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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NONHUMAN RIGHTS PROJECT, INC., on
behalf of Mari and Vaigai, individuals,

Petitioner,

vs.

CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE
SERVICES and its DIRECTOR, DITA
HOLIFIELD, and the HONOLULU ZOO
DIRECTOR, LINDA SANTOS,

Respondents.

CIVIL NO. 1CCV-23-0001418

**RESPONDENTS CITY AND COUNTY OF
HONOLULU DEPARTMENT OF
ENTERPRISE SERVICES AND ITS
DIRECTOR, DITA HOLIFIELD, AND
THE HONOLULU ZOO DIRECTOR,
LINDA SANTOS' MOTION TO DISMISS
PETITION FOR A COMMON LAW
WRIT OF HABEAS CORPUS;
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS; NOTICE OF
HEARING AND CERTIFICATE OF
SERVICE**

HEARING:

DATE: Tuesday, January 16, 2024

TIME: 3:00 p.m. (HST)

JUDGE: Honorable Gary W.B. Chang

(No trial date set)



**RESPONDENTS CITY AND COUNTY OF HONOLULU DEPARTMENT OF
ENTERPRISE SERVICES AND ITS DIRECTOR, DITA HOLIFIELD, AND THE
HONOLULU ZOO DIRECTOR, LINDA SANTOS’ MOTION TO DISMISS PETITION
FOR A COMMON LAW WRIT OF HABEAS CORPUS**

Respondents City and County of Honolulu Department of Enterprise Services and its Director, Dita Holifield, and the Honolulu Zoo Director, Linda Santos (“City”), by and through its attorneys, DANA M.O. VIOLA, Corporation Counsel, and DANIEL M. GLUCK, JACQUELINE M. DE LEEUW HUANG, and PATRÍCIA A.V. SENDÃO, Deputies Corporation Counsel, hereby move this Honorable Court for an Order dismissing Petitioner’s Petition for a Common Law Writ of Habeas Corpus, filed on October 31, 2023 (“Petition”) for failure to state a claim on which relief may be granted, pursuant to Hawai‘i Rules of Civil Procedure (“HRCP”) Rules 7 and 12(b)(6), and Rules 7 and 8 of the Rules of the Circuit Courts of the State of Hawai‘i.

DATED: Honolulu, Hawai‘i, November 20, 2023.

DANA M.O. VIOLA
Corporation Counsel

By /s/Patricia A. V. Sendao
DANIEL M. GLUCK
JACQUELINE M. DE LEEUW HUANG
PATRICIA A.V. SENDAO
Deputies Corporation Counsel
Attorneys for Respondents

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NONHUMAN RIGHTS PROJECT, INC., on
behalf of Mari and Vaigai, individuals,

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CITY AND COUNTY OF HONOLULU,
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SERVICES and its DIRECTOR, DITA
HOLIFIELD, and the HONOLULU ZOO
DIRECTOR, LINDA SANTOS,

Respondents.

CIVIL NO. 1CCV-23-0001418

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

Hawai'i Revised Statutes ("HRS") chapter 660 provides that "persons" may petition the courts for writs of habeas corpus. Petitioner Nonhuman Rights Project, Inc., seeks writs on behalf of Mari and Vaigai, two Asian elephants at the Honolulu Zoo. The elephants are not "persons" within the meaning of the statute, and are therefore ineligible for the relief sought. *See* HRS § 1-19 (defining "person" with no reference to nonhuman animals). As such, the Petition should be dismissed as a matter of law. Even if this Court were to rely solely on the common law writ of habeas corpus, rather than upon the provisions of HRS chapter 660, the Petition would still fail: at common law, the writ applied only to human beings, not to animals.

II. BACKGROUND

Mari and Vaigai are Asian elephants at the Honolulu Zoo. Dkt. 1 at PDF page 24, ¶18. Nonhuman Rights Project, Inc. (“Petitioner”) filed its Petition for a Common Law Writ of Habeas Corpus on October 31, 2023. Dkt. 1. Although Petitioner uses the terms “writ of habeas corpus” and “order to show cause” interchangeably, the Petition requests “an issuance of an order to show cause rather than a writ of habeas corpus.” Dkt. 1 at PDF page 21, n.4. In so doing, it seeks a lengthy and time-consuming evidentiary hearing. However, as discussed below, Petitioner’s claim fails as a matter of law.

