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2025 CO 3

No. 24SA21, ***Nonhuman Rights Project v. Cheyenne Mountain Zoo*****—Habeas Corpus—Standing**

This direct appeal of the dismissal of a habeas corpus proceeding requires the court to decide whether the liberty interests protected by the great writ of habeas corpus extend to nonhuman animals. Petitioner Nonhuman Rights Project, Inc. contends that the district court erred in dismissing its habeas petition because the five elephants that are the subject of the petition, Missy, Kimba, Lucky, LouLou, and Jambo, lacked standing to seek relief via the great writ.

The court now concludes that the district court correctly held that Colorado's habeas statute, § 13-45-102, C.R.S. (2024), only applies to persons, and not to nonhuman animals, no matter how cognitively, psychologically, or socially sophisticated they may be. Accordingly, the court affirms the judgment of the district court.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 3

Supreme Court Case No. 24SA21
Certiorari to the District Court
El Paso County District Court Case No. 23CV31236
Honorable Eric Bentley, Judge

Petitioner-Appellant:

Nonhuman Rights Project, Inc.,

v.

Respondents-Appellees:

Cheyenne Mountain Zoological Society and Bob Chastain.

Judgment Affirmed
en banc
January 21, 2025

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ, JUSTICE BOATRIGHT, JUSTICE GABRIEL, JUSTICE HART, AND JUSTICE SAMOUR** joined.
JUSTICE HOOD did not participate.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 This case comes to us on direct appeal of the dismissal of a habeas corpus proceeding. The appeal requires us to decide whether the liberty interests protected by the great writ of habeas corpus extend to nonhuman animals. Petitioner Nonhuman Rights Project, Inc. ("NRP") contends that the district court erred in dismissing its habeas petition because the five elephants that are the subject of the petition, Missy, Kimba, Lucky, LouLou, and Jambo ("the elephants"), lacked standing to seek relief via the great writ.

¶2 For the reasons detailed below, we conclude that the district court correctly held that Colorado's habeas statute only applies to persons, and not to nonhuman animals, no matter how cognitively, psychologically, or socially sophisticated they may be. Accordingly, we affirm the judgment of the district court.

I. Background and Procedural History

¶3 Missy, Kimba, Lucky, LouLou, and Jambo are five elderly African elephants that live at the Cheyenne Mountain Zoo ("CMZ"). NRP, a nonprofit corporation that identifies its mission as seeking to secure legal rights for highly intelligent nonhuman animals, filed a Verified Petition for Writ of Habeas Corpus ("Petition") on behalf of the elephants to secure their transfer to a "suitable elephant sanctuary." In its Petition, NRP asserted that the elephants were unlawfully confined at the CMZ by respondents Cheyenne Mountain Zoological

Society and its President and CEO Bob Chastain (the "Zoo"). NRP argued that the elephants have a right to bodily liberty because they are autonomous and extraordinarily cognitively and socially complex beings.

¶4 To support its request, NRP submitted affidavits from seven animal biologists. According to the affidavits, elephants are autonomous animals that generally have complex biological, psychological, and social needs. Their brains, which are the largest in absolute size of any land animal, hold nearly as many cortical neurons (used to control executive functioning) as humans' brains. Elephants, the affiants explain, share numerous cognitive capacities with humans, including self-awareness, empathy, awareness of death, intentional communication, and the ability to learn and categorize. They are, as well, highly social animals that have the capacity to form long-lasting memories. This ability allows elephants to gather and retain extensive social knowledge that accumulates with age.

¶5 The affiants further observe that elephants are adept at communication, using as many as forty-seven different call types and more than three hundred gestures, signals, and postures to share knowledge and information with each other. In the wild, elephants travel tens of kilometers a day across diverse terrain in highly organized social groups. And, according to one of the affidavits submitted by NRP, when deprived of exercise, a varied environment, and the

social opportunities that the wild provides, elephants suffer from chronic frustration, boredom, and stress, resulting over time in physical disabilities, psychological disorders, and, often, brain damage.

¶6 The Zoo filed a motion to dismiss the Petition for lack of subject matter jurisdiction and failure to state a claim on which relief may be granted. In its motion to dismiss, the Zoo vigorously disputed the factual allegations in the Petition, pushing back against the suggestion that the elephants were receiving anything short of remarkable care. It argued that there was no legal basis for habeas relief because the liberty interest guaranteed by the writ of habeas corpus does not extend to nonhuman animals and because the elephants at CMZ are not unlawfully confined. Further, the Zoo argued that the court lacked subject matter jurisdiction over the claim because the elephants do not have standing to seek habeas relief.

