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**Pro hac vice* applicant

Attorneys for Angeline, Savanna, Tasha, Victoria and Zuri

**IN THE COURT OF COMMON PLEAS
FOR ALLEGHENY COUNTY**

CIVIL DIVISION

NONHUMAN RIGHTS PROJECT, INC., on)
behalf of Angeline, Savanna, Tasha, Victoria, and)
Zuri, individuals,)

Petitioner,)

v.)

ZOOLOGICAL SOCIETY OF PITTSBURGH,)
which owns and operates the Pittsburgh Zoo; and)
DR. JEREMY GOODMAN, the CEO and President)
of the Pittsburgh Zoo,)

Respondents.)

Civil Case No. _____

**VERIFIED PETITION FOR A
COMMON LAW WRIT OF
HABEAS CORPUS**

VERIFIED PETITION FOR A COMMON LAW WRIT OF HABEAS CORPUS

Petitioner Nonhuman Rights Project, Inc. (“NhRP”) on behalf of female African elephants

Angeline, Savanna, Tasha, Victoria, and Zuri,¹ by and through undersigned counsel, hereby petitions this Honorable Court for the elephants' release from the custody of the Zoological Society of Pittsburgh, and their confinement at the Pittsburgh Zoo & Aquarium ("Pittsburgh Zoo"), on a Verified Petition for a Common Law Writ of Habeas Corpus ("Petition"), pursuant to 42 Pa.C.S. § 6501 et seq. and Allegh. L. R. No. 301 et seq., and as grounds therefor avers as follows:

I. INTRODUCTION

1. The fundamental right to bodily liberty—in other words, the protection of one's autonomy—is the most sacred and carefully guarded right under the common law. The Court must decide whether to affirm this sacredness and its accompanying protection by granting five autonomous and extraordinarily cognitively complex individuals the ability to come before it and plead for their freedom. If it chooses not to protect Angeline, Savanna, Tasha, Victoria, and Zuri—although they are autonomous and deserving of protection—because they walk on four legs and have trunks, the common law, and by extension this Court, will forever be weaker.
2. "Frans de Waal once complained of our 'tendency to compare animal behavior with the most dizzying accomplishments of our race and to be smugly satisfied when a thousand monkeys with a thousand sand typewriters do not come close to Shakespeare.'" STEVEN M. WISE, *RATTLING THE CAGE* 116 (Da Capo Press, 2000) (citation omitted). "If fundamental rights turned on the ability to write prose like Shakespeare or poetry like Dante, to do science like Einstein or mathematics like Newton, to sculpt like Michelangelo or paint like Leonardo, to

¹ A petition for a writ of habeas corpus may be brought on behalf of more than one individual. *Com. ex rel. Paulinski v. Isaac*, 483 Pa. 467, 473 n.2 (1979) ("[A]ppellants argue that the trial court's order should be vacated because no habeas corpus proceeding should be brought on behalf of more than one relator." "[A] New York court has expressly rejected this proffered rule . . . and the federal courts consistently reach the merits of habeas petitions brought on behalf of more than one relator. We follow these jurisdictions.") (citations omitted).

demonstrate the insight of Freud or the political skills of Lincoln, few humans would have them.” *Id.* “But because fundamental liberties and equality are universal among humans, they must turn on something else.” *Id.* “[T]his ‘something else’ is not their membership in the species *Homo sapiens* but their autonomy.” *Id.* The fundamental rights of a[n] [elephant] should turn on the same thing.” *Id.*

3. In June of 2022, the now Chief Judge of New York State’s highest court (the New York Court of Appeals), Rowan Wilson, and his colleague, Judge Jenny Rivera, found the common law writ of habeas corpus was available to an elephant for challenging her unjust confinement at the Bronx Zoo. *See Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 577-626 (N.Y. 2022) (Wilson, J., dissenting); *id.* at 626-42 (Rivera, J., dissenting). Both judges refuted the irrational and arbitrary notion that only members of the species *Homo Sapiens* may invoke the protections of the Great Writ, recognizing that as societal norms and knowledge about nonhuman animals evolve, the common law must also evolve.
4. As in New York, the Great Writ is a common law writ in Pennsylvania. There is nothing prohibiting its application to individuals like Angeline, Savanna, Tasha, Victoria, and Zuri.² “The essential characteristic of the common law . . . is its flexibility. Under the common law, we are not powerless to cope with novel situations.” *Com. v. Keller*, 35 Pa. D. & C.2d 615 (Quar. Sess. 1964). “More broadly, novel common law cases—of which habeas is a subset—have advanced the law in countless areas.” *Breheny*, 38 N.Y.3d at 584 (Wilson, J., dissenting).

² Even if such a rule existed, “it is the peculiar genius of the common law that no legal rule is mandated by the doctrine of *stare decisis* when that rule was conceived in error or when the times and circumstances have so changed as to render it an instrument of injustice.” *Flagiello v. Pennsylvania Hosp.*, 417 Pa. 486, 512 (1965) (citation omitted). “While age adds venerableness to moral principles and some physical objects, it occasionally becomes necessary, and it is not sacrilegious to do so, to scrape away the moss of the years to study closely the thing which is being accepted as authoritative, inviolable, and untouchable.” *Id.*

The argument—“‘this has never been done before’—is an argument against all progress, one that flies in the face of legal history. The correct approach is not to say, ‘this has never been done’ and then quit, but to ask, ‘should this now be done even though it hasn’t before, and why?’” *Id.*

5. Through this Petition, Angeline, Savanna, Tasha, Victoria, and Zuri beg this Court to extend to them the protection of Pennsylvania common law against the confinement and inhumanities that have been routinely visited upon them for decades. These five individuals have been shamefully held captive in an unnatural and sterile environment for the sole purpose of zoo profit. They have committed no wrong and yet have been relegated to a life behind bars.
6. The science is clear: like humans, elephants are autonomous and extraordinarily cognitively complex individuals who possess complex biological, psychological, and social needs. Science is also clear that elephants suffer greatly because of their confinement at zoos. The NhRP respectfully submits that it is time for the common law of this state to evolve to allow Angeline, Savanna, Tasha, Victoria, and Zuri to obtain habeas corpus relief from their inherently unjust confinement.
7. The NhRP seeks this Court’s recognition of the elephants’ common law right to bodily liberty protected by habeas corpus and no other right. However, the Court does not need to decide the case’s merits at the outset. To formally begin this habeas corpus proceeding, the Court must issue an order to show cause (“OSC”). The issuance of an OSC means the Court has correctly assumed (without deciding) that the elephants *could* have the common law right to bodily liberty and that a prima facie case has been made. Upon issuance of the OSC, a hearing date will be set at which time the merits of the Petition will be argued and thereafter adjudicated. *See generally* § VII.

8. If the Court does recognize Angeline, Savanna, Tasha, Victoria, and Zuri’s common law right to bodily liberty, and determines confinement at the Pittsburgh Zoo violates their right to bodily liberty, the Court must order them rewilded or released to an elephant sanctuary accredited by the Global Federation of Animal Sanctuaries (“GFAS”). At a rewilding center or at a GFAS-accredited sanctuary, all five elephants can live as nature intended by exercising their autonomy and extraordinary cognitive complexity to the greatest extent possible for the remainder of their lives.
9. Refusing to issue an OSC and thereby not holding a hearing would be a “refusal to confront a manifest injustice.” *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1059 (N.Y. 2018) (Fahey, J., concurring).

II. PARTIES

10. Petitioner NhRP is a 501(c)(3) non-profit corporation incorporated in the State of Massachusetts, with a principal address at 611 Pennsylvania Avenue SE #345, Washington, D.C. 20003. The NhRP is the only civil rights organization in the United States dedicated solely to securing legal rights for nonhuman animals. Since 1995, the NhRP has worked to obtain legal rights for autonomous nonhuman animals such as chimpanzees and elephants.
11. Angeline, Savanna, Tasha, Victoria, and Zuri are African elephants and the only elephants at the Pittsburgh Zoo. Their plight as the zoo is described further in ¶¶ 75-85.
 - Angeline is a female African elephant born on July 9, 2008, at the Pittsburgh Zoo. Her entire life has been one of forced captivity behind iron bars. Her mother is Savanna. Angeline is pictured below:



- Savanna is a wild-born, female African elephant. She was born somewhere on the African continent around 1983. She was forcibly removed from her multi-generational, matriarchal herd as a calf in 1985. A year later, she was shipped to the United States. She was held captive at Zoo Miami from June 4, 1990, until June 29, 1992, and since then she has been held captive at the Pittsburgh Zoo. Savanna has been forcibly impregnated three times.³ Savanna is pictured below:

³ Captive breeding programs in zoos remove elephant autonomy over their reproduction, in contrast to the wild where choice is an important component of elephant sexual behavior. Declaration of Michael Pardo (“Pardo Decl.”) ¶ 102. Captive breeding in North American zoos most often occurs via artificial insemination. *Id.* This involves first collecting semen from the male by inserting an arm into his rectum to stimulate his prostate. *Id.* A similarly invasive procedure is then performed on the female to insert the semen into her reproductive tract, often multiple times. *Id.* Elephants are usually restrained (with ropes or chains) during these procedures. *Id.*



- Tasha is a wild-born, female African elephant. She was born in South Africa around December 1976 and, like Savanna, was forcibly removed from her multi-generational, matriarchal herd as a calf in 1978. She arrived at the Pittsburgh Zoo on July 9, 1982. Tasha is pictured immediately below. Savanna and Tasha are pictured in the second image below.



- Victoria is a female African elephant born on September 12, 1999, at the Pittsburgh Zoo. Her entire life has been one of forced captivity behind iron bars. Her sister is Zuri.

Victoria is pictured below:



- Zuri is a female African elephant born on July 25, 2008, at the Pittsburgh Zoo. Her entire life has been one of forced captivity behind iron bars. In 2014, the Pittsburgh Zoo forcibly separated fifteen-year-old Victoria and six-year-old Zuri from their mother, Moja. Moja was then shipped to the Winston Wildlife Safari in Winston, Oregon. Zuri is pictured below.



12. Respondent Zoological Society of Pittsburgh, which owns and operates the Pittsburgh Zoo, is located at P.O. Box 5250, Pittsburgh, PA 15206; Respondent Dr. Jeremy Goodman is the CEO and President of the Pittsburgh Zoo. The Pittsburgh Zoo is located at 7370 Baker Street, Pittsburgh, PA 15206.

III. LIST OF EXHIBITS

13. Eight of the world’s most renowned experts on elephant cognition and behavior have submitted Expert Declarations supporting this Petition. The Expert Declarations, listed below, are attached to the Petition and incorporated herein by reference.

- Exhibit I: April 16, 2025, Declaration of Bob Jacobs, Ph.D. (“Jacobs Decl.”).
- Exhibit II: May 6, 2025, and July 10, 2025, Joint Declaration of Lucy Bates, Ph.D., and Richard M. Byrne, Ph.D. (“Bates & Byrne Decl.”).
- Exhibit III: May 12, 2025, Declaration of Karen McComb, Ph.D. (“McComb Decl.”).
- Exhibit IV: June 10, 2025, Declaration of Cynthia Moss, Sc.D. (“Moss Decl.”).
- Exhibit V: June 18, 2025, Declaration of Joyce Poole, Ph.D. (“Poole Decl.”).
- Exhibit VI: June 25, 2025, Declaration of Michael Pardo, Ph.D. (“Pardo Decl.”)
- Exhibit VII: August 14, 2025, Declaration of Keith Lindsay, Ph.D. (“Lindsay Decl.”).
- Exhibit VIII: September 4, 2025, Declaration of Brett Mitchell (“Mitchell Decl.”).

IV. THE EXPERT DECLARATIONS

14. Elephants have never—and will never—thrive in captivity.⁴ Mitchell Decl. ¶ 11. The continued

⁴ “Elephants are particularly unhappy in zoos, given their great size, social nature and cognitive complexity. Many suffer from arthritis and other joint problems from standing on hard surfaces; elephants kept alone become desperately lonely; and *all* zoo elephants suffer mentally from being cooped up in tiny yards while their free-ranging cousins walk up to 50 miles a day. Zoo elephants tend to die young. At least 20 zoos in the United States have already ended their elephant exhibits in part because of ethical concerns about keeping the species captive.” Emma Marris, *Modern Zoos Are Not Worth the Moral Cost*, N.Y. TIMES (June 11, 2021), <https://bit.ly/3tZBPcx> (emphasis

keeping of elephants at the Pittsburgh Zoo cannot be justified on any basis. Lindsay Decl. ¶ 68. It is inhumane and cruel to subject these sentient beings to continuous control over their lives in such inadequate conditions. *Id.* It is now accepted that elephants experience permanent damage to their brains as a result of the trauma endured in impoverished environments like the Pittsburgh Zoo. *Id.* at ¶ 65 (citation omitted). Angeline, Savanna, Tasha, Victoria, and Zuri are undoubtedly suffering in many ways, including cognitively because they are unable to exercise their extraordinary cognition. *Id.* It is clear to Declarant Dr. Keith Lindsay that the Pittsburgh Zoo facilities (indoor and outdoor) and their management fall far short of fulfilling the physical and psychological needs of the five elephants, including the need to exercise their autonomy. *Id.* at ¶ 48.

