Id.*

appropriately to the communicative actions of each other. (Jensvold Aff. ¶ 18). Signing chimpanzees demonstrate contingent communication with humans at the same level as young human children. When they make a request and it is satisfied, they cease signing their request. When the request is misunderstood, refused, or not acknowledged, chimpanzees repeat and revise their signing until they get a satisfactory response. As in humans, this pattern of contingency in conversation is a key demonstration of volitional and purposeful communication and thought. *Id.*

68. Chimpanzees have demonstrated the capacity to understand that conversation involves turn-taking and mutual attention. (Jensvold Aff. ¶ 20). If chimpanzees wish to communicate with a human whose back is turned to them they will make attention-getting sounds, i.e., using only signs with a noisy sound component, such as smacking the hand. *Id.* Their reactions to and interactions with a conversational partner resembled patterns of conversation found in similar studies of human children. (Jensvold Aff. ¶ 19).

69. Chimpanzees acquire vocabulary in patterns that resemble human children, with the difference being that chimpanzees begin to sign earlier than children. (Jensvold Aff. ¶ 14). The development of phrases in chimpanzees also parallels that in human children, as well as early vocabulary content, patterns of eye gaze, and turn-taking. *Id.*

70. Just as humans do, chimpanzees modulate their signs to change the meaning of signs (for example, changing the place where a sign occurs). (Jensvold Aff. ¶ 14). Declaratives are important because they show the communicator is using language as a way to share experiences with another and not just to request items like food or a toy. Both human children and signing and other symbol-using chimpanzees use declaratives to name objects, interact, and negotiate. *Id.* Chimpanzees also use symbols to comment on other individuals and about past and future events. (Jensvold Aff. ¶ 15).

71. Signing chimpanzees also sign amongst themselves, which shows that chimpanzee sign language is not a simple response to prompting by humans but is similar to the way human children develop language. (Jensvold Aff. ¶ 21). In addition, signing chimpanzees spontaneously use ASL to communicate with each other, without being first taught by humans. For instance, Loulis (a male chimpanzee) was the first non-human to learn a human language from other non-humans. Loulis was the adopted son of another signing chimpanzee, Washoe, and acquired his signs from Washoe and other signing chimpanzees. Loulis observed other chimpanzees using the signs of ASL around him, like CHASE and TICKLE during play interactions. Moreover, Washoe would mold his hand into signs like MORE for more food. Loulis learned to use many signs in different categories (names, pronouns, verbs, etc.) as a direct consequence of social learning and being taught by his mother's intentional and goal-directed shaping of his abilities. Washoe's behavior toward her adopted son demonstrates perspective-taking and empathy. The chimpanzees sign to each other in social interactions to initiate, regulate and maintain the interaction. *Id.*

72. Humans and chimpanzees exhibit a telltale sign of volitional use of language, that is, private signing or signing to themselves. (Jensvold Aff. ¶ 22). For speakers this is known as private speech. *Id.* Just as in human children, a high percentage of the private utterances referred to objects present in the environment. These utterances by chimpanzees also accompanied behaviors or signs about a behavior before they performed it. *Id.* There are numerous similarities between private speech in human children and chimpanzees. *Id.*

73. Studies of cross-fostered chimpanzees, that is, those who have been raised by humans and acquired a symbol-based language, reveal similar patterns of cognitive and communicative development in human infants and chimpanzees. (Jensvold Aff. ¶ 14). There are numerous parallels in the way chimpanzee and human communication skills develop over time,



suggesting a similar unfolding cognitive process across the two species and an underlying neurobiological continuity. Chimpanzees show some of the same early developmental tendencies and changes in their communication skills as human children. *Id.*

74. Both signing and wild chimpanzees understand the give-and-take of a conversation and adjust their communication to the attentional state of the individual with whom they want to communicate. (Jensvold Aff. ¶ 20). Both wild and captive chimpanzees string together multiple gestures to create gesture sequences. *Id.* Chimpanzees use visual gestures toward an attentive partner and tactile and auditory gestures more often toward inattentive partners. If the partner does not respond, they repeat the gesture and use one that is more effective at communicating. *Id.*

## **7. Numerosity**

75. Numerosity judgment is the ability to understand numbers as a sequence of quantities, and it requires not only sophisticated working memory (to keep numbers in mind) but also a conceptual understanding of a sequence, which is closely related to mental time travel (thinking about something in the future) and planning out the right sequence of steps towards a goal, which are two critical components of autonomy. (Matsuzawa Decl. ¶ 24).

76. Not only do chimpanzees excel at understanding sequences of numbers but they understand that Arabic symbols (“2”, “5”, etc.) represent discrete quantities, outperforming humans in some of these tasks. (Matsuzawa Decl. ¶ 24). Sequential learning is critical for human speech and language processing, the learning of action sequences, or any task that requires putting items into an ordered sequence. *Id.* Chimpanzees can count or sum up arrays of real objects or Arabic numerals and display the concepts of ordinality and transitivity (the logic that if  $A > B$  and  $B > C$ , then  $A > C$ ) when engaged in numerical tasks, demonstrating a real understanding of the ordinal nature of numbers. *Id.* Chimpanzees also understand proportions (e.g.,  $1/2$ ,  $3/4$ , etc.).

Chimpanzees can learn to name (using a symbol-based computer keyboard) the number, color, and type of object shown on a computer screen. *Id.* They can use a computer touch screen to count from 0 to 9 in sequence. *Id.* Most recently, a study showed that chimpanzees can master the sequential order of Arabic numerals from 1 to 19. *Id.*

## **8. Working Memory**

77. Not only do chimpanzees understand numbers and sequences, their working memory (short-term memory) of numbers is superior to that of adult humans. (Matsuzawa Decl. ¶ 25). Working memory is the ability to temporarily store, manipulate, and recall items (numbers, objects, names, etc.), and underlies several mental skills related to mental representation. *Id.* The cognitive processes needed to achieve this include attention and executive control (reasoning, planning, and execution). *Id.* Chimpanzees have an extraordinary working memory capability for numerical recollection, better than that of adult humans. *Id.*<sup>30</sup>

## **9. Tool making and tool use**

78. One of the most important indicators of intelligence is tool making and use. (McGrew Decl. ¶ 15). Tool making implies complex problem-solving skills and an understanding of means-ends relations and causation. *Id.*<sup>31</sup> Tool-making requires the same mental abilities that underlie human culture: Observing others and acquiring skills about how to do things. (McGrew Decl. ¶ 20).

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<sup>30</sup> In one study, chimpanzees were shown the numerals 1-9 spread randomly across a computer screen. The numbers appeared for a very limited duration (210, 430, and 650 milliseconds and then were replaced by white squares, which had to be touched in the correct order (1-9). In another version of the task, they had to remember the location of each concealed number and touch them in the correct order. The performance of chimpanzees on these memory tasks was not only accurate but much better than that of human adults, who could not even complete most versions of the task. (Matsuzawa Decl. ¶ 25).

<sup>31</sup> That is, it requires making choices, often in a specific sequence, toward a predefined goal, which is a key aspect of intentional action. (McGrew Decl. ¶ 15).

79. Chimpanzees demonstrate intelligent tool making and usage in both nature and in captivity. (McGrew Decl. ¶ 15) (Matsuzawa Decl. ¶ 26). In nature, they make tools with vegetation and stone and use them in daily life to hunt, forage, fight, play, communicate, and in courtship, hygiene and socializing. (McGrew Decl. ¶ 15).

80. Chimpanzees utilize their intelligence to learn various kinds of tools for their survival. (Matsuzawa Decl. ¶ 26). All chimpanzee populations throughout Africa use and make tools of different shapes and sizes to solve technical challenges in their environment. (Boesch Decl. ¶ 22). Chimpanzees have been seen to use diverse and extensive sets of tools helping them to access rich food sources, like ants, termites, honey, water, and hard-shelled nuts. (Boesch Decl. ¶ 22). Jane Goodall first found that chimpanzees use twigs to fish termites in the mound. (Matsuzawa Decl. ¶ 26). Chimpanzees in West Africa use hammer stones and anvils to crack open nuts, while chimpanzees in the Goualougo Triangle use tools to perforate termite nests, puncture termite nests, pound for honey, and use leafy twigs for rain cover. *Id.*

81. Chimpanzees make and use *complex* tools that require them to utilize two or more objects at the same time. (McGrew Decl. ¶ 16). An example is using one stone as a hammer and another as an anvil for cracking hard nuts. *Id.* Chimpanzees also make *compound* tools, in which two or more components are combined into a single working unit. *Id.* The wedge stone, which is inserted under an anvil in order to level its working surface, increases the efficiency of nut-cracking. *Id.* The leaf sponge, in which several fresh leaves are compressed into a single absorbent mass, enables drinking water to be extracted from tree holes. *Id.* *Composite* tools such as these reflect the fact that chimpanzees have the mental capacity to combine components in appropriate ways to achieve a goal. *Id.*

82. Each group of chimpanzees makes and uses a unique combination of tools known as a *tool kit*. (McGrew Decl. ¶ 17). This typically comprises up to 20 different tools that perform various functions in daily life. *Id.* These include tools used for extracting and processing food, such as sticks to open termite mounds, probes to skewer small mammals, twigs to extract marrow from bones of prey, stone hammer and anvil to crack nuts, etc. *Id.* It even extends to using plants in self-medication for illness or injury. *Id.* Tool kits vary from group to group, are passed down generationally, and occur in a wide range of habitats, from savanna to rain forest. (McGrew Decl. ¶ 19).

83. Chimpanzees also use *tool sets*, which entail using two or more tools to achieve a single goal. (McGrew Decl. ¶ 21). Tool sets are a hallmark of intentionality, mental representation, and opportunism. *Id.* Chimpanzees have been known to use a set of five objects—pounder, perforator, enlarger, collector, and swab—to obtain honey. *Id.*

84. Chimpanzees make and use tools for personal comfort and hygiene, including to clean the body; they use stems to comb through hair, twigs to clear their nostrils, and leafy fans to repel insects, etc. (McGrew Decl. ¶ 19). For sleeping, chimpanzees use special ways of bending branches and twigs to make a comfortable bed in the trees or on the ground. *Id.*

85. In the archaeological record, chimpanzee stone tools such as hammers and anvils are preserved just as with human stone tools. (McGrew Decl. ¶ 18). Stone artifacts have been excavated from sites in West Africa, indicating a ‘Stone Age’ that dates to at least 4,300 years ago. *Id.* These chimpanzee artifacts can be compared with early human ones, as indicators of their comparable mental abilities. *Id.* This includes the ability to pass tool-making skills generationally. In at least one population, chimpanzee tool-making has been passed down through 225 generations. *Id.*

## 10. Emotional Complexity (Empathy and Compassion)

86. Chimpanzees are capable of highly developed empathic abilities. (Jensvold Aff. ¶ 47). (Boesch Decl. ¶ 29) (Matsuzawa Decl. ¶ 23). They exhibit empathy, compassion and recognition when someone else is trying to help them – all complex aspects of self-awareness and autonomy. (Boesch Decl. ¶ 30) (Matsuzawa Decl. ¶ 23). The accumulation of evidence suggests that the emotional systems of chimpanzees may have become specialized to cope with the increasing demands of complex social organization and more elaborate relationships. (Fugate Aff. ¶ 12).

87. Empathy is the ability to put oneself in the situation of another perceptually and cognitively, which is only possible if one can adopt another's perspective. (Boesch Decl. ¶ 29). Empathy, and, in particular, compassion, requires not only a sense of self but the ability to attribute feelings to others, i.e., to understand that someone else could be in a different state than you or could be feeling differently from you. *Id.*

88. Chimpanzees are known to spontaneously provide contact comfort to recent victims of aggression, a behaviour known as consolation. Similar behaviour in human children is attributed to empathic or sympathetic concern. (Matsuzawa Decl. ¶ 23). Clear instances of compassionate care and empathy have been observed among wild chimpanzees towards injured individuals.<sup>32</sup> (Boesch Decl. ¶ 30). Moreover, chimpanzees are aware of the intentions of other chimpanzees

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<sup>32</sup> For instance, responses to others' wounds are not based on simple learning rules because wound licking and tending are only done under specific circumstances, e.g., when the wounded individual is too weak to care for himself or when wounds are in hard-to-reach places. (Boesch Decl. ¶ 30). Wound tending is also done by individuals who are not close family relatives of the injured. *Id.* Saliva has a strong antiseptic property and its regular application to a fresh wound speeds up healing. *Id.* Tai chimpanzees have been observed licking wounds on the injured feet of others and cleaning out a cut over an eye. *Id.*

when being helped. *Id.* Adoption of orphans is rather common in chimpanzees. (Boesch Decl. ¶ 37).

89. One of the neurobiological bases for empathy may be the presence of mirror neurons, special nerve cells in the primate brain, and they are found in the prefrontal cortex of all primates, including humans and chimpanzees. (Fugate Aff. ¶ 18). Chimpanzees exhibit “emotional contagion,” which is a basic form of empathy that results from watching the behavior of others: one example is contagious yawning. *Id.* Chimpanzees who were shown videos of other chimpanzees yawning showed higher levels of yawning than when they were showed open-mouth facial expressions— such behavior provides even further evidence that chimpanzees possess very complex levels of self-awareness and empathic abilities. (Matsuzawa Decl. ¶ 23).

90. The signing chimpanzee Washoe had experienced the death of two infants in her life. (Jensvold Aff. ¶ 47). Years later, one of her human caregivers who had experienced a miscarriage explained to Washoe that her baby had died. *Id.* In a demonstration of empathy, Washoe signed CRY. *Id.*

## **11. Imitation**

91. True imitation is an important indicator of self-awareness, because it suggests that an individual has a sense of their own body and how it corresponds to another, so they can accommodate their movements to the other’s actions. (McGrew Decl. ¶ 25). Studies show that chimpanzees copy methods used by others to manipulate objects and to interact with others. *Id.* Chimpanzees can imitate other chimpanzees (or humans), using an exact sequence of three actions in order to open a box to obtain a treat. *Id.*

92. Chimpanzees also are capable of ‘deferred imitation’, that is, copying actions that they have seen in the past. (McGrew Decl. ¶ 25). Deferred imitation relies on even more

sophisticated cognitive capacities than direct imitation, as it depends on memory skills. *Id.* Moreover, chimpanzees know when they are being imitated, responding just like human toddlers. *Id.*

93. All the capacities of imitation and emulation are necessary for *cumulative cultural evolution*. (McGrew Decl. ¶ 26). This specific kind of culture is found in humans and chimpanzees and involves progressive building upon preceding customs. *Id.* Chimpanzees and humans show striking similarities in mentality via observational learning, copying, decision-making, memory, and innovation cumulative cultural evolution. *Id.*

## **12. Culture**

94. Culture is a set of behaviors transmitted by observational learning, which becomes characteristic of a group or population, resulting in societal traditions. (McGrew Decl. ¶ 22). Culture is *socially acquired* (learned by watching others), *normative* (all individuals take part), and *collective* (characteristic of a community). *Id.* Culture is a hallmark of higher intelligence, based on several complex cognitive capacities: *imitation* (direct mimicking of bodily actions), *emulation* (attending to the results of another's actions, then achieving results in an alternative, often better, way), and *innovation* (inventing new techniques of doing things, often by combining elements). *Id.* In other words, culture requires significant behavioral flexibility and innovation, social learning, cumulative knowledge, and adherence to traditions.” (Boesch Decl. ¶ 21).

95. Chimpanzees show all these abilities. (McGrew Decl. ¶ 22). “The evidence for these capacities in wild chimpanzees is robust and indisputable and our knowledge of the richness of their different cultures continues to grow.” (Boesch Decl. ¶ 21). Chimpanzees possess widespread cultures that are found in all known populations and that distinguish them from other

populations. (Boesch Decl. ¶ 21). Decades of field research reveal many unique chimpanzee cultures spread across sub-Saharan African, from Senegal to Tanzania. (McGrew Decl. ¶ 24).

96. Chimpanzee culture includes rituals and traditions. (McGrew Decl. ¶ 24). The Gombe chimpanzees, for instance, perform a “rain dance,” a slow and deliberate pattern of bipedal locomotory display at the start of a rainstorm. *Id.* Another striking social custom, first observed in the Mahale Mountains in Tanzania, is the ‘grooming hand-clasp,’ in which two chimpanzees grip each other’s hand, raise their arms overhead, and groom each other with the other hand. (McGrew Decl. ¶ 24).

97. Dr. Goodall reported the ‘waterfall display’ in which male chimpanzees show vigorous displays in exaggerated, rhythmic movements before a spectacular waterfall. (McGrew Decl. ¶ 24). For ten minutes or more, they pick up and throw rocks, sand, and branches, leap between hanging vines, and swing over the streambed. *Id.*

98. There are striking similarities in the cognitive mechanisms underlying chimpanzee and human culture. (Boesch Decl. ¶ 21). Chimpanzees show cultural traditions that meet the same criteria used to identify human culture. (McGrew Decl. ¶ 23). Three general cultural domains are found in both humans and chimpanzees: 1) *material culture*, as shown through the use of tool use and tool making; 2) *social culture*, that is, behavior that allows individuals to develop and benefit from social living, and 3) *symbolic culture*, which comprises specific communicative gestures and vocalizations that arbitrarily reflect particular intentions. (McGrew Decl. ¶ 23).

99. Within the same forest, neighbor groups distinguish themselves with different cultural traits that are maintained over decades despite the exchange of females across groups. (Boesch Decl. ¶ 21). New immigrants adopt the cultural traditions of their new group rapidly through social learning allowing for the maintenance of continuity in different traditions within



each group. *Id.* They also show evidence of symbolic cultural traditions based on arbitrary gestures that have no direct connection with their meanings but are understood by all group members. *Id.*

100. The learning process of cultural tradition is called “Education by master apprenticeship.” (Matsuzawa Decl. ¶ 26). It is a form of observational learning that involves the mother as the primary teacher but is not limited to the mother-infant relationship. *Id.* Infants learn from juveniles and juveniles learn from adults. *Id.* The culture and education of wild chimpanzees suggest that chimpanzees do not have formal schooling, but they learn through observation and imitation of their mothers and other members of their social group. *Id.*

### **13. Perception**

101. Chimpanzees, with minimal training, are not only able to recognize familiar individuals but are also able to discriminate different species-typical facial expressions of unfamiliar individuals when presented on a computer screen. (Fugate Aff. ¶ 19). They are also able to extract emotional meaning from short videos depicting behavioral events (e.g., a caregiver giving a chimpanzee a hypodermic injection for veterinary purposes, or researcher rewarding another chimpanzee with food). *Id.* For example, using match-to-sample computerized training, chimpanzees can match a positive facial expression (such as making a “play face”) to positive events and negative facial expressions (such as bared teeth or “scream face”) to negative events, demonstrating that these facial expressions are reliably associated with familiar emotional events. *Id.* Chimpanzees can also match real pictures of familiar chimpanzee individuals to computer-animated facial expressions of them. *Id.*

102. Chimpanzees are able to match cross-modally: Using again the match-to-sample computer paradigm and with minimal training, chimpanzees who were played an auditory vocalization of another chimpanzee were able to match the identity of the caller to the face of the

individual on the screen. Chimpanzees in captivity have also been shown to match a voice recording of a familiar human to the picture of the human. (Fugate Aff. ¶ 20).

103. Categorical perception is a cognitively complex perceptual phenomenon in which the brain of an individual separates continuously varying information into discrete categories. (Fugate Aff. ¶ 21). Chimpanzees are highly attuned to the individual emotional expressions and states of others. (Fugate Aff. ¶ 20). Chimpanzees are not only able to recognize familiar individuals but are also able to discriminate different species-typical facial expressions of unfamiliar individuals when presented on a computer screen. *Id.* Chimpanzees were able to appropriately sort chimpanzee faces that were morphed (blended) between emotional expressions into the two categories of emotions by the percentage of each emotion depicted, showing the basis of a phenomenon known as categorical perception. (Fugate Aff. ¶ 21).

#### **14. Death Awareness and Grieving Rituals**

104. An understanding of death requires an ability to recognize the continuity of self and others through time. (Boesch Decl. ¶ 23) Self-recognition, which chimpanzees demonstrate, would be a requirement for understanding the irreversibility of death. *Id.* Chimpanzees exhibit an understanding of death as a kind of irreversible situation. *Id.* Indeed, chimpanzees often respond with elaborate mourning rituals that demonstrate some understanding of the concept of life and its ending. *Id.* Once they come to this realization they enact behaviors which can be described as mournful, respectful, and almost-ritualistic. (Boesch Decl. ¶ 23)

105. Numerous observations from different chimpanzee communities demonstrate a complex group response unique to death involving guarding of the dead body for hours, helping orphans who remain close to their dead mothers, testing for a reaction by shaking the body, grooming the body but not licking blood or wounds as is usually done with injured individuals,

showing signs of sorrow when leaving the body, showing signs of respect by keeping youngsters at bay, and, sometimes, carrying the corpse to a safe place. (Boesch Decl. ¶ 26).