¶7 The district court granted the Zoo's motion to dismiss. As required in ruling on a motion to dismiss, the court accepted the allegations in NRP's Petition as true, including its assertion that elephants cannot function normally in captivity. Addressing NRP's argument that the common law has historically been used to extend the writ of habeas corpus, the court noted that no U.S. court has extended the right to nonhuman animals and, regardless, that the right to habeas corpus in Colorado is a creature of statute.

¶8 Turning to that statute, the court concluded that section 13-45-101, C.R.S. (2024), only authorizes habeas relief for "any person" and does not extend to nonhuman animals like the elephants. Thus, the court held that the elephants did not have standing to seek habeas relief and therefore the court did not have subject matter jurisdiction to hear the case. The court additionally determined that NRP did not have proper next friend status to bring a habeas petition on the elephants' behalf because it failed to establish that it was in a better position to speak for the elephants than the Zoo.

¶9 Lastly, the court concluded that even if the elephants, through NRP, had standing to bring the habeas petition, NRP still had to make a prima facie showing that the elephants are unlawfully confined and entitled to immediate release. To make this showing, the court explained, a petitioner must produce "evidence that, when considered in a light most favorable to the petitioner and when all reasonable inferences therefrom are drawn in the petitioner's favor, would permit the court to find that the petitioner is entitled to release." *Cardiel v. Brittian*, 833 P.2d 748, 752 (Colo. 1992).

¶10 The court acknowledged that, accepting NRP's allegations as true, it had demonstrated the elephants would be better off in an accredited elephant sanctuary. But it further determined that NRP failed to prove that the elephants were being confined in violation of any cognizable legal standard. Indeed, the

court noted that "the Zoo holds the[] elephants under a broad framework of laws that permit zoos to hold nonhuman animals for public display in exactly the manner the Zoo is doing." NRP did not, the court noted, assert that the Zoo was violating any of those laws or standards. After explaining that a petition for writ of habeas corpus must be dismissed if it is insufficient on its face, § 13-45-101, the court granted the Zoo's motion to dismiss, concluding that the elephants lack standing to bring a habeas petition, but that even if they had standing, they are not unlawfully confined.

¶11 NRP directly appealed the district court's order.[1] For the reasons discussed below, we affirm.

II. Analysis

¶12 This case requires us to determine whether the liberty interests protected by the writ of habeas corpus extend to nonhuman animals. We begin by addressing our jurisdiction to resolve this appeal. Then, we set out the appropriate standard of review. Next, we address the historical development of the writ of habeas corpus in the common law as well as in Colorado's writ of habeas corpus statute. We then discuss subject matter jurisdiction and the requirements for standing.

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[1] The issues on appeal are as follows:

1. Does the Petition make a prima facie case that Missy, Kimba, Lucky, LouLou, and Jambo are entitled to release?
2. Did the district court have subject matter jurisdiction?

Finally, applying the relevant statutes and case law, we affirm the district court's holding that the elephants do not have standing because, as we explain, habeas corpus relief in Colorado is available only to persons, not nonhuman animals.

A. Jurisdiction

¶13 This case comes to us on direct appeal of the dismissal of a habeas corpus proceeding. Colorado's habeas corpus statute allows for the filing of a habeas petition by any person who is being unlawfully detained by anyone, whether a state actor or not. § 13-45-102, C.R.S. (2024). We have direct appellate jurisdiction over habeas corpus proceedings pursuant to article VI, section 2(1) of the Colorado Constitution (giving the supreme court appellate jurisdiction and a "general superintending control over all inferior courts") and section 13-4-102(1)(e), C.R.S. (2024) (prohibiting the Colorado Court of Appeals from having initial jurisdiction over appeals from final judgments of writs of habeas corpus). *See also Diehl v. Weiser*, 2019 CO 70, ¶ 8, 444 P.3d 313, 316 ("We have jurisdiction over appeals from habeas corpus proceedings.").

B. Standard of Review

¶14 A C.R.C.P. 12(b)(1) motion to dismiss challenges a court's subject matter jurisdiction. When, as here, the resolution of the jurisdictional challenge involves no disputed facts and instead presents a question of law, we review the district court's ruling on a motion to dismiss de novo. *Jones v. Williams*, 2019 CO 61, ¶ 7,

443 P.3d 56, 59. Likewise, we review de novo issues of statutory interpretation. *Godinez v. Williams*, 2024 CO 14, ¶ 19, 544 P.3d 1233, 1237. In interpreting a statutory requirement, we must give effect to the General Assembly's intent by first turning to the text and giving words their plain and ordinary meanings. *Jones*, ¶ 7, 443 P.3d at 59 (citing *Colorow Health Care, LLC v. Fischer*, 2018 CO 52M, ¶ 11, 420 P.3d 259, 262). If the language is clear and unambiguous, then our analysis ends there. *Diehl*, ¶ 13, 444 P.3d at 317.