A. Elephants are autonomous, possess highly capable brains, and have evolved to live in highly specific environments

15. The Expert Declarations demonstrate that elephants are autonomous because they exhibit self-determined behavior that is based on freedom of choice.⁵ As a psychological concept, autonomy implies that the individual is directing their behavior based on some non-observable, internal cognitive process rather than responding reflexively.⁶

added); *see also Breheny*, 38 N.Y.3d at 642 (Rivera, J., dissenting) (“Happy [the elephant]’s confinement by human beings has never been intended to benefit her but serves only to entertain and satisfy human curiosity, regardless of the loss of freedom to Happy. 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.”). Since 2021, another 20 zoos have ended their elephant exhibits. *See infra* ¶ 205.

⁵ Bates & Byrne Decl. ¶ 30; McComb Decl. ¶¶ 24, 31, 54; Moss Decl. ¶¶ 18, 48; Poole Decl. ¶¶ 22; Pardo Decl. ¶¶ 11, 63, 85.

⁶ Bates & Byrne Decl. ¶ 30; McComb Decl. ¶ 24; Poole Decl. ¶ 22; Moss Decl. ¶ 18.

16. Elephant cognition includes the following attributes—once erroneously considered unique to humans—which are each components of autonomy: empathy; self-awareness; self-determination; theory of mind (awareness others have minds); insight; vocal imitation; working memory; long-term memory; innovative problem-solving; behavioral flexibility; understanding causation; the ability to detect animacy and goal directedness in others; the ability to point and understand pointing; the ability to engage in true teaching (taking the pupil’s lack of knowledge into account and acting accordingly); cooperation, including coalition building and cooperative problem-solving; planning, including the ability to adjust plans according to risk assessment; intentional communication, including vocalizations to share knowledge and information with others, the use of emphasis for particular communications, and speaking to other elephants by using individual names; complex learning and categorization abilities; and finally, an awareness of and response to death, including grieving rituals. *See generally* Poole Decl.; Pardo Decl.
17. Two examples (of which there are many) that illustrate the impressiveness of elephant cognition follow. The first example occurred when researchers (on multiple occasions) presented African savannah elephants with the bones of elephants and other large mammals (giraffes, rhinos, and buffalos); the elephants extensively touched and smelled the elephant bones but ignored the bones of the other species, which indicates that they recognize the remains of their own species even when all soft tissue has rotted away.⁷ The second example occurred when a study documented five Asian elephant calves found partially buried in irrigation ditches with only their legs protruding above ground. Pardo Decl. ¶ 20. The authors

⁷ Pardo Decl. ¶ 17; *see also* Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Moss Decl. ¶ 27; Poole Decl. ¶ 31.

of the study believed the calves were intentionally buried by other elephants and gave five compelling reasons to justify that belief. *Id.* If the calves were buried by other elephants, it would be an unprecedented example of sophisticated funerary behavior comparable only to human funeral practices. *Id.*

18. Elephants possess the largest absolute brain of any land animal.⁸ Even relative to their body sizes, elephant brains are large.⁹ An encephalization quotient (“EQ”) of 1.0 means a brain is exactly the size expected for that body size; values greater than 1.0 indicate a larger brain than expected for that body size.¹⁰ Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species).¹¹ This means an elephant’s brain can be more than twice as large as is expected for an animal of its size; these EQ values are like those of the great apes, with whom elephants have not shared a common ancestor for almost 100 million years.¹²
19. A large brain allows greater cognitive skill and behavioral flexibility.¹³ Typically, mammals are born with brains weighing up to 90% of the adult weight, but this figure drops to about 50% for chimpanzees, and about 27% for humans whose brains increase in size over a prolonged

⁸ Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Moss Decl. ¶ 20; ; Poole Decl. ¶ 24.

⁹ Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Poole Decl. ¶ 24; Moss Decl. ¶ 20 (“Encephalization quotients (EQ) are a standardized measure of brain size relative to body size and illustrate by how much a species’ brain size deviates from that expected for its body size.”).

¹⁰ Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Moss Decl. ¶ 20; Poole Decl. ¶ 24.

¹¹ Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Moss Decl. ¶ 20; Poole Decl. ¶ 24.

¹² Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Moss Decl. ¶ 20; Poole Decl. ¶ 24.

¹³ Bates & Byrne Decl. ¶¶ 32-33; McComb Decl. ¶ 26; Moss Decl. ¶ 20; Poole Decl. ¶ 24.

childhood.¹⁴ This lengthy period of brain development (termed “developmental delay”) is a key feature of human brain evolution; it provides a longer period during which the brain may be shaped by experience and learning, and plays a role in the emergence of complex cognitive abilities such as self-awareness, creativity, planning, decision making, and social interaction.¹⁵ At birth, elephant brains weigh only about 35% of their adult mass; as a result, elephants undergo a similarly protracted period of growth, development, and learning, resulting in the emergence of self-awareness.¹⁶

20. Elephant brains hold nearly as many cortical neurons as human brains, and much more than chimpanzees and bottlenose dolphins.¹⁷ Elephant pyramidal neurons—the class of neurons found in the cerebral cortex, particularly the pre-frontal cortex, which is the brain area that controls executive functions—are larger than in humans and most other species.¹⁸ The term “executive function” refers to one’s controlling operations, examples of which include paying attention, inhibiting inappropriate actions, deciding how to search one’s memory. Bates & Byrne Decl. ¶ 35. The complexity of pyramidal neurons is linked to cognitive ability, with more complex connections between pyramidal neurons being associated with increased cognitive capabilities.¹⁹

¹⁴ Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Moss Decl. ¶ 21; Poole Decl. ¶ 25.

¹⁵ Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Moss Decl. ¶ 21; Poole Decl. ¶ 25.

¹⁶ Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Moss Decl. ¶ 21; Poole Decl. ¶ 25.

¹⁷ Bates & Byrne Decl. ¶ 35; McComb Decl. ¶ 29; Moss Decl. ¶ 23; Poole Decl. ¶ 27 (“Humans: 1.15×10^{10} ; elephants: 1.1×10^{10} ; chimpanzees: 6.2×10^9 ; dolphins: 5.8×10^9 .”).

¹⁸ Bates & Byrne Decl. ¶ 35; McComb Decl. ¶ 29; Moss Decl. ¶ 23; Poole Decl. ¶ 27.

¹⁹ Bates & Byrne Decl. ¶ 36; McComb Decl. ¶ 30; Moss Decl. ¶ 23; Poole Decl. ¶ 28.

21. Pyramidal neurons in elephants are just as complex as similar neurons in the human cortex, and like in humans, these neurons are also more complex in the frontal lobe (involved with higher cognitive function) than in the occipital lobe (involved in the early processing of incoming visual information). Jacobs Decl. ¶ 9. These parallels are remarkable in terms of the overall complexity of neurons and their functional involvement. *Id.*
22. One difference was noted between the cortical neurons in the African elephant and in humans—those in the African elephant appear to extend their branches more broadly than neurons in the human, which tend to be more compact. *Id.* As such, elephant neurons sample a very wide array of information because of the length of their dendrites. *Id.* This broad synthesis of information in the African elephant may contribute to their contemplative nature—elephants often appear to be examining their surroundings and thinking very deeply about what is going on around them. *Id.* They have the leisure of their great size and few natural predators, which allows them to consider their decisions very carefully. *Id.* Primate cortical neurons, by contrast, seem more designed for quick responses to the environment. *Id.* This contemplative aspect of the elephant further supports findings related to how damaging captivity is to the elephant brain. *Id.*
23. Elephants, like humans, great apes, and some cetaceans, possess *Von Economo neurons*, or spindle cells, the so-called “air-traffic controllers for emotions,” in the anterior cingulate, fronto-insular, and dorsolateral prefrontal cortex areas of the brain. Moss Decl. ¶ 24. In humans, these cortical areas are involved with the processing of complex social information, emotional learning and empathy, planning and decision-making, and self-awareness and self-control, among other things. *Id.* The presence of spindle cells in the same brain locations in elephants

and humans strongly implies that these higher-order brain functions, which are the building blocks of autonomous, self-determined behavior, are common to both species. *Id.*

24. Elephants have extensive and long-lasting memories.²⁰ Evidence suggests that elephants can remember bonded social companions for many years, including recognizing familial urine after 27 years of separation and familial calls after 12 years of separation. Pardo Decl. ¶¶ 48-49. In fact, African elephants can remember and recognize the voices of at least 100 other elephants.²¹ Using experimental playback of long-distance contact calls in Amboseli National Park, Kenya, each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average of 14 families in the population.²² When the calls came from the test elephants' own family, they contact-called in response and approached the location of the loudspeaker; when they were from an unrelated but familiar family, one that had been shown to have a high association index with the test group, they listened but remained relaxed.²³ When a test group heard unfamiliar contact calls from groups with a low association index with the test group, the elephants bunched together and retreated from the area.²⁴
25. Declarant Dr. Karen McComb has demonstrated this social knowledge accumulates with age; older females have the best knowledge of the contact calls of other family groups, and older females are better leaders than younger elephants because of their more appropriate decision-

²⁰ Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Moss Decl. ¶ 42; Poole Decl. ¶ 50; Pardo Decl. ¶¶ 45-54.

²¹ Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Moss Decl. ¶ 42; Poole Decl. ¶ 50.

²² Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Moss Decl. ¶ 42; Poole Decl. ¶ 50.

²³ Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Moss Decl. ¶ 42; Poole Decl. ¶ 50.

²⁴ Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Moss Decl. ¶ 42; Poole Decl. ¶ 50.

making in response to potential threats.²⁵ Sensitivity to the roars of male lions increased with increasing matriarch age, with the oldest and most experienced females showing the strongest response to this danger.²⁶ These studies show that elephants continue to learn and remember information about their environments throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they age.²⁷ The experiences elephants gain over a lifetime are shared between members of their strongly bonded social groups through example, teaching, and learning.²⁸

26. Another example of how well-developed working memory is in elephants comes from an experiment in which captive African savannah elephants were trained to match human body scent to a corresponding sample. Pardo Decl. ¶ 54. The elephants were presented with a target scent and tasked with identifying which of the nine scents from different individual humans (some of whom were closely related to each other) matched the target sample. *Id.* They identified the correct scent at an average of 82% and showed no decrease in performance when the target scent was at the end or the beginning of the lineup. *Id.* This success rate contrasts with forensic dogs, who were 15% less likely to make the correct choice when the target scent was near the end of the line-up (although the dogs were only presented with a six-scent lineup compared to the elephants' nine). *Id.* This study suggests that African savannah elephants have a better working memory for scents than trained forensic dogs while also demonstrating

²⁵ Bates & Byrne Decl. ¶ 55; McComb Decl. ¶ 49; Moss Decl. ¶ 43; Poole Decl. ¶ 51.

²⁶ Bates & Byrne Decl. ¶ 55; McComb Decl. ¶ 49; Moss Decl. ¶ 43; Poole Decl. ¶ 51.

²⁷ Bates & Byrne Decl. ¶ 55; McComb Decl. ¶ 49; Moss Decl. ¶ 43; Poole Decl. ¶ 51.

²⁸ Keith Lindsay Declaration ("Lindsay Decl.") ¶ 34.

that elephants can recognize individual humans by smell, including distinguishing between the scents of human relatives. *Id.*

27. Further evidence of elephants' long-term memory emerges from data on their movement patterns; specifically, their search for food and water over vast distances.²⁹ For example, elephants inhabiting the deserts of Namib and Mali travel hundreds of miles to visit remote water sources shortly after the onset of rain, sometimes along routes that have not been used for many years.³⁰ One study of elephants living in the Namib Desert showed the group traveled over 370 miles in five months.³¹ Another study showed different elephants in the same region visited water holes approximately every four days although some watering holes were more than 38 miles apart.³² The movements of elephants are highly directional, and when seeking watering holes elephants move toward the closest option 90% of the time, which is explained by detailed spatial memory of the locations of waterholes. Pardo Decl. ¶ 51.

28. The detailed spatial memory that allows for these remarkable feats of precise travel is a result of exceptional cognitive mapping skills that rely upon the long-term memories of older individuals who likely traveled the same paths decades earlier.³³ This means family groups led by older matriarchs are more likely to survive periods of drought because of their accrued knowledge regarding food and water sources.³⁴ Again, herds led by older matriarchs tend to

²⁹ Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Moss Decl. ¶ 44; Poole Decl. ¶ 52.

³⁰ Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Moss Decl. ¶ 44; Poole Decl. ¶ 52.

³¹ Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Moss Decl. ¶ 44; Poole Decl. ¶ 52.

³² Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Moss Decl. ¶ 44; Poole Decl. ¶ 52.

³³ Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Moss Decl. ¶ 44; Poole Decl. ¶ 52.