106. One of the most impressive examples of collective community action sometimes occurs after the death of a group member. (McGrew Decl. ¶ 36). Others may perform what amounts to a funeral ceremony, or wake. *Id.* They congregate around the corpse, groom and test it for viability, seeming to seek to arouse it. Then, as if accepting that death has occurred, they maintain a silent vigil that may last for hours. *Id.* This collective action occurs both in nature and in captivity, and there is no obvious material pay-off to the individuals who join in. *Id.*

107. Chimpanzees understand the irreversibility of death. (Boesch Decl. ¶ 28).<sup>33</sup> Relatedly, chimpanzees distinguish between mortal wounds and other kinds of injuries. (Boesch Decl. ¶ 26). Chimpanzees faced with the death of a friend or family member will not immediately give up but, after several attempts, experience strong bouts of grief and distress as they come to the realization that the deceased is not coming back and the condition is irreversible. *Id.*

## **15. Moral Behavior**

108. Chimpanzees behave in ways that, if we saw the same thing in humans, we would interpret as a reflection of self-conscious, moral imperatives. (McGrew Decl. ¶ 28). Chimpanzees demonstrate morality by rejecting, excluding and shunning individuals who violate social norms;

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<sup>33</sup> One example of distress at the death of a friend—and the realization that the individual is beyond help—comes from one chimpanzee, Falstaff’s, severe injury during a leopard attack and the response of his hunting partner and friend, Snoopy. (Boesch Decl. ¶ 27). Snoopy stayed with the immobile Falstaff for two hours—even though the rest of the males of the community were moving on. *Id.* Snoopy would walk a few steps and look behind him to see if Falstaff was following him. *Id.* He then moved 200 meters north and drummed loudly and repeatedly on a large tree to apparently communicate to Falstaff. *Id.* When Falstaff did not answer, Snoopy let out a loud distressed scream as he finally realized Falstaff was not coming and had to move on. *Id.* In the case of mothers who lose an infant, although they may be hesitant to abandon the corpse, the mothers do not behave towards their dead infants as they would if they were alive and eventually leave them behind. *Id.*

intervene impartially in third-party violence that is disruptive of group life, which reflects community concern; respond negatively to inequitable situations, such as when offered lower rewards when companions are receiving higher ones; and when given a chance to play economic games (e.g. Ultimatum Game), they spontaneously make fair offers, even when not obliged to do so. *Id.*

109. Dr. Goodall wrote about a male chimpanzee in captivity who rescued his human caretaker, Mark Cusano, with whom he had a close relationship, from a very bad attack from three adult females. Mark told Dr. Goodall that the chimp had saved his life. (Goodall Decl. ¶ 27).

110. Dr. Jensvold reported that moral behavior can be demonstrated by chimpanzees' use of the ASL sign SORRY, which they acquired while reared as deaf human children. (Jensvold Aff. ¶ 39).

## **16. Humor, Imagination, and Play**

111. Chimpanzees have a sense of humor and are known to laugh under many of the same circumstances humans laugh, e.g., signing a "joke" or funny statement, during play, when tickled, etc. (Jensvold Aff. ¶ 27). The chimpanzees Dr. Jensvold worked with "demonstrated purposeful communication, conversation, understanding of symbols, perspective-taking, imagination, and humor." (Jensvold Aff. ¶ 13).

112. Imagination is a key component of mental representation (the ability to represent an object or concept in one's mind), metacognition (the ability to reflect upon one's own thoughts), and the ability to mentally create other realities. (Jensvold Aff. ¶ 24).

113. Dr. Jensvold studied imaginary play in five signing chimpanzees and found strong parallels with that of 2-6 year old human children, including in the categories of animation and

substitution. (Jensvold Aff. ¶ 25). Animation is pretending that an inanimate object is alive, e.g., talking to a teddy bear, and substitution is pretending an object has a new identity, e.g., placing a block on the head as a hat. *Id.* Chimpanzees also engage in imaginary private signing just like human children. (Jensvold Aff. ¶ 23). They create word-play, or transform a sign or its referent to a different meaning, whether it is present or not—an example is placing a wooden block on one’s head and referring to it, in sign, as a “hat.” *Id.*

114. Captive chimpanzees show an interest in drawing and painting. (Jensvold Aff. ¶ 28). Chimpanzee drawings are not random acts on paper, but are deliberate exploratory choices, indicating autonomy. *Id.* Chimpanzees systematically make marks that demonstrate balance and respect for boundaries, which are aspects of aesthetics in human artwork. *Id.* Signing chimpanzees even assign titles to their productions. *Id.*

115. There are reports of imaginary play in wild chimpanzees.<sup>34</sup> (Jensvold Aff. ¶ 24). A compelling observation from a chimpanzee field researcher is of an 8-year-old (childhood age) chimpanzee carrying a log like a doll; the chimpanzee carried the log on his back like chimpanzee mothers carry their babies, played tickle games with it like chimpanzee mothers do with their babies, and placed it in a little nest that he made in the trees. *Id.* At night chimpanzees build nests in the trees to sleep. *Id.*

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<sup>34</sup> Dr. Goodall reported that a 4-year-old wild chimpanzee, Wanda, had been watching her mother, who was perched on a branch above a termite hill, dip a stick into the insects’ hole and pull it out loaded with termites. (Jensvold Aff. ¶ 24). Wanda then picked up a small twig, perched herself on a sapling branch, and poked her stick in a downward direction. *Id.* A similar instance of imaginary play is very common in human children using cups, saucers, pots, and toy stoves to pretend to prepare and serve a meal as they see their parents do—in these instances a child uses adult tools to go through the motions of a common adult activity. *Id.* Be it children using pots for cooking or chimpanzees using twigs for dipping, these are analogous behaviors. *Id.*

116. A very similar behavior to imaginary play is deception; both require behaviors directed toward something that is not there and often involve modeling mental states. (Jensvold Aff. ¶ 26). There are many instances of deception reported in chimpanzees. *Id.*

### **17. Duties and Responsibilities**

117. Similar to humans, chimpanzees bear duties and responsibilities to one another. (McGrew Decl. ¶ 29) (Boesch Decl. ¶ 31) (Jensvold Aff. ¶ 33) (Goodall Decl. ¶ 17). This is evidenced by the obligations chimpanzees fulfill in their social life in the wild, including in areas such as group defense, rescue, assistance to wounded individuals, rewards and punishment in the hunting context, as well as providing support for weak individuals. (Boesch Decl. ¶ 31). Another way this is demonstrated is by their social dynamics. (Jensvold Aff. ¶ 33). For example, the dominant male will provide grooming, access to females, and perhaps access to meat to his primary supporters. Chimpanzees are also highly protective of their communities, and will go to great lengths to defend them. *Id.*

118. Based on his 40 years of observing wild chimpanzees, Dr. McGrew believes “that chimpanzees understand and carry out duties and responsibilities to their peers. They knowingly assume obligations and honor them. Such behavior is essential for maintenance of chimpanzee societies.” (McGrew Decl. ¶ 39).

119. According to Dr. Jensvold, the same is true of captive chimpanzees: “Chimpanzees have duties to each other. Their relationships to each other are even more supportive than those with a human caregiver, no matter their level of fondness for the human.” (Jensvold Aff. ¶ 38).

120. The experts have identified several specific examples of duties and responsibilities among and within chimpanzee communities.

121. Maternal Duties: Chimpanzee mothers show a degree of duty of care to their offspring that rivals humans. (McGrew Decl. ¶ 29) (Goodall Decl. ¶ 17). Maternal behavior is another clear indicator of responsibility. (Jensvold Aff. ¶ 37). The duties and responsibilities of a mother towards her offspring are many and often onerous. (Goodall Decl. ¶ 17). As single mothers, they feed, protect, carry, shelter, and train their offspring for an average of 5.5 years, from birth to weaning. (McGrew Decl. ¶ 29).<sup>35</sup> After weaning, chimpanzee mothers continue to groom, support and cooperate with their offspring for the rest of their lives, even into the adulthood of their offspring and the old age of the mothers. *Id.* There have been many instances when mothers have gone to help their fully-grown offspring. (Goodall Decl. ¶ 20).

122. An important component of maternal responsibility is to provide support for her child. (Goodall Decl. ¶ 19). During a play session, if an infant should get hurt and screams – the mother will hasten to support her child, reprimanding the rough playmate even though this may entail retaliation from a more dominant mother. *Id.* When the older child is male, he is often anxious to join groups of adult males, particularly when there is a lot of excitement. Mothers with small infants often prefer to avoid such groups. *Id.*

123. Young female chimpanzees practice for their future maternal behavior by using sticks as ‘dolls’, in a form of symbolic play. (McGrew Decl. ¶ 29).

124. Other Familial Duties: Familial duties are not restricted to mothers. (McGrew Decl. ¶ 30) (Goodall Decl. ¶ 21). Most adult males of a community act in a paternal way to all

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<sup>35</sup> For three years the infant is dependent on breast milk, and continues to suckle though less often for the next two years until the next baby is born. (Goodall Decl. ¶ 17). Throughout this period the mother continues to carry the infant, at first clinging to her belly and then riding on her back. *Id.* During this time the mother waits for the child before moving off, and she constructs a nest large enough for herself and her child until the next baby is born. *Id.*

infants in their community, rushing to their aid when necessary. (Goodall Decl. ¶ 21).<sup>36</sup> Maternal siblings of both sexes supplement their mother, using similar caregiving behaviors. (McGrew Decl. ¶ 30). In female kinship lineages, patterns of familial duties extend through three generations, such that grandmothers participate in the upbringing of their grandchildren. *Id.*

125. Juveniles and adolescents very frequently act responsibly towards their infant siblings. (Goodall Decl. ¶ 22).<sup>37</sup> An older sibling will almost always adopt an infant. (Goodall Decl. ¶ 23).

126. Community Duties: Duties of care extend beyond kinship. (McGrew Decl. ¶ 31) (Goodall Decl. ¶ 24). Duties and responsibilities extend beyond the family (lineage) into the realm of the community, which is the basic social unit of chimpanzees. (McGrew Decl. ¶ 32).

127. Unrelated individuals may adopt orphaned infants. (Goodall Decl. ¶ 24) (McGrew Decl. ¶ 31). Such a foster parent need not be female, or even an adult. (McGrew Decl. ¶ 31). Adopted orphans are more likely to survive and thrive, while unadopted infants below the age of weaning almost always perish. *Id.* Such bonds may last a lifetime, even between unrelated males in adulthood, as expressed in sustained grooming, the currency of chimpanzee social life. *Id.* At Gombe, a 12-year-old adolescent male cared for a 3-year-old male orphan, and definitely saved his life. (Goodall Decl. ¶ 24). His altruistic behaviour was most impressive

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<sup>36</sup> On one occasion two hunters (human) shot a female chimpanzee, seized her infant, and tried to push it into a sack. (Goodall Decl. ¶ 21). As the infant screamed, a male chimpanzee rushed out of the forest, attacked the two men, grabbed the baby, and disappeared into the forest. *Id.* There are many other tales of adult males protecting – or trying to protect – infants from hunters across Africa. *Id.* Tragically they often get killed themselves. *Id.*

<sup>37</sup> One 9-year-old female, who had run in terror from a large poisonous snake, nevertheless climbed down from her tree to gather up and carry to safety her 3-year-old brother, who seemed unaware of the danger. (Goodall Decl. ¶ 22). A different adolescent female prevented her infant brother from following their mother when the trail passed through a clump of tall grasses infested, with tiny ticks. *Id.*



when he ran to seize the orphan and got too close to socially roused males – despite the fact that adolescent males normally keep well away from the adult males at such times. *Id.* He often got beaten up for his altruistic behavior, but this did not prevent him from acting in the same way the next time his help was needed. *Id.* The signing chimpanzee Washoe adopted a 10-month-old chimpanzee named Loulis, and proved to be a very protective adoptive mother. (Jensvold Aff. ¶ 37).

128. Chimpanzees show behavior that is lawful and rule-governed. (McGrew Decl. ¶ 37). There are many examples of behavioral regularity that reflect maintenance of a social order: adult males being protective of infants, dominant individuals breaking up fights, adult kin avoiding incest, etc. *Id.* Sometimes there is specific, targeted ostracism of individuals who violate norms, including fatal punishment. *Id.* Systematic, long-term reciprocity of favors is another example of rule-governed social interaction. (McGrew Decl. ¶ 38). A simple example is like-for-like social grooming, while a more complex form is the exchange of differing goods or services (e.g., if I favor you prized food, then later you favor me as a mate; if you support my aggressive attempts to rise in dominance, then I will allow you access to females for mating). *Id.*

129. Social Dominance: Another chimpanzee universal that necessarily entails duties and responsibilities is participation in a hierarchy of social dominance. (McGrew Decl. ¶ 34). The alpha-male's role includes a range of time-and energy-sapping activities, such as intervening in disputes between others, thus maintaining community integrity and preventing injury. (McGrew Decl. ¶ 35). He may oversee the distribution of prized resources, such as meat, after a successful hunt. *Id.* When crossing roads, high-ranking males lead the way by being vigilant for traffic, and bring up the rear, ensuring that others are not left behind. *Id.*

130. Group Defense: Chimpanzees defend territories collectively, unlike the individual territories of most animals; they must work together to defend themselves and their resources against their neighbors. (McGrew Decl. ¶ 32). This duty is essential, and numbers count. (McGrew Decl. ¶ 33).

131. The adult males of a community are responsible for patrolling their territory, chasing away or attacking individuals from neighboring communities – this serves to protect and sometimes increase resources for their own females and young. (Goodall Decl. ¶ 25). *Accord* (McGrew Decl. ¶ 33) (Boesch Decl. ¶ 32). This requires close cooperation and gang attacks. (Goodall Decl. ¶ 25). Even two males who may be engaged in challenging each other for social dominance within the community will join in an attack on a stranger. (Goodall Decl. ¶ 25). Territories are aggressively defended in all chimpanzee populations that have been studied. (Boesch Decl. ¶ 32). According to Dr. McGrew, “[w]hat makes this shared responsibility so impressive is that the same males whose lives depend on one another in the patrol will later compete robustly with one another over access to sexually receptive females. They somehow resolve the contradictions involved in having conflicting interests in different contexts.” (McGrew Decl. ¶ 33).

132. Rescue: Impressive supports by male group members are provided to rescue isolated individuals who have been taken prisoner by intruders. (Boesch Decl. ¶ 33). Outnumbered individuals during intergroup encounters were observed to sustain severe injuries in 40% of the cases, leading to death in 15% of the severe attacks. *Id.* In one example, a single adult male with an adopted infant on his back rushed for 600 meters to rescue an adult female from his group who was trapped and beaten up by five male intruders. *Id.* This spontaneous high level of altruism

toward group members in this chimpanzee population reveals the sense of obligation felt by them to help and protect one another. *Id.*

133. Hunting Responsibilities: Group members realize that anticipating a prey is an essential part of a successful hunting team and they place an equally high value on this as doing the capture itself. (Boesch Decl. ¶ 35). Hunting roles requiring anticipation of the prey movements are as equally well rewarded as capturing the prey, even if the individuals doing such movements were not making a capture. *Id.* Conversely, the rewarding of certain actions leads to the passive punishment of individuals present during the hunt but did not participate in it (such individuals received 2.6 times less meat than hunters). (Boesch Decl. ¶ 36).

134. Human Chores: Dr. Jensvold worked with five chimpanzees over nearly three decades studying how they use American Sign Language to communicate with humans and each other. (Jensvold Aff. ¶ 34). For decades, the daily routine at the Central Washington University laboratory in Ellensburg, Washington, involved the chimpanzees participating in numerous activities with caregivers—including husbandry duties. *Id.* For example, in the mornings, the chimpanzees helped clean enclosures by returning their blankets from the night before. (Jensvold Aff. ¶ 35). The chimpanzees all participated; it was the duty that the caregivers placed upon them. *Id.* When new caregivers appeared, the chimpanzees sometimes made an attempt at ditching their duties, but eventually they bore the responsibility of returning blankets and other objects in the enclosure to the caregiver. *Id.* This was done without bribery. *Id.*

**C. Chimpanzees have complex physical, psychological, and social needs, and the failure to meet those needs in captivity is physically and psychologically harmful.**

135. Chimpanzees are autonomous and highly cognitively complex beings, possessing complex physical, psychological, and social needs. (Matsuzawa Decl. ¶ 32). When held in

captivity, chimpanzees must be kept in a suitable environment that can meet their complex needs. *Id.* Their care in captivity requires a sound knowledge of the species and standards of care. (Jensvold Aff. ¶ 50).

### **1. Social Needs (Freedom to Socialize)**

136. Chimpanzees are highly social animals. (Matsuzawa Decl. ¶ 32) (Jensvold Aff. ¶ 29). Chimpanzees have a fundamental need to socialize as part of their daily life, including by greeting, grooming, and moving together with other chimpanzees. (Matsuzawa Decl. ¶ 32).

137. In the wild, they live in groups of 20-200 individuals. (Jensvold Aff. ¶ 29). Within these communities, chimpanzees have fluid subgroups that adjust to social and environmental contexts and have relationships that last a lifetime. *Id.* Their developmental milestones show their emotional and biological similarities with humans. *Id.*

138. During childhood, a young chimpanzee remains with the mother and the younger sibling. (Jensvold Aff. ¶ 30). Between 10-12 years of age, chimpanzees enter puberty. During this time, they spend more time with other community members socializing and strengthening peer relationships. *Id.* Male chimpanzees have a strong bond with their mothers. (Matsuzawa Decl. ¶ 28). Males stay in their natal community for the duration of their lives which may last 50-60 years. (Jensvold Aff. ¶ 30) (Matsuzawa Decl. ¶ 28). In contrast, female chimpanzees disperse from their natal communities, an adaptive behavior to avoid incest (Matsuzawa Decl. ¶ 28).

139. Chimpanzee social life is cooperative. (McGrew Decl. ¶ 27). Males have a social hierarchy characterized by Machiavellian-type politicking and maneuvering through the ranks by forming alliances based on kinship, friendship, charisma, and sometimes fear-mongering. (Jensvold Aff. ¶ 30). They form close alliances and coalitions with other males in lifelong bonds, and bond together to defend the community against neighboring communities. (Jensvold Aff. ¶

30). They engage in collaborative hunting, in which different individual hunters adopt different roles that increase the chances of collective success in the hunt. (McGrew Decl. ¶ 27). Males cooperate in territorial defence, when they engage in repelling boundary incursions, reflecting a purposeful and well-coordinated society. *Id.*

140. Species-typical social interactions of chimpanzees in the wild include greetings upon meeting others, such as embraces and kisses, and reassurance in times of excitement, such as calming touches. (Jensvold Aff. ¶ 31). Interactions include hours spent grooming, which has a hygiene function but more importantly serves to reinforce bonds and decrease stress. *Id.* Wild chimpanzees spend 6-33% of their waking time grooming with other chimpanzees. *Id.*

141. Because chimpanzees are extremely social beings, they should not be isolated from one another. (Matsuzawa Decl. ¶ 32). In captivity, it is imperative that chimpanzees can engage in appropriate and meaningful social interactions with other chimpanzees. *Id.*

## **2. Habitat Needs (Freedom to Move)**

142. Chimpanzees have a fundamental need to move freely. (Matsuzawa Decl. ¶ 32). Chimpanzees spend 10-20% of their time traveling, so they need adequate opportunities to move around both on and off the ground. (Jensvold Aff. ¶ 66).

143. Outdoor Environment: An appropriate outdoor environment is essential for meeting the complex needs of chimpanzees. (Matsuzawa Decl. ¶ 31). Chimpanzees need access to the sun, water, and various plants and vegetation. *Id.*

144. Climbing Structures: Chimpanzees are an arboreal species, meaning they live off the ground and are natural climbers. (Jensvold Aff. ¶ 65). Chimpanzees live in the forest and walk on the ground, but spend more time in the trees. They build nests in the trees at night and sometimes during the day. *Id.* Enclosures must therefore include climbable surfaces, such as sturdy fencing,

catwalks, various structures, hoses, ropes, and hammocks that create places and pathways above the ground. (Jensvold Aff. ¶ 66). *See also* (Matsuzawa Decl. ¶ 31) (“chimpanzees need high climbing frames because they are an arboreal species; they spend hours in trees in the wild.”).<sup>38</sup>

145. Multiple habitats: Chimpanzees need multiple connecting habitats—such as outdoor compounds and cages connected by the corridors—since they live in a “fission-fusion” society. (Matsuzawa Decl. ¶ 31). Chimpanzees need the freedom to move from one place to the next with changing partners. *Id.*<sup>39</sup>

146. Environmental Enrichment: Because chimpanzees are autonomous and highly cognitively complex, they need to live in a socially and physically enriched environment. (Matsuzawa Decl. ¶ 31).<sup>40</sup> Chimpanzees should receive 10-20 different objects daily and should receive appropriate new objects at least twice daily. (Jensvold Aff. ¶ 60).

### **3. Foraging Needs (Freedom to Forage)**

147. While diet is part of an enrichment program, it also is a separate consideration. (Jensvold Aff. ¶ 63).

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<sup>38</sup> Enclosure size requirements are varied. While the Animal Welfare Act mandates 25 ft<sup>2</sup>, the Institute of Medicine report recommended 1000 ft<sup>2</sup> but NIH revised that to 250 ft<sup>2</sup> (NIH, 2014). Even the largest chimpanzee enclosures are a small fraction of the size of chimpanzee home ranges. (Jensvold Aff. ¶ 67).

<sup>39</sup> A troop of macaque monkeys or a group of gorillas, for example, can be kept in one place because they form a group and always move together; however, chimpanzees should *not* be kept in one place because they need to have fission-fusion parties. (Matsuzawa Decl. ¶ 31).