This is not the first petition of its kind. Petitioner Nonhuman Rights Project, Inc. has filed petitions for writs of habeas corpus on behalf of animals in multiple jurisdictions, and these petitions have been rejected by trial courts every single time. And every single time a trial court’s decision was reviewed by an appellate court, the trial court’s decision was affirmed. Petitioner has failed at least nine times in three jurisdictions:

1. *Nonhuman Rights Project, Inc. v. Fresno’s Chaffee Zoo Corporation et al.*, 22CECG02471, *Order* (Cal. Ct. App., May 18, 2023) (denying petition for a writ of habeas corpus for two elephants);¹
2. *In re Nonhuman Rights Project, Inc., ex rel. Amahle, Nolwazi, and Vusmusi*, 22CRWR686796, *Order* (Cal. Super. Ct., Nov. 15, 2022) (denying petition for a writ of habeas corpus for three elephants);²

¹ The trial court’s order appears to be available on Petitioner’s website: <https://bit.ly/2023-habeas-denial-CA> (last visited Nov. 16, 2023). The Petition itself also appears to be available on Petitioner’s website: <https://bit.ly/2023-habeas-CA> (last visited Nov. 16, 2023).

² Again, the trial court’s order appears to be available on Petitioner’s website: <https://bit.ly/2022-habeas-denial-CA> (last visited Nov. 16, 2023). The Petition itself also appears to be available on Petitioner’s website: <https://bit.ly/2022-habeas-CA> (last visited Nov. 16, 2023).

3. *Nonhuman Rights Project, Inc. ex rel. Happy v. Breheny*, 197 N.E.3d 921 (N.Y. 2022) (affirming trial court’s denial of habeas relief for an elephant);
4. *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, (*Commerford II*) 231 A.3d 1171 (Conn. App. Ct. 2020) (affirming denial of habeas relief for three elephants), *leave to appeal denied*, 235 A.3d 525 (Conn. 2020);
5. *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, (*Commerford I*) 216 A.3d 839 (Conn. App. Ct. 2019) (affirming denial of habeas relief for three elephants), *leave to appeal denied*, 217 A.3d 635 (Conn. 2019);
6. *Nonhuman Rights Project, Inc. v. Lavery*, 54 N.Y.S.3d 392 (N.Y. App. Div. 2017) (affirming denial of habeas relief for two chimpanzees), *leave to appeal denied*, 100 N.E.3d 846 (N.Y. 2018);
7. *Nonhuman Rights Project, Inc. ex rel. Hercules and Another v. Stanley*, 16 N.Y.S.3d 898 (N.Y. Sup. Ct. 2015) (denying habeas relief for two chimpanzees);
8. *People ex rel. Nonhuman Rights Project, Inc., ex rel. Tommy v. Lavery*, 998 N.Y.S.2d 248 (N.Y. App Div. 2014) (affirming trial court’s denial of habeas relief for a chimpanzee), *leave to appeal denied*, 38 N.E.3d 828 (N.Y. 2015);
9. *Nonhuman Rights Project, Inc., ex rel. Kiko v. Presti*, 999 N.Y.S.2d 652 (N.Y. App. Div. 2015) (affirming denial of habeas relief for a chimpanzee), *leave to appeal denied*, 38 N.E.3d 827 (N.Y. 2015).³

Petitioner has now filed in Hawai‘i seeking a different result on the same grounds.

³ Another petition was filed in 2023 in Colorado on behalf of five elephants: *Nonhuman Rights Project, Inc., v. Cheyenne Mountain Zoological Society and Bob Chastain*, 2023CV301236. The petition appears to be available at <https://bit.ly/2023-habeas-CO> (last visited Nov. 16, 2023).

III. STANDARDS OF REVIEW

A. Motion to Dismiss

“[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief.” *Bank of Am., N.A. v. Reyes-Toledo*, 143 Hawai‘i 249, 257, 428 P.3d 761, 769 (2018) (citations and block quote formatting omitted). “[D]ismissal pursuant to HRCP Rule 12(b)(6) is appropriate where the allegations of the complaint itself clearly demonstrate that plaintiff does not have a claim, and in weighing the allegations of the complaint as against a motion to dismiss, the court will not accept conclusory allegations concerning the legal effect of the events the plaintiff has alleged.” *Id.* at 262, 428 P.3d at 774 (cleaned up). Further, “[t]here is no duty on the part of the trial court or the appellate court to create a claim which appellant has not spelled out in his pleading[.]” *Mendes v. Heirs and/or Devisees of Kealakai*, 81 Hawai‘i 165, 169, 914 P.2d 558, 562 (App. 1996) (cleaned up).