³⁴ Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Moss Decl. ¶ 44; Poole Decl. ¶ 52.

be more resilient than herds led by younger matriarchs who do not possess as much spatial mapping for food, water, and other needs.³⁵

29. Studies reveal that long-term memories, and the decision-making mechanisms that rely on this knowledge, are severely disrupted in elephants who have experienced trauma or extreme disruption due to “management” practices initiated by humans.³⁶ For example, South African elephants who experienced the traumas of having herd members “managed” (i.e., culled) decades earlier showed significantly reduced social knowledge.³⁷ As a result of these archaic culling practices, juvenile ‘cull-orphan’ elephants were forcibly separated from family members and subsequently taken to new locations; two decades later, their social knowledge, skills, and decision-making abilities were impoverished compared to an undisturbed Kenyan population.³⁸ Disrupting an elephant’s natural way of life has substantial negative impacts on their knowledge and decision-making abilities.³⁹

30. Elephants show sophisticated categorization of their environment on par with humans.⁴⁰ Declarants Dr. Lucy Bates, Dr. Richard Byrne, Dr. Joyce Poole, and Dr. Cynthia Moss experimentally presented the elephants of Amboseli National Park, Kenya with garments that gave olfactory or visual information about their human wearers, either Maasai warriors who traditionally attack and spear elephants as part of their rite of passage or Kamba men who are

³⁵ Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Moss Decl. ¶ 44; Poole Decl. ¶ 52.

³⁶ Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Moss Decl. ¶ 45; Poole Decl. ¶ 53.

³⁷ Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Moss Decl. ¶ 45; Poole Decl. ¶ 53.

³⁸ Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Moss Decl. ¶ 45; Poole Decl. ¶ 53.

³⁹ Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Moss Decl. ¶ 45; Poole Decl. ¶ 53.

⁴⁰ Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Moss Decl. ¶ 47; Poole Decl. ¶ 55.

agriculturalists and traditionally pose little threat to elephants.⁴¹ In the first experiment, the only thing that differed between the clothes was the smell, derived from the ethnicity and/or lifestyle of the wearers; the elephants were significantly more likely to run away when they sniffed cloths worn by Maasai men than those worn by Kamba men or no one at all.⁴²

31. In a second experiment, they presented the elephants with two cloths that had not been worn by anyone; one was white (a neutral stimulus) and the other red, the color ritually worn by Maasai warriors.⁴³ With access to only these visual cues, the elephants showed significantly greater, sometimes aggressive, reactions to red garments instead of whites; the scientists concluded that elephants are able to categorize a single species (humans) into sub-classes (i.e., “dangerous” or “low risk”) based on either olfactory or visual cues alone.⁴⁴

32. It is further demonstrated that the same elephants distinguish human groups based on their voices; the elephants reacted differently, and appropriately, depending on whether they heard Maasai or Kamba men speaking, and whether the speakers were male Maasai versus female Maasai (who also pose little threat).⁴⁵ Scent, sounds, and visual signs associated specifically with Maasai men are categorized as “dangerous,” while neutral signals are attended to but categorized as “low risk”; these sophisticated, multi-modal categorization skills demonstrate elephants’ acute sensitivity to the human world and how they monitor human behavior and

⁴¹ Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Moss Decl. ¶ 47; Poole Decl. ¶ 55.

⁴² Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Moss Decl. ¶ 47; Poole Decl. ¶ 55.

⁴³ Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Moss Decl. ¶ 47; Poole Decl. ¶ 55.

⁴⁴ Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Moss Decl. ¶ 47; Poole Decl. ¶ 55.

⁴⁵ Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Moss Decl. ¶ 47; Poole Decl. ¶ 55.

learn to recognize when we might cause them harm.⁴⁶

33. Human speech and language reflect autonomous thinking and intentional behavior, and like humans, elephants vocalize to share knowledge and information.⁴⁷ Call types are separated into those produced by the larynx (such as “rumbles”) and calls produced by the trunk (such as “trumpets”), with different calls in each category used in different contexts; field experiments have shown that African elephants distinguish between call types.⁴⁸ For example, such contact calls as “rumbles” may travel kilometers and maintain associations between elephants, or “Estrus-Rumbles” may occur after a female has copulated, and these call types elicit different responses in listeners.⁴⁹

34. Ostensive communication refers to the way humans use behavior, such as tone of speech, eye contact, and physical contact, to emphasize that a particular communication is important. Poole Decl. at ¶ 36. Matriarchs use ostensive communication frequently to say, “Heads up – I am about to do something that you should pay attention to.” *Id.* This means elephant vocalizations are not merely reflexive; they have distinct meanings to listeners and communicate in a manner like the way humans use language.⁵⁰

35. Declarant Dr. Michael Pardo led a study showing that African savannah elephants address each other with individual names. Pardo Decl. ¶ 70. The study indicates that African savannah elephants can determine if a call is intended for them or another individual. *Id.* Evidence further

⁴⁶ Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Moss Decl. ¶ 47; Poole Decl. ¶ 55.

⁴⁷ Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Moss Decl. ¶ 38; Poole Decl. ¶ 42.

⁴⁸ Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Moss Decl. ¶ 38; Poole Decl. ¶ 42.

⁴⁹ Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Moss Decl. ¶ 38; Poole Decl. ¶ 42.

⁵⁰ Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Moss Decl. ¶ 38; Poole Decl. ¶ 42.

suggests that African savannah elephants may be more likely to include names in long-distance rumbles or in rumbles addressed to young calves in a caregiving context, and less likely to use names when greeting adults at a close distance. *Id.* The potentially high prevalence of name-use in calls addressed to young calves raises the possibility that mother elephants actively name their calves. *Id.* at ¶ 71. The existence of names in elephants is a testament to the importance of their social bonds and suggests that they have complex mental representations of other individuals. *Id.* at ¶ 70.

36. Elephants can vocally imitate sounds they hear, from the engines of passing trucks to the commands of human zookeepers.⁵¹ Imitating another's behavior is demonstrative of a sense of self because it is necessary to understand how one's own behavior relates to the behavior of others.⁵² African elephants recognize the importance of visual attentiveness on the part of an intended recipient, elephant or human, and of gestural communication, which further demonstrates that elephant communications are intentional and purposeful.⁵³ This ability to understand the visual attentiveness and perspective of others is crucial for empathy, mental-state understanding, and "theory of mind" (the ability to mentally represent and think about the knowledge, beliefs, and emotional states of others while recognizing that these can be distinct from your own knowledge, beliefs, and emotions).⁵⁴

37. Along with naming and vocal imitation, elephants display more than 300 gestures, signals and

⁵¹ Bates & Byrne Decl. ¶ 51; McComb Decl. ¶ 45; Moss Decl. ¶ 39; Poole Decl. ¶ 47.

⁵² Bates & Byrne Decl. ¶ 51; McComb Decl. ¶ 45; Moss Decl. ¶ 39; Poole Decl. ¶ 47.

⁵³ Bates & Byrne Decl. ¶ 53; McComb Decl. ¶ 47; Moss Decl. ¶ 41; Poole Decl. ¶ 49.

⁵⁴ Bates & Byrne Decl. ¶ 53; McComb Decl. ¶ 37; Moss Decl. ¶ 41; Poole Dec. ¶ 49.

postures that they use to communicate information to their audience.⁵⁵ Such signals are adopted in many contexts, including aggressive, sexual or socially integrative situations; the signals are well-defined, carry a specific meaning both to the actor and recipient, result in predictable responses from the audience, and together demonstrate intentional and purposeful communication intended to share information and/or alter the others' behavior to fit their own will.⁵⁶

38. Elephants use specific calls and gestures to plan and discuss a course of action. Poole Decl.

¶ 44. These calls and gestures might be in response to a threat and result in a group retreating or mobbing action (including a celebration of successful efforts), or they might be intended to discuss a plan for where, when, and how the herd will move to a new location. *Id.* In group-defensive situations, for example, elephants respond with highly coordinated behavior, both rapidly and predictably, to specific calls uttered and gestures exhibited by group members. *Id.* at ¶ 45. These calls and gestures carry specific meanings to elephant listeners and experienced human listeners, and the rapid, predictable, and collective response of elephants to these calls and gestures indicates that elephants have the capacity to understand the goals and intentions of the signaling individual. *Id.* A notable example is the fact that elephants can detect alarm calls from considerable distance and avoid the area where elephant killings by rural villagers or armed gangs take place. Lindsay Decl. ¶ 27.

39. Elephant group defensive behavior is highly evolved and involves a range of different tactical maneuvers adopted by different elephants. Poole Decl. ¶ 45. In one example, matriarch Provocadora's contemplation of Dr. Poole's team through "Listening" and "J-Sniffing,"

⁵⁵ Bates & Byrne Decl. ¶ 52; McComb Decl. ¶ 46; Moss Decl. ¶ 40; Poole Decl. ¶ 43.

⁵⁶ Bates & Byrne Decl. ¶ 52; McComb Decl. ¶ 46; Moss Decl. ¶ 40; Poole Decl. ¶ 43.

followed by her purposeful “Perpendicular-Walk” toward her family (in relation to Dr. Poole’s team) and her “Ear-Flap-Slap,” clearly communicated that her family should begin a “Group-Advance” upon Dr. Poole’s team. *Id.* Provocadora’s instigation of the “Group-Advance” led to a two-and-a-half minute “Group-Charge” in which the three other large adult females of the 36-member family took turns leading the charge, passing the baton, in a sense, from one to the next. *Id.* Once they succeeded in their goal of chasing Dr. Poole’s team away, they celebrated their victory by “High-Fiving” with their trunks and engaging in an “End-Zone-Dance.” *Id.* This confrontation is a powerful example of elephant coalition and cooperation. *Id.*

40. Dr. Poole has also observed elephants using the axis of their body to point in the direction they wish to go, and then vocalize every few minutes with a specific call known as a “Let’s-Go” rumble, i.e., “I want to go this way, let’s go together.” *Id.* at ¶ 46. Elephants will also use intention gestures—such as “Foot-Swinging”—to indicate their intention to move. *Id.* Such a call may be successful or unsuccessful at moving the group or may lead to a 45-minute (or longer) discussion (a series of rumble exchanges known as “Cadenced-Rumbles”) that researchers interpret as negotiations. *Id.* Sometimes such negotiations lead to disagreement that may result in the group splitting and going in different directions for a period of time. *Id.* In situations where the security of the group is at stake, such as when movement is planned through or near human settlement, all group members focus on the matriarch’s decisions. *Id.* While “Let’s Go” rumbles are uttered, others adopt a “Waiting” posture until the matriarch, after much “Listening,” “J-Sniffing,” and “Monitoring,” decides it is safe to proceed; the elephants then bunch together and move purposefully at a fast pace in what’s called a “Group-March.” *Id.*

41. Elephants typically move through dangerous habitat at high speed in a clearly goal-oriented

manner known as “streaking,” which has been described and documented through the movements of elephants wearing satellite tracking collars. *Id.* The many different signals—calls, postures, gestures, and behaviors elephants use to contemplate and initiate such movement (including “Ear-Flap” and “Ear-Flap-Slide”)—are clearly understood by other elephants (just as they can be understood after a long-term study by human observers); they mean very specific things, and they indicate that elephants: 1) have a particular plan which they can communicate with others, 2) can adjust their plan according to their immediate assessment of risk or opportunity, and 3) can communicate and execute the plan in a coordinated manner. *Id.*

42. As do humans, Asian elephants exhibit “mirror self-recognition” (MSR) using Gallup’s classic “mark test,”⁵⁷ MSR is the ability to recognize a reflection in the mirror as oneself, and the mark test involves surreptitiously placing a colored mark on an individual’s forehead that the subject is unaware of without the aid of a mirror.⁵⁸ If the individual uses the mirror to investigate the mark then the individual must recognize the reflection as oneself.⁵⁹
43. MSR is significant because it is a key identifier of self-awareness; self-awareness is intimately related to autobiographical memory in humans and is central to autonomy and being able to direct one’s own behavior to achieve personal goals and desires.⁶⁰ By demonstrating they can

⁵⁷ Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Moss Decl. ¶ 26; Poole Decl. ¶ 30.

⁵⁸ Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Moss Decl. ¶ 26; Poole Decl. ¶ 30.

⁵⁹ Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Moss Decl. ¶ 26; Poole Decl. ¶ 30.

⁶⁰ Bates & Byrne Decl. ¶ 38 (“‘Autobiographical memory’ refers to what one remembers about his or her own life; for example, not that ‘Paris is the Capital of France,’ but the recollection that you had a lovely time when you went there”); McComb Decl. ¶ 32; Moss Decl. ¶ 26; Poole Decl. ¶ 30.

recognize themselves in a mirror, elephants must be holding a mental representation of themselves from another perspective and thus be aware that they are a separate entity from others.⁶¹

44. A being who understands the concept of dying and death possesses a sense of self and based on research, observing reactions to dead family or group members suggests an awareness of death in only two animal genera beyond humans: chimpanzees and elephants.⁶² Wild African elephants have been shown experimentally to be more interested in the bones of dead elephants than the bones of other animals, and they have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead individuals.⁶³ Although they do not give up trying to lift or elicit movement from a dead body immediately, elephants appear to realize that once dead, the carcass can no longer be helped; and instead they engage in more “mournful” or “grief-stricken” behavior, such as standing guard over the body with dejected demeanor and protecting it from predators.⁶⁴ Moreover, wild African elephants have been observed covering the bodies of their dead with dirt and vegetation.⁶⁵ Mothers who lose a calf may remain with the calf’s body for an extended period, but do not behave towards the body as they would a live calf.⁶⁶ The general demeanor of elephants attending to a dead elephant is one of grief and compassion, with slow movements and few vocalizations; these behaviors are akin to human

⁶¹ Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Moss Decl. ¶ 26; Poole Decl. ¶ 30.