<sup>40</sup> Environmental enrichment is the provision of a stimulating physical environment, including enclosures, permanent structures within enclosures, and temporary structures such as hammocks and swings; a social environment, meaning social housing and friendly relationships with caregivers; activities such as painting and grooming; food stimulation including a varied diet, forages, and food puzzles; and objects including toys, clothing, paper, magazines, hairbrushes, mirrors, and puzzles. These programs are meant to stimulate the natural behaviors of tool use, object manipulation, problem solving, and foraging needs, to name a few. (Jensvold Aff. ¶ 59).

148. Chimpanzees have a fundamental need to forage freely. (Matsuzawa Decl. ¶ 32). In the wild, chimpanzees have the freedom to choose when to eat, what to eat, and where to eat. *Id.* The habitat on land allows chimpanzees to consume grass, shrubs, bark, and other vegetation. (Matsuzawa Decl. ¶ 31). Chimpanzees in the wild eat hundreds of different foods such as vegetation, fruits, nuts, insects, reptiles, and mammals. (Jensvold Aff. ¶ 63).

149. Chimpanzees make and use many types of tools to acquire foods, such as sticks to fish for termites in mounds or alga in still ponds, and rocks to crack nuts. (Jensvold Aff. ¶ 63). In the wild, chimpanzees use hundreds of tools, including: sticks to dip into termite mounds and into honey bee nests (using a long one for stinging bees and a short one for stingless bees); large sticks to punch holes in the ground; leaves for sponging up water, wiping faces and rears, protection for feet from thorny walking surfaces; and stones for hammers and anvils in nut cracking. (Jensvold Aff. ¶ 58). When given the opportunity, chimpanzees in captivity also use a myriad of tools—such as screwdrivers, paintbrushes, hammers, forks, spoons, crayons, clothing, hairbrushes, toothbrushes, and iPads. *Id.*

150. In captivity, chimpanzees must receive a varied and diverse diet with a variety of ingredients. Specific nutritional requirements include high fiber, fruit, vegetables, and protein. In captivity, food must be presented in ways to promote foraging which can create enriching activities. Cardiac disease and diabetes are concerns in chimpanzee health and poorly planned diets can contribute to these problems. (Jensvold Aff. ¶ 63). In the appropriate sanctuaries, where there is natural vegetation such as grass, shrubs, trees, etc., chimpanzees can freely access edible items. (Matsuzawa Decl. ¶ 32).

#### **4. Harms of Captivity**

151. The failure to meet the essential needs of chimpanzees causes them to suffer physically and psychologically. (Matsuzawa Decl. ¶ 33); *accord* (Jensvold Aff. ¶ 65) (“When such furnishings and conditions are lacking, the captive chimpanzee will likely suffer physiological harm.”).

152. Longevity: Chimpanzees in captivity live for 45 years on average. (Matsuzawa Decl. ¶ 29). Wild chimpanzees may survive for more than 60 years and have a long post-reproductive period after menopause. *Id.*

153. Social Deprivation: Social interaction and stimulation are essential for a chimpanzee’s development, health, and well-being. (Jensvold Aff. ¶ 30). Chimpanzees have a high degree of choice in their participation in subgroups. *Id.* An individual can spend time on the periphery of the community or move through different subgroups depending on activities such as sexual grouping, feeding parties, mother and offspring groups, or hunting. This social flexibility is absent in captive environments and determined wholly by caregivers. In captivity, groups of chimpanzees are typically smaller and less fluid than in the wild.

154. When chimpanzees are not provided the ability to live with adequate social groups and social stimulation during their formative years, they suffer from psychological harm reflected in the exhibition of abnormal behavior and self-injurious behavior, and are at risk of becoming less likely to be able to form appropriate social relationships in the future. (Jensvold Aff. ¶ 56).

155. As Dr. Jensvold details in her affidavit, chimpanzees are likely to suffer psychological and physical harm when deprived of adequate opportunities to engage in social and tactile behaviors, such as grooming and playing with members of their own species. (Jensvold Aff. ¶ 51). Chimpanzees raised in social isolation show severe deficits and abnormalities, such as



increases in a variety of abnormal behaviors including rocking, swaying, thumb-sucking, eye-poking, biting, over-grooming, coprophagy (ingestion of feces), and head banging. *Id.*

156. The harm caused by inadequate social groupings also is reflected in physical changes in a chimpanzee's brain. (Jensvold Aff. ¶ 55). In a recent study, chimpanzee brains were more developed in mother-reared chimpanzees, mirroring earlier studies reporting that human children who have experienced neglect and adverse rearing conditions also have brain abnormalities. *Id.*

157. Boring Environment: Free-living chimpanzees lead a cognitively and socially rich stimulating life that requires them to engage in constant problem-solving, tool making, and tool use. (Jensvold Aff. ¶ 57). A lack of stimulation in the social realm and object/physical realm presents a risk of harm to captive chimpanzees. *Id.*

158. The effects of unenriched environments can result in stereotypical and abnormal behaviors, aberrant self-directed behaviors (such as self-manipulation, self-scratching, self-grasping, and self-injurious behavior), increased aggression, decreased exploration, low dominance rank, and reduced or abnormal sexual behaviors. (Jensvold Aff. ¶¶ 12, 54). Chimpanzees reared in environmentally deprived conditions exhibited many behavioral abnormalities and problems not exhibited by chimpanzees reared by their mothers. (Jensvold Aff. ¶ 52). The deprived chimpanzees typically developed stereotypies (abnormal, repetitive, seemingly meaningless behaviors) such as rocking and head banging. *Id.*<sup>41</sup>

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<sup>41</sup> Chimpanzees who were reared in a deprived environment for 2-2.5 years had deficits that lasted a lifetime. (Jensvold Aff. ¶ 52). In another study, chimpanzees pulled from their biological mothers and raised by humans in a laboratory nursery ("nursery-reared") showed more rocking and self-sucking than mother-reared chimpanzees. In yet another study, laboratory chimpanzees reared apart from their mothers exhibited poor social skills, fear of novelty, and difficulty coping. (Jensvold Aff. ¶ 53).

159. Decades of research points to the profound impact of the quality of the environment on the nervous system of chimpanzees and the reason for environmental enrichment. (Jensvold Aff. ¶ 61). Other research demonstrates that chimpanzees' psychological growth and ability will become depressed when they are reared in less stimulating environments. (Jensvold Aff. ¶ 62).

160. Insufficient Space: Outdoor access has a major impact on chimpanzee behavior. (Jensvold Aff. ¶ 69). A study comparing the behavior of pairs and trios of chimpanzees housed exclusively indoors, or with access to the outdoors, found that those groups with access to outdoors showed significantly less abnormal behavior, less yawning (a tension-related behavior), and more self-grooming. *Id.*

161. Inadequate Diet: Foraging for food is a large part of how wild chimpanzees spend their days, exercising their autonomy. (Jensvold Aff. ¶ 63). Chimpanzees are often denied this ability to forage freely in artificial environments such as zoos, where feeding decisions are made by human caretakers. (Matsuzawa Decl. ¶ 32). While zoos may provide chimpanzees with the fundamental freedom of eating, the feeding time is strictly controlled by caretakers, not by the chimpanzees. (Matsuzawa Decl. ¶ 31). In that sense, the freedom of eating is not really free like in the wild. *Id.* Environmental enrichment programs that include food puzzles and/or scatter browse are meant to emulate the challenges of food procurement in the wild, although they seldom come close. (Jensvold Aff. ¶ 64).

162. Diets for chimpanzees in zoos and laboratories include primarily monkey chow with some fresh fruit and vegetables. (Jensvold Aff. ¶ 64). Chow is a highly processed kibble-type food that requires no processing skills. *Id.* Sanctuaries endeavor to provide a variety of foods with diverse ingredients, preparation style, and presentation. Additionally, sanctuaries will adjust to the

needs of individuals. A proper captive chimpanzee diet requires planning, preparation, time, and funding. *Id.*

163. Poor Caregivers: Caregivers play a crucial role in captive chimpanzee care. (Jensvold Aff. ¶ 72). Caregivers should have a deep knowledge of the species and know each individual's history, personality, preferences, and dislikes. *Id.* They must also understand potential social partners and groupings. (Jensvold Aff. ¶ 32). It is of utmost importance that caregivers receive specific training in chimpanzee behavior and husbandry to provide the quality of care that they require. (Jensvold Aff. ¶ 74). When appropriate training and knowledge are lacking, caregivers are unable to read and understand the chimpanzees' needs. This results in a failure to recognize problems that—if undetected and unaddressed—are likely to lead to psychological injuries, physical illnesses, and even death. (Jensvold Aff. ¶ 75).

**D. The DeYoung Family Zoo is a completely unacceptable place for chimpanzees because it cannot meet their complex needs and prevents them from exercising their autonomy.**

164. The Expert Affidavits and Declarations collectively demonstrate that DFZ is a completely unacceptable place for chimpanzees. Dr. Jensvold and Dr. Matsuzawa reviewed videos and photographs of DFZ (see here: <https://rb.gy/57pbv>) and confirm this conclusion.<sup>42</sup> *See* (Jensvold Aff. ¶ 98) (“The DFZ is a completely unacceptable place for chimpanzees.”); (Matsuzawa Decl. ¶ 34) (“[T]he current situation for the chimpanzees at the zoo seems far from acceptable. It does not appear that the DeYoung Family Zoo can provide chimpanzees with a normal life appropriate for their species.”).

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<sup>42</sup> A thumb drive containing the videos as well as hard copies of the photographs are attached to Jake Davis's affidavit. These videos and photographs are true and accurate representations of the ones Mr. Davis captured at the zoo on August 21, 2023. (Davis Aff. ¶ 3).

165. With no accreditation displayed on its website, DFZ is properly classified as a roadside zoo. (Jensvold Aff. ¶ 97). The zoo does not meet the AZA standards for chimpanzee care, let alone the rigorous standards of a GFAS-accredited sanctuary. *Id.* The USDA is the only organization providing oversight of the zoo, and its standards are minimal and wholly insufficient. *Id.* Unlike GFAS, the USDA does not have specific standards that address the complex needs and autonomy of captive chimpanzees. *Id.*

166. Based on the videos and photographs of the zoo, Dr. Jensvold made the following observations: “There does not appear to be any protected outdoor space at DFZ. This would mean that if the chimpanzees are allowed outside, they would be exposed to adverse conditions. In extreme cold and snow, chimpanzees can easily develop frostbite or hypothermia. So it’s either that or they are stuck inside for many months.” (Jensvold Aff. ¶ 70). She added: “I observed one outdoor enclosure with a woven wire top for chimpanzees. There is no shelter on the top of the enclosure, so rain and snow can enter the enclosure. There is no indication from the photographs and videos I’ve observed that there is sheltered outdoor space. I estimate the outdoor enclosure to be about 25 x 25 ft. The building beside it is about the same and that is attached to a smaller building. During winter months it is likely that the outdoor enclosure is filled with snow. The average annual snowfall in Wallace, MI is 47 inches per year. The ground is frozen all winter. This would mean the outdoor enclosure would be largely unusable for chimpanzees. Keeping the chimpanzees inside all winter would be physically and psychologically harmful. They need access to fresh air and sunshine all year.” (Jensvold Aff. ¶ 68).

167. Dr. Jensvold also reviewed USDA records of DFZ spanning from 2013-2023 (see records here: <https://bit.ly/3sy6cH2>). (Jensvold Aff. ¶ 85). She noted that the number of chimpanzees at DFZ has fluctuated from 2 in 2016, 5 in 2017, 8 in 2018, and 7 in 2022. (Jensvold

Aff. ¶ 93). The USDA records include inspection reports and responses to many animal welfare complaints. (Jensvold Aff. ¶ 85).

168. The records reveal that Prisoner A (aka Louie), who has been at DFZ since he was six weeks old, has essentially lived alone for more than half his life, if not his entire life. (Jensvold Aff. ¶ 86). For a chimpanzee, this is utterly unacceptable. The cognitive development of chimpanzees is much like human children, and the need for social interactions is essential for normal development. *Id.* Dr. Jensvold thus concludes: “What Louie has endured is highly detrimental to his psychological well-being, mental health, growth, and development.” *Id.*

169. As stated by Dr. Jensvold’s late colleague, Dr. Steve Ross: “Providing captive chimpanzees with a rich, dynamic, and stable social environment is likely the single most important element in promoting chimpanzee well-being.” (Jensvold Aff. ¶ 90). Yet over a period of at least 8 years, Louie has not been provided with an adequate social environment. *Id.*

170. In 2016, the records indicate that Louie lived in a cage beside a monkey and they would pass a ball between them, which is absolutely inadequate for meeting the complex needs of chimpanzees. (Jensvold Aff. ¶ 88). Captive chimpanzees need to be able to engage in species-typical behaviors, and monkeys and chimpanzees do not share the same behaviors. *Id.*

171. In 2018, the USDA inspector noted that Louie (then 8 years old) “is still singularly housed.” (Jensvold Aff. ¶ 90). A chimpanzee held alone in an enclosure is in solitary housing, even if there is an adjacent enclosure with another chimpanzee. *Id.* By 2018, Louie had been housed with humans and took trips at times to be adjacent to the other chimpanzees at the zoo. (Jensvold Aff. ¶ 89). This housing arrangement constitutes solitary housing, which is severely harmful. *Id.* With nearly a lifetime of solitary housing, Louie will not know how to be a normal chimpanzee. (Jensvold Aff. ¶ 91). Former pet chimpanzees like Louie have the most difficult time socializing

with other chimpanzees. *Id.* As adults they show higher levels of hair cortisol, which is an indicator of stress. *Id.* This fact, coupled with the need of chimpanzees for social stimulation, shows that Louie has been severely psychologically harmed by his life at DFZ. *Id.*

172. The 2018 USDA inspector reported that Louie was “very well-behaved” (p. 284), probably meaning calm and compliant. (Jensvold Aff. ¶ 94). However, being “very well-behaved,” whatever that means for a chimpanzee, is *not* an indicator of psychological well-being; species-typical behaviors are. *Id.*

173. The USDA records indicate that a chimpanzee named Tommy, who died in 2022, had likely been living alone since his arrival in 2015 (Jensvold Aff. ¶ 92). The solitary housing would have caused Tommy psychological harm. *Id.*

174. The 2018 inspection report (p. 281) notes that the DFZ owners had been hand-raising an infant female chimpanzee, who had been removed from her mother because the mother was not taking adequate care of her. (Jensvold Aff. ¶ 93). This raising of a chimpanzee without proper social housing is highly detrimental to chimpanzee well-being. (Jensvold Aff. ¶ 92).<sup>43</sup>

175. The 2018 inspection report also states that stereotypical behavior was not observed, but this does not mean the chimpanzees were not exhibiting such behavior at other times. Stereotypical behavior, which is a sign of brain damage, often occurs when chimpanzees are calm and otherwise unoccupied. As highly social beings, chimpanzees are usually pretty busy during an inspection when there are strangers around. (Jensvold Aff. ¶ 95).

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<sup>43</sup> Dr. Jensvold also observed in the videos she watched: “two females had sexual swellings indicating they were receptive. There also was a male in the enclosure. This would indicate to me the potential for breeding.” (Jensvold Aff. ¶ 76).

176. Finally, the inspection reports confirm that the chimpanzees are housed indoors for the duration of the winter, which, as indicated earlier, is extremely harmful to their physical and psychological well-being. (Jensvold Aff. ¶ 96).

**E. The DeYoung Prisoners can have their complex needs met and exercise their autonomy at a chimpanzee sanctuary accredited by the Global Federation of Animal Sanctuaries.**

177. The experts recommend that the DeYoung Prisoners should be sent to a GFAS-accredited chimpanzee sanctuary so that they can exercise their autonomy and have their complex needs met. (Jensvold Aff. ¶ 97) (Matsuzawa Decl. ¶ 34) (McGrew Decl. ¶ 40).

178. In GFAS-accredited sanctuaries, the culture of care stands apart from that of other traditional wildlife facilities. (Jensvold Aff. ¶ 82). One of the ways that sanctuaries better serve the chimpanzees in their care is by providing them with a home for the duration of their lives. *Id.* GFAS-accredited sanctuaries never trade animals with other facilities, transfer them for breeding, or relocate animals to free up space. *Id.* Accredited sanctuaries do not breed chimpanzees. (Jensvold Aff. ¶ 76). Zoos often remove unruly adolescent males, sending them to other zoos. (Jensvold Aff. ¶ 77). According to Dr. Jensvold: “This disruption is completely unnatural. Zoos may also transfer chimpanzees to other zoos for breeding purposes. Transfer and breeding are forbidden in GFAS-accredited sanctuaries and there must be contraception plans.” *Id.*

179. Sanctuaries operate from an ethic of service to each animal as an individual with a certain personal history, and to meeting their needs as best as possible in captivity. (Jensvold Aff. ¶ 81). From that ethic comes certain practices, including the “resident first” philosophy and practice (as opposed to consideration of other issues such as visitor experiences), no breeding, and no impositions on well-being and autonomy (that is, no performances, demonstrations, or close

contact with the public). These principles and practices of sanctuaries are meant to be reparative and healing. *Id.*

180. A key characteristic of the caregiver-resident relationship in sanctuaries is a lack of human domination, a recognition of the offset of control, and an emphasis on providing the animals with opportunities to exert control as already described (in other words, opportunities to act autonomously). (Jensvold Aff. ¶ 73). Caregivers are completely focused on the animals in their care, without the distractions associated with exhibition and ambassador programs of zoos. *Id.*

181. GFAS stipulates standards of care for non-human animals in GFAS-accredited sanctuaries and has a manual specific to great ape care. (Jensvold Aff. ¶ 78). GFAS has requirements and standards for enclosure size and design, diet, environmental enrichment, veterinary care, daily husbandry such as enclosure cleaning and sanitation, social housing, caregiver training, qualifications, and care protocols and on-site inspections. It requires annual updates and has a renewal process every three years that includes an on-site inspection. *Id.*

182. GFAS Housing: GFAS requires that great apes, which includes chimpanzees, be housed in an environment that allows them to move about freely and rapidly and exercise choice in location. (Jensvold Aff. ¶ 78). Apes must have as much outdoor access as possible whatever the climate. *Id.* Outdoor enclosures must be a minimum of 5,000 sq. ft for 5 apes, with 250 sq. ft. for each additional ape. Outdoor enclosures with a top must be a minimum of 20 ft. For indoor enclosures, GFAS requires at least two rooms per group. Minimum room size is 200 sq. ft. per pair of apes with an additional 50 sq. ft. per ape. The minimum height is 15 ft. indoors. There must be furniture or walkways to access the vertical space. The GFAS standards have details on the design of the enclosures. Enclosures must have appropriate complexity with combinations of visual barriers, climbing structures, resting platforms, handholds, ropes, fire hoses, and cargo nets. The



design must allow access for all individuals, including elderly apes and those with physical limitations. Indoor enclosures must have spaces to sleep above the ground. (Jensvold Aff. ¶ 78).

183. GFAS Enrichment: GFAS provides detailed information on a standard enrichment program to provide for behavioral and psychological well-being and promote species-appropriate behaviors. GFAS requires a complete environmental enrichment program in a written protocol, which must include different categories of enrichment: structural enrichment such as benches, climbing structures, ropes and hammocks; object enrichment such as straw blankets, paper, cardboard, mirrors, dolls, and toys; and food enrichment such as treat dipping and raisin tubes. Another enrichment category is social enrichment, which entails affiliative interactions with caregivers when appropriate. The enrichment plan must include novelty—which means there must be complexity, variability, and many objects. GFAS stipulates consideration for the individual’s history in the plan for objects, diet, bedding, and social enrichment. (Jensvold Aff. ¶ 78).

184. GFAS sanctuaries must maintain daily records including notes on meals. The meal plan should include ways to ensure each individual chimpanzee receives their meals, and caregivers must watch to ensure this is happening. (Jensvold Aff. ¶ 79).

185. GFAS also considers physical well-being in its standards. (Jensvold Aff. ¶ 80). Chimpanzees should be able to enjoy lives as close as possible to their wild counterparts and have opportunities to engage in species-typical behaviors. *Id.* This requires regular assessments to ensure that chimpanzees have an appropriate social environment. *Id.* Social housing for chimpanzees should allow for fission-fusion groupings, which is when an individual is able to split off from a larger group and spend time with subgroups. This enables chimpanzees to have choice and autonomy in their social groups. *Id.*

186. Sanctuary life for chimpanzees: The specialized and individualized care that GFAS-accredited sanctuaries offer to chimpanzees is exemplified by Dr. Jensvold’s account of what daily life is like for the resident chimpanzees at the Fauna Foundation, a GFAS-accredited sanctuary where she works. (Jensvold Aff. ¶ 83). Their life is full of options and activities. As Dr. Jensvold explains: “Chimpanzees are offered enrichment, meals, and snack choices throughout the day. Breakfast maybe fruit and farina. Later in the morning when caregivers clean enclosures, the chimpanzees have the option to move to another location and the timing and sequence of the cleaning routine is determined by the chimpanzees. If a chimpanzee wants to remain in a room that needs to be cleaned, they can. The room will be cleaned later when the chimpanzee wants to leave. At points throughout the day, caregivers may take a break to play a game of chase or a quiet grooming session with one of the chimpanzees—caregivers are friends with the chimpanzees, as well as ‘servants’ who fill the chimpanzees’ requests for activities, objects, and enrichment. The chimpanzees have access to caregivers for most of the day. This gives the chimpanzees more control and autonomy than those confined in zoos per se where caregivers leave to care for other animals.” (Jensvold Aff. ¶ 83).