C. The Great Writ

¶15 Embodying the decree in the Magna Carta that no man would be imprisoned contrary to the law of the land, the writ of habeas corpus developed, albeit painstakingly, over hundreds of years of English constitutional history. *Boumediene v. Bush*, 553 U.S. 723, 740 (2008). "The writ was known and used in some form at least as early as the reign of Edward I" in the thirteenth century. *Id.* "Over the centuries it has been the common law world's 'freedom writ' by whose orderly processes the production of a prisoner in court may be required and the legality of the grounds for his incarceration inquired into, failing which the prisoner is set free." *Smith v. Bennett*, 365 U.S. 708, 712–13 (1961).

¶16 The writ "became 'an integral part of our common-law heritage' by the time the Colonies achieved independence and received explicit recognition in the Constitution." *Rasul v. Bush*, 542 U.S. 466, 473–74 (2004) (citation omitted)

(quoting *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973)). "The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." *Boumediene*, 553 U.S. at 739.

¶17 The writ of habeas corpus was first referred to as the "great writ" by Chief Justice Marshall in *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 96 (1807), because of its role in preserving freedom against illegal restraint. The right to habeas corpus has been described as "the greatest of all writs" and the "precious safeguard of personal liberty." *Geer v. Alaniz*, 331 P.2d 260, 261 (Colo. 1958) (first quoting *People ex rel. Sabatino v. Jennings*, 158 N.E. 613, 614 (N.Y. 1927); and then quoting *Bowen v. Johnston*, 306 U.S. 19, 26 (1939)). The writ's "history is inextricably intertwined with the growth of fundamental rights of personal liberty." *Fay v. Noia*, 372 U.S. 391, 401 (1963), *overruled in part on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977). It 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." *Peyton v. Rowe*, 391 U.S. 54, 66 (1968). The writ's "function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints." *Fay*, 372 U.S. at 401–02. To that end, the writ has profound historical importance as a means to challenge various forms of unjust detention.

¶18 In Colorado, a court's authority "to hear habeas corpus petitions derives from constitutional and statutory grants of authority." *Jones*, ¶ 9, 443 P.3d at 59. While the Colorado Constitution "grants the right to seek a writ of habeas corpus," the statute "makes it 'lawful . . . to apply to the . . . district courts for a writ of habeas corpus.'" *Id.* (omissions in original) (first citing Colo. Const. art. II, § 21; and then quoting § 13-45-101(1)). Thus, both the "Habeas Corpus [Statute] and the rules of this court delineate the right which may be enforced with the Great Writ of Habeas Corpus, and the procedure which is to be followed." *Ryan v. Cronin*, 553 P.2d 754, 755 (Colo. 1976). This court has expressly stated that the habeas corpus statute "carefully defines the circumstances under which the relief authorized thereby may be granted. The intervention by the judiciary . . . is reserved for [the] most serious violations of fundamental rights . . . ." *White v. Rickets*, 684 P.2d 239, 241 (Colo. 1984).

¶19 While habeas corpus petitions are typically filed to seek the liberty of persons held in criminal custody by the state, Colorado's habeas corpus statutes also allow for the filing of a habeas petition by any person who is being unlawfully detained by anyone, whether a state actor or not.[2] With this background in mind,

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[2] There are two habeas corpus statutes in Colorado. Section 13-45-101 grants a person the right to apply for a writ of habeas corpus in criminal matters. It also describes the procedures required when a writ is filed. In contrast, section 13-45-102 provides for habeas relief in *civil* cases but states that the "same

we turn to the requirements for a party to have standing and to the issue of subject matter jurisdiction.

D. Standing and Subject Matter Jurisdiction

¶20 "Standing represents a challenge to the court's subject matter jurisdiction." *Lobato v. State*, 218 P.3d 358, 368 (Colo. 2009). As a preliminary matter, a plaintiff must have standing to sue in order to bring a legal action. *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004). Thus, standing is a threshold issue that "must be determined prior to a decision on the merits." *Hickenlooper v. Freedom from Religion Found., Inc.*, 2014 CO 77, ¶ 7, 338 P.3d 1002, 1006 (citing *Ainscough*, 90 P.3d at 855).