⁶² Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Moss Decl. ¶ 27; Poole Decl. ¶ 31.

⁶³ Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Moss Decl. ¶ 27; Poole Decl. ¶ 31.

⁶⁴ Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Moss Decl. ¶ 27; Poole Decl. ¶ 31.

⁶⁵ Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Moss Decl. ¶ 27; Poole Decl. ¶ 31.

⁶⁶ Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Moss Decl. ¶ 27; Poole Decl. ¶ 31.

responses to the death of a close relative or friend and demonstrate that elephants possess some understanding of life and the permanence of death.⁶⁷

45. The interest that elephants have in the bodies, carcasses, and bones of elephants who have passed away is so marked that trails to the site of the dead become worn into the ground by the repeated visits of many elephants over days, weeks, months, even years. Poole Decl. ¶ 31. The accumulation of dung around the site attests to the extended time that visiting elephants spend touching and contemplating the bones. *Id.* As time wears on, Dr. Poole has observed that elephant bones may become scattered over dozens or hundreds of square feet as elephants pick up the bones and carry them away. *Id.* The tusks are of particular interest and may be carried and deposited hundreds of feet from the site of death. *Id.*
46. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities, with empathy being defined as identifying with, and understanding, another's experiences or feelings by relating personally to their situation.⁶⁸ Empathy is an important component of human consciousness and autonomy and is a cornerstone of normal social interaction.⁶⁹ It requires modeling the emotional states and desired goals that influence others' behavior, both in the past and future, and using this information to plan one's own actions; empathy is only possible if one can adopt or imagine another's perspective and attribute emotions to that other individual.⁷⁰ Thus, empathy is a component of the "theory of

⁶⁷ Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Moss Decl. ¶ 27; Poole Decl. ¶ 31.

⁶⁸ Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Moss Decl. ¶ 28; Poole Decl. ¶ 32.

⁶⁹ Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Moss Decl. ¶ 28; Poole Decl. ¶ 32.

⁷⁰ Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Moss Decl. ¶ 28; Poole Decl. ¶ 32.

mind.”⁷¹

47. Elephants frequently display empathy in the form of protection, comfort, and consolation, as well as by actively helping those in difficulty, such as assisting injured individuals to stand and walk or helping calves out of rivers or ditches with steep banks.⁷² Elephants have been seen to react when anticipating the pain of others by wincing when a nearby elephant stretched her trunk toward a live wire, and have been observed feeding those unable to use their own trunks to eat.⁷³

48. In an analysis of behavioral data collected from wild African elephants over a 40-year continuous field study, Dr. Bates and colleagues concluded that along with possessing their own intentions, elephants can diagnose animacy and goal-directedness in others, understand the physical competence and emotional state of others, and attribute goals and mental states (intentions) to others. Bates & Byrne Decl. ¶ 42. For example:

IB’s family is crossing a river. The infant struggles to climb out of the bank after its mother. An adult female [not the mother] is standing next to the calf and moves closer as the infant struggles. The female does not push the calf out with its trunk but digs her tusks into the mud behind the calf’s front right leg which acts to provide some anchorage for the calf, who then scrambles up and out and rejoins the mother. At 11.10ish Ella gives a “let’s go” rumble as she moves further down the swamp . . . At 11.19 Ella goes into the swamp. The entire group is in the swamp except for Elspeth and her calf [<1 year] and Eudora [Elspeth’s mother]. At 11.25 Eudora appears to “lead” Elspeth and the calf to a good place to enter the swamp—the only place where there is no mud.

Id.

49. In addition to the examples analyzed by Dr. Bates, Dr. Poole observed two adult females rush to the side of a third female who had just given birth, back into her, and press their bodies to

⁷¹ Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Moss Decl. ¶ 28; Poole Decl. ¶ 32.

⁷² Bates & Byrne Decl. ¶ 41; McComb Decl. ¶ 35; Moss Decl. ¶ 29; Poole Decl. ¶ 33.

⁷³ Bates & Byrne Decl. ¶ 41; McComb Decl. ¶ 35; Moss Decl. ¶ 29; Poole Decl. ¶ 33.

her in what appeared to be a spontaneous attempt to prevent injury to the newborn. Poole Decl.

¶ 34. In describing the situation, Dr. Poole wrote:

The elephants' sounds [relating to the birth] also attracted the attention of several males including young and inexperienced, Ramon, who, picking up on the interesting smells of the mother [Ella], mounted her, his clumsy body and feet poised above the newborn. Matriarch Echo and her adult daughter Erin, rushed to Ella's side and, I believe, purposefully backed into her in what appeared to be an attempt to prevent the male from landing on the baby when he dismounted.

Id.

50. Such examples demonstrate that the acting elephant(s) (the adult female in the first example, Eudora in the second, and Erin and Echo in the third) were able to understand the intentions or situation of the other (the calf in the first case, Elspeth in the second, Ella's newborn and the male in the third), and could adjust their own behavior to counteract the problem being faced by the other. *Id.*

51. Emphatic behavior begins early in elephants. In humans, rudimentary sympathy for others in distress has been recorded in infants as young as 10 months old; young elephants similarly exhibit sympathetic behavior. *Id.* For example, during fieldwork in the Maasai Mara in 2011, Declarant Dr. Joyce Poole filmed a mother elephant using her trunk to assist her one-year-old female calf up a steep bank. Once the calf was safely up the bank, the calf turned around to face her five-year-old sister, who was also having difficulties getting up the bank. As the older calf struggled to clamber up the bank the younger calf approached her and first touched her mouth (a gesture of reassurance among family members) and then reached her trunk out to touch the leg that had been having difficulty. Only when her sibling was safely up the bank did the calf turn to follow her mother. *Id.*

52. In raw footage filmed by Dr. Poole's brother in Kenya's Massai Mara, an "allo-mother" (an elephant who cares for an infant and is not the infant's mother or father) moves a log from

under the head of an infant in what appears to be an effort to make him more comfortable. *Id.*

In a further example of the ability to understand the goal-directedness of others, elephants appear to understand that vehicles drive on roads or tracks, and they further appear to know where these tracks lead. *Id.* In the Gorongosa National Park of Mozambique, where elephants exhibit a culture of aggression toward humans, charging, chasing, and attacking vehicles, adult females anticipate the direction the vehicle will go and attempt to cut it off by taking shortcuts before the vehicle has begun to turn. *Id.*

53. In a separate yet extraordinary anecdote, after government officials created a new road and began to use it to cull African savannah elephants, the elephants broke branches and poled them in the road, effectively blocking it off. Pardo Decl. ¶ 81. When the government officials cleared the branches, the elephants replaced them four times. *Id.* This raises the possibility that the elephants intentionally blocked the road to prevent it from being used to shoot them, which would be an exceptionally sophisticated example of cause-and-effect reasoning and insightful problem solving. *Id.*

54. Moreover, elephants' personality affects their performance on problem-solving tasks. Pardo Decl. ¶ 76. For example, more aggressive elephants were faster at solving certain types of puzzles to get food. *Id.* Both Asian and African savannah elephants have been observed using a variety of simple tools. *Id.* at 76. Asian elephants use branches as switches to repel flies and will intentionally modify branches to make them more effective for fly switching *Id.* Other types of tool use observed in both species include, but are not limited to, elephants using twigs to scratch themselves, dabbing cuts with clumps of grass, and throwing objects at other animals to repel them. *Id.*

55. Elephants exhibit evidence of “natural pedagogy” or true teaching, whereby a teacher considers

the immediate knowledge of the learner as she passes on relevant information.⁷⁴ Drs. Bates, Byrne, and Moss’s analysis of simulated “oestrus behaviours”⁷⁵ in African elephants—whereby a non-cycling, sexually experienced older female will simulate the visual signals of being sexually receptive even though she is not ready to mate or breed again—demonstrates that these knowledgeable females can adopt false “oestrus behaviours” to show naïve young females how to attract and respond appropriately to suitable males.⁷⁶ The experienced females may be taking the youngster’s lack of knowledge into account and actively showing them what to do—a possible example of true teaching as it is defined in humans.⁷⁷ This evidence, coupled with the data showing they understand the ostensive cues in human pointing, suggests that elephants understand the intentions and knowledge states (minds) of others.⁷⁸

56. Coalitions and cooperation have been frequently documented in wild African elephants, particularly to defend family members or close allies from attacks by outsiders, such as when one family group tries to “kidnap” a calf from an unrelated family.⁷⁹ These behaviors are generally preceded by gestural and vocal signals, typically given by the matriarch, and acted

⁷⁴ McComb Decl. ¶ 38; Moss Decl. ¶ 32.

⁷⁵ Bates & Byrne Decl. ¶ 44 (“Ostension is the way that we can ‘mark’ our communications to show people that is what they are. If you do something that another copies, that’s imitation; but if you deliberately indicate what you are doing to be helpful, that’s ‘ostensive’ teaching. Similarly, we may ‘mark’ a joke, hidden in seemingly innocent words; or ‘mark’ our words as directed towards someone specific by catching their eye. Ostension implies that the signaler knows what they are doing.”).

⁷⁶ Bates & Byrne Decl. ¶ 44; McComb Decl. ¶ 38; Moss Decl. ¶ 32; Poole Decl. ¶ 36.

⁷⁷ Bates & Byrne Decl. ¶ 44; McComb Decl. ¶ 38; Moss Decl. ¶ 32; Poole Decl. ¶ 36.

⁷⁸ Bates & Byrne Decl. ¶ 44; McComb Decl. ¶ 38; Moss Decl. ¶ 32; Poole Decl. ¶ 36.

⁷⁹ Bates & Byrne Decl. ¶ 45; McComb Decl. ¶ 39; Moss Decl. ¶ 33; Poole Decl. ¶ 37.

upon by family members, and are based on one elephant understanding the emotions and goals of a coalition partner.⁸⁰ Cooperation is also evident in captive Asian elephants who demonstrate they can work together in pairs to obtain a reward; however, elephants also understand the pointlessness of attempting a task requiring two elephants if their partner is not present or cannot access the necessary equipment.⁸¹

57. Elephants can learn to solve a variety of complex problems by trial-and-error. Pardo Decl. ¶

77. One study presented 12 captive Asian elephants with a marshmallow inside a tube, where the only way to extract the marshmallow was to add water to the tube so that the marshmallow would float to the top. *Id.* One of the elephants, Shanthi, figured out how to solve this problem after just two trials. *Id.* In another zoo, two captive Asian elephants learned to push food items out of inaccessible locations by blowing air at them. *Id.* Both captive and wild Asian elephants learned via trial-and-error to solve a puzzle in which food is placed inside a box with doors that the elephant must either push, pull, or slide to open. *Id.*

58. Success in this kind of “means-end” task demonstrates causal knowledge, which requires understanding not just that two events are associated with each other, but that some mediating force connects and affects the two which may be used to predict and control events.¹⁶⁵ Understanding causation and inferring object relations may be related to understanding psychological causation, which is an appreciation that others are animate beings who generate their own behavior and have mental states (e.g., intentions).⁸²

59. Furthermore, problem-solving and working together to achieve a collectively desired outcome

⁸⁰ Bates & Byrne Decl. ¶ 45; McComb Decl. ¶ 39; Moss Decl. ¶ 33; Poole Decl. ¶ 37.

⁸¹ Bates & Byrne Decl. ¶ 46; McComb Decl. ¶ 40; Moss Decl. ¶ 33; Poole Decl. ¶ 37.

⁸² Bates & Byrne Decl. ¶ 49; McComb Decl. ¶ 36; Moss Decl. ¶ 32; Poole Decl. ¶ 39.

involve mentally representing both a goal and the sequence of behaviors that is required to achieve that goal; it is based on (at the very least) short-term action planning.⁸³ In comparative psychology, insight refers to the ability to “think through” a problem and spontaneously come up with a novel solution without trial-and-error learning.⁸⁴ It is considered a highly advanced form of cognition as it requires individuals to understand the nature of the problem and imagine a solution to it. Pardo Decl. ¶ 78. Such intentional, goal-directed action forms the foundation of an independent agency, self-determination, and autonomy.⁸⁵

60. Attempts to mitigate or eliminate human-elephant conflicts have been met with mixed success, in large part because elephants are able to respond and find ways around them. Lindsay Decl. ¶ 29. For example, when electric fences are erected to keep elephants out of crop fields, elephants have responded to the hazard of electric shocks by handling the ‘hot’ wire with non-conducting tusks and breaking fences by pushing other elephants into them; both approaches demonstrate their higher cognitive ability and autonomy. *Id.* The most effective responses to human-elephant conflicts treat elephants as autonomous beings and work with their biological nature to achieve solutions that promote coexistence. *Id.* It is now increasingly recognized by conservation workers that coexistence can be achieved by humans entering into ‘negotiation’ with elephants. *Id.* at ¶ 33.

B. Zoos are not capable of providing elephants with the environments they need to thrive, and elephants suffer immense physical and psychological harm as a result

⁸³ Bates & Byrne Decl. ¶ 46; McComb Decl. ¶ 40; Moss Decl. ¶ 34; Poole Decl. ¶ 41.