187. That is not all. At the Fauna Foundation, the caregivers will have a plan for the day to stimulate and encourage diversity in activities and avoid the routinizing effects that can occur in zoo institutions. (Jensvold Aff. ¶ 84). Dr. Jensvold writes: “A forage or food puzzle is offered each day. Morning snack options may include a muffin and tea snack mid-morning. After cleaning the chimpanzees have access to an assortment of fresh vegetables. They can choose and take what they want and when they want from a shelf. Lunch is served individually on plates and bowls. This day it may be lentil soup. Another activity is offered in the afternoon such as blowing bubbles,

watching videos, a manicure, painting, or coloring. The chimpanzees often entertain each other with vigorous play or intense grooming.” *Id.*

188. Moreover, the chimpanzees at Fauna live in groups—because having the company of other chimpanzees is essential to their well-being. (Jensvold Aff. ¶ 84). Dr. Jensvold writes: “Fauna offers fission-fusion groupings so certain chimpanzees may visit with compatible neighboring chimpanzees who are outside of their usual group—these groupings are wholly determined by the chimpanzees’ desires. For instance, Tatu uses sign language to tell caregivers who she would like to visit and for how long. The evening routine includes a supper bag made individually for chimpanzees’ preferences and blankets for nesting.” (Jensvold Aff. ¶ 84).

189. The socially and physically rich environment offered to chimpanzees at GFAS-accredited sanctuaries is simply not possible at DFZ.

### **III. Jurisdiction and Venue**

#### **A. Jurisdictional Statement**

190. This Court has jurisdiction over the Complaint under both Michigan common law and the Michigan habeas corpus procedural statute. *See* MCL 600.4304 (“The circuit courts, or a judge thereof” may issue a “writ of habeas corpus to inquire into the cause of detention, or an order to show cause why the writ should not issue.”); *In re Hicks*, 20 Mich. 129, 134 (1870) (noting that the “writ of *habeas corpus*” is a proceeding “allowed by the common law”); *In The Matter of Elizabeth Denison, et al., No. 60.*, 1807 WL 1109, at \*1 (Mich. Sept. 26, 1807) (“[w]hen a statutory method of investigating the right to freedom is not provided, the common-law writ of habeas corpus is appropriate.”).<sup>44</sup>

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<sup>44</sup> MI CONST Art. 3, § 7 provides: “The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed.” *See In re Sanderson*, 289 Mich. 165, 174 (1939) (“The common law, including

191. No previous application for a writ of habeas corpus has been made on behalf of the DeYoung Prisoners in Michigan.

### **B. Venue**

192. Venue is proper in this Court because the action is commenced in the county of detention. *See* MCR 3.303 (A) (“The action must be brought in the county in which the prisoner is detained.”). The chimpanzees are imprisoned at DFZ, which is in Wallace, MI.

### **C. Standing**

193. NhRP has standing to file the Complaint. Michigan’s “statute relating to habeas corpus proceedings specifically provides for the filing of the petition by ‘some person’ other than the one whose alleged unlawful restraint is in issue. . . . For obvious reasons such provision has been *liberally construed*.” *Ex parte Fuller*, 334 Mich. 566, 572 (1952) (emphasis added). *See id.* (“A [habeas] petition filed by a parent, a spouse, a close relative, an attorney, or a friend, has been recognized by this Court as sufficient to confer jurisdiction to inquire into the matter of an alleged illegal restraint.”). In *In re Nowack*, 274 Mich. 544, 549 (1936), the court declared: “*Any person* may sue out a writ of habeas corpus.” (citing *In re Mould*, 162 Mich. 1 (1910) (emphasis added)).

194. MCL 600.4307 provides: “An action for habeas corpus to inquire into the cause of detention may be brought by *or on behalf* of any person restrained of his liberty within this state under any pretense whatsoever, except as specified in section 4310.”<sup>45</sup> (emphasis added). MCR

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the English statutes of general application, made the law of the Northwest Territory by the ordinance of 1787, continued to be the law of Michigan during the territorial period.”).

<sup>45</sup> MCL 600.4310 does not apply here. It provides: “An action for habeas corpus to inquire into the cause of detention may *not be brought* by or on behalf of the following persons: (1) Persons detained by virtue of any process issued by any court of the United States, or any judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts; (2) Persons committed for treason

3.303 (B) also provides: “habeas corpus may be brought by the prisoner or by *another person on the prisoner’s behalf*.” (emphasis added). The comments specify that Subrule (B) was added to make “explicit” that “the action may be brought on behalf of a prisoner *by another person*.” *Id.* (emphasis added). This is a continuation of the English common law, which allowed habeas corpus petitions to be brought by a stranger on behalf of another: “*Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment.*” 11 HALSBURY’S LAWS OF ENGLAND, § 1476, p. 783 (4th ed. 1976) (emphasis added).<sup>46</sup>

195. NhRP has filed seven habeas corpus petitions on behalf of an elephant and four chimpanzees in New York and none of the courts found that NhRP lacked standing. In fact, in two

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or felony, or for suspicion thereof, or as accessories before the fact to a felony, where the cause is plainly and specially expressed in the warrant of commitment; (3) Persons convicted, or in execution, upon legal process, civil or criminal; (4) Persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless excessive and unreasonable bail is required.”

<sup>46</sup> *Accord* JUDITH FARBEY ET AL., THE LAW OF HABEAS CORPUS 237 (3d ed. 2011). *See also* *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990) (“the English Habeas Corpus Act of 1679 authorizes complaints to be filed by ‘any one on . . . behalf’ of detained persons . . . and in 1704 the house of lords resolved ‘that every Englishman, who is imprisoned by any authority whatsoever, has an undoubted right, *by his agents, or friends*, to apply for, and obtain a Writ of Habeas Corpus’”); Rollin C. Hurd, *A Treatise on the Right of Personal Liberty and on the Writ of Habeas Corpus* 212 (1858) (“An agent or friend may make it on behalf of the prisoner”); *Lemmon v. People*, 20 N.Y. 562 (1860) (abolitionist stranger obtained a writ of habeas corpus on behalf of eight slaves); *In re Kirk*, 1 Edm.Sel.Cas. 315 (1846) (abolitionist stranger obtained a writ of habeas corpus on behalf of a slave); *Commonwealth v. Taylor*, 44 Mass. 72 (1841) (abolitionist stranger obtained a writ of habeas corpus on behalf of a child slave); *Commonwealth v. Aves*, 35 Mass. 193 (1836) (abolitionist stranger obtained a writ of habeas corpus on behalf of a child slave); *Truth about Motorways Pty Limited v. Macquarie Infrastructure Investment Management Limited*, HCA 11, 85 (2000) (High Court of Australia) (stranger may seek habeas corpus), <https://bit.ly/3xjAxc0>; *In re Ning Yi-Ching*, 34 Am. J. Int’l 347 (1940) (stranger China Campaign Committee obtained a writ of habeas corpus on behalf of four Chinese nationals), <https://bit.ly/3JyAyLI>; *Boudreau v. Thaw*, 13 D.L.R. 712 (Quebec Sup. Ct. 1913) (stranger obtained a writ of habeas corpus), <https://bit.ly/3xiATQ9>; *Gootoo and Inyokwana*, 35 Sol. Jo. 481 (1891) (stranger and member of antislavery society obtained a writ of habeas corpus on behalf of children destined for slavery abroad), <https://bit.ly/3uu9Ekl>; *Case of Hottentot Venus*, 13 East 185, 104 Eng. Rep. 344 (K.B. 1805) (stranger abolitionist society obtained a writ of habeas corpus on behalf of an African woman), <https://bit.ly/3KIJjsri>.

of the cases, the courts explicitly stated that NhRP had standing. *See Stanley*, 49 Misc.3d at 756 (“As [CPLR 7002(a)] places no restriction on who may bring a petition for habeas corpus on behalf of the person restrained, and absent any authority for the proposition that the statutory phrase ‘one acting on his behalf’ is modified by a requirement for obtaining standing by a third party, petitioner has met its burden of demonstrating that it has standing” on behalf of two chimpanzees.); *Breheny (Trial Court)*, 2020 WL 1670735 at \*7 (“The NhRP has standing to file the Petition for habeas corpus on behalf of Happy.”).<sup>47</sup>

#### **IV. This Court must issue an order to show cause for the DeYoung Prisoners.**

##### **A. Michigan’s Common Law Habeas Corpus Procedural Framework**

196. “The writ of *habeas corpus* is the most celebrated writ known to the law, and has been justly styled ‘the great writ of liberty.’” *Attorney Gen v. Daboll*, 90 Mich. 272, 276 (1892). Habeas corpus “is a writ of inquiry.” *Phillips v. Warden, State Prison of S. Michigan*, 153 Mich. App. 557, 564 (1986). “The primary, if not the only, object of a writ of habeas corpus is to determine the legality of the restraint.” *Id.* at 565. *See also Hinton v. Parole Bd.*, 148 Mich. App. 235, 244 (1986) (“A complaint for *habeas corpus* is designed to test the legality of detaining an individual and restraining him of his liberty.”).

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<sup>47</sup> Two decisions of the Appellate Court of Connecticut erroneously held that NhRP lacked standing to bring its habeas corpus petition on behalf of three elephants because “the elephants, not being persons, lacked standing in the first instance.” *Nonhuman Rights Project, Inc. v R.W. Commerford and Sons, Inc.*, 192 Conn.App. 36, 41 (2019); *Nonhuman Rights Project, Inc. v R.W. Commerford & Sons, Inc.*, 197 Conn.App. 353, 360 (2020). These decisions were wrong for deciding the merits at the standing stage. *See generally Maloney v. Pac.*, 183 Conn. 313, 321 n.6 (1981) (“We emphasize that the question of standing is not an inquiry into the merits.”). In addition, these decisions are directly contrary to the binding Connecticut precedent in *Jackson v. Bulloch*, 12 Conn. 38 (1837), where Nancy Jackson, an enslaved woman who lacked legal personhood (and thus lacked standing in the first instance) was freed through habeas corpus.

197. The procedures applicable to the issuance of the common law writ of habeas corpus are set forth in M.C.L. §§ 600.4301 to 600.4379 and in MI Rules MCR 3.303.

198. These provisions are purely procedural and do not affect this Court’s common-law authority to determine the substantive scope of the writ. “It was never the case in England that the court of king’s bench derived its jurisdiction to issue and enforce this writ from the statute. Statutes were not passed to give the right, but to compel the observance of rights which existed.” *In re Jackson*, 15 Mich. 417, 436 (1867) (Cooley, J., concurring). “The writ is so ancient that its origin is lost in obscurity,” and even the famous Habeas Corpus Act of 1679, confined only to imprisonment for criminal or supposed criminal matters, “introduced no new principle” that was not present in the common law. *Id.*

199. While MCL 600.4322 uses the term “prisoner,” it is not limited to incarcerated human beings. Rather, it is broadly defined to mean “the person on whose behalf the writ is issued, *such as* an inmate of a penal or mental institution, the child whose custody is sought, and *other persons alleged to be restrained of their liberty.*” (emphasis added).

200. “The right to a writ of habeas corpus is fundamental to personal liberty. Its sources in the common law go back to the earliest struggles for freedom. . . . The privilege of habeas corpus was further developed from time to time and established the basic right of freedom from unlawful detention. The earliest colonists brought it to this country as a part of the common law, and it became, and ever since remained, the law of the land.” *Goetz*, 256 Mich. at 567.<sup>48</sup>

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<sup>48</sup> See also *In re Coffeen*, 38 Mich. 311, 311 (1878) (“This is a common law proceeding and does not come under the statute, which in certain cases makes the writ of habeas corpus a writ demandable of right”).

201. “As [habeas corpus] came from no statute, it is not confined in its scope to any prescribed limits, but is co-extensive with the cases to which its principles can be applied, and in which it can afford a remedy.” *In re Jackson*, 15 Mich. at 439 (Cooley, J., concurring).

202. Indeed, this Court’s authority over the substance and expansion of the writ is constitutionally guaranteed. “[S]tate constitutions recognize the writ of habeas corpus as an existing remedy in the cases to which it is properly applicable, and designate the courts or officers which may issue it; but they do not point out the cases in which it may be employed. Upon this subject the common law and the statutes must be our guide; and although the statutes will be found to make specific provision for particular cases, it is believed that in no instance which has fallen under our observation has there been any intention to restrict the remedy, and make it less broad and effectual than it was at the common law.” *People v. Collins*, 36 Mich. App. 400, 410 (1971) (Levin, J., concurring), *aff’d*, 388 Mich. 680 (1972) (citation omitted).

**B. To issue an order to show cause, this Court need only assume without deciding that the DeYoung Prisoners could have the common law right to bodily liberty protected by habeas corpus.**

203. At this preliminary stage (issuance of an order to show cause), this Court need only assume without deciding that the DeYoung Prisoners could have the common law right to bodily liberty protected by habeas corpus.<sup>49</sup>

204. Writs of habeas corpus have long been issued for individuals whose right to bodily liberty was previously unrecognized. Against the long-entrenched background of legally sanctioned slavery, “the courts of England and the United States worked, through the Great Writ, to secure liberty for those deemed chattel, equated, at most, with animals.” *Breheny*, 38 N.Y.3d at

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<sup>49</sup> As set forth in the Argument (*infra* § V.), ample common law precedent support this Court’s ultimate recognition of their right to bodily liberty.



592. This includes the landmark case of *Somerset v. Stewart*, 1 Lofft. 1 (K.B. 1772), where Lord Mansfield assumed (without deciding) that an enslaved Black man, James Somerset, could possess the common law right to bodily liberty protected by habeas corpus when he famously issued a writ requiring the respondent to justify Somerset’s detention—before ultimately granting Somerset his freedom. *Somerset* is part of Michigan law, Const. 1963, art. 3, § 7, and is celebrated as “that famous decision which will live, and justly so, as long as history does, as that particular glory of Lord Mansfield’s judicial diadem.” *Love v. Phalen*, 128 Mich. 545, 548 (1901).

205. Since *Somerset*, courts in free states including Michigan, California, and New York have issued writs of habeas corpus for enslaved individuals, despite being compelled by comity laws to ultimately rule against their freedom. *E.g.*, *In The Matter of Elizabeth Denison, et al.*, No. 60., 1807 WL 1109 at \*1 (writ of habeas corpus issued for enslaved children to inquire into their detention, although relief was ultimately denied); *In re Perkins*, 2 Cal. 424, 429 (1852) (writ of habeas corpus issued for three enslaved Black men brought to California from out of state, although the California Supreme Court subsequently determined that they were not entitled to their freedom).<sup>50</sup>

206. In *In re Kirk*, 1 Edm.Sel.Cas. 315, 332 (1846), the court recognized its duty to issue a writ of habeas corpus for an enslaved Black child imprisoned on a docked ship by a Georgia slaveholder: “I was bound to allow the writ of habeas corpus, even if I had been fully convinced of the legality of the imprisonment, and . . . it becomes my duty to consider and decide it--a duty from which I am not at liberty to shrink.” The court added: “I approach this with all the caution

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<sup>50</sup> More abundant are cases where slaves were famously set free. See *Lemmon v. People*, 20 N.Y. 562 (1860); *Commonwealth v. Aves*, 35 Mass. 193 (1836); *Jackson v. Bulloch*, 12 Conn. 38 (1837); *Republica v. Blackmore*, 2 Yeates 234 (Pa. 1797).

becoming the gravity of the case, yet with a lively sense of what is due to personal liberty.” *Id.* at 335.

207. More recently, courts have issued writs of habeas corpus for nonhuman animals even when their right to bodily liberty was not recognized.

208. In 2015, the New York Supreme Court, New York County issued an historic habeas corpus order for two imprisoned chimpanzees, recognizing that “the court need not make an initial judicial determination that Hercules and Leo are persons in order to issue the writ and show cause order.” *Stanley*, 49 Misc.3d at 748.<sup>51</sup> Before a packed courtroom with The New York Times and other media in attendance, Justice Jaffe asked the Assistant Attorney General of New York: “Isn’t it incumbent on the judiciary to at least consider whether a class of beings might be granted a right or something short of the right under the habeas corpus law?”<sup>52</sup>

209. In 2018, an order to show cause was issued for the imprisoned elephant Happy.<sup>53</sup> Following a three-day hearing, the New York Supreme Court, Bronx County concluded that NhRP’s merits arguments were “extremely persuasive.” *Breheny (Trial Court)*, 2020 WL 1670735 at \*10.

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<sup>51</sup> The court rejected the State of New York’s argument to the contrary as inappropriately “require[ing] an initial, substantive finding that chimpanzees are not entitled to legal personhood for the purpose of obtaining a writ of habeas corpus.” *Id.* at 760.

<sup>52</sup> James C. McKinley Jr., *Arguing in Court Whether 2 Chimps Have the Right to ‘Bodily Liberty’*, N.Y. TIMES (May 27, 2015), <https://bit.ly/3umXQIO>. See also Chris Hegedus and DA Pennebaker, *Unlocking The Cage* (2016) (documentary film showing oral argument before the trial court, where Justice Barbara Jaffe stated: “We are here for oral argument by the lawyers in this case . . . I thus signed the order [to show cause] in anticipation of hearing both sides address the procedural and substantive issues raised.”).

<sup>53</sup> Andrea Morris, *Judge To Rule On Historic Case Of Whether An Elephant Is A Person*, FORBES (Nov. 19, 2018), <https://bit.ly/2Z4MCmx>; Debra Cassens Weiss, *Judge takes first step to decide whether Happy the elephant should be released from Bronx Zoo*, ABA J. (Nov. 20, 2018), <https://bit.ly/3EnKSVy>.

210. In 2016, an Argentinian court granted habeas corpus relief to an imprisoned chimpanzee named Cecilia, declared her a “nonhuman legal person,” and ordered her transferred from the Mendoza Zoo to a Brazilian sanctuary.<sup>54</sup>

**C. The Complaint sets forth a prima facie case for the issuance of an order to show cause.**

211. “Any court or judge empowered to grant the writ of habeas corpus shall, upon proper application, grant the preliminary writ (or an order to show cause) without delay, unless the party applying therefor is not entitled to the writ.” MCL 600.4316.

212. MCR 3.303 (C) provides that a habeas corpus complaint must state:

- (1) that the person on whose behalf the writ is applied for (the prisoner) is restrained of his or her liberty;
- (2) the name, if known, or the description of the prisoner;
- (3) the name, if known, or the description of the officer or person by whom the prisoner is restrained;
- (4) the place of restraint, if known;
- (5) that the action for habeas corpus by or on behalf of the prisoner is not prohibited;
- (6) the cause or pretense of the restraint, according to the plaintiff’s best knowledge and belief; and
- (7) why the restraint is illegal.

213. The Complaint complies with these pleading requirements as it states:

- (1) The DeYoung Prisoners are seven chimpanzees who are restrained of their liberty.
- (2) Prisoner A (aka Louie) is an approximately 13-year-old male chimpanzee; Prisoner B is an adult female chimpanzee who gave birth to Prisoner C, an

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<sup>54</sup> *Presented by A.F.A.D.A. About the Chimpanzee “Cecilia” – Nonhuman Individual*, File No. P.72.254/15 at 32 (Third Court of Guarantees, Mendoza, Argentina, Nov. 3, 2016) [English translation], <https://bit.ly/3mkkSmy>.

approximately 6-year-old female chimpanzee; Prisoner D is an adult female chimpanzee; and Prisoners E-G are three adult male chimpanzees.

- (3) The DeYoung Prisoners are restrained of their liberty by Respondents De Young Family Zoo, LLC and Harold DeYoung.
- (4) The DeYoung Prisoners are restrained of their liberty at DFZ, which is located at N5406 Co Rd 577, Wallace, MI 49893.
- (5) This action for habeas corpus relief is not prohibited.<sup>55</sup>
- (6) Based on NhRP's best knowledge and belief, the DeYoung Prisoners are restrained of their liberty for no criminal matter but solely because they are chimpanzees.
- (7) The restraint of the DeYoung Prisoners is illegal because it violates their common law right to bodily liberty protected by habeas corpus, specifically by depriving them of the ability to meaningfully exercise their autonomy and extraordinary cognitive complexity, including the freedom to choose where to go, what to do, and with whom to be. As a result of this deprivation, they are suffering physically and psychologically. (*supra* § II.C-D).

214. This Court must accept the factual allegations in the Complaint as true and construe them in the light most favorable to NhRP.<sup>56</sup> In doing so, the Court must conclude that the Complaint establishes a *prima facie* case that the DeYoung Prisoners are being illegally restrained of their liberty. Accordingly, and as set forth in more detail in the following sections, this Court must issue an order to show cause for the DeYoung Prisoners without delay.<sup>57</sup>

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<sup>55</sup> MCL 600.4310 enumerates four categories of "persons" who may not file an action for habeas corpus which are inapplicable here. *See generally*, footnote 45, *supra*.