¶21 To have standing under Colorado law, "(1) the party must have suffered injury-in-fact; and (2) this injury must be to a legally protected interest." *Aurora Pub. Schs. v. A.S.*, 2023 CO 39, ¶ 26, 531 P.3d 1036, 1044. If the court determines that a plaintiff does not have standing, it must dismiss the case. *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977). We review de novo whether a plaintiff has standing to sue. *Ainscough*, 90 P.3d at 856.

III. Application

¶22 NRP contends that the district court erred in dismissing its Petition because nonhuman animals are entitled to habeas protection. We disagree.

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proceedings shall thereupon be had in all respects as are directed in section 13-45-101." For clarity and ease of reading, we refer to both throughout this opinion as Colorado's habeas corpus statute.

¶23 As noted, in Colorado, the right to habeas corpus is defined by statute. Thus, the question before us is "whether [the legislature] has passed a statute actually [granting standing to nonhuman animals]." *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1176 (9th Cir. 2004). The statute at issue here authorizes habeas petitions by *persons* detained in circumstances other than criminal matters. It states, in relevant part:

> When any *person* not being committed or detained for any criminal or supposed criminal matter is confined or restrained of his liberty under any color or pretense whatever, he may proceed by appropriate action as prescribed by the Colorado rules of civil procedure in the nature of habeas corpus which petition shall be in writing, signed by the party or some person on his behalf, setting forth the facts concerning his imprisonment and wherein the illegality of such imprisonment consists, and in whose custody he is detained. The petition shall be verified by the oath or affirmation of the party applying or some other person on his behalf.

§ 13-45-102 (emphasis added).

¶24 Colorado's habeas corpus statute does not define the term "person." It is, however, defined by section 2-4-401, C.R.S. (2024), which contains definitions that "apply to every statute, unless the context otherwise requires." Under section 2-4-401(8), "'Person' means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity." Looking to the dictionary, the term "person" is defined as an individual human being. *See Person*, Black's Law Dictionary (12th ed. 2024) ("[a] human being"); *Person*, Merriam-

Webster Dictionary, https://www.merriam-webster.com/dictionary/person [https://perma.cc/6AX5-9MCH] ("human, individual").

¶25 Given the statutory definition of the term "person" and the plain and ordinary meaning of the term found in the dictionary, we conclude that the General Assembly's choice of the word "person" demonstrates its intent to limit the reach of section 13-45-102 to human beings. Our conclusion is further bolstered by the fact that including nonhuman animals in the definition of the term "person" is the type of monumental change in the law that one would reasonably expect the General Assembly to make explicit. That is, "[i]f [the General Assembly] intended to take the extraordinary step of authorizing animals as well as people . . . to sue, they could, and should, have said so plainly." *Cetacean Cmty.*, 386 F.3d at 1179 (first alteration in original) (quoting *Citizens to End Animal Suffering & Exploitation, Inc. v. New England Aquarium*, 836 F. Supp. 45, 49 (D. Mass. 1993)). By stating that the statute applies to "any *person*," the legislature made clear to whom the statute applies. It does not include nonhuman animals.

¶26 NRP urges us to look to the common law, not to section 13-45-102, to determine the substantive scope of the elephants' habeas corpus rights. According to NRP, the common law writ of habeas corpus provides relief far broader than that provided by Colorado's habeas corpus statute. Again, we disagree. Regardless of how broadly the writ was used in colonial times or well before then,

we need not look to the common law here because Colorado's habeas corpus statute explicitly limits the right to habeas corpus relief in Colorado to "person[s]." *See Jones*, ¶ 9, 443 P.3d at 59; *Ryan*, 553 P.2d at 755; *White*, 684 P.2d at 241.

¶27 Indeed, even if the right to habeas corpus relief in Colorado was defined solely by the common law, we would still not be persuaded. This is because nothing in the common law supports NRP's position, which rests primarily on a concurring opinion and two dissenting opinions in its unsuccessful efforts to extend the writ of habeas corpus to nonhuman animals. *See Nonhuman Rts. Project, Inc. v. Lavery*, 100 N.E.3d 846, 846–49 (N.Y. 2018) (Fahey, J., concurring); *Nonhuman Rts. Project, Inc. v. Breheny*, 197 N.E.3d 921, 932–66 (N.Y. 2022) (Wilson, J., dissenting); *Breheny*, 197 N.E.3d at 966–77 (Rivera, J., dissenting). We are not alone in rejecting NRP's attempt to extend the great writ to nonhuman animals. NRP has commenced similar legal proceedings in many other states on behalf of elephants and chimpanzees living in zoos and other facilities. Every one of its petitions for writ of habeas corpus has been denied for the same or very similar reasons.