⁸⁴ Bates & Byrne Decl. ¶ 48 (“In cognitive psychology terms, insight is the ability to inspect and manipulate a mental representation of something, even when you can’t physically perceive or touch the something at the time. Or more simply, insight is thinking and using only thoughts to solve problems.”).

⁸⁵ Bates & Byrne Decl. ¶ 47; McComb Decl. ¶ 41; Moss Decl. ¶ 35; Poole Decl. ¶ 39.

61. All zoo standards fall exceedingly short of fulfilling requirements for the space and sociality in both indoor and outdoor facilities that elephants need to thrive (in fact, they fall short by several orders of magnitude; one merely needs to compare the lives of elephants at zoos to the lives of elephants in the wild). Lindsay Decl. ¶ 41. Specifically, the standards put forth by the Association of Zoos and Aquariums (“AZA”) for elephant captivity are exceedingly inadequate; they are also weaker than both those of the United Kingdom and the Coalition for Captive Elephant Well-Being, which are themselves inadequate for elephants. *Id.* at ¶ 39. Moreover, the AZA standards for captive elephant social conditions are equally inadequate. *Id.* at ¶ 40. These guidelines appear to be a compromise between the actual needs of elephants and the financial and logistical difficulties faced by AZA member zoos in meeting such requirements, with the balance tilted firmly towards the latter. *Id.*
62. For African savannah elephants, life expectancy in zoos is significantly lower than their natural lifespan (i.e., the lifespan of wild elephants who die of natural causes). Pardo Decl. at ¶ 107. A 2008 study of zoo elephants born between 1960-2005 found that the median lifespan for female African savannah elephants in zoos was only 19.6 years, compared to 56.0 years for wild females in Amboseli National Park, Kenya who were not killed by humans. *Id.* More recently, a 2023 study found that even among the youngest adult cohort of African savannah elephants born in zoos (i.e., elephants born between 1990-2009), survival was significantly lower than in wild populations with low rates of human-caused mortality. *Id.* This suggests that even with modern husbandry practices, the life expectancy of African elephants in zoos still fails to approach the natural life expectancy of this species. *Id.*
63. Elephants often exhibit reproductive health issues in zoos, likely caused by a combination of obesity and the stress of living in captivity. *Id.* at ¶ 105. Many captive female elephants develop

ovarian cysts, stop cycling, or cycle irregularly. *Id.* Approximately 20% of Asian elephants born in Western zoos are stillborn or die within 24 hours of birth, compared to only 3% for captive working elephants in Asia. *Id.* Zoo elephants are also more susceptible to certain infectious diseases than wild elephants, especially tuberculosis and elephant endotheliotropic herpesvirus. *Id.* at ¶ 106. The high susceptibility of zoo elephants to tuberculosis is likely due at least in part to the stress of captivity. *Id.*

64. It is unheard of for a mother elephant to intentionally kill her calf in the wild, but infanticide is relatively common in zoo elephants. *Id.* ¶ 95. One study of 121 Asian elephants born in European zoos found that 10% of calves were killed by their mother. *Id.* The prevalence of this highly aberrant behavior in zoos is another indication of the damaging effects of captivity on elephant psychology. *Id.*

65. All extant species of elephants are native to tropical and subtropical regions. Thus, zoo elephants in cold climates must spend much of their time indoors, further limiting their opportunities for exercise and mental stimulation. *Id.* Low temperatures have been found to exacerbate stereotypic behaviors among Asian elephants who were already predisposed to stereotypic behavior. *Id.*

66. In zoos, elephants also experience extremely noisy environments (crowds of human visitors, loud fans in indoor spaces, and construction), which is stressful because of their sensitive hearing. *Id.* at ¶ 97. Moreover, they are unable to live in normal social environments, *id.* at ¶¶ 98-99, they are frequently transferred between zoos for breeding purposes, *id.* at ¶ 100, and often experience fractures to their tusks because zoos use materials such as concrete or metal that do not yield like trees do when elephants push on them to explore their surroundings. *Id.* at ¶ 104. One study of 350 Asian and African savannah elephants across 60 North American

zoos found that 31% had tusk fractures, compared to a median of just 1.3% across 15 populations of wild African savannah elephants. *Id.* These fractures can be very painful if they expose the pulp of the tusk where nerves are located, and they can even be fatal if the pulp becomes infected. *Id.*

67. The lack of space in zoos makes it impossible for elephants to graze and browse as they would in the wild, because elephants will quickly destroy the limited amount of vegetation that can grow in a zoo enclosure. *Id.* at ¶ 91. Thus, elephants in zoos are fed a diet that is lacking in fiber and certain essential vitamins and minerals compared to the food that elephants evolved to eat while simultaneously being higher in calories. *Id.* Combined with the lack of sufficient exercise in zoos, this frequently leads to dental problems, gastrointestinal issues, and obesity in zoo elephants. *Id.* One study of 132 African savannah elephants and 108 Asian elephants across 65 North American zoos found that 74% of the elephants were overweight and 34% were obese. *Id.*

68. Simply, long-lived, large-brained mammals—like cetaceans and elephants—who possess large, complex brains integral to their intricate sociobehavioral existence, cannot function normally in captivity. Jacobs Decl. ¶ 19. Given the highly conserved nature of neural structures (i.e., brains of large mammals have a lot in common across species) there is no logical reason to believe that the large, complex brains of animals such as elephants would react any differently to a severely stressful environment than does the human brain. *Id.* at ¶ 16. Elephants experience permanent damage to their brains because of the trauma endured in impoverished environments like zoos. *Id.* at ¶19.⁸⁶

⁸⁶ See also Bob Jacobs et al., *Putative neural consequences of captivity for elephants and cetaceans*, REVIEWS IN THE NEUROSCIENCES 4 (2021), which notes:

69. An elephant's cerebral cortex (the area of the brain responsible for higher-level functions like thinking, reasoning, and voluntary movement, i.e., executive function) is negatively affected by an impoverished environment. *Id.* at ¶ 13. These effects include a thinner cerebral cortex, decreased blood supply, smaller neuronal cell bodies with few glial ('helper') cells for metabolic support, decreased dendritic branching for synthesizing information, fewer dendritic spines (indicating fewer connections with other neurons), and smaller, less efficient synapses. *Id.* These changes at the cortical level are associated with deficits in an animal's emotional and cognitive functioning. *Id.*
70. A crucial component to an enriched environment is exercise, which increases the supply of oxygenated blood to the brain and enhances cognitive abilities through a series of complex biochemical cascades. *Id.* at ¶ 14. Captive/impoverished elephants living in small enclosures are severely deprived of exercise, especially when one considers that elephants in the wild travel a dozen or more miles per day (sometimes more than 60 miles). *Id.* In the wild, elephants ranging over vast distances encounter a wide variety of sensory experiences, social

In terms of behavior, a prevalent abnormality is stereotypic behavior, which consists of aberrant, repetitive movements (e.g., limb swaying, and rocking) induced by the frustration of natural impulses. It is estimated that 47–85% of elephants in zoos and 100% of those in circuses exhibit stereotypies. Captive elephants also exhibit hyperaggression, in part because there is no opportunity for physical distancing during heightened intragroup stress. Medically, captive elephants suffer from both gastrointestinal diseases and nutritional/metabolic disorders because of their captive diet and lack of exercise, with obesity being a serious issue. Across North American zoos, 74% of elephants were found to be overweight with 34% believed to be clinically obese. Skin issues (e.g., inflammation, lesions, and pressure sores) are common as are foot-related disorders (e.g., hyperkeratosis, cracked nails, and abscesses). Osteoarthritis in the feet, exacerbated by locomotor stereotypies and obesity, occurs prematurely in captive elephants and can lead to euthanasia. Finally, captive elephants are particularly susceptible to several infectious diseases (e.g., *Mycobacterium tuberculosis*, TB, the endotheliotropic herpesvirus, EEHV), which are highly contagious. TB is deadly in elephants and treatment is often unsuccessful.

interactions, and mental challenges that cannot be reproduced in a zoo environment. Pardo Decl. ¶ 92. They are active both day and night in the wild, averaging only a few hours of sleep in a 24-hour period. *Id.* at ¶ 93. However, most zoos (including the Pittsburgh Zoo) lock elephants indoors all night, further restricting their nominal available space. *Id.* Accordingly, captive/impoverished elephants possess cortical neurons that are less complex, receive less metabolic support, and process information less efficiently than cortical neurons from animals in an enriched, natural environment. Jacobs Decl. ¶ 14.

71. Other areas of the brain that are negatively affected by the chronic frustration, boredom, and stress rampant in captive/impoverished environments are two subcortical brain structures (i.e., beneath the cortex) known as the (1) hippocampus, which is involved primarily in declarative (i.e., facts and events) and spatial memory formation, and the (2) amygdala, which is involved in emotional processing. *Id.* at ¶ 15. Prolonged stress results in chronically elevated levels of glucocorticoids (i.e., stress hormones). *Id.* Chronic exposure to glucocorticoids contributes to wide-ranging neurodegeneration, including neuronal damage/death in the hippocampus, which results in memory deficits, as well as neuronal damage/death in the amygdala, which results in emotional processing deficits. *Id.*

72. In a natural environment, the body's stress-response system is designed for "quick activation" to escape dangerous situations; in captivity, where animals have a near total lack of control over their environment, there is no escape, and such situations foster learned helplessness. *Id.* at ¶¶ 15-16. The stress that humans experience under similar conditions is associated with a variety of neuropsychiatric diseases such as anxiety and mood disorders, including major depression and post-traumatic stress disorder. *Id.* at ¶ 16. In fact, current human research suggests that childhood trauma may subsequently make the adult brain more vulnerable to

maladaptive stress response, an issue particularly relevant for long-lived, highly social animals such as elephants and cetaceans born into captivity. *Id.* One neural consequence under such conditions is microglia activation and a sustained release of inflammatory mediators. *Id.* This neuroinflammation contributes to physiological, behavioral, affective, and cognitive disorders; captive animals are thus more susceptible not only to neuroinflammation but also to opportunistic infections and possible disruptions of fertility. *Id.*

73. Captivity—and the psychological stress it creates—also has a negative effect on the complex circuitry between the basal ganglia and cerebral cortex. *Id.* at ¶ 17. The basal ganglia regulate the two pathways involved in movement: the direct pathway and the indirect pathway. *Id.* Normal movement depends on a delicate balance between these two pathways, and stress can result in stereotypic behavior, which is invariably associated with an imbalance in the direct/indirect pathways. *Id.* Behavioral stereotypies may represent a coping strategy to mitigate the overwhelming effects of psychological stress. *Id.* For as long as elephants have been studied in their natural habitats there has never been a recorded case of an elephant exhibiting such stereotypies, which reflects underlying disruptions of neural mechanisms in captive/impoverished elephants. *Id.*

74. From a physical perspective, imprisoning elephants and putting them on display is undeniably cruel. Poole Decl. ¶ 57. From a neural perspective, imprisoning elephants and putting them on display is undeniably cruel. Jacobs Decl. at ¶ 19. Physical and behavioral abnormalities are easy to observe, but one must look deeper to see the neural consequences. *Id.* Evolution has constructed the brain—of all organisms—to be extremely and exquisitely responsive to the environment (for better and worse), and this responsivity extends to the level of gene expression, meaning that the environment can turn on or turn off different genes. *Id.* As such,

the captive environment we place animals in significantly and sometimes permanently alters their brains in a negative manner. *Id.* Elephants have evolved to move and holding them captive prevents them from engaging in normal, autonomous behavior and can result in the development of arthritis, osteoarthritis, osteomyelitis, boredom, and stereotypical behavior. Poole Decl. ¶ 57. Human caregivers are no substitute for the numerous, complex social relationships and the rich gestural and vocal communication exchanges that occur between free-living elephants. *Id.* Ultimately, elephants need sufficient space, and social and environmental enrichment to maintain agility and physical and mental health. *Id.* at ¶ 58.

75. It is simply not possible to meet an elephant's physical, social, and emotional needs with a few acres; without adequate space, no zoo can suitably manage and care for elephants. *Id.* The Pittsburgh Zoo specifically is a grossly inadequate space that cannot satisfy Angeline, Savannah, Tasha, Victoria, and Zuri's needs in any vital areas. *Id.*

C. The Pittsburgh Zoo is the antithesis of where elephants should live

76. The Pittsburgh Zoo's elephant exhibit is the epitome of an insufficient environment for the species. Jacobs Decl. at ¶ 21(a), (b). For example, the Pittsburgh Zoo elephant barn (zoo elephants typically spend half or more of their days in an elephant barn because that is where they are kept when zoo staff is off-duty) contains nothing of interest to the elephants; it is a featureless and an impoverished environment with a concrete floor, which is among the worst substrate one can have for elephants as it significantly contributes to musculoskeletal foot disease (a very common ailment among captive elephants). *Id.* at 21(b). Ailments associated with the disease include pain and joint stiffness and inability to stand, which sometimes leads to euthanasia. *Id.* There is an extensive body of research linking barren housing environments to neuropathologies like underdeveloped brains, stereotypic behavior, chronic boredom, and

adverse physical health. Pardo Decl. ¶ 117.