<sup>56</sup> A habeas complaint can only be summarily dismissed "if the party applying therefor is not entitled to the writ." MCL 600.4316. This is analogous to the standard that courts use when evaluating a motion to dismiss for failure to state a claim under MCR 2.116 (C)(8), which "tests the legal sufficiency of a claim on the basis of the pleadings alone." *Madejski v. Kotmar Ltd*, 246 Mich. App. 441, 444-43 (2001). "All well-pleaded facts are accepted as true and are construed in the light most favorable to the nonmoving party." *Id.*

<sup>57</sup> "The writ or an order to show cause must be issued unless it appears that the prisoner is not entitled to relief. . . . Technical or formal defects in the complaint should not be seized upon to avoid the obligation of inquiring into the validity of the detention. In other words, the prisoner is entitled to more than a peremptory guess as to the validity of his or her detention; he or she is entitled to a judicial

215. Significantly, the two New York trial court judges who issued orders to show cause for elephants and chimpanzees implicitly found that the habeas corpus petitions made a prima facie case for relief, and judges on New York’s highest court went out of their way to explain why such petitions must, at a minimum, survive dismissal, in order to respect the history of the writ itself. In Happy’s case, Judge Wilson and Judge Rivera found that NhRP established a prima facie case that Happy was being illegally imprisoned at the Bronx Zoo. *See Breheny*, 38 N.Y.3d at 617 (Wilson, J., dissenting); *id.* at 628 (Rivera, J., dissenting). Accepting “the information Happy has submitted as true, and granting every possible reasonable inference in her favor,” *id.* at 618, Judge Wilson considered two crucial questions: (1) “‘what does the information submitted by the petitioner [Happy] tell us about the petitioner?’”; and (2) “‘what does the information submitted by the petitioner tell us about the confinement?’” *Id.* at 621-22 (Wilson, J., dissenting).

216. First, Judge Wilson found that “Happy and elephants like her ‘possesses complex cognitive abilities’ of a great number”:

Among those myriad qualities and abilities include “autonomy; empathy; self-awareness; self-determination; theory of mind (awareness that others have minds); insight; working memory; [and] an extensive long-term memory that allows them to accumulate social knowledge.” They are able to “act intentionally and in a goal-oriented manner,” “understand the physical competence and emotional state of others,” “engage in true teaching,” “cooperate and build coalitions,” engage in “cooperative” and “innovative problem-solving,” “understand causation,” and engage in “intentional communication.” They have “complex learning and categorization abilities,” and they understand death, practicing grieving behaviors that “are akin to human responses to the death of a close relative or friend” when they have lost a companion.

*Id.* at 618-19. Next, Judge Wilson evaluated the nature of Happy’s confinement, and found that it is “causing her deep physical and emotional suffering because it is so unnaturally different from

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inquiry unless his or her own application forecloses any question.” *Issuance of the writ or order to show cause*, 4 Mich. Ct. Rules Prac., Text § 3303.5 (7th ed.).

conditions that meet the needs of elephants.” *Id.* at 620. Thus, he concluded: “Happy has very substantial cognitive, emotional and social needs and abilities, and . . . those qualities coupled with the circumstances of her particular confinement establish a prima facie case that her present confinement is unjust.” *Id.* at 626.

217. Judge Rivera concluded that NhRP “made the case for Happy’s release and transfer to an elephant sanctuary, and the writ should therefore be granted,” after relying on “submitted affidavits from several internationally renowned elephant experts to establish Happy’s autonomy and the inherent harm of her captivity in the Zoo.”<sup>58</sup> *Id.* at 634 (Rivera, J., dissenting). The expert evidence demonstrated: “Captivity is anathema to Happy because of her cognitive abilities and behavioral modalities—because she is an autonomous being. . . . She is held in an environment that is unnatural to her and that does not allow her to live her life as she was meant to: as a self-determinative, autonomous elephant in the wild.” *Id.* at 642.

218. Just like in Happy’s case, the Expert Affidavits and Declarations establish that the DeYoung Prisoners are autonomous beings with very substantial cognitive, emotional and social needs and abilities, as well as the inherent harm of their imprisonment. These indisputable facts compel the conclusion that the Complaint establishes a prima facie case that the DeYoung Prisoners’ imprisonment is illegal. As discussed in more detail below, their imprisonment is illegal because it violates Michigan common law.

### **1. The DeYoung Prisoners’ imprisonment is illegal under the common law.**

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<sup>58</sup> The trial court noted that NhRP “placed before the Court five deeply educated, independent, expert opinions . . . by some of the most prominent elephant scientists in the world. In great detail, these opinions carefully demonstrate that elephants are autonomous beings possessed of extraordinarily cognitively complex minds.” *Breheny (Trial Court)*, 2020 WL 1670735 at \*6.

219. If the Court recognizes the DeYoung Prisoners’ right to bodily liberty, as it should as set forth below (*infra* § V.C-D), then it must conclude that their imprisonment at the zoo is illegal because it grossly restricts their autonomy. In *Donovan v. Guy*, 347 Mich. 457, 464 (1956), the Court explained in a case concerning false imprisonment: “‘it is only necessary for the plaintiff . . . to show that he *has been imprisoned or restrained of his liberty*. The presumption then arises that he was unlawfully imprisoned, and it is for the person who has committed the trespass to show that it was legally justified.’” (emphasis added).

220. This presumption of liberty (*in favorem libertatis*) lies at the heart of the right to bodily liberty and undergirds the most significant common law bodily liberty cases to date. In *Somerset*, Lord Mansfield announced that slavery is “so odious, that nothing can be suffered to support it” under the common law. 1 Lofft at 19.<sup>59</sup> Judge Cooley echoed Mansfield when he declared: “Slavery is the negation of natural right.” *People ex rel. Hedgman v. Bd. of Registration of Detroit, First Ward*, 26 Mich. 51, 54 (1872). And the presumption was the crux of *Botsford*’s esteemed refrain: “No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person . . . *unless by clear and unquestionable authority of law*.” *Union Pac R Co v. Botsford*, 141 U.S. 250, 251 (1891) (emphasis added). Indeed, this presumption of liberty is subsumed in the habeas corpus procedural statute. MCL 600.4352 (1) provides: “*If no legal cause* is shown for the restraint, or for the continuation thereof, the court or judge shall discharge the person restrained from the restraint under which he is held.” (emphasis added).

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<sup>59</sup> See also, e.g., *Whitford v. Panama R. Co.*, 23 N.Y. 465, 467-68 (1861) (“prima facie, a man is entitled to personal freedom, and the absence of bodily restraint . . .”); *Ex parte The Queen of the Bay*, 1 Cal. 157, 158 (1850) (“There appearing to be no cause for the detention of the ‘Queen of the Bay,’ and the ‘daughters of the chiefs,’ they are, consequently, discharged from the custody of Captain Snow.”).

221. The Expert Affidavits and Declarations establish that chimpanzees are autonomous, extraordinarily cognitively complex beings with complex physical, psychological, and social needs (*supra* § II.B). They are self-aware beings who can remember the past and plan for the future; engage in sophisticated communication, including sign language; shoulder duties and responsibilities; exhibit empathy, compassion, and other moral behaviors; and understand the finality of death. (Matsuzawa Decl. ¶ 20) (Boesch Decl. ¶¶ 17, 23) (Jensvold Aff. ¶ 13) (McGrew Decl. ¶ 29). In the wild, chimpanzees naturally lead a cognitively and socially rich stimulating life that requires them to engage in constant problem-solving, tool making, and tool use. (Jensvold Aff. ¶ 57). They form relationships that last a lifetime, living in complex fission-fusion societies with groups of 20-200 individuals (and fluid subgroups), and confront many challenges provided by a continually changing physical and social environment—including finding food and maintaining or improving their position in their community. (Jensvold Aff. ¶ 29) (Goodall Decl. ¶ 15).

222. The rich and complex life of chimpanzees in the wild is not possible in captivity. (McGrew Decl. ¶ 40). Chimpanzees in captive environments who are unable to exercise their autonomy can suffer severe physical and psychological harm, including stereotypical and abnormal behaviors, aberrant self-directed behaviors (such as self-manipulation, self-scratching, self-grasping, and self-injurious behavior), increased aggression, decreased exploration, low dominance rank, and reduced or abnormal sexual behaviors. (Jensvold Aff. ¶ 12). They also have shorter lives: in captivity, chimpanzees live for 45 years on average, while their wild counterparts may survive for more than 60 years. (Matsuzawa Decl. ¶ 29). In short, confining chimpanzees in non-species-specific living conditions is devastating to their physical and psychological well-being. (Boesch Decl. ¶ 14) (Matsuzawa ¶¶ 32-33).



223. The DeYoung Prisoners are unable to live a normal life appropriate for their species. (Matsuzawa Decl. ¶ 34). They should be able to enjoy lives as close as possible to their wild counterparts and have opportunities to engage in species-typical behaviors, which is not possible at a roadside zoo.<sup>60</sup> (Jensvold Aff. ¶¶ 80, 86). For instance, chimpanzees need access to fresh air and sunshine all year. (Jensvold Aff. ¶ 68) (Matsuzawa Decl. ¶¶ 31, 32). However, during the winter months, the DeYoung Prisoners do not have that option because there does not appear to be any protected outdoor space at DFZ. (Jensvold Aff. ¶¶ 68, 70). In Wallace, Michigan, the ground is frozen all winter and the average annual snowfall is 47 inches per year, which makes being outside untenable: chimpanzees can easily develop frostbite or hypothermia from exposure to extreme cold and snow. (Jensvold Aff. ¶ 70). This means the DeYoung Prisoners must remain inside for many months every year, which is physically and psychologically harmful. *Id.* at ¶ 68.

**2. The DeYoung Prisoners are being illegally imprisoned regardless of the absence of any statutory violation.**

224. The word “illegal” and “no legal cause” in Michigan’s habeas corpus procedural statute broadly encompasses *all* unlawful imprisonments, including those unjust as a matter of common law. The writ of habeas corpus is “the ‘easy, prompt and efficient remedy afforded *for all unlawful imprisonment.*’” *In re Jackson*, 15 Mich. at 440 (Cooley J., concurring) (quoting 2 Kent’s Com., 32). The Great Writ’s “history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy *for*

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<sup>60</sup> The only organization providing oversight over DFZ is the USDA, whose standards are minimal and wholly insufficient for meeting the complex needs of chimpanzees. (Jensvold Aff. ¶ 85). DFZ has no accreditation displayed on its website and does not meet the AZA standards for chimpanzee care, let alone the rigorous standards of a GFAS-accredited sanctuary. *Id.*

*whatever society deems to be intolerable restraints.”* *Fay v. Noia*, 372 U.S. 391, 401–02 (1963), *overruled in part on other grounds*, 433 U.S. 72 (1977) (emphasis added).<sup>61</sup>

225. In NhRP’s case on behalf of Happy, Judge Wilson understood that “[t]he question is not whether Happy’s detention violates some statute: historically, the Great Writ of habeas corpus was used to challenge detentions that violated no statutory right and were otherwise legal but, in a given case, unjust.” *Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting). “[T]he courts of England and the United States used the Great Writ to grant relief to women and children in the face of statutory and common law rendering their mistreatment by men lawful.” *Id.* at 597. For many women, “[t]he writ [of habeas corpus] acted as a lifeline for freedom’ ..., used to overcome their husbands’ common law right to restrain them.” *Id.* (citation omitted).

226. NhRP’s “core argument” in *Breheny*, as here, was that “Happy’s confinement at the Zoo was a violation of her right to bodily liberty as an autonomous being, regardless of the care she was receiving.” *Id.* at 637 (Rivera, J., dissenting). “Confinement at the Zoo is harmful, not because it violates any particular regulation or statute relating to the care of elephants, but because an autonomous creature such as Happy suffers harm by the mere fact that her bodily liberty has been severely—and unjustifiably—curtailed.” *Id.* at 642.

227. The Great Writ has long been available to safeguard the liberty of individuals with few or no rights. As Judge Wilson explained, the Great Writ’s history “demonstrates that courts have used and should use it to enhance liberty when a captivity is unjust, even when the captor has

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<sup>61</sup> “The very history of habeas corpus is one of providing a mechanism for challenging the status quo and litigating the meaning of fundamental liberty and autonomy rights.” Br. of *Amici Curiae* Habeas Corpus Experts 26 (Sept. 24, 2021), <https://bit.ly/3q4RsLN> (citing PAUL D. HALLIDAY, *HABEAS CORPUS: FROM ENGLAND TO EMPIRE* 133 (2010). *See also* *Peyton v. Rowe*, 391 U.S. 54, 66 (1968) (habeas corpus is “not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty”).

statutory or common law rights authorizing such captivities in general.” *Id.* at 580 (Wilson, J., dissenting). “[T]he writ was used to grant freedom to slaves, who were considered chattel with no legal rights or existence,” as well as to “grant freedom to wives and children, who, though not chattel, had few or no legal rights and legally were under the dominion of husbands and fathers.” *Id.* at 588-89. Centuries of “prior decisions . . . compel our acknowledgment of the availability of the writ to a nonhuman animal to challenge an alleged unjust confinement.” *Id.* at 629 (Rivera, J., dissenting).

228. Two seminal cases “show how the Great Writ was flexibly used by the courts as a tool for innovation and social change.” *Id.* at 592 (Wilson, J., dissenting). The first is *Somerset v. Stewart*, which “stands as an example of just how powerful the common law writ of habeas corpus could be, not only in protecting—but also expanding—liberty.” AMANDA L. TYLER, *HABEAS CORPUS: A VERY SHORT INTRODUCTION* 27 (2021). There, Mansfield ordered an enslaved Black man freed because “[t]he state of slavery is . . . so odious, that nothing can be suffered to support it” under the common law.<sup>62</sup> 1 Lofft. at 19. The second case is the famous New York Court of Appeals decision in *Lemmon v. People*, 20 N.Y. 562 (1860). Relying on *Somerset*, the court affirmed a decision granting a habeas corpus petition brought on behalf of eight enslaved individuals, and ruled that “slavery is repugnant to natural justice and right.” *Id.* at 617.<sup>63</sup>

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<sup>62</sup> Lord Mansfield famously stated, “fiat justitia, ruat ccelum” (“let justice be done though the heavens may fall”). 1 Lofft. at 17. “The heavens did not fall, but certainly the chains of bondage did for many slaves in England.” Paul Finkelman, *Let Justice Be Done, Though the Heavens May Fall: The Law of Freedom*, 70.2 CHI.-KENT L. REV. 326 (1994). See also STEVEN M. WISE, *THOUGH THE HEAVENS MAY FALL: THE LANDMARK TRIAL THAT LED TO THE END OF HUMAN SLAVERY* 225 (Da Capo Press, Reprint ed. 2006) (“That black chattel slavery was so odious the common law would never support it was *Somerset’s* chief legacy. . . . *Somerset’s* principles have begun to radiate beyond humanity, as some lawyers are insisting today that at least the most cognitively complex nonhuman animals should no longer be treated as slaves.”).

<sup>63</sup> “Michigan never did tolerate slavery. Even before statehood, the Northwest Ordinance forbade slavery and it has been forbidden in every Michigan Constitution.” *Beech Grove*, 380 Mich. at 431.

**3. The long history of habeas corpus powerfully supports issuing an order to show cause.**

229. That habeas corpus has yet to be extended to a chimpanzee in Michigan only demonstrates that this case is novel, which does not render it without merit. As the Michigan Supreme Court observed when considering a novel case, “[t]he fact that no case remotely resembling the one at issue is uncovered does not paralyze the common-law system, which is endowed with judicial inventiveness to meet new situations.” *Beech Grove*, 380 Mich. at 429 (citation omitted); *see also Breheny*, 38 N.Y. at 629 (Rivera, J., dissenting) (“novel questions merely present opportunities to develop the law”).

230. Rather, in keeping with the history of habeas corpus, it should provide the Court with a reason to issue an order to show cause. “The very history of habeas corpus is one of providing a mechanism for challenging the status quo and litigating the meaning of fundamental liberty and autonomy rights.” Br. of *Amici Curiae* Habeas Corpus Experts 26 (Sept. 24, 2021), <https://bit.ly/3q4RsLN> (citing PAUL D. HALLIDAY, *HABEAS CORPUS: FROM ENGLAND TO EMPIRE* 133 (2010)).

231. “[A] novel habeas case freed an enslaved person; a novel habeas case removed a woman from the subjugation of her husband; a novel habeas case removed a child from her father’s presumptive dominion and transferred her to the custody of another.” *Breheny*, 38 N.Y.3d at 584 (Wilson, J., dissenting). “More broadly, novel common law cases—of which habeas is a subset—have advanced the law in countless areas.” *Id.*

232. In referring to “humans who were denied full rights under the law to demonstrate the flexibility of the historical uses of the writ,” we “do not undermine in any way the dignity of those individuals or diminish their struggles for equality and the right to live free.” *Id.* at 632 (Rivera, J., dissenting). Rather, the legal and moral point is that the “Great Writ serves to protect

against unjust captivity and to safeguard the right to bodily liberty,” and “those protections are not the singular possessions of human beings.” *Id.* As Judge Rivera explained:

If an enslaved human being with no legal personhood, a Native American tribal leader whom the federal government argued could not be considered a person under law, a married woman who could be abused by her husband with impunity, a resident of Puerto Rico who is a United States citizen deprived of full rights because of Puerto Rico's colonial status, and an enemy combatant as defined by the federal government can all seek habeas corpus relief, so can an autonomous nonhuman animal.

*Id.* at 631 (citations omitted).

233. In sum, the Complaint presents a *prima facie* case that the DeYoung Prisoners are being illegally imprisoned, requiring the issuance of an order to show cause. Upon its issuance, the burden shifts to Respondents to justify the imprisonment of these strikingly autonomous and complex beings. MCR 3.303 (K)(2). If these prisoners are refused the opportunity for a full and fair hearing, they will be condemned to a lifetime of imprisonment and suffer certain destruction of their autonomy, caused by social isolation, intellectual, emotional, and social stunting, severe emotional distress, feelings of hopelessness, and more.

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## **ARGUMENT FOR RECOGNIZING THE RIGHT TO BODILY LIBERTY**

### **V. This Court must recognize the DeYoung Prisoners’ common law right to bodily liberty protected by habeas corpus.**

#### **A. The substantive question is not whether the DeYoung Prisoners are “persons” but whether they have the common law right to bodily liberty protected by habeas corpus.**

234. While “person” is used in Michigan’s habeas corpus procedural statutes, it is undefined and is meant to have no substantive component. Formalistically asking whether chimpanzees fit the definition of “persons” evades the more fundamental question of whether they

have a liberty interest that habeas corpus must protect. This Court must properly frame the question presented commensurate with the weighty liberty interests at stake and base its decision in accordance with the fundamental principles of the common law.

235. As Judge Fahey recognized in *Tommy*, the proper question is a substantive one, not definitional: “Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional question, but a deep dilemma of ethics and policy.” 31 N.Y.3d at 1058 (Fahey, J., concurring). *See also Breheny*, 38 N.Y.3d at 582 (Wilson, J., dissenting) (explaining that the undefined term “person” in New York’s similar habeas corpus procedural statute “was meant to have no substantive component,” and “is irrelevant to whether the writ can extend beyond humans”); *id.* at 633 (Rivera, J., dissenting) (“While CPLR article 70 sets forth the *procedure* to seek habeas relief, it does not create the right to bodily liberty nor determine who may seek such relief. . . . [I]t is for this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought.”).

236. Accordingly, the focus of this Court’s inquiry (after issuance of an order to show cause) must be on whether the DeYoung Prisoners have the common law right to bodily liberty protected by habeas corpus, not whether they fit the definition of “person.”

237. As Judge Fahey explained, the question is “not whether a chimpanzee fits the definition of a person or whether a chimpanzee has the same rights and duties as a human being, but instead whether he or she has the right to liberty protected by habeas corpus. That question, one of precise moral and legal status, is the one that matters here. Moreover, the answer to that question will depend on our assessment of the intrinsic nature of chimpanzees as a species.” *Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring). And, in Happy’s case, Judge Wilson and Judge

Rivera understood that whether a nonhuman animal can employ the protections of habeas corpus is not a definitional question regarding the term “person.” *See Breheny*, 38 N.Y.3d at 582 (Wilson, J., dissenting); *id.* at 633 (Rivera, J., dissenting)

238. Once this Court recognizes that the DeYoung Prisoners have the right to bodily liberty, they are *necessarily* “persons” for purposes of habeas corpus because a “person” is merely the consequence of being a rightsholder: a “person is any being whom the law regards as capable of rights or duties,” and “[a]ny being that is so capable is a person, whether a human being or not.” *Person*, BLACK’S LAW DICTIONARY (11th ed. 2019) (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)).<sup>64</sup>

239. As a theoretical matter, “[l]egal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, and idol.” GEORGE WHITECROSS PATON, A TEXTBOOK OF JURISPRUDENCE 351 (3d ed. 1964). There is even “no difficulty giving legal rights to a supernatural being and thus making him or her a legal person.” JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE LAW 39 (2d ed. 1963). The same is true for nonhuman animals: “[A]nimals may conceivably be legal persons. . . . [T]here may have been, or indeed, may still be, systems of Law in which animals have legal rights.” *Id.* at 42-43.