B. Issuing a Writ of Habeas Corpus

Circuit courts have jurisdiction to issue writs of habeas corpus in cases in which “persons” are unlawfully restrained of their liberty. HRS § 660-3. A writ of habeas corpus should not be issued if “it appears from the application that the person detained is not entitled thereto.” HRS § 660-6. A sentence of restraint “must be void on its face to entitle the petitioner to a discharge on habeas corpus.” *In re Hoopai*, 10 Haw. 610, 611 (Haw. Terr. 1897). *Accord In re Anin*, 17 Haw. 338, 340 (Haw. Terr. 1906); *Ex parte Oriemon*, 13 Haw. 102 (Haw. Terr. 1900); *In re Titcomb*, 9 Haw. 131, 134 (Haw. Prov. Gov. 1893) (“To warrant the discharge of the petitioner, the sentence under which he is held must be not merely erroneous and voidable,

but absolutely void.” (quoting *Ex parte Reed*, 100 U.S. 13 1879)); *In re Brown*, 6 Haw. 704, 706 (Haw. Kingdom 1888); *In re Kauffman*, 2 Haw. 313, 321 (Haw. Kingdom 1860).

IV. ARGUMENT

A. **Petitioner fails to state a claim under HRS chapter 660 because writs of habeas corpus are only available to “persons.”**

Habeas relief is available to “*persons* [who] are unlawfully restrained of their liberty[.]” HRS § 660-3 (emphasis added). The plain language of HRS § 660-3 is clear that writs of habeas corpus are limited to cases in which a “*person*[.]” is unlawfully restrained. *Id.* (emphasis added). The Legislature has already provided a catchall definition of “person” in HRS § 1-19, and it does not include animals:

The word ‘person,’ or words importing persons, for instance, ‘another’, ‘others’, ‘any’, ‘anyone’, ‘anybody’, and the like, signify not only individuals, but corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, or neighborhood, or persons known or unknown, and the public generally, where it appears, from the subject matter, the sense and connection in which such words are used, that such construction is intended.

Additionally, the ordinary use of the word “person” does not include nonhuman animals. *See* HRS § 1-14 (“The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning.”); *see also, e.g., Black’s Law Dictionary* 1257 (9th ed. 2009) (defining “person” as “A human being. – Also termed *natural person*.”). Elephants are not “persons,” and are thus statutorily ineligible for habeas relief. The Court does not need to go any further than this, and the Petition can and should be denied on this basis.

Should the Court wish to dig deeper, the “whole code” canon of statutory interpretation provides that “courts [are to] construe terms across different statutes consistently.” *See K.L. v.*

R.I. Bd. of Educ., 907 F.3d 639, 640 (1st Cir. 2018). The Legislature has defined “person” in multiple sections of the Hawai‘i Revised Statutes, but nowhere has the Legislature suggested that “person” includes “animals.”⁴ For example, HRS chapter 701-118 – one of the preliminary provisions of the Hawai‘i Penal Code – provides:

‘Person,’ ‘he,’ ‘him,’ ‘actor,’ and ‘defendant’ include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person’s name is known, and, where relevant, a corporation or an unincorporated association.^[5]

Accord HRS § 707-700 (“‘Person’ means a *human being* who has been born and is alive.” (emphasis added)). There are many other statutes defining “person” as including both human beings and corporate entities, but not animals. *See, e.g.*, HRS § 6E-2 (historic preservation: “‘Person’ means any individual, firm, corporation, partnership, or association.”); HRS § 11-302 (campaign finance: “‘Person’ means an individual, a partnership, a candidate committee or noncandidate committee, a party, an association, a corporation, a business entity, an organization, or a labor union and its auxiliary committees.”); HRS § 235-1 (general provisions regarding taxation: “‘Person’ includes an individual, a trust, estate, partnership, association, company, or corporation.”); HRS § 560:1-201 (Uniform Probate Code: “‘Person’ means an

⁴ To the contrary (and as discussed more fully *infra*), where the Legislature directed legislation at animals, the Legislature was clear in doing so.