77. It is completely unsuitable to keep the elephants confined in this small of space for more than a few hours on any given day; as mentioned, confinement for longer periods is likely to lead to foot and joint damage from standing on hard concrete substrate, but also psychological damage from the noise and the frustration of prevented choice and movement. Lindsay Decl. ¶ 51. In one of the videos reviewed for his declaration, Dr. Keith Lindsay observed an elephant pacing back and forth in one of the small stalls in the barn; this type of repetitive movement, which may manifest as head bobbing, swaying on the spot, or continuous walking on the same path is a clear example of stereotypy (i.e., the dysregulation of motor control circuitry in the brain due to impoverished living conditions and lack of choice—stated succinctly, stereotypies are physical manifestations of brain damage). *Id.*
78. On cold winter days, Angeline, Savanna, Victoria, Tasha, and Zuri are kept in the barn almost all day. Lindsay Decl. ¶ 59. As elephants in the wild are actively moving for up to 18 hours every 24-hour period, this involuntary confinement is, again, both physically and psychologically devastating. *Id.* It also removes agency from the elephants, depriving them of the fundamental need to make their own decisions on how and where to spend their time. *Id.*
79. Angeline, Savannah, Tasha, Victoria, and Zuri have access to approximately 0.75 acres of outdoor space, which is obviously orders of magnitude smaller than the median home range of wild counterparts. Pardo Decl. ¶ 116. In the yard, there is minimal shade, which is essential for the health of elephant skin. Jacobs Decl. ¶ 21(b). When allowed outside, they are commonly unable to walk more than 112 yards in any direction, Lindsay Decl. ¶ 67, and within 10 minutes of entering the yard, the elephants could easily explore every aspect of the environment. Jacobs Decl. ¶ 21(b). The yard itself is compacted soil, and in terms of hardness, barely different from

concrete. *Id.* There is no live vegetation available to the elephants, which prevents the elephants from engaging in natural foraging behaviors; although vegetation is visible from their enclosure, it is off-limits to the elephants because of barriers or electric wires (something that must be extremely frustrating for a large herbivore). *Id.* at ¶ 21(c); Pardo Decl. ¶ 117.

80. The food available to the elephants appears to be mostly hay, scattered fruits, vegetables, and limited browse, a monotonous diet that requires little manipulation and is quickly consumed. Jacobs Decl. ¶ 21(d). In their natural habitat, elephants are highly diverse feeders, consuming more than 100 seasonally and geographically varying food species (e.g., grasses, trees, bark, roots, fruits, and aquatic plants), and spending 60-80% of their waking hours foraging over long distances. *Id.* In zoos, feeding schedules tend to be predictable and bland, which is ultimately harmful to elephant well-being. *Id.*

81. Angeline, Savannah, Tasha, Victoria, and Zuri receive very little exercise in such a small enclosure. *Id.* at 21(e). Such exercise is not only important for their overall cardiovascular, immune, cognitive, and neural health, but also for the health of their feet. *Id.* Approximately 60 million years of evolution have led to a range of anatomical and physiological specializations for long distance living; in particular, long-distance walking helps elephants maintain foot health—something not possible at the Pittsburgh Zoo. *Id.*

82. There appears to be little social interaction among the elephants, and they often appear isolated from one another. *Id.* at 21(f). In the wild, elephants choose their social groups; at the Pittsburgh Zoo, Victoria and Zuri's mother (Moja) was separated from her daughters in 2014 and transferred to the Winston Wildlife Safari in Oregon. Pardo Decl. ¶ 113. At the time, Zuri was 6 years old, which is still a juvenile; in the wild, female African savannah elephants typically stay with their mother for life and maintain a strong lifelong bond with her, and they

are especially dependent on their mothers throughout their juvenile years. *Id.* Thus, it is very likely that being separated from each other caused Moja, Victoria, and Zuri substantial emotional trauma. *Id.* Many elephant management problems are linked to inappropriate social groupings. Jacobs Decl. ¶ 21(f). Free elephants tend to live in multi-generational, matriarchal family groups of two to 10 adult females and juveniles. *Id.* Elephant family groups share a fission-fusion structure, separating and merging with larger groups of up to several hundred elephants. *Id.* At the Pittsburgh Zoo, the elephants do not comprise a normal social grouping. *Id.*

83. All elephants at the Pittsburgh Zoo exhibit stereotypies. *Id.* at 21(g). Between ~47% and ~85% of elephants in zoos exhibit stereotypies, which can consume up to ~20% of the animal's daily activity. *Id.* As noted above, the existence of stereotypies is a direct reflection of dysregulation of motor control circuitry in the brain, that is, a form of brain damage; such stereotypies are not exhibited in the wild. *Id.*
84. Even a cursory examination of the day-to-day life of captive elephants, with the Pittsburgh Zoo elephants being no exception, clearly reveals that these elephants exist in a tightly controlled environment that removes their autonomy. *Id.* at 21(i). It is estimated that elephants spend ~50% of their daytime hours under behavioral control in caregiver-managed activities (e.g., exercise sessions, foot and skin care, training). *Id.* The previous use of dogs at the Pittsburgh Zoo to herd elephants is a blatant example of the controlled environment these elephants are forced to endure.⁸⁷ *Id.* Lack of control over one's environment, and the chronic stress that

⁸⁷ From 2014-2015, the Pittsburgh Zoo used dogs to help control the elephants. Pardo Decl. ¶ 114. The United States Department of Agriculture ("USDA") cited the zoo for using dogs to manage elephants in this manner and ordered them to stop, stating that this "may cause undue stress to the elephants." *Id.* (citation omitted). The USDA inspection report noted that the dogs had "bitten the elephants during the course of their work" and that "the elephants exhibited signs of distress when charged by one of the dogs." *Id.* (citation omitted).

accompanies such situations, is a significant predictor of learned helplessness and depression in a variety of species, including elephants. *Id.* at ¶ 16.

85. Ultimately, the Pittsburgh Zoo's environmental impoverishment and coercive control of the elephants have been stressful and inhumane to the point of cruelty. Lindsay Decl. ¶ 48.

D. Rewilding or placement in an elephant sanctuary accredited by GFAS is the only acceptable relief for Angeline, Savannah, Tasha, Victoria, and Zuri

86. Elephants are highly social animals and, whether male or female, they are suited to the company of other elephants. Poole Decl. ¶ 71. Elephants in captivity are often unagreeable toward the elephants their captors force them to live with. *Id.* Elephants need a choice of social partners and the space to permit them to be with the ones they want, when they want, and to avoid particular individuals when desired. *Id.* Compliance with AZA Standards for Elephant Management and Care, the United States Animal Welfare Act, or similar standards, laws, and regulations is inadequate for ensuring the wellbeing of elephants. *Id.* at ¶ 72. Specifically, AZA specifications are *woefully* inadequate for meeting the needs of elephants. *Id.* (emphasis added).

87. Rewilding the Pittsburgh Zoo elephants would be the most ethical option available to them; a second-best option would be transfer to an elephant sanctuary accredited by GFAS. Mitchell Decl. ¶ 18. As this group of elephants is made up of females, and are a bonded group, they have an excellent structure for rewilding as wild elephant herds are matriarchal in nature. Angeline, Savannah, Tasha, Victoria, and Zuri will support each other through the transition from captivity to a fully rewilded state, and likely share lifelong bonds even in the wild. *Id.* at ¶ 20.

88. If rewilding is not feasible, the orders of magnitude of greater space offered at appropriate sanctuaries allow elephants to exercise their autonomy, develop more healthy social

relationships, and to engage in a near-natural repertoire of behavior including movement and foraging. Poole Decl. ¶ 70. Elephants with serious physical or psychological problems in zoos often quickly become more normal functioning elephants when given more appropriate space in a sanctuary accredited by GFAS such as the Performing Animal Welfare Society (PAWS) in Northern California, The Elephant Sanctuary (“TES”) in Tennessee or the Global Sanctuary for Elephants in Brazil. *Id.* at ¶ 73. For example:

- Maggie was considered to be an anti-social, aggressive elephant and by the time she was moved from the Alaska Zoo to PAWS she was in such poor condition she could barely stand. Yet until her death in 2021, she thrived and was considered to be PAWS’ most social elephant. *Id.* at ¶ 74.
- Ruby was transferred from the Los Angeles Zoo to the Knoxville Zoo where she did not successfully integrate with the Knoxville elephants. *Id.* at ¶ 75. When she was moved back to California and into PAWS, she integrated easily with the other elephants and has become a respected leader of her group. *Id.*
- Sissy is another classic example: At the Frank Buck Zoo in Gainesville, Texas, where she was forced to live alone, Sissy ultimately killed a person, which resulted in her being moved to the El Paso Zoo where she was savagely beaten with baseball bats and axe handles for hours on end because she was labeled a killer elephant; Sissy would eventually leave the El Paso Zoo with a partially paralyzed trunk, a likely result of her frequent beatings.⁸⁸ *Id.* at ¶ 76. In fact, Sissy had been transferred four times and had

⁸⁸ “Her arrival at the El Paso was videotaped. She was treated so badly by Zoo Keepers when she arrived that the City Council voted to remove her from the Zoo. Those that have viewed the videotape described it as a ‘savage beating.’ She was struck on her legs with bats and ax handles. The beating lasted several hours. . . . As a result of her beating, the US Department of Agriculture charged the Zoo with violations of the Federal Animal Welfare Act. In addition, the Zoo Director

- spent a decade and a half alone before being sent to the Houston Zoo where she was labeled autistic and antisocial. *Id.* In 2000 she was transferred to TES and within six months of arrival she was calm and cooperative, becoming a leader and putting all elephants at ease. *Id.* In 2000, the United States Department of Agriculture had given Sissy only a year to live; twenty-five years later she is still going strong. *Id.*
- Bunny was 47 years old and had spent 40 years alone when she arrived at TES. *Id.* at ¶ 77. She had been transferred four times and had only known less than a half-acre exhibit. *Id.* Within 24 hours of arriving at the sanctuary, she was completely and seamlessly integrated into the group. *Id.*
 - Maia and Guida, the first two elephants at the Global Sanctuary for Elephants in Brazil, had lived together for 40 years. *Id.* at ¶ 78. For most of these years, Maia was aggressive to Guida, knocking her over, pushing her down and pinning her to the ground. *Id.* Within 12 hours of arriving at the sanctuary, the gates were opened between them and from the moment of arrival onward, no further aggression was seen. *Id.* The sanctuary is currently home to six rescued elephants, with more on the way, who share 75 acres, including one area of 40 acres, another of 22 acres and three other smaller areas ranging from 1.5 to 4 acres. *Id.* The three smaller yards are introductory areas to help assimilate and provide flexible care depending on the physical and emotional needs of the elephants, and their gates are generally left open into the larger habitats to permit a greater level of exploration and autonomous living. *Id.* This combination of possible spaces allows for adaptable integration of new elephants, and the sanctuary owns a total

resigned. While at El Paso, she suffered a partially paralyzed trunk as well.” *The Story of Sis, The Six Flags Elephants*, PARKTIMES, at:
[https://www.parktimes.com/articles/sissy/sissystory_copy\(1\).htm](https://www.parktimes.com/articles/sissy/sissystory_copy(1).htm).

of 2800 acres it plans to develop for future elephants. *Id.*

89. As these examples illustrate, captive elephants have been safely and successfully transferred long distances to sanctuary. *Id.* at ¶ 81. For example, PAWS has been involved in moving more than a dozen elephants over the years without incident. *Id.* These moves include older females and are from places as far away as Alaska and Toronto, Canada. Some of these elephants had lived in their prior facilities for over 40 years. *Id.* There is no evidence that the inevitable stress of these moves has had a long-term effect on any of the elephants. *Id.*
90. The problems seen in captive elephants can usually be mitigated with the proper attention and environment. *Id.* at ¶ 80. There is no basis for arguing that captive and wild elephants are fundamentally different. *Id.* They have the same biology and needs, but the failure of captivity to meet these needs results in physical and psychological problems that only appropriate rewilding or sanctuaries—not zoos—can mitigate. *Id.*

V. VENUE AND JURISDICTION

91. No previous application for a common law writ of habeas corpus has been made on behalf of Angeline, Savanna, Tasha, Victoria, and Zuri. Venue and jurisdiction are proper in this Court because the elephants are confined at the Pittsburgh Zoo located in Pittsburgh, Pennsylvania. 42 Pa.C.S. § 6502(b) (“The venue of matters brought under this chapter shall be as prescribed by general rule.”); Pa. R.C.P. No. 1006 (“an action against an individual may be brought in and only in a county where (1) the individual may be served; (2) the cause of action arose”); *Kester v. Pennsylvania Bd. of Prob. & Parole*, 148 Pa.Cmwlth. 29, 38 (1992) (“The Pennsylvania Rules of Civil Procedure have no specific provision governing venue for civil habeas corpus cases. . . . Thus, no rule of civil procedure specifically applies to the petition presented here. The general import of both Pa.R.Crim.P. 1701 and Pa.R.C.P. No. 1006 is that

venue lies in the judicial district where the nexus of the underlying transaction took place.”).⁸⁹

VI. STANDING

92. The NhRP has standing to file the Petition. Pennsylvania’s Habeas Corpus Act reads, “an application 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 Commonwealth under any pretense whatsoever.” 42 Pa.C.S. § 6503(a) (emphasis added). This language is essentially unchanged from the statute’s original inception, the Act of 1785, Feb. 18, 2 Sm.L. 275, § 1 (12 P.S. § 1871) (“it shall and may be lawful to and for the person so committed or detained, *or any one on his or her behalf*, to appeal or complain to any Judge of the Supreme Court, or to the President of the Court of Common Pleas for the county, within which the person is so committed or detained”) (emphasis added).