**B. The common law right to bodily liberty protected by habeas corpus is not limited to human beings.**

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<sup>64</sup> *See also* IV ROSCOE POUND, JURISPRUDENCE 197 (1959) (“The significant fortune of legal personality is the capacity for rights.”); Richard Tur, *The “Person” in Law*, in PERSONS AND PERSONALITY: A CONTEMPORARY INQUIRY, 121-22 (Arthur Peacocke & Grant Gillett eds. 1987) (“[L]egal personality can be given to just about anything. . . . It is an empty slot that can be filled by anything that can have rights or duties.”); Bryant Smith, *Legal Personality*, 37 YALE L.J. 283, 283 (1928) (“To confer legal rights or to impose legal duties . . . is to confer legal personality.”); J.-R. Trahan, *The Distinction Between Persons and Things: An Historical Perspective*, 1 J. CIVIL L. STUD. 9, 14 (2008) (“First, the modern theory (re-) defines ‘person’ as the ‘subject of rights and duties,’ in the sense of that which is ‘capable of being ‘subjected’ to duties and/or of being ‘invested’ with rights.”).

240. Habeas corpus “serves to protect against unjust captivity and to safeguard the right to bodily liberty,” and “those protections are not the singular possessions of human beings.” *Breheny*, 38 N.Y.3d at 632 (Rivera, J., dissenting). “Indeed, if a corporation—a legal fiction created to benefit some humans—can have constitutional rights protected in our courts, then the law can recognize an autonomous animal’s right to judicial consideration of their claim to be released from an unjust captivity.” *Id.* at 631.

241. As Michigan’s own Judge Thomas M. Cooley recognized, the common law right to bodily liberty is ““a right of *complete immunity*; to be let alone.”” *Botsford*, 141 U.S. at 251 (quoting Cooley, Torts, 29) (emphasis added)).<sup>65</sup> As with all immunity rights, this right imposes no duty on the rights-holder. As the Michigan Supreme Court explained in a recent case: “One way to think of a right is in terms of the correlative duty it imposes on another to act or refrain from acting for the benefit of the right-holder.” *Bauserman v. Unempl. Ins. Agency*, 509 Mich. 673, 691 (2022) (citing Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions As Applied in Judicial Reasoning*, 23 *Yale L.J.* 16, 55 (1913)). Thus, because the right to bodily liberty imposes no duties on the rights holder, there is no reason to limit it to humans.

242. As elaborated in the next three sections, refusing to extend the common law right to bodily liberty protected by habeas corpus to the DeYoung Prisoners merely because they are not human would contravene this Court’s duty to evolve the common law in accordance with science, changing societal norms, and public policy, as well as the fundamental principles of justice, liberty, and equality.

**C. This Court’s duty to upkeep the common law in view of science, justice, changing societal norms and public policy, requires recognition of the**

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<sup>65</sup> *Accord People v. Corder*, 224 Mich. 274, 287 (1928) (“As well said by Judge Cooley, ‘The right to one’s person may be said to be a right of complete immunity; to be let alone.’”) (citation omitted).



**DeYoung Prisoners' common law right to bodily liberty protected by habeas corpus.**

243. Extensive common law jurisprudence places this Court under an obligation to extend the common law when change is required, as trade, commerce, inventions it is in this case. ““The inherent capacity of the common law for growth and change is its most significant feature.”” *Beech Grove*, 380 Mich. 405 at 429 (citation omitted). The common law ““is a flexible body of principles which are designed to meet, and are susceptible of adaptation to, among other things, new institutions, public policies, conditions, usages and practices, and changes in mores,, and increasing knowledge, as the progress of society may require,”” with the consequence that ““changing conditions may give rise to new rights under the law.”” *Id.* at 430.

244. “This Court has often recognized its authority, indeed its duty, to change the common law when change is required.” *People v. Stevenson*, 416 Mich. 383, 390 (1982) (citing cases). Michigan courts “have not hesitated to examine common-law doctrines in view of changes in society’s mores, institutions, and problems, and to alter those doctrines where necessary.” *Adkins v. Thomas Solvent Co.*, 440 Mich. 293, 317 (1992).

245. In deciding whether to recognize the DeYoung Prisoners’ common law right to bodily liberty protected by habeas corpus, this Court should consider: (1) **science**; *e.g.*, *People v. Guthrie*, 97 Mich. App. 226, 230-32 (1980) (medical advancements); *Womack v. Buchhorn*, 384 Mich. 718, 724 (1971) (court must update the common law to conform to “present day science [and] philosophy”); *Detroit City Ry. v. Mills*, 85 Mich. 634, 650 (1891) (common law updated in light of scientific advancements in transportation); (2) **justice**; *e.g.*, *Placek v. Sterling Heights*, 405 Mich. 638, 652 (1979) (“There is little dispute among legal commentators that the doctrine of contributory negligence has caused substantial injustice since it was first invoked in England in 1809”); (3) **changing societal norms and public policy**; *e.g.*, *Beech Grove*, 380 Mich. at 429;

*Montgomery v. Stephan*, 359 Mich. 33, 49 (1960) (harmonizing common law of consortium “with the conditions of modern society” pertaining to women).

246. Separately, each consideration weighs in favor of recognizing the right in this case, and collectively, they paint a powerful case for expanding the protections of habeas corpus to the DeYoung Prisoners and granting them their freedom. Judge Wilson understood the interrelatedness and significance of these considerations in Happy’s case. At its core, NhRP’s elephant case was about “whether society’s norms have evolved such that elephants like Happy should be able to file habeas petitions to challenge unjust confinements.” *Breheny*, 38 N.Y.3d at 588 (Wilson, J., dissenting). “Society’s determination as to whether elephants have a right to be free of oppressive confinement, which they may test through habeas corpus, is not likely to be the same today as it was 100 years ago.” *Id.* This is because “[w]hether an elephant could have petitioned for habeas corpus in the 18th century is a different question from whether an elephant can do so today because we know much more about elephant cognition, social organization, behaviors and needs than we did in past centuries, and our laws and norms have changed in response to our improved knowledge of animals.” *Id.* at 603. The same is true here.

## **1. Science**

247. Michigan common law must be updated in “light of the present state of science.” *Womack*, 384 Mich. at 725. *See also Guthrie*, 97 Mich. App. at 232 (updating the common law because “[m]odern medical practice has advanced to the point that, unlike the situation when the rule was first developed, the vast majority of viable fetuses will . . . be born alive”).

248. Sea changes in scientific understandings about chimpanzee autonomy in the past decades require this Court’s recognition of the DeYoung Prisoners’ common law right to bodily liberty protected by habeas corpus. Science regarding chimpanzee autonomy, intelligence,

emotional capacities, and their vast complex capabilities simply were not widely known or discovered until the past several decades. As Judge Wilson remarked: “Driving many of the changing social norms about wild animals is our vastly enhanced understanding of their cognitive abilities, needs and suffering when in captivity.” *Breheny*, 38 N.Y. at 606 (Wilson, J., dissenting).

249. It was long believed that nonhuman animals are unable to think, believe, remember, reason, and experience emotion. *See generally* RICHARD SORABJI, *ANIMAL MINDS & HUMAN MORALS: THE ORIGINS OF THE WESTERN DEBATE* 1-96 (1993). “Prior to the twentieth century, human understanding of animal intelligence was minimal,” with humans regarding “themselves as ‘unique in their sociality, individuality, and intelligence.’” *Breheny*, 38 N.Y.3d at 606 (Wilson, J., dissenting). The seventeenth-century philosopher René Descartes infamously posited that nonhuman animals were neither rational nor conscious creatures, but insentient beings incapable of suffering. *See generally id.* at 607 (citing Peter Harrison, *The Virtues of Animals in Seventeenth-Century Thought*, 59 J. OF THE HIST. OF IDEAS 463, 463 (1998)).

250. Scientific progress in the twentieth century “began to discredit the notion of human exceptionalism,” when “[s]cientists found that animals such as apes, dolphins and elephants—like humans—had substantial capacity to engage in and maintain social relationships, to learn and transpose information, to ‘appreciate the thoughts and feelings of other sentient beings, and engage in strategic behavior.’” *Id.* at 606-07.

251. As the Expert Affidavits and Declarations demonstrate, the “scientific work on chimpanzees over the past decades shows they are an especially sophisticated species, sharing a surprising number of psychological attributes with human beings,” and our scientific knowledge about them “is vast and has been increasing at an exponential rate.” (Boesch Decl. ¶¶ 12, 13).

252. Perhaps this Complaint “would have seemed ludicrous to Descartes, who saw animals as inanimate, insentient objects.” *Breheny*, 38 N.Y.3d at 607. But “[g]iven what we know today, it would be even more absurd to allow Descartes’s views” to factor in this case since human understanding of chimpanzee “cognition, social behavior, capabilities and needs demonstrates the absurdity of those ancient, uninformed views.” *Id.* at 609. *See also Tommy*, 31 N.Y.3d at 1058 (Fahey, J. concurring) (“chimpanzees demonstrate autonomy by self-initiating intentional, adequately informed actions, free of controlling influences”).

253. The time has come for Michigan common law to reflect the scientific understanding that chimpanzees are autonomous, extraordinarily cognitively complex beings who suffer physically and psychologically when deprived of their ability to exercise their autonomy.

## **2. Justice**

254. The common law evolves to accord with the fundamental principle of justice. *E.g.*, *Womack*, 384 Mich. at 725 (“justice requires that the principle be recognized that a child has a legal right to begin life with a sound mind and body”) (citation omitted); *Placek*, 405 Mich. at 650 (changing the common law by discarding the doctrine of contributory negligence “in the interest of justice for all litigants in this state”).<sup>66</sup>

255. Courts have “the duty to reexamine a question where justice demands it.” *Womack*, 384 Mich. at 724 (citation omitted). This Court’s “oath is to do justice, not to perpetuate error.” *Montgomery*, 359 Mich. at 38. After all, the common law is “the embodiment of principles

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<sup>66</sup> *See also Pittman v. City of Taylor*, 398 Mich. 41, 50 (1976) (changing the common law by abrogating the common-law doctrine of state governmental immunity; “[w]e eliminate from the case law of Michigan an ancient rule inherited from the days of absolute monarchy which has been productive of great injustice in our courts”) (citation omitted); *Parker v. Port Huron Hosp.*, 361 Mich. 1, 25 (1960) (changing the common law by abolishing immunity exception for charitable eleemosynary organizations; “there is today no factual justification for immunity in a case such as this, and that principles of law, logic and intrinsic justice demand that the mantle of immunity be withdrawn.”).

and rules inspired by natural reason, an innate sense of justice, and the dictates of convenience.”  
*Garwols v. Bankers Trust Co.*, 251 Mich. 420, 423–24 (1930) (citation omitted).

256. Justice is “[t]he quality of being fair or reasonable.” JUSTICE, BLACK’S LAW DICTIONARY (11th ed. 2019). “[L]aw cannot be divorced from morality in so far as it clearly contains, as one of its elements, the notion of right to which the moral quality of justice corresponds.” *Id.* (quoting PAUL VINOGRADOFF, COMMON SENSE IN LAW 19-20 (H.G. Hanbury ed., 2d ed. 1946)). Indeed, “[t]he common law is but the accumulated expressions of the various judicial tribunals in their efforts to ascertain *what is right and just* between individuals in respect to private disputes.” *Bugbee v. Fowle*, 277 Mich. 485, 492 (1936) (citation omitted; emphasis added). *See also* BENJAMIN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 150 (1921) (“I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice . . . there should be less hesitation in frank avowal and full abandonment.”).

257. In Happy’s case, Judge Wilson and Judge Rivera agreed that habeas corpus was available for an elephant to challenge her unjust confinement at a zoo. Judge Rivera described Happy’s “captivity [as] inherently unjust and inhumane,” for she is “held an environment that is unnatural to her and that does not allow her to live her life as she was meant to: as a self-determinative, autonomous elephant in the wild.” *Breheny*, 38 N.Y.3d at 642 (Rivera, J., dissenting). Judge Wilson explained that “the contrast between what we now know and the paucity of information in earlier times must inform our analysis. What was unknown about animal cognizance and sentience a century ago is particularly relevant to whether Happy should be able to test her confinement by way of habeas corpus, because we now have information suggesting

that her confinement may be cruel and unsuited to her well-being.” *Id.* at 607 (Wilson, J., dissenting).<sup>67</sup>

258. More than a decade ago, a California court found that “Captivity is a terrible existence for any intelligent, self-aware species, which the undisputed evidence shows elephants are. To believe otherwise, as some high-ranking zoo employees appear to believe, is delusional.” *Leider v. Lewis*, Case No. BC375234 at 30 (L.A. Cnty. Sup. Ct. July 23, 2012), available at: <https://bit.ly/3KRQfln>. The injustice of the elephants’ imprisonment was clear as their life was “empty, purposeless, boring, and occasionally painful.” *Id.* at 45.

259. Our knowledge of chimpanzees compels the conclusion that the imprisonment of the DeYoung Prisoners is unjust. These are autonomous, self-determining beings forced to live in a wholly unnatural environment, one that deprives them of the ability to meaningfully exercise their autonomy. As a consequence of this unjust deprivation, they are suffering physically and psychologically (*supra* § II.C-D, ¶¶ 222-23).

### **3. Changing Societal Norms and Public Policy**

260. Rigid assumptions of early “common law courts have yielded to the influence of social progress.” *Ward v. Fellers*, 3 Mich. 281, 287-88 (1854). “‘If judges have woefully misinterpreted the *mores* of their day, or if the *mores* of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors.’” *Van Dorpel v. Haven-Busch Co.*, 350 Mich. 135, 151 (1957) (citation omitted). In addition, the common law must grow

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<sup>67</sup> The trial court also recognized “Happy’s plight,” and that she “is an extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytic abilities akin to human beings.” *Brehey (Trial Court)*, 2020 WL 1670735 at \*10. Although the trial court felt “[r]egrettably” bound by precedent to rule against Happy, *id.* at \*9, it found the arguments that NhRP advanced for transferring her to an elephant sanctuary “extremely persuasive.” *Id.* at \*10.

to “reflect the public policy of a given era,” *Beech Grove*, 380 Mich. at 429, which can be deduced from cases and statutes. *Id.* at 430-31.

261. “As we continue to learn more about the interrelated nature of all life, the day may come when humans perceive less separation between themselves and other living beings than the law now reflects. However, we do not need a mirror to the past or a telescope to the future to recognize that the legal status of animals has changed and is changing still.” *State v. Fessenden*, 355 Or. 759, 769–70 (2014).

262. Whether the DeYoung Prisoners should be able to challenge their imprisonment through a writ of habeas corpus thus “arises within our country’s history of evolving norms and knowledge about animals,” and “[t]hose evolving norms and our deepening understanding about animals, along with legal developments that reflect them, provide the essential context for deciding this case.” *Breheny*, 38 N.Y.3d at 610.

263. *First*, societal norms towards exploiting and keeping autonomous nonhuman animals like chimpanzees in captivity have changed. In 2015, the National Institutes of Health (NIH) announced that it would no longer support biomedical research on chimpanzees, following its previous decision in 2013 to “significantly reduce the use of chimpanzees in agency-supported biomedical research.”<sup>68</sup> These decisions were due to the NIH’s recognition that chimpanzees possess the capacity for choice and self-determination. *See Announcement of Agency Decision: Recommendations on the Use of Chimpanzees in NIH-Supported Research* (June 26, 2013) available at: <https://bit.ly/46uDODC>, accepting recommendation which states: “The environmental enrichment program developed for chimpanzees must provide relevant

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<sup>68</sup> *NIH Will No Longer Support Biomedical Research on Chimpanzees* (November 17, 2015), available at: <https://bit.ly/46kUopd>.

opportunities for choice and self-determination.” (emphasis added). There the NIH noted, “A large number of commenters who responded to this topic strongly supported this recommendation as a way to ensure both the complexity of the captive environment and chimpanzees’ ability to exercise volition with respect to activity, social groups, and other opportunities.”

264. Since NhRP began filing habeas corpus petitions on behalf of chimpanzees ten years ago, various judges of all levels have taken seriously our arguments to extend the protections of habeas corpus to members of other species, a resounding testament of the changing times. *E.g.*, *Stanley*, 49 Misc.3d at 772-73 (“Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed.”); *Tommy*, 31 N.Y.3d at 1056, 1059 (Fahey, J., concurring) (“The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us.”).

265. Happy’s case alone exemplifies the overwhelming support across diverse disciplines—academic, judicial, religious, and scientific communities—for extending the right to bodily liberty to at least some nonhuman animals. Following Judge Fahey’s trailblazing concurring opinion involving Tommy, the New York Court of Appeals in 2022 agreed to take up NhRP’s appeal on behalf of Happy. Writing in *The Atlantic*, Harvard historian Jill Lepore called Happy’s case “the most important animal-rights case of the 21st century.”<sup>69</sup>

266. Eighteen amicus briefs signed by 146 distinguished scholars, lawyers, judges, and religious and moral leaders, were filed supporting Happy’s freedom.<sup>70</sup> These included the world’s

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<sup>69</sup> Jill Lepore, *The Elephant Who Could be a Person*, ATLANTIC (Nov. 16, 2021), <https://bit.ly/41lGlOg>.

<sup>70</sup> *Amicus Support* for the fight to #FreeHappy, NONHUMAN RIGHTS BLOG (Apr. 25, 2022), <https://bit.ly/3Mm5Z0U>. This prompted the *Breheny* majority to observe: “this case garnered extraordinary interest from amici curiae and the public—a testament to the complicated and ever-evolving relationship between human beings and other animals.” 38 N.Y.3d at 577.



most prominent philosophers<sup>71</sup> (e.g., Peter Singer<sup>72</sup> and Martha Nussbaum<sup>73</sup>), civil rights pioneers<sup>74</sup> (e.g., Evan Wolfson and Shannon Minter<sup>75</sup>), legal scholars (e.g., Laurence Tribe,<sup>76</sup> and legal academics from all over U.S., Canada,<sup>77</sup> and the UK<sup>78</sup>), theologians (e.g., Buddhist scholars<sup>79</sup> and Catholic Theologians<sup>80</sup>), and even former high court judges, including Retired South African Constitutional Court Judge Edwin Cameron.<sup>81</sup> As Peter Singer remarked in his brief: “These circumstances place the Court in an enviable position. The major traditions in moral philosophy converge on the same judgment. It is unusual to find such convergence among ethics specialists.” *See also Tommy*, 31 N.Y.3d at 1058 (Fahey, J. concurring) (finding the amicus briefs persuasive on matters of science and policy: “[T]he amici philosophers with expertise in animal ethics and related areas draw our attention to recent evidence that chimpanzees demonstrate autonomy by self-initiating intentional, adequately informed actions, free of controlling influences”).

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<sup>71</sup> Br. of *Amici Curiae* Philosophers (Sept. 24, 2021), <https://bit.ly/3GO8GmH>.

<sup>72</sup> Br. of *Amici Curiae* Peter Singer et al. (April 8, 2022), <https://bit.ly/3RcJb6p>.

<sup>73</sup> Br. of *Amicus Curiae* Martha C. Nussbaum (Aug. 20, 2021), <https://bit.ly/3bAQTRC>.

<sup>74</sup> Br. of *Amici Curiae* Habeas Corpus Experts (Sept. 24, 2021), <https://bit.ly/3q4RsLN>.

<sup>75</sup> Br. of *Amici Curiae* Shannon Minter and Evan Wolfson (April 7, 2022), <https://bit.ly/46xWEtG>.

<sup>76</sup> Br. of *Amici Curiae* Laurence H. Tribe et al. (Oct. 22, 2021), <https://bit.ly/3mOxJON>.

<sup>77</sup> Br. of *Amici Curiae* Law Professors (March 18, 2022), <https://bit.ly/3R6ZAJu>.

<sup>78</sup> Br. of *Amici Curiae* UK-Based Legal Academics (Oct. 8, 2021), <https://bit.ly/3q3LtXH>.

<sup>79</sup> Br. of *Amici Curiae* Buddhist Scholars (Oct. 7, 2021), <https://bit.ly/31ERznP>.

<sup>80</sup> Br. of *Amici Curiae* Catholic Theologians (Sept. 21, 2021), <https://bit.ly/41d6y2v>.

<sup>81</sup> Br. of *Amicus Curiae* Edwin Cameron (Oct. 21, 2021), <https://bit.ly/3BFkmEE>.

267. *Second*, how society views nonhuman animals is reflected in the public policy expressed in state and local legislation. “Statutes and other legislative judgments may themselves be a source of common law.” *Moning v. Alfono*, 400 Mich. 425, 453 (1977). In applying public policy to its common law analysis, this Court may consider tangentially related legislation, as “legislative establishment of policy carries significance beyond the particular scope of each of the statutes involved.” *Id.* (citation omitted).

268. Relevant to the case at bar, Michigan law expressly provides that a trust may be created for a “designated domestic or pet animal.” MCL 700.2722(2).<sup>82</sup> *See also* MCL 700.2722(3) (“a trust for the care of a designated domestic or pet animal is valid”). That Michigan law allows nonhuman animals to inherit property—a right once denied to women at common law who were chattel of their husbands<sup>83</sup>—is a strong reflection of public policy regarding the changed legal status of nonhuman animals.<sup>84</sup> Indeed, “all fifty states and the District of Columbia now have ‘pet trust’ laws on their books, which enable guardians to create legally enforceable arrangements for the care of their animal companions.” Pamela Frasch, Joyce Tischler, *Animal Law: The Next Generation*, 25 *Animal L.* 303, 316 (2019).

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<sup>82</sup> Senator William Van Regenmorter introduced Senate Bill 209 on February 19, 1997, and it passed the Michigan State Senate with a vote of thirty-seven yeas and one nay, and unanimously passed the House on September 24, 1998. J. of the Senate, No. 12 at 128 (Feb. 19, 1997) (Mich.); J. of the House No. 74 (Sept. 24, 1998) (Mich.).