⁵ The Hawai‘i Intermediate Court of Appeals (“ICA”) has already been presented with the question of whether a dolphin was included in the terms “person” and “another” under the Penal Code, though the Penal Code expressly defines “person” as “any natural person.” In *State v. Le Vasseur*, the ICA affirmed the trial court’s decision that the terms “persons” and “another” did not include dolphins. 1 Haw. App. 19, 25, 613 P.2d 1328, 1333 (1980). The ICA concluded that “[a] dolphin is not ‘another’ within the meaning of HRS § 703-302 where HRS § 701-118(8) defines ‘another’ as ‘any other person ...’ and HRS § 701-118(7) defines ‘person’ as a natural person and when relevant a corporation or an unincorporated association.” *Id.*

individual or an organization.”); HRS § 428-101 (Uniform Limited Liability Company Act: “‘Person’ includes any individual or entity” and “‘Individual’ means a natural person.”).⁶

Notably, there is no mention of nonhuman animals in any of these definitions.

The Legislature is, of course, very capable of amending the definition of “person” to fit different circumstances. For example, HRS § 174C-12.5 (part of the State Water Code) defines “person aggrieved” to include “an agency that is a party to a contested case proceeding before that agency or another agency.” In contrast, HRS § 531B-2 (addressing the disposition of human remains) defines “person” as “an individual eighteen years of age or older.” Had the Legislature wanted to include elephants or other nonhuman animals in HRS chapter 660, it would have.

As set forth above, several definitions of “person” include the word “individual,” *see, e.g.*, HRS § 1-19, but the word “individual” does not include elephants either. “Individual” is defined more than a dozen times throughout the Hawai‘i Revised Statutes; nearly all of these statutory provisions define “individual” as a “natural person” (and none of them include animals). *See, e.g.*, HRS §§ 11-302, 414-3, 414D-14, 421-1, 428-101. Furthermore, as the Hawai‘i Supreme Court has explained, “where general words follow specific words in a statute, those general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *Priceline.com, Inc. v. Dir. of Taxation*, 144 Hawai‘i 72, 90, 436 P.3d 1155, 1173 (2019) (cleaned up). For instance, HRS § 1-19 defines “person” to include individuals, firms, corporations, and others. As the category of “nonhuman animal” markedly strays from the commonality of these enumerated items, the canon of statutory interpretation guides courts away from its inclusion in such provisions. *See Bostock v. Clayton*

⁶ There are over one hundred statutory provisions defining “person,” none of which include animals. Some (but not all) of these statutes are listed in the HRS Index under Definitions, Person.

Cty., 140 S. Ct. 1731, 1753 (2020) (“[T]he no-elephants-in-mouseholes canon . . . recognizes that [the legislature] ‘does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions’”); *Morita v. Gorak*, 145 Hawai‘i 385, 399, 453 P.3d 205 (2019) (“legislatures do not ‘hide elephants in mouseholes’”). If the Legislature wanted to include nonhuman animals – an entirely different class of beings – in the definitions of “person” or “individual,” it would have done so.

Finally, where the Legislature intended to refer to animals, the Legislature was clear in doing so. *See, e.g.*, HRS § 711-1100 (defining “animal” as “every living creature, *except a human being*” (emphasis added)); HRS chapter 142 (“Animals, Brands, and Fences”); HRS chapter 150A (“Plant and Animal Quarantine”). Indeed, one definition of “animal” is written very broadly: “[a]nimal’ means any invertebrate or vertebrate species of the animal kingdom including but not limited to mammal, bird, fish, reptile, mollusk, crustacean, insect, mite, and nematode, other than common domestic animal such as dog and cat.” HRS § 150A-2. Clearly, the Legislature is capable of drafting an all-encompassing definition if it chooses to do so. Nowhere has the Legislature included nonhuman animals in the definition of people.

Simply put, elephants are not statutorily eligible for a writ of habeas corpus.

B. Petitioner fails to state a claim because habeas corpus is only available to human beings under the common law.

The Legislature has set forth a procedure for issuing writs of habeas corpus in HRS chapter 660; consequently, if any common law principles differ from the language of chapter 660, it is unclear whether such differing common law principles would still apply. *See* HRS § 1-1 (“The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, *except as otherwise expressly provided* by the Constitution or laws of the United States, or *by the laws of the State . . .*” (emphases

added)); *Doi v. Hawaiian Ins. & Guar. Co.*, 6 Haw. App. 456, 465, 727 P.2d 884, 890 (1986) (“[S]tatutes in derogation of the common law must be strictly construed and, where it does not appear that there was a legislative purpose in the statute to supersede the common law, the common law applies.”).