93. The 1785 habeas corpus statute enshrined the traditional common law habeas corpus rule effective for centuries in English-speaking jurisdictions—that ordinarily, anyone may file a petition for habeas corpus on behalf of a detainee to inquire into the cause of their detention. *See, e.g.*, PAUL HALLIDAY, HABEAS CORPUS: FROM ENGLAND TO EMPIRE 45 (Harv. U. Press, 2010) (“Anyone could tell a story about someone else to touch off the writ’s issuance.”); *id.* at 46 (“[A]ny person, regardless of his or her social standing, could tell a story to justify the court’s concern that it should learn more about a person’s confinement by anyone, anywhere. Who told the story mattered little, if at all.”).⁹⁰

⁸⁹ *See also Kester*, 148 Pa. Cmwlth. at 37 n.5 (1992) (“Any judge of a court of record is empowered to issue the writ. 42 Pa.C.S. § 6502(a). All the courts of common pleas are courts of record. 42 Pa.C.S. § 321. The courts of common pleas also have unlimited original jurisdiction. 42 Pa.C.S. § 931(a). We read these three statutory sections to confer jurisdiction in [habeas corpus] matter[s] on the courts of common pleas.”).

⁹⁰ “Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose

94. Consistent with 42 Pa.C.S. § 6503(a), Pennsylvania courts have generally not restricted who may file a habeas corpus petition on another's behalf. *See, e.g., Pirate v. Dalby*, 1 U.S. 167 (1786) (discussing how a Philadelphia "society" filed a habeas corpus action to free an enslaved individual); *Com. v. Superintendent of House of Correction*, 64 Pa. Super. 613, 617 (1916) ("On the same day, by her next friend, she presented her petition for a writ of habeas corpus, to a judge of the Court of Quarter Sessions."); *Com. ex rel. Bock v. Bock*, 159 Pa. Super. 159, 159 (1946) ("This is a habeas corpus proceeding brought by a wife against her husband to secure custody of their son.").

95. The NhRP has filed twelve habeas corpus petitions on behalf of eleven chimpanzees and six

of liberating another from an illegal imprisonment." 11 HALSBURY'S LAWS OF ENGLAND, § 1476, p. 783 (4th ed. 1976); *accord* JUDITH FARBEY ET AL., THE LAW OF HABEAS CORPUS 237 (3d ed. 2011) ("where a prisoner is being held in circumstances which do not allow for recourse to the courts . . . an application from a third party will be entertained"); ROLLIN C. HURD, A TREATISE ON THE RIGHT OF PERSONAL LIBERTY, AND ON THE WRIT OF HABEAS CORPUS 211-12 (1858) (It "is not necessary that [the application] proceed from [the prisoner]. An agent or friend may make it on behalf of the prisoner . . . no legal relation is required to exist between the prisoner and the person making the application. It may be made by any one."); *Somerset v. Stewart*, 1 Lofft 1 (KB 1772) (unrelated third parties received common law writ of habeas corpus on behalf of an enslaved individual imprisoned on a ship). *See also* *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, para. 211 (2000) (High Court of Australia) (Callinan, J.) (stranger may seek habeas corpus), <https://bit.ly/3xjAxc0>; *Boudreau v. Thaw*, 13 D.L.R. 712 (Quebec Sup. Ct. 1913) ("No legal relationship is required to exist between the prisoner and the person making the application for a writ of habeas [corpus] for the prisoner's release."), <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/3KxsvvW>; *Ex Parte West*, 2 Legge. 1475 (Supreme Court of New South Wales 1861) (stranger obtained a writ of habeas corpus on behalf of an aboriginal child), <https://bit.ly/3uu9Ek1>; *Case of Hottentot Venus*, 13 East 185 (K.B. 1805) (stranger abolitionist society obtained a writ of habeas corpus on behalf of an African woman), <https://bit.ly/3KIJsri>.

elephants between California, Hawai‘i, Michigan, and New York. None of these courts have found that the NhRP lacked standing to seek habeas corpus relief on behalf of a nonhuman animal.⁹¹ In two cases, the courts explicitly stated that the NhRP had standing. *The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735 *1, *7 (N.Y. Sup. Ct. 2020) (*Breheny, Trial Court*) (“The NhRP has standing to file the Petition for habeas corpus on behalf of Happy.”); *Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 756 (Sup. Ct. 2015) (“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].”).⁹²

VII. THE PRIMA FACIE CASE

A. Pennsylvania’s Habeas Corpus Act is procedural and places no restriction on who may utilize the Great Writ

96. Chapter 65 governs the procedure applicable to common law writs of habeas corpus in

⁹¹ Like 42 Pa.C.S. § 6503(a), the New York, California, Hawai‘i, and Michigan procedural statutes governing the filing of habeas corpus petitions allow for a third party to bring a petition on anyone’s behalf. *See generally* CPLR § 7002(a); Cal. Penal Code § 1474(1); Haw. Rev. Stat. § 660-5; Mich. Comp. Laws Ann. § 600.4307.

⁹² Two decisions of the Appellate Court of Connecticut held that the 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 and Sons, Inc.*, 197 Conn.App. 353, 360 (2020). However, these decisions were based on the erroneous notion that legal persons must be able to bear duties. Similarly, the Colorado Supreme Court concluded that “because an elephant is not a person, the elephants here do not have standing to bring a habeas corpus claim.” *Nonhuman Rts. Project, Inc. v. Cheyenne Mountain Zoological Soc’y*, 2025 CO 3, ¶ 34, *reh’g denied* (Feb. 10, 2025). The Colorado Supreme Court erroneously undertook a definitional analysis of the term “person” in Colorado’s habeas statute, focusing on legislative intent, rather than a common law analysis.

Pennsylvania. The law is clear that Chapter 65 is a procedural statute and places no substantive limitation on who may invoke the Great Writ's protections. The "who" is developed under a common law analysis, i.e., without referencing statutes. *Com. ex rel. Stevens v. Myers*, 419 Pa. 1, 18 (1965) ("Our common law writ," "is left to the development of the common law.").

97. The Great Writ's procedural requirements are set by legislation, while its substantive scope is set by a judicial analysis of the relevant common law. Under Pennsylvania law this distinction is precise. Like its predecessor,⁹³ Chapter 65 "deals only with venue and procedure; it in no way restricts judicial freedom to expand the common law confines of the writ." *Id.* at 18 n.20. The statute "involves merely minor regulations of procedure and undertakes no change of the writ's character as developed by—or developed under—the common law." *Id.* See also *Stander v. Kelley*, 250 A.2d 474, 485 (Pa. 1969) (Roberts, J., concurring) ("it is abundantly clear that the 'Great Writ' retains its historical character as the ultimate and essential safeguard of individual rights").

98. "The writ at common law is issued in 'all cases of illegal confinement.' . . . [I]f no sufficient ground of detention appears, the party is entitled to his immediate discharge." *Com. v. Gane*, 3 Grant 447, 449 (Pa. 1863). "One who asks for release from custody under a writ of habeas corpus must present a prima facie case entitling him to court relief." *Com. ex. rel. Tokarchik v. Claudy*, 174 Pa. Super 509, 513 (1954). Importantly, habeas corpus "is a writ of right, and may not be refused to one who shows a prima facie case entitling him to be discharged." *In re Williamson's Case*, 26 Pa. 9, 15 (1855), *overruled on other ground by In re Messmore's Est.*, 293 Pa. 63 (1928).

B. Because the NhRP has made a prima facie case, an order to show cause must be issued and then a hearing date set whereupon the Court will consider the facts and evaluate the merits of the Petition

⁹³ Act of May 25, 1951, P.L. 415, § 1 et seq., 12 P.S. § 1901 et seq.

99. A prima facie case is made when the petition “specifically aver[s] facts which, if true, would entitle the relator to an award of a writ of habeas corpus and a hearing thereon.” *Balsamo v. Mazurkiewicz*, 417 Pa. Super. 36, 40 (1992). “A habeas corpus court, in determining whether a petition for a writ requires a hearing, must accept as true all allegations of fact contained in the petition which are non-frivolous, specific, and not contradicted by the record, even though those allegations may [later] be controverted.” *Com. ex rel. W. v. Myers*, 423 Pa. 1, 4 (1966) (citing cases). “If accepting the petitioner's allegations as true the writ would issue, then it is incumbent upon the court to hold a hearing affording the petitioner the opportunity to establish the truth of his allegations.”⁹⁴ *Id.*

100. The Expert Declarations are non-frivolous, specific, and incontrovertible. They demonstrate that the elephants are autonomous and extraordinarily cognitively complex individuals who suffer in captivity. Accepting the Expert Declarations as true, as this Court must in initially evaluating the Petition, the Petition establishes that: (1) the elephants have the common law right to bodily liberty protected by habeas corpus, and (2) their confinement at the Pittsburgh Zoo is unlawful because it violates their common law right by preventing the elephants from engaging in normal, autonomous behavior.

101. That Respondents’ confinement of the elephants may comply with federal, state, or local animal welfare laws does not render the elephants’ confinement lawful; in the same way that a slave master who complied with federal, state, and local laws could still lose entitlement to

⁹⁴ If “the Court directs the writ to issue or allows a rule to show cause why the writ should not be issued, a hearing is necessary.” *Com. ex rel. Elliott v. Baldi*, 373 Pa. 489, 495 n.5 (1953); 42 Pa.C.S. § 6504 (same).

enslaved humans due to writs of habeas corpus and forward-looking theories of justice.⁹⁵ *Breheny*, 38 N.Y.3d at 579 (2022) (Wilson, J., dissenting) (“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”).⁹⁶

102. Habeas corpus is rooted in the protection of an individual’s liberty interest, whether that interest is protected by a statute, a constitutional provision, or the common law. *Com. ex rel. Snyder v. Francies*, 58 Pa. Super. 273, 275 (1914) (“the efficacy of the common-law writ . . . has many forms according to the character of the case in which it is applied”). *See, e.g., Stanley*, 49 Misc. 3d at 749 (“The conditions under which [chimpanzees] Hercules and Leo are confined are not challenged by petitioner . . . and it advances no allegation that respondents are violating any federal, state or local laws . . . nor does it ‘seek improved welfare for Hercules and Leo,’ [rather] the sole issue is whether Hercules and Leo may be legally detained at all.”).

103. Accordingly, it is the liberty-stripping confinement itself that is unlawful because it violates the elephants’ right to bodily liberty protected by habeas corpus. *See Breheny*, 38 N.Y.3d at 637 (Rivera, J., dissenting) (“Critically, respondents failed to address the [NhRP]’s core argument that the writ should issue because 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.”).

⁹⁵ It is also irrelevant that the Pittsburgh Zoo may adhere to the elephant-specific standards of the Association of Zoos and Aquariums because those standards are “*woefully* inadequate for meeting the needs of the elephants.” Poole Decl. ¶ 72 (emphasis added).

⁹⁶ *See also Com. ex rel. Bryant v. Hendrick*, 444 Pa. 83, 90 (1971) (“Therefore, despite what has been said in our previous decisions, we now conclude and rule that habeas corpus is available to secure relief from conditions constituting cruel and unusual punishment, even though the detention itself is legal.”).

104. The Petition makes a prima facie case that the elephants are entitled to the issuance of an order to show cause (“OSC”) followed by a hearing so that the merits of the Petition may be litigated.⁹⁷ 42 Pa.C.S. § 6504; *see also Breheny*, 38 N.Y.3d at 602 (Wilson, J., dissenting) (“the writ may be invoked on behalf of chattel”).

C. Issuing an order to show cause means the Court has appropriately assumed the allegations in the petition could be true; it does not mean the court has concluded the allegations are true

105. To be clear, issuing an OSC does not require this Court to make an initial determination that the elephants possess the common law right to bodily liberty protected by habeas corpus. *See infra* ¶¶ 109-111 (discussing *Somerset*). Rather, the Court must accept the non-frivolous, specific, and incontrovertible facts presented in the Expert Declarations, *Myers*, 423 Pa. at 4, and *assume* the elephants’ possession of the right.

106. The issuance of an OSC will trigger a hearing where the required threshold assumptions will be set aside and the merits of the petition adjudicated, meaning a legal determination will be made regarding the elephants’ actual entitlement to the writ and release from zoo confinement. *Id.* at 7 (“having alleged facts which, if true, would entitle him to the issuance of the writ prayed for, appellant must be afforded a hearing and the opportunity to establish the truth of his allegations. Should he succeed in this endeavor, the court below shall direct the writ to issue”).