<sup>83</sup> *See N. Ottawa Community Hosp. v. Kieft*, 457 Mich. 394, 408 (1998) (“the contemporary reality of women owning property, working outside the home, and otherwise contributing to their own economic support calls for the abrogation of this sex-discriminatory doctrine from early common law”) (citation omitted).

<sup>84</sup> A trust is “[t]he right . . . to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the *trustee*) at the request of another (the *settlor*) for the benefit of a third party (the *beneficiary*).” *Trust*, BLACK’S LAW DICTIONARY (11th ed. 2019). A “beneficiary” is “[a] person to whom another is in a fiduciary relation, . . . esp., a person for whose benefit property is held in trust.” *Beneficiary*, BLACK’S LAW DICTIONARY (11th ed. 2019).

269. Inspired by Happy's case, in late September 2023, the Ojai City Council, in Ojai, California, passed a historic ordinance recognizing the right to bodily liberty for elephants.<sup>85</sup>

270. *Third*, changing societal norms have led courts in other countries to recognize the rights of some nonhuman animals.

- In 2014, the Supreme Court of India held that all nonhuman animals possess certain constitutional and statutory rights.<sup>86</sup>
- In 2016, an Argentinian court granted habeas corpus relief to an imprisoned chimpanzee named Cecilia, declared her a “nonhuman legal person,” and ordered her transferred from the Mendoza Zoo to a Brazilian sanctuary.<sup>87</sup>
- In 2017, the Civil Cassation Chamber of the Colombia Supreme Court granted habeas corpus relief to an imprisoned spectacled bear named Chucho and ordered him transferred from the Barranquilla City Zoo to the Río Blanco Natural Reserve.<sup>88</sup> That decision was subsequently nullified on due process grounds and the nullification was confirmed by the Colombian Constitutional Court in a 7-2 decision.<sup>89</sup> Magistrate Diana Fajardo Rivera powerfully dissented on the basis of the Great Writ's history, concluding that Chucho is “the holder of the right to animal freedom, understood as conditions in which he is better able to express his vital behavioral patterns,” and possesses “intrinsic value.”<sup>90</sup> An official court announcement regarding the Tutela Action indicated that

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<sup>85</sup> Brad Matthews, *Southern California city grants elephants the right to freedom, first in the nation*, THE WASH. TIMES (Sept. 28, 2023), <https://bit.ly/3RGDk9x>.

<sup>86</sup> *Animal Welfare Board v. Nagaraja*, MANU/SC/0426/2014 at paras. 32, 54, 56, 62, 77 (Supreme Court of India, July 5, 2014), available at: <https://bit.ly/3JbHdMP>.

<sup>87</sup> *Presented by A.F.A.D.A. About the Chimpanzee “Cecilia” – Nonhuman Individual*, File No. P.72.254/15 at 32 (Third Court of Guarantees, Mendoza, Argentina, Nov. 3, 2016) [English translation], available at: <https://bit.ly/3mkkSmy>.

<sup>88</sup> *Luis Domingo Gomez Maldonado contra Corporacion Autonoma Regional de Caldas Corpocaldas*, AHC4806-2017 at 17 (Supreme Court of Colombia, Civil Cassation Chamber, July 26, 2017) [English translation], available at: <https://bit.ly/3GUb0rw>.

<sup>89</sup> *Tutela Action Filed by the Botanical and Zoological Foundation of Barranquilla (FUNDAZOO) against the Supreme Court of Justice*, SU016/20 (Constitutional Court of Colombia, Jan. 23, 2020) [English translation], available at: <https://bit.ly/3yzWTog> (“Tutela Action”).

<sup>90</sup> *Id.* at ¶¶ 117, 118 (Fajardo, J., dissenting). Magistrate Fajardo cited NhRP and its President and Founder, Steven Wise, ten times. *Tutela Action* at ¶ 41 and fns. 90, 91, 96, 114, 155, 177, 187, 189 (Fajardo, J., dissenting); *Tutela Action* at ¶¶ 57-58 (Annex to Fajardo, J., dissent). She also cited with approval Judge Fahey's concurrence in *Tommy. Tutela Action* at ¶ 75 and fns. 163, 168 (Fajardo, J., dissenting).

Magistrate Alberto Rojas Ríos partially dissented because “the concept of person is not synonymous with human being and that personality is not merely a biological concept,” and that nonhuman animals, “according to their autonomy, should have basic rights which can be protected.”<sup>91</sup>

- In 2018, the Islamabad High Court ordered the release of an elephant named Kaavan from the Marghazar Zoo to an elephant sanctuary after finding that Kaavan had been subjected to “unimaginable pain and suffering for the past three decades.”<sup>92</sup> The court recognized the “exceptional abilities” of elephants and that the “needs of this innocent creation cannot be met in the captive environment of a zoo.”<sup>93</sup>
- In 2022, Ecuador’s highest court—the Constitutional Court—decided an appeal from the denial of a writ of habeas corpus for a choro monkey named Estrellita.<sup>94</sup> By a 7-2 vote, the Court ruled: “Animals are subjects of rights protected by the rights of Nature.” *Id.* at ¶ 181, p. 55. Regarding the availability of habeas corpus for wild nonhuman animals, the Court wrote:

[T]he rights of a wild animal must be protected objectively, taking its life, freedom and integrity as their own inherent rights, and not based on the claims, desires or intentions of third parties. In these cases, if the judges prove that the deprivation or restriction of the freedom of a wild animal is unlawful, they must provide the most suitable alternative for the preservation of the life, freedom, integrity and other related rights of the victim; they may order, without being restrictive, its reinsertion in its natural ecosystem, its translocation to shelters, sanctuaries, aquariums, eco zoos, or its treatment in animal rehabilitation centers.<sup>95</sup>

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<sup>91</sup> *Report No. 03*, SU016/20 at 7 (Constitutional Court of Colombia, Jan. 23, 2020) [English Translation], available at: <https://bit.ly/3GZgocT>.

<sup>92</sup> *Islamabad Wildlife Mgmt. Bd. v. Metropolitan Corp. Islamabad*, W.P. No. 1155/2019 at 62 (H.C. Islamabad, Pakistan May 21, 2020), available at: <https://bit.ly/3tXu4zT>.

<sup>93</sup> *Id.* at 12-13.

<sup>94</sup> Judgment No. 253-20-JH/22 *Rights of Nature and animals as subjects of rights, ‘Estrellita Monkey’ Case* (Constitutional Court of Ecuador, 2022), <https://bit.ly/3MhkBw6>. In 2020, the Constitutional Court selected this case for appeal in order to “develop case law determining the scope of a motion for habeas corpus with respect to the protection of other living beings, and if these can be considered as subjects entitled to rights covered by the laws of nature.” Selection Court of the Constitutional Court of Ecuador re: Case No. 253-20-JH at ¶ 9 (Dec. 22, 2020) [English translation], available at: <https://bit.ly/3LYoMf8>.

<sup>95</sup> *Id.* at ¶ 173, p. 53. The Constitutional Court relied upon a joint amicus brief submitted by NhRP and Harvard Law School’s Animal Law & Policy Program, citing it ten times. Judgment No. 253-20-JH/22 at ¶ 5, p. 3; ¶¶ 10-13, pp. 4-5; ¶ 68, p. 22; ¶ 86 n.89, p. 28; ¶ 126 n.117, p. 38; ¶ 128, pp. 38-39; ¶ 132

271. In sum, science, changing societal norms and public policy, and the sheer manifest injustice of the DeYoung Prisoners' imprisonment, compel the recognition of their common law right to bodily liberty protected by habeas corpus. As discussed below, two substantive common law concepts, liberty and equality, further require recognition of their right.

**D. As a matter of liberty, this Court must recognize the DeYoung Prisoners' common law right to bodily liberty protected by habeas corpus because they are autonomous, extraordinarily cognitively complex beings.**

272. This Court has a duty to protect the autonomy interest at the heart of the right to bodily liberty: “*No right* is held more sacred, or is *more carefully guarded by the common law*, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *People v. Nixon*, 42 Mich. App. 332, 340 n.17 (1972) (quoting *Union Pac R Co v. Botsford*, 141 U.S. 250, 251 (1891)) (emphasis added).

273. Michigan courts have been a pioneer in protecting autonomy. The Michigan Supreme Court recognized as early as 1881 that the right to exercise one's autonomy is a highly valued right. *See, e.g., Advisory Opinion 1975 P.A. 227*, 396 Mich. 465, 504 (1976) (citing *DeMay v. Roberts*, 46 Mich. 160 (1881)).<sup>96</sup>

274. Autonomy is a supreme common law value that can trump even the State's interest in life itself. In Michigan, the protection given to one's autonomy under the common law is of such supreme importance that an individual, whether competent or incompetent, may choose to reject

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n.125, p. 41; ¶ 136 n.129, p. 42; ¶ 143 n.133, p. 44; ¶ 144, pp. 44- 45. The joint amicus brief is available at <https://bit.ly/3F0QViM>.

<sup>96</sup> *See Nixon*, 42 Mich. App. at 340 n. 17 (“There can be no question as to the right of a woman to possess and control her body as she sees fit, in the absence of an expressed compelling state interest.”); *id.* at 339 (holding that because advances in medicine had dramatically reduced the danger of abortion, the blanket denial of a woman's right to obtain an abortion was no longer justified).

lifesaving medical treatment and die. *See In re Rosebush*, 195 Mich. App. 675, 680 (1992) (“We hold that, in Michigan, there is a right to withhold or withdraw life-sustaining medical treatment as an aspect of the common-law doctrine of informed consent.”). *See also In re Martin*, 450 Mich. 204, 215 n.8 (1995) (regarding “a patient’s prerogative to spurn life-preserving treatment,” “the object remains to honor individual dignity by promoting self-determination and choice”). Significantly, “[t]he right to refuse lifesaving medical treatment is not lost because of the incompetence or the youth of the patient,” *In re Rosebush*, 195 Mich. App. at 681-82, because the right can be “discharged by a surrogate decisionmaker.” *In re Martin*, 450 Mich. at 219 (“conclud[ing] that a person’s right to refuse life-sustaining medical treatment survives incompetency”).<sup>97</sup>

275. The common law right to bodily liberty protects the right of autonomous individuals to exercise their autonomy. *See Breheny*, 38 N.Y.3d at 629 (Rivera, J., dissenting) (Any “autonomous being, regardless of species,” may invoke habeas corpus to “challenge an unjust denial of freedom.”); *Stanley*, 49 Misc.3d at 753 (“The great writ of habeas corpus lies at the heart of our liberty, and is deeply rooted in our cherished ideas of individual autonomy and free choice.”) (internal citations and quotations omitted).

276. Judge Fahey understood the importance of autonomy to the question of whether a chimpanzee “has the right to liberty protected by habeas corpus,” the recognition of which depends on “our assessment of the intrinsic nature of chimpanzees as a species.” *Tommy*, 31 N.Y.3d at 1057

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<sup>97</sup> In *In re Martin*, the Michigan Supreme Court granted leave to consider “whether life-sustaining treatment . . . should be removed from a conscious patient who is not terminally ill or in a persistent vegetative state.” 450 Mich. at 207. Having recognized the right to refuse life-sustaining treatment as enunciated in *In re Rosebush*, *id.* at 218, the Court sought to establish a standard for “address[ing] how the surrogate effectuates the incompetent patient’s decision” in deciding whether to decline lifesaving treatment. 450 Mich. at 218.

(Fahey, J. concurring). Both Judge Wilson and Judge Rivera also understood the importance of autonomy to an elephant's right to petition for her liberty. *See Breheny*, 38 N.Y.3d at 619 (Wilson, J., dissenting) ("Happy has a level of autonomy, intelligence and understanding that could make suffering particularly acute."); *id.* at 634 (Rivera, J., dissenting) (writ of habeas corpus should be granted, as NhRP's "submitted affidavits from several internationally renowned elephant experts [established] Happy's autonomy and the inherent harm of her captivity in the Zoo").

277. Assessing the intrinsic nature of chimpanzees requires looking at the scientific evidence. In undertaking that analysis, Judge Fahey observed:

The record before us in the motion for leave to appeal contains un rebutted evidence, in the form of affidavits from eminent primatologists, that chimpanzees have advanced cognitive abilities, including being able to remember the past and plan for the future, the capacities of self-awareness and self-control, and the ability to communicate through sign language. Chimpanzees make tools to catch insects; they recognize themselves in mirrors, photographs, and television images; they imitate others; they exhibit compassion and depression when a community member dies; they even display a sense of humor. Moreover, . . . chimpanzees demonstrate autonomy by self-initiating intentional, adequately informed actions, free of controlling influences.

*Tommy*, 31 N.Y.3d at 1057-58 (citations omitted). Based on this evidence, Judge Fahey recognized that chimpanzees are "autonomous, intelligent creatures." *Id.* at 1059.

278. The expert evidence in this case is even more extensive since Judge Fahey's observations (*supra* § II.B), and is continuing to grow. "[W]hat we know now is still only a small fraction of what chimpanzees are capable of." (Boesch Decl. ¶ 13). As demonstrated by the Expert Affidavits and Declarations, chimpanzees are capable of making complex decisions, including decisions relevant to habeas corpus: they can choose what they want to do, where they wish to go,

and when, and with whom. Remarkably, there is evidence of one chimpanzee, Bruno, who used American Sign Language to literally ask for his freedom.<sup>98</sup> (Jensvold Aff. ¶ 16).

279. Accordingly, this Court must either protect the autonomy of the DeYoung Prisoners by recognizing their right to bodily liberty, a right not contingent on being human, or reject the importance of autonomy, thus violating the Court’s most sacred duty to protect this supreme Michigan value.

**E. As a matter of equality, this Court must recognize the DeYoung Prisoners’ common law right to bodily liberty protected by habeas corpus because they are autonomous, extraordinarily cognitively complex beings.**

**1. This Court has a duty to update the common law in light of equality.**

280. To fulfill the common law’s longstanding promise of equality, “[c]hanging times demand reexamination of seemingly unchangeable legal dogma.” *N. Ottawa Community Hosp. v. Kieft*, 457 Mich. 394, 402 (1998) (citation omitted); *id.* at 408 (holding that “the contemporary reality of women owning property, working outside the home, and otherwise contributing to their own economic support calls for the abrogation of this sex-discriminatory doctrine from early common law”).

281. Equality is deeply woven into the fabric of the common law. *See, e.g., Heurtebise v. Reliable Bus. Computers*, 452 Mich. 405, 422-23 (1996); *Sullivan v. Minneapolis & R. R. Ry. Co.*, 121 Minn. 488, 492 (1913) (“the general principle of equality is a principle of the common law”) (citation omitted); *Simrall v. City of Covington*, 14 S.W. 369, 370 (Ky. 1890) (“Perhaps the most distinguishing feature of the common law is its regard for the protection and equality of

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<sup>98</sup> Bruno had learned ASL as a child. When Dr. Jensvold’s colleague, Mark Bodamer, met Bruno, the chimpanzee had been imprisoned in a laboratory for 16 years. Bodamer asked Bruno his name in ASL; Bruno replied KEY OUT. *See* BODAMER, M. (2020). KEY OUT: A CHIMPANZEE’S PETITION FOR FREEDOM. *in* D. Rosenman (Ed.). *The Chimpanzee Chronicles* (pp. 217-34).



individual right.”); *James v. Commonwealth*, 12 Serg. & Rawle 220, 230 (Pa. 1825) (“the common law . . . stamps freedom and equality upon all who are subject to it”). Indeed, “[o]ur whole system of law is predicated on the general fundamental principle of equality of application of the law.” *Truax v. Corrigan*, 257 U.S. 312, 332 (1921).<sup>99</sup>

282. Michigan courts made the state a champion in equality under its common law by requiring relevantly similar individuals to be treated equally and prohibiting arbitrary and unjust discrimination, independent from constitutional equality. *See generally Anderson v. Chicago, M. & S. P. R. Co.*, 208 Mich. 424, 429 (1919) (statute prohibiting such discrimination is “declaratory of the common law”); *Bradford v. Citizens’ Tel. Co.*, 161 Mich. 385, 389 (1910) (telephone company guilty of discrimination under statute that was merely “declaratory of the common law”); *Ferguson v. Gies*, 82 Mich. 358, 365 (1890) (race discrimination prohibited under common law). “*Ferguson* began to establish that, in Michigan, whenever a particular equal protection right is recognized, whether by constitution, statute, or common law, then fused to that right is the right to pursue judicial relief.” *Heurtebise*, 452 Mich. at 422-23 (emphasis added)

283. Notably, the *Ferguson* Court rejected the “separate but equal” theory six years before the United States Supreme Court adopted it in *Plessy v. Ferguson*, 163 U.S. 537 (1896). *See*

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<sup>99</sup> *See also Loving v. Virginia*, 388 U.S. 1, 11 (1967) (our “institutions are founded upon the doctrine of equality”) (citation omitted); *Crego v. Coleman*, 463 Mich. 248, 258 (2000) (“The Equal Protection Clauses of the United States Constitution and the Michigan Constitution provide that no person shall be denied the equal protection of the law. . . . The essence of the Equal Protection Clauses is that the government not treat persons differently on account of certain, largely innate, characteristics that do not justify disparate treatment.”); MI CONST Art. 1, § 2 (“nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin”). While the instant habeas corpus litigation does not seek the recognition of a constitutional right or require constitutional interpretation, “constitutional values — especially the values so meticulously set out in our lengthy state chargers — . . . can enrich the common law.” Judith S. Kaye, *Forward: The Common Law and State Constitutional Law as Full Partners in the Protection of Individual Rights*, 23 RUTGERS L. J. 727, 743 (1992). The two-way street that exists between common law and constitutional adjudication can result in “common law decisionmaking infused with constitutional values.” *Id.* at 747.

also *Beech Grove*, 380 Mich. at 436 (recognizing “a civil right to private housing both at common law and under the 1963 Michigan Constitution” based on the equality principle that “a member of the public is entitled to the same treatment and consideration as anyone else—no better, but no worse”).

284. Likewise, in *Montgomery*, the Court held that a wife may maintain an action for loss of consortium, rejecting inequitable precedents “from the dusty books” that allow husbands to recover for such loss while denying the same right to wives. 359 Mich. at 38. The Court determined that the inequality inherent in those precedents was “out of harmony with the conditions of modern society,” and “do violence to our convictions and our principles.” *Id.* at 49. “Decision founded upon the assumption of a bygone inequality are unrelated to present-day realities, and ought not to be permitted to prescribe a rule of life.” *Id.* at 41.<sup>100</sup>

285. As evident from *Ferguson* and *Montgomery*, an equality analysis has two components. It has (1) a comparative component, in which one’s entitlement to a right is determined by comparing one’s situation to the situation of another who has that right, as well as (2) a noncomparative component, in which one’s entitlement to a right is determined by making a normative judgment. The comparative component—which requires like cases to be treated alike—is violated when relevantly similar individuals are treated in dissimilar ways, while the

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<sup>100</sup> Courts in other states have also evolved their common law to accord with the foundational equality principle that like cases must be treated alike. See, e.g., *Benavidez v. Sierra Blanca Motors*, 122 N.M. 209, 214 (1996) (“[O]ne of the most basic principles of the common law” is that “like cases will be treated alike.”); *Enright by Enright v. Eli Lilly & Co.*, 77 N.Y.2d 377, 388 (1991) (It is a “fundamental principle of justice” under the common law that “like cases should be treated alike”); *De Ayala v. Florida Farm Bureau Cas. Ins. Co.*, 543 So. 2d 204, 206 (Fla.1989) (“Under . . . our common law heritage, all similarly situated persons are equal before the law.”); *Millington v. S.E. Elevator Co.*, 22 N.Y.2d 498 (1968) (overruling prior precedent to acknowledge “the equal right of the wife to damages as a result of her loss of consortium”); *Klein v. Klein*, 376 P.2d 70 (Cal. 1962) (abrogating spousal immunity for negligent torts).

noncomparative component—which forbids unjust discrimination—is violated when the treatment lacks a legitimate or just reason. *See also Landon Holdings, Inc. v. Grattan Twp.*, 257 Mich. App. 154, 176 (2003) (“The essence of an equal protection claim is discrimination based on characteristics not justifying different treatment.”).

286. Applying the fundamental principles of equality to the case at bar requires the recognition of the DeYoung Prisoners’ common law right to bodily liberty protected by habeas corpus. This is because (1) the chimpanzees are relevantly similar to humans for purposes of habeas corpus, and (2) their imprisonment lacks a legitimate or just reason for it is based solely on their species membership.

**2. The DeYoung Prisoners and humans are relevantly similar for purposes of habeas corpus.**

287. At its core, equality requires equal treatment of individuals who are relevantly similar. Three judges on New York’s highest court understood that autonomous nonhuman animals are relevantly similar to humans for purposes of habeas corpus. Judge Wilson and Judge Rivera recognized the right of autonomous beings like elephants to seek relief pursuant to habeas corpus. Judge Wilson rejected the notion that “the writ must be limited to humans, no matter how sophisticated, intelligent, self-aware or capable of suffering an elephant is and no matter how severe the conditions of its confinement are.” *Breheny*, 38 N.Y.3d at 580 (Wilson, J., dissenting) (citation omitted). Judge Rivera similarly concluded: “history, logic, justice, and our humanity must lead us to recognize that if humans without full rights and responsibilities under the law may invoke the writ to challenge an unjust denial of freedom, so too may any other autonomous being, regardless of species.” *Id.* at 628-29 (Rivera, J., dissenting).