Even if this Court were to rely solely on English common law, however, Petitioner’s claims would still fail for the same reason: the ancient writ of habeas corpus was (and is) only available to human beings. *See, generally, In re Apuna*, 6 Haw. 732, 735-736 (1869) (“The rights of *persons* in this Kingdom under writs of *habeas corpus* are. . . as fully secured by Constitutional and Statutory provisions as if the famous English guaranties and enactment. . . were spread upon our statute books The writ of *habeas corpus* enjoyed here is the same in substance with the original writ as secured and vivified by the English Acts, Bills and Charters.” (emphasis added)). Across the nation, courts have reflected on the common law derived from England and determined that nonhuman animals are not entitled to the protections it confers onto persons. The writ has never in the long history of English and American courts been made applicable to nonhuman animals. For example, as the New York State Court of Appeals explained:

[D]espite the awesome power of the writ of habeas corpus and its enduring use throughout the centuries, no court of this state—or any other—has ever held the writ applicable to a nonhuman animal. Nothing in our precedent or, in fact, that of any other state or federal court, provides support for the notion that the writ of habeas corpus is or should be applicable to nonhuman animals. . . . [T]he Great Writ protects the right to liberty of humans *because* they are humans with certain fundamental liberty rights recognized by law. . . . While it is true that the courts—not the legislature—ultimately define the scope of the common-law writ of habeas corpus. . . [the statutory distinctions between human beings and nonhuman animals] reflect the abiding view that nonhuman animals are not persons with a common-law right to liberty that may be secured through a writ of habeas corpus.

Nonhuman Rights Project, Inc. ex rel. Happy v. Breheny, 197 N.E.3d 921, 927-931. *Accord Justice v. Vercher*, 518 P.3d 131, 136 (Or. Ct. App. 2022) (“Under the English common law, only human beings and legal entities created by human beings were considered ‘persons’ capable of holding and asserting legal rights”); *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, 216 A.3d 839, 840 (Conn. App. Ct. 2019), *leave to appeal denied*, 217 A.3d 635 (Conn. 2019) (“[T]here is no instance in our common law in which a nonhuman animal or representative for it has been permitted to bring a lawsuit to vindicate the animal’s own purported rights, and animals under Connecticut law, as in all other states, have generally been regarded as personal property; moreover, because an elephant is incapable of bearing duties and social responsibilities, as required under the social compact theory.”).

Under the common law derived from England and developed in the United States, and applied in Hawai‘i, the writ of habeas corpus offers protections to human beings only. No court has expanded its application to nonhuman animals.

V. CONCLUSION

Petitioner may advocate for policy changes at the Legislature and City Council, but Petitioner cannot use a habeas petition to accomplish its policy goals. The City respectfully requests that the Petition be dismissed in its entirety, with prejudice.

DATED: Honolulu, Hawai‘i, November 20, 2023.

DANA M.O. VIOLA
Corporation Counsel

By /s/Patricia A.V. Sendao
DANIEL M. GLUCK
JACQUELINE M. DE LEEUW HUANG
PATRICIA A.V. SENDAO
Deputies Corporation Counsel
Attorneys for Respondents

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DIRECTOR, LINDA SANTOS,

Respondents.

CIVIL NO. 1CCV-23-0001418

NOTICE OF HEARING AND
CERTIFICATE OF SERVICE

NOTICE OF HEARING

TO: Cheryl Nolan, Esq.
611 Pennsylvania Avenue, SE #345
Washington, DC 20003
Email: cnolan@nolananimallaw.com

NOTICE IS HEREBY GIVEN that the above-identified **MOTION TO DISMISS** shall come on for hearing before the Honorable Gary W. B. Chang, Judge of the above-entitled Court, in his courtroom in the Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i, on Tuesday, January 16, 2024, at 3:00 p.m. (HST), or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai‘i, November 20, 2023.

DANA M.O. VIOLA
Corporation Counsel

By /s/Patricia A.V. Sendao
DANIEL M. GLUCK
JACQUELINE M. DE LEEUW HUANG
PATRICIA A.V. SENDAO
Deputies Corporation Counsel
Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon the following by the Judiciary
Electronic Filing System (JEFS) on November 20, 2023:

Cheryl Nolan, Esq.
611 Pennsylvania Avenue, SE #345
Washington, DC 20003
Email: cnolan@nolananimallaw.com

DATED: Honolulu, Hawai‘i, November 20, 2023.

DANA M.O. VIOLA
Corporation Counsel

By /s/Patricia A. V. Sendao
DANIEL M. GLUCK
JACQUELINE M. DE LEEUW HUANG
PATRICIA A.V. SENDAO
Deputies Corporation Counsel
Attorneys for Respondents