¶28 For example, in *Breheny*, NRP sought habeas corpus relief on behalf of Happy, an elephant residing at the Bronx Zoo. 197 N.E.3d at 923. There, the court dismissed the petition after it held that the right to habeas corpus does not extend

to nonhuman animals as it protects "the right to liberty of humans *because* they are humans with certain fundamental liberty rights recognized by law." *Id.* at 927.

¶29 In *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, 216 A.3d 839, 840, 844 (Conn. App. Ct. 2019), the court dismissed NRP's petition for a writ of habeas corpus on behalf of three elephants, Beulah, Minnie, and Karen, at the Commerford Zoo. The court examined its habeas corpus jurisprudence and stated that there is "no indication that habeas corpus relief was ever intended to apply to a nonhuman animal, irrespective of the animal's purported autonomous characteristics." *Id.* at 844. Further, the court held that elephants are "incapable of bearing duties and social responsibilities" required by the social compact that forms the Connecticut Constitution and therefore the three elephants did not have standing. *Id.* at 845; *see also Lavery*, 100 N.E.3d at 846 (denying a motion for leave to appeal the dismissal of habeas corpus proceedings brought on behalf of Tommy and Kiko, two chimpanzees).

¶30 Simply put, no Colorado court, nor any other court in any other jurisdiction in the United States has ever recognized the legal "personhood" of any nonhuman species.[3]

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[3] The one possible exception was walked back in 2004 by the Ninth Circuit, which described its suggestion in a 1988 opinion that an endangered Hawaiian bird had "legal status," *Palila v. Haw. Dep't of Land & Nat. Res.*, 852 F.2d 1106, 1107 (9th Cir.

¶31 Courts have rejected these types of claims, among other reasons, due to concerns regarding the unintended consequences of recognizing nonhuman animals as persons. As the *Breheny* majority recognized, "[g]ranting legal personhood to a nonhuman animal . . . would have significant implications for the interactions of humans and animals in all facets of life, including risking the disruption of property rights, the agricultural industry[,] . . . and medical research efforts." 197 N.E.3d at 929; *see, e.g.*, *Lewis v. Burger King*, 344 Fed. App'x 470, 472 (10th Cir. 2009) (holding "Lady Brown Dog, as a dog and putative co-plaintiff, lacks standing to sue under the ADA (or any other civil rights statute)."). We recognize these concerns, but far more importantly, we are persuaded that if the General Assembly intended to recognize nonhuman animals as persons entitled to habeas relief, it would have explicitly said so.

¶32 We are also unpersuaded by NRP's assertion that habeas corpus relief is based on a being's autonomous capacity. Habeas protections flow from the status of being a person, not from a being's ability to pass some type of autonomous capacity test. As the *Breheny* majority observed:

> The selective capacity for autonomy, intelligence, and emotion of a particular nonhuman animal species is not a determinative factor in whether the writ is available as such factors are not what makes a person detained qualified to seek the writ. Rather, the great writ

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1988), as non-binding dicta that was "little more than rhetorical flourish[]." *Cetacean Cmty.*, 386 F.3d at 1174.

> protects the right to liberty of humans *because they are humans* with certain fundamental liberty rights recognized by law. . . .

197 N.E.3d at 927 (emphasis added).

¶33 Finally, we observe that NRP is not actually seeking the right to liberty—that is, freedom from captivity—for the elephants. It conceded as much during oral argument, acknowledging that it was not suggesting that the Zoo should open its gates and set the elephants loose to roam free in Colorado Springs and beyond, any more than it was suggesting that very smart dogs could not be "kept" as house pets. Instead, it asked to transfer the elephants from the Zoo to a different confinement. The fact that NRP merely seeks the transfer of the elephants from one form of confinement to another is yet another reason that habeas relief is not appropriate here. *See White*, 684 P.2d at 242.

¶34 It bears noting that the narrow legal question before this court does not turn on our regard for these majestic animals generally or these five elephants specifically. Instead, the legal question here boils down to whether an elephant is a person as that term is used in the habeas corpus statute. And because an elephant is not a person, the elephants here do not have standing to bring a habeas corpus claim.

¶35 This is why the district court correctly concluded that it lacked subject matter jurisdiction and had no choice but to dismiss NRP's Petition. Since the elephants do not have standing, we need not reach the question of whether the

Petition sets forth a prima facie case for their immediate release from the Zoo. Last, we emphasize, like every other court that has considered a similar appeal by NRP, that its efforts to expand existing legal rights for nonhuman animals—including for Missy, Kimba, Lucky, LouLou, and Jambo—are best advanced through the legislative, not judicial, branch.

IV. Conclusion

¶36 The district court properly concluded that Colorado's writ of habeas corpus does not apply to nonhuman animals. We therefore affirm.