288. Judge Fahey explained that “in elevating our species, we should not lower the status of other highly intelligent species.” *Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring). Suggesting

that chimpanzees may have the right to liberty protected by habeas corpus, Judge Fahey emphasized the fact that they are “autonomous, intelligent creatures.” *Id.* at 1059. They have “advanced cognitive abilities, including being able to remember the past and plan for the future, the capacities of self-awareness and self-control, and the ability to communicate through sign language.” *Id.*

289. The Expert Affidavits and Declarations also demonstrate that chimpanzees are relevantly similar to humans for purposes of habeas corpus. Specifically, they show that chimpanzees are autonomous, extraordinarily cognitively complex beings, capable of a wide variety of sophisticated cognitive abilities, including complex decision-making, and suffer immensely when unjustly confined (*supra* § II.A-C). They can even shoulder duties and responsibilities, understand numbers as a sequence of quantities, exhibit empathy and compassion, and perform certain memory tests better than humans. They can recall their past and anticipate their future, and when their future is imprisonment, they suffer from the pain of being unable to act freely, much in the same way as humans.

290. Just as Judge Wilson, Judge Rivera, and Judge Fahey recognized in regards to elephants and chimpanzees, the science dictates that this Court must recognize that the DeYoung Prisoners are relevantly similar to humans for purposes of habeas corpus. Accordingly, it is this Court’s duty to evolve the common law and recognize that these chimpanzees have the common law right to bodily liberty protected by habeas corpus.

### **3. The DeYoung Prisoners’ imprisonment lacks a legitimate or just reason.**

291. Distinctions between relevantly similar individuals based upon irrelevant characteristics are illegitimate and unjust. In Michigan, courts have evolved the common law by rejecting distinctions between relevantly similar individuals that were based upon irrelevant

characteristics.<sup>101</sup> This was powerfully illustrated over a hundred years ago by the Michigan Supreme Court in *Ferguson*.

292. In *Ferguson*, the plaintiff was denied service at a restaurant “for no other reason than that Ferguson was a colored man.” 82 Mich. at 360. The restaurant owner prevailed at trial on the theory that Ferguson was not denied “full and equal accommodations,” since the defendant was willing to serve Ferguson had he sat in the area reserved for Black customers. *Id.* at 361. In reversing, the Michigan Supreme Court empathically declared: “there must be and is an absolute, unconditional equality of white and colored men before the law.” *Id.* at 363. The Court stressed: “Any discrimination founded upon race or color of the citizen is unjust and cruel, and can have no sanction in the law of this state.” *Id.* at 365. The Court rejected defendant’s argument that Ferguson had no private right of action, holding that under the common law, he had a “right of action for any injuries arising from an unjust discrimination against him . . . just as perfect and sacred in the courts as that of any other citizen.” *Id.*

293. Similarly, in *Romer v. Evans*, 517 U.S. 620, 633 (1996), the United States Supreme Court struck down on equal protection grounds a provision in Colorado’s Constitution (Amendment 2) that prohibited the protection of gay and lesbian individuals from discrimination, because the law “identif[ed] persons by a single trait [sexual orientation] and then deni[ed] them protection across the board.” There was no legitimate or just reason for distinguishing between individuals based upon sexual orientation: “Amendment 2 classifie[d] homosexuals not to further a proper legislative end but to make them unequal to everyone else.” *Id.* at 635. *See also Equality Found. v. City of Cincinnati*, 128 F.3d 289, 297 (6th Cir. 1997) (noting that *Romer* found

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<sup>101</sup> *See also James v. Marinsip Corp.*, 155 P.2d 329, 339 (Cal. 1944) (finding that a labor union’s “discriminatory practices” treated qualified Black workers unequally solely upon the irrelevant characteristic of race).

Amendment 2 “so obviously and fundamentally inequitable, arbitrary, and oppressive that it literally violated basic equal protection values”).<sup>102</sup>

294. Just as distinctions based upon irrelevant characteristics such as sexual orientation and race are illegitimate and unjust, as *Romer* and *Ferguson* made clear, so too are distinctions based upon species membership. This Court must choose the position that harmonizes best with the most essential values and principles embraced by Michigan courts. The position that only species membership matters for the right to bodily liberty protected by habeas corpus not only deeply conflicts with the importance of protecting an individual’s autonomy under the common law (*supra* § V.D), but also perpetuates an unjust discrimination.

295. As three judges on New York’s highest court made clear, there is no rational, non-arbitrary reason to limit the Great Writ’s protections to humans.

296. Judge Fahey recognized that given the autonomous nature of chimpanzees, it is illegitimate and unjust to deny them the right to bodily liberty protected by habeas corpus simply because they are not human. He criticized a lower court’s “conclusion that a chimpanzee cannot be considered a ‘person’ and is not entitled to habeas relief” as being “based on nothing more than the premise that a chimpanzee is not a member of the human species.” *Tommy*, 31 N.Y.3d at 1057 (Fahey, J. concurring). “To treat a chimpanzee as if he or she had no right to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth, as a mere resource for human use, a thing the value of which consists exclusively in its usefulness to others.”

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<sup>102</sup> Cf. *Buck v. Davis*, 580 U.S. 100, 123 (2017) (“Our law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle.”); *United States v. Windsor*, 570 U.S. 744, 770 (2013) (The Constitution’s guarantee of equality ‘must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot’ justify disparate treatment of that group.) (citation omitted).

*Id.* at 1058. “Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect.” *Id.*

297. Judge Wilson and Judge Rivera agreed that given the autonomous nature of elephants, it was illegitimate and unjust to deny Happy the right to bodily liberty protected by habeas corpus simply because she is not human. Judge Wilson understood the crucial question in Happy’s case was “whether the detention of an elephant can ever be so cruel, so antithetical to the essence of an elephant, that the writ of habeas corpus should be made available under the common law.” *Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting). The answer should not depend on the irrelevant fact that an elephant is not a member of the human species. To illustrate this point, Judge Wilson quoted English philosopher, jurist, and social reformer Jeremy Bentham:

The day *may* come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. . . . It may come one day to be recognised, that the number of legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? . . . [T]he question is not, Can they *reason*? nor, Can they *talk*?, but *Can they suffer*?

*Id.* at 578-79 (quoting JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 311 n.1 (1781)). The contrary position—held by the *Breheny* majority, and likely by the Respondents here—that autonomous beings like chimpanzees cannot have fundamental liberty rights simply because they are not human, despite their great suffering in captivity, embraces blatant species bias to justify an unjust discrimination.<sup>103</sup> It “denies and denigrates the human capacity for understanding, empathy and compassion.” *Id.* at 626.

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<sup>103</sup> This bias is called “speciesism.” PETER SINGER, ANIMAL LIBERATION: THE DEFINITIVE CLASSIC OF THE ANIMAL MOVEMENT 6 (2009), <https://bit.ly/3JPxbCo> (“Speciesism . . . is a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species.”); *see also* *Speciesism*, ANIMAL ETHICS, <https://www.animal-ethics.org/speciesism/> (last visited Mar. 31, 2023) (“Speciesism is a form of discrimination. Discrimination occurs when someone is given less moral consideration than others or treated worse for an unjustified reason.”). *See also*

298. Judge Rivera also criticized the *Breheny* majority’s position as arbitrary and irrational, noting the “incoherence of its circular logic”:

The majority’s argument boils down to a claim that animals do not have the right to seek habeas corpus because they are not human beings and that human beings have such a right because they are not animals. But, of course, humans are animals. And glaringly absent is any explanation of why some kinds of animals—i.e., humans—may seek habeas relief, while others—e.g., elephants—may not. The majority’s suggestion that the “fundamental liberty rights” of human beings are “recognized by law” is nothing more than a tautological evasion. Whether autonomous, nonhuman animals have rights that ought to be “recognized by law” is *precisely* the question we are called upon to answer in this appeal.

*Id.* at 632-33 (Rivera, J., dissenting). Looking beyond Happy’s biological classification, Judge Rivera understood that “an autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life.” *Id.* at 629.

299. Accordingly, it would be illegitimate and unjust to deny the DeYoung Prisoners the common law right to bodily liberty protected by habeas corpus simply because they are not human. Since the imprisonment of the DeYoung Prisoners lacks a legitimate or just reason—for it is based solely upon the irrelevant characteristic of their species membership—this Court should not permit an unjust discrimination to stand.

300. To dismiss the petition would not only be wrong, it would anchor rights to a bygone era. “If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied.” *Obergefell v. Hodges*, 576 U.S. 644, 671 (2015). “At one time aliens could not enjoy the same rights and privileges in property as citizens of Michigan. The disabilities of coverture also existed.”

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KRISTIN ANDREWS ET AL., CHIMPANZEE RIGHTS: THE PHILOSOPHERS’ BRIEF 34 (2019) (“[I]t is arbitrary to utilize species membership alone as a condition of personhood, and it fails to satisfy the basic requirement of justice that we treat like cases alike. It picks out a single characteristic as one that confers rights without providing any reason for thinking it has any relevance to rights.”).



*Beech Grove*, 380 Mich. at 431. Any such argument misperceives the “inherent capacity of the common law for growth and change.” *Id.* at 429 (citation omitted).

**F. This Court must not deflect its duty to recognize the DeYoung Prisoners’ common law right to bodily liberty protected by habeas corpus onto the legislature.**

301. Michigan courts have long rejected the “timeworn, threadbare argument” that changing archaic common law should be left to the legislature. *Weeks v. Slavick Builders, Inc.*, 24 Mich. App. 621, 627 (1970) (citation omitted). *See, e.g., Womack*, 384 Mich. at 725 (expanding the common law by allowing negligence actions for negligently inflicted prenatal injury); *Montgomery*, 359 Mich. at 38 (expanding the common law by allowing wives to maintain an action for loss of consortium); *Daley v. LaCroix*, 384 Mich. 4, 12-13 (1970) (expanding the common law by allowing claims for emotional distress caused by negligent conduct in the absence of any physical impact at the time of the mental shock).<sup>104</sup>

302. There is absolutely no “reason to await, perhaps indefinitely, action by the Legislature when this Court has the competence and authority to determine the existence of a common-law duty.” *Roberts v. Salmi*, 308 Mich. App. 605, 631 (2014).

303. Deflecting the responsibility to change archaic common law onto the legislature is an abdication of judicial duty. *See Placek*, 405 Mich. at 657 (“when dealing with judge-made law, this Court in the past has not disregarded its corrective responsibility in the proper case”); *Moning*,

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<sup>104</sup> *See also Stevenson*, 416 Mich. at 392 (abolishing the common-law year-and-a-day rule in homicide cases); *Placek*, 405 Mich. at 650 (abolishing common-law contributory negligence as a total bar to recovery and adopting pure comparative negligence); *Plumley v. Klein*, 388 Mich. 1, 5-8 (1972) (abolishing the common-law rule that children cannot bring a tort cause of action against their parents); *James v. Alberts*, 464 Mich. 12, 18 (2001) (abolishing the common-law “volunteer” doctrine); *Pittman v. City of Taylor*, 398 Mich. 41, 50 (1976) (abrogating the common-law doctrine of state governmental immunity); *Serafin v. Serafin*, 401 Mich. 629, 634 (1977) (abolishing common law evidentiary rule, which prevented spouses from testifying that they had no access to each other at the time a child was conceived to prove the husband's lack of paternity).

400 Mich. at 436 (“The law of negligence was created by common law judges and, therefore, it is unavoidably the Court’s responsibility to continue to develop or limit the development of that body of law absent legislative directive.”).

304. When Judge Wilson confronted whether to change archaic common law so that an elephant could invoke the protections of habeas corpus, he recognized that “[t]he Great Writ’s use, as a case by case tool to probe whether the law may need to adapt, is part of the fundamental role of a common law court to adapt the law as society evolves.” *Breheny*, 38 N.Y.3d at 617 (Wilson, J, dissenting). He thus admonished the majority for deflecting its judicial responsibility onto the legislature:

The judges, Justice Paine among them, who issued writs of habeas corpus freeing enslaved persons, or liberating women and children from households run by abusive men, or ordering the return home of underage soldiers could have said, as the majority does here, “that’s a job for the legislature.” They could have said, “existing law offers some protections, and we dare not do more.” They could have said, “we can’t be the first.” But they did not.

*Id.*

305. Judge Rivera similarly stated: “[I]t is for this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought. The difficulty of the task—i.e., determining the reach of a substantive common-law right whose existence pre-dates *any* legislative enactment on the subject and whose core guarantees are unalterable by the legislature—is no basis to shrink from our judicial obligation by recasting it as the exclusive purview of the legislative branch. The common law is our bailiwick.” *Id.* at 633 (Rivera, J, dissenting).

306. Accordingly, this Court must not deflect its responsibility to recognize the DeYoung Prisoners’ common law right to bodily liberty protected by habeas corpus onto the legislature.

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## HABEAS CORPUS RELIEF

### VI. The DeYoung Prisoners are entitled to immediate release from their illegal imprisonment.

307. The preceding sections establish not only that the DeYoung Prisoners have the common law right to bodily liberty protected by habeas corpus, but also that their right has been violated, thereby rendering their imprisonment illegal. Accordingly, the DeYoung Prisoners are entitled to release from their illegal imprisonment through habeas corpus. *See Goetz*, 256 Mich. at 570 (“If a party is unlawfully imprisoned, the writ of habeas corpus is his appropriate legal remedy.”) (citation omitted); MCL 600.4352 (“If no legal cause is shown for the restraint, or for the continuation thereof, the court or judge shall discharge the person restrained from the restraint under which he is held.”).<sup>105</sup>

308. It has long been understood that “common-law habeas corpus was, above all, an adaptable remedy,” with its “precise application and scope” changing “depending upon the circumstances.” *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Indeed, the Great Writ’s very nature “demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

309. That the DeYoung Prisoners cannot be released onto the streets of Michigan is no barrier to habeas corpus relief. At a proper chimpanzee sanctuary, the DeYoung Prisoners will be provided with the specialized care necessary to satisfy their complex social, emotional, and

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<sup>105</sup> A “right must have a remedy.” *Bauserman*, 509 Mich. at 691 (citation omitted). It is a “deep-seated principle of Anglo-American law” that “where one’s right is invaded or destroyed, the law gives a remedy to protect it or damages for its loss.” *People v. Kabongo*, 507 Mich. 78, 135 (2021), *abrogated on other grounds by People v. Yarbrough*, 511 Mich. 252 (2023) (cleaned up). *See also Stout v. Keyes*, 2 Doug 184, 187 (1845) (“It is a general principle of the common law, that whenever the law gives a right, or prohibits an injury, it also gives a remedy by action; and, where no specific remedy is give[n] for an injury complained of, a remedy may be had by special action on the case.”).

physical needs for the duration of their life, and allow for them to exercise *their autonomy to the greatest degree possible*. See *Breheny*, 38 N.Y.3d at 598, 640-41 (Rivera, J., dissenting) (“the writ is flexible” and can be “applied innovatively by courts to achieve a just and workable outcome” for a nonhuman animal who “cannot live as a free being within human society”); *id.* at 641 (While Happy cannot be released onto the streets, “a court can order the most practical and humane alternative: transfer to an elephant sanctuary. This is the safest place for Happy *because it most closely approximates her natural environment.*”) (emphasis added).

310. Such relief is analogous to habeas corpus cases involving infants,<sup>106</sup> minors at reform schools,<sup>107</sup> and mentally incapacitated or elderly patients.<sup>108</sup> See *In re Payette*, 315 Mich. 700 (1946) (“Our issuance of a writ does not preclude the taking of further action either immediately or after it is determined that the girl will not be properly safeguarded under home or other conditions.”). As Judge Wilson explained: “underscoring the flexibility of the Great Writ, its history evinces that habeas corpus could be used to transfer custody from one confinement, if

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<sup>106</sup> *Goodchild v. Foster*, 51 Mich. 599 (1883) (imprisonment was unlawful, children released to mother).

<sup>107</sup> See *Ex parte Brooks*, 331 Mich. 628 (1951) (minor “is ordered to be released” from training home for feeble-minded youth to father’s care on father’s habeas petition); *Walls v. Dir. of Institutional Servs.*, 84 Mich. App. 355, 360 (1978) (“Petitioner was a juvenile with limited capacity to read” confined at a training school based on an unconstitutional hearing, the court thus ruled his “confinement therefore is improper” and a writ to “release petitioner is ordered.”); *In re Maffett*, 304 Mich. 173 (1943) (guardian sought habeas corpus to inquire into cause of child’s detention after child was adjudged feeble-minded person and committed to institution); *Ex parte Roberts*, 310 Mich. 560, 561-63 (1945) (mother brought a habeas corpus proceeding to inquire “into the cause of the detention of her son . . . in the Kalamazoo State hospital” for insanity; “the petition for his release [was] granted.”); *In re Aslanian*, 318 Mich. 55 (1947) (release of minor from school for “feeble minded” mother’s petition for habeas corpus); *In re Pierce*, 74 Mich. 239 (1889) (eleven-year-old discharged from reform school).

<sup>108</sup> The writ of habeas corpus “penetrates the walls of insane asylums as fully and freely as any other place where persons are illegally restrained of their liberty.” *Palmer v. Circuit Judge of Kalamazoo County*, 83 Mich. 528, 536 (1890). See *Ex parte Clifford*, 303 Mich. 84, 85 (1942) (discharge from insane asylum); *Schantz v. Ruehs*, 348 Mich. 680, 683 (1957); *In re Gordon*, 301 Mich. 224 (1942) (petitioner discharged from hospital because “the commitment was unauthorized and void.”).

determined to be unlawful, to another type of custody; habeas petitions were not required to seek or result in total liberation as the remedy. That aspect of habeas corpus is evident across issues impacting children, women, and enslaved people.” *Breheny*, 38 N.Y.3d at 598 (Wilson, J., dissenting).

311. NhRP’s requested relief is *not* analogous to cases where a prisoner challenges the conditions of their confinement.<sup>109</sup> That is, NhRP does not seek to *improve* the conditions at DFZ, any more than a human prisoner who is being illegally imprisoned seeks to improve the conditions of his prison. *See Breheny*, 38 N.Y.3d at 637 (Rivera, J., dissenting) (recognizing NhRP’s “core argument” that an elephant’s confinement at a zoo “was a violation of her right to bodily liberty as an autonomous being, regardless of the care she was receiving”).

312. The conditions at DFZ are not at issue in this case because the sole question is whether the DeYoung Prisoners may be imprisoned at all. *Cf. Stanley*, 49 Misc. 3d at 749 (“The conditions under which [the chimpanzees] Hercules and Leo are confined are not challenged by petitioner . . . . [T]he sole issue is whether Hercules and Leo may be legally detained at all.”); *People ex rel Nonhuman Rights Project, Inc v. Lavery*, 124 A.D.3d. 148, 149 (2014) (“Notably, we have not been asked to evaluate the quality of Tommy’s current living conditions in an effort to improve his welfare.”). “A gilded cage is still a cage.” *Breheny*, 38 N.Y.3d at 628 (Rivera, J., dissenting).

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<sup>109</sup> *Cf. Phillips*, 153 Mich. App. at 565 (stating that habeas corpus is proper to challenge “the fact or duration of confinement,” but not to attack “the conditions of confinement”). *But see In re Kemmerer*, 309 Mich. 313, 317 (1944) (“He is entitled to proper care such as his condition and the good of society demands. If he is not receiving it and is suffering any unusual punishment, he can always present a petition for *habeas corpus* preferably to the circuit court of Jackson County where proper and full inquiry can be made into the facts.”).

313. Accordingly, because the DeYoung Prisoners are being illegally imprisoned, this Court must order them set free to a place that “most closely approximates [their] natural environment.” *Id.* at 641 (Rivera, J., dissenting). As recommended by the experts, a GFAS-accredited chimpanzee sanctuary will allow them to exercise their autonomy and extraordinary cognitive complexity to the greatest extent possible.

### **CONCLUSION**

314. While the “nature of injustice is that we may not always see it in our own times,” *Obergefell*, 576 U.S. at 664, it is this Court’s solemn obligation to see it here and correct it. The DeYoung Prisoners are autonomous complex beings who experience the suffering of imprisonment much in the same way as we do, and should be treated no differently for purposes of habeas corpus. They are entitled to freedom from their illegal imprisonment. Proper application of Michigan’s venerated common law must result in these magnificent, innocent beings living the rest of their lives as autonomous chimpanzees to the greatest extent possible.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully demands the following relief:

A. Issuance of an order to show cause pursuant to MCL 600.4316 and MCR 3.303 (D), requiring Respondents to file an answer justifying their imprisonment of the DeYoung Prisoners: Prisoner A (aka Louie), Prisoner B, Prisoner C, Prisoner D, Prisoner E, Prisoner F, and Prisoner G;

B. Upon a determination that the DeYoung Prisoners are being illegally imprisoned, order their release from the DeYoung Family Zoo and relocation to a chimpanzee sanctuary accredited by the Global Federation of Animal Sanctuaries;

C. Grant such other and further relief as this Court deems just and proper.

December 4, 2023

Respectfully submitted,

/s/ Ginny Mikita

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