D. The case of *Somerset v. Stewart* establishes historical precedent for the issuance of an order to show cause on behalf of an individual with no legal identity

107. The Great Writ has been “vigorously used to challenge the detention of slaves when, under

⁹⁷ In Pennsylvania, like other states, “the writ” and “the order to show cause (“OSC”) why the writ should not issue,” 42 Pa.C.S. § 6504, are functionally equivalent aside from the issuance of an OSC not requiring the detainee’s appearance in court. *See Com. ex rel. Zimbo v. Zoretskie*, 124 Pa. Super. 154, 158 (1936) (allowing “a rule to show cause why the writ should not issue, without the production of the relator in court, unless his presence is deemed necessary”).

law, they were deemed chattel, and to challenge the detention of women and children who at that time, though not chattel property, had no legal existence.” *Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting). “[T]he courts of England and the United States worked, through the Great Writ, to secure liberty for those deemed chattel, equated, at most, with animals.” *Id.* at 592.

108. A prime example of the Great Writ’s vigor is the landmark case of *Somerset v. Stewart*, 1 Lofft 1 (KB 1772), available at: <http://bit.ly/3jpLmkH>. James Somerset was an enslaved man on whose behalf abolitionists submitted a habeas corpus petition. The overseeing judge, Lord Mansfield of King’s Bench, recognized that counsel for Mr. Somerset had made a prima facie case entitling Mr. Somerset to relief. Undeterred by the fact that Mr. Somerset had no legal existence, Lord Mansfield issued the writ requiring Mr. Somerset’s enslaver to justify his detention. *Somerset* is good law in Pennsylvania law and has never been abrogated or overruled. 1 Pa.C.S. § 1503(a); *Kauffman v. Oliver*, 10 Pa. 514, 516 (1849) (recognizing *Somerset* as part of Pennsylvania common law to justify the freeing of fugitive enslaved individuals).

109. Habeas corpus scholar Paul Halliday argues the most significant aspect of *Somerset* was the fact that it became “a case at all” by Lord Mansfield issuing the writ:

[T]he fact of the writ’s issuance was of the first importance. King’s Bench issued the writ by reasoning not from precedents, but from the writ’s central premise: that it exists to empower the justices to examine detention in all forms. If the justices had any doubts about the propriety of doing so for a slave, they could look back to more than a century of novel uses found for the writ by the same process of reasoning that radiated from this core proposition.

HALLIDAY at 176.

110. Crucially, by issuing the writ, Lord Mansfield made no determination as to the merits of Mr. Somerset’s claim for freedom. Rather, Lord Mansfield simply assumed (without deciding

the merits of the case) that Mr. Somerset could possess the common law right to bodily liberty protected by habeas corpus. When his enslaver ultimately failed to justify Mr. Somerset's detention upon return of the writ, Lord Mansfield adjudicated the merits of the case and liberated Mr. Somerset from confinement.⁹⁸

E. Orders to show cause have been issued for nonhuman animals

111. In 2015, the NhRP secured the first-ever habeas corpus OSC for a nonhuman animal in the United States: specifically, two chimpanzees named Hercules and Leo who were the subjects of locomotion research at the State University of New York at Stony Brook. A state trial court held a merits hearing requiring the New York State Attorney General's Office to justify the confinement of the chimpanzees. *See Stanley*, 49 Misc.3d at 748 ("Given the important questions raised here, I signed petitioner's order to show cause, and was mindful of petitioner's assertion 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.'"); *id.* at 755 (given the great flexibility and vague scope of habeas corpus, "I exercised my discretion in favor of hearing from both sides"). Although the petition was ultimately denied, the court recognized that "[e]fforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed." *Id.* at 772-73.

112. In 2018, the NhRP secured the world's first habeas corpus OSC for an elephant who still

⁹⁸ Similarly, in *In re Kirk*, 1 Edm.Sel.Cas. 315, 332 (1846), a New York court recognized its duty to issue the writ on behalf of an enslaved child confined 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." The court added: "I approach this with all the caution becoming the gravity of the case, yet with a lively sense of what is due to personal liberty." *Id.* at 335. *See also Lemmon v. People*, 20 N.Y. 562 (1860); *Jackson v. Bulloch*, 12 Conn. 38 (1837); *Commonwealth v. Aves*, 35 Mass. 193 (1836); *Republica v. Blackmore*, 2 Yeates 234 (Pa. 1797).

remains confined at the Bronx Zoo in New York City.⁹⁹ Following the issuance of the OSC and subsequent transfer of venue, the Bronx County Supreme Court heard thirteen hours of oral argument over three days and concluded that the NhRP's arguments were "extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit at the Bronx Zoo, to an elephant sanctuary on a 2300 acre lot." *The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735, *10 (Sup. Ct. 2020). However, the court ultimately found itself "regrettably" bound by appellate precedent and denied the petition.¹⁰⁰ *Id.* at *9.

113. Happy's case was then heard on appeal by the New York Court of Appeals, which marked the first time in history that the highest court of an English-speaking jurisdiction heard a habeas corpus case brought on behalf of a nonhuman animal. While the majority did not rule in favor of Happy's freedom, Judges Wilson and Rivera each wrote a historic dissenting opinion.

114. With great care, Judge Wilson undertook a thorough *prima facie* analysis and ultimately found that Happy was entitled to a merits hearing in a lower court. *See Breheny*, 38 N.Y.3d at 577-627 (Wilson, J., dissenting). Judge Rivera went one step further and found that Happy

⁹⁹ 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/3EnKSVv>.

¹⁰⁰ The precedent relied on, *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 152 (2014), erroneously held that chimpanzees are not entitled to the Great Writ's protections because they cannot bear "any legal responsibilities and societal duties." The preposterous argument that to have legal rights one must also possess legal duties has been refuted by countless learned individuals, including legal experts, philosophers, ethicists, theologians, academics, appellate judges, and others too numerous to mention. Most notably, Judge Fahey wrote the following repudiation in his concurring opinion in *Tommy*: "Even if it is correct, however, that nonhuman animals cannot bear duties, the same is true of human infants or comatose human adults, yet no one would suppose that it is improper to seek a writ of habeas corpus on behalf of one's infant child or a parent suffering from dementia." 31 N.Y.3d at 1057 (Fahey, J., concurring) (citations omitted). *See also Breheny*, 38 N.Y.3d at 629 (Rivera, J., dissenting) ("if humans without full rights and responsibilities under the law may invoke the writ to challenge an unjust denial or freedom, so too may any other autonomous being, regardless of species").

should be released from the Bronx Zoo to an elephant sanctuary. *Id.* at 627-642 (Rivera, J., dissenting). Although the *Breheny* dissents are not binding on this Court, they provide persuasive reasoning for how the Court should evaluate whether Angeline, Savanna, Tasha, Victoria, and Zuri have made a *prima facie* case entitling them to habeas corpus relief, which is the first question to be answered in this matter.¹⁰¹

i. Judge Wilson’s *prima facie* analysis serves as a blueprint for how to analyze habeas corpus petitions on behalf of elephants

115. Judge Wilson asked, “did Happy present sufficient information through her complaint and supporting affidavits to entitle her to a full hearing?” *Breheny*, 38 N.Y.3d at 617 (Wilson, J., dissenting). He then assumed the truth of the information submitted for Happy and granted “every possible reasonable inference in her favor.” *Id.* at 618. He considered: “‘what does the information submitted by the petitioner tell us about the petitioner?’ [and] ‘what does the information submitted by the petitioner tell us about the confinement?’” *Id.* at 621-22.

116. Having accepted “as true the (largely unchallenged) expert affidavits submitted on behalf of Happy,” Judge Wilson found that “Happy and elephants like her ‘possess complex cognitive abilities of a great number,’ including:

“[A]utonomy; 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.

¹⁰¹ *Com. v. Hayes*, 544 Pa. 46, 56 (1996) (“We find the reasoning of our sister states logically persuasive.”); *Com. v. Means*, 565 Pa. 309, 327 (2001) (“it is not the numerical weight that is persuasive; rather, it is the reasoning employed which drives us to consider the disposition of a particular issue by our sister states”).

Id. at 618-19.

117. He then evaluated the nature of Happy’s confinement, finding that it is “a miniscule fraction of the size of elephants’ typical environments in the wild,” and is “causing her deep physical and emotional suffering because it is so unnaturally different from conditions that meet the needs of elephants.” *Id.* at 619-20.

118. Accepting all the information submitted as true—as this Court must do, *Myers*, 423 Pa. at 4—Judge Wilson concluded, “Happy is a being with highly complex cognitive, social and emotional abilities. She has self-awareness, social needs and empathy. She also comes from a wild, highly social species whose bodies and minds are accustomed to traversing long distances to connect with others and to find food.” *Breheny*, 38 N.Y.3d at 620 (Wilson, J., dissenting). Therefore, “Happy has established a prima facie case that her confinement at the Bronx Zoo stunts her needs in ways that cause suffering so great as to be deemed unjust.” *Id.* Simply, “Happy has sufficiently stated a prima facie case entitling her to a hearing.” *Id.* at 617.

ii. Judge Rivera went beyond the prima facie analysis and found that Happy should be released and transferred to an elephant sanctuary

119. Judge Rivera’s analysis began by recognizing that “the writ may be invoked because Happy is a sentient being, who feels and understands, who has the capacity, if not the opportunity, for self-determination.” *Id.* at 628 (Rivera, J., dissenting). “[T]hat recognition,” she added, “means that a court may consider whether to issue the writ because it is unjust to continue Happy’s decades-long confinement in an unnatural habitat where she is held for the sole purpose of human entertainment.” *Id.*

120. Like Judge Wilson, Judge Rivera’s findings were informed by scientific evidence, which “the Nonhuman Rights Project submitted [through] affidavits from several internationally renowned elephant experts to establish Happy’s autonomy and the inherent harm of her

captivity in the Zoo.” *Id.* at 634. Based on that evidence, Judge Rivera concluded:

Captivity is anathema to Happy because of her cognitive abilities and behavioral modalities—because she is an autonomous being. . . . Her captivity is inherently unjust and inhumane. It is an affront to a civilized society, and every day she remains a captive—a spectacle for humans— we, too, are diminished.

Id. at 642.

121. Relying on the un rebutted evidence of Happy’s autonomy and extraordinary cognitive complexity, along with the finding that Happy’s existence was a “cruel reality,” *id.* at 628, Judge Rivera concluded that the NhRP had “made the case for Happy’s release and transfer to an elephant sanctuary, and the writ should therefore be granted.” *Id.* at 634.

122. Even more Expert Declarations from internationally renowned elephant experts are before the Court here. *See, e.g.*, Pardo Decl. They establish the autonomy, extraordinary cognitive complexity, and cruel reality of Angeline, Savanna, Tasha, Victoria, and Zuri’s existence at the Pittsburgh Zoo. *See generally* § IV (The Expert Declarations).

F. Regardless of the petitioner’s species, a properly pled habeas corpus petition should always be heard

123. “A writ of habeas corpus is a writ of right and may not be refused where the relator shows a prima facie case entitling him to be discharged.” *Com. ex rel. Milewski v. Ashe*, 362 Pa. 48, 50 (1949), *rev’d on other grounds by* 363 Pa. 596 (1950), *and overruled on other grounds by* *Com. ex rel. Bryant v. Hendrick*, 444 Pa. 83 (1971). “Nothing in the common law or prior cases addressing the scope of habeas corpus warrants slamming the courthouse door on otherwise valid petitions simply because the petitioner is not a human being.” Brief of Amici Curiae Shannon Minter and Evan Wolfson in Support of Petitioner-Appellant, *Matter of Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555 (2022), at 5 (“Minter and Wolfson Brief”).¹⁰²

¹⁰² Available at: <https://www.nonhumanrights.org/wp-content/uploads/Evan-Wolfson-and-Shannon-Minter-Amici-Brief-Filed-in-Support-of-Happy-Petition.pdf>

124. Refusing to issue an OSC and thereby preventing this case from proceeding to a hearing on the merits of the Petition would be contrary to Pennsylvania common law, undermine the function of the Great Writ, and constitute a “refusal to confront a manifest injustice.” *Tommy*, 31 N.Y.3d at 1059 (2018) (Fahey, J. concurring). It would also be “a mockery of judicial procedure.” *Com. ex rel. Levine v. Fair*, 394 Pa. 262, 282 (1958).

VIII. ARGUMENT

A. An ancient and erroneous pseudoscience—the “Great Chain of Being”—remains the foundational principle that still underlies modern exploitation of nonhuman animals

125. Why do we insist on relegating elephants to a lifetime behind bars when we know they suffer tremendously in zoo captivity? To answer that question, one must understand the scientifically inaccurate, yet foundational hierarchical framework of Western thought called the “Great Chain of Being.” See Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897) (“The rational study of law is still to a large extent the study of history. History must be a part of the study, because without it we cannot know the precise scope of the rules which it is our business to know. It is a part of the rational study, because it is the first step toward an enlightened scepticism, that is, toward a deliberate reconsideration of the worth of those rules.”).

i. What is the Great Chain of Being?

126. The Great Chain, often credited to Plato and Aristotle and later adopted by the Romans, was the justification for exercising dominion over certain human races and virtually all nonhuman animals.¹⁰³ The Great Chain “saw the Universe as ordered in a linear sequence

¹⁰³ In other words: “In the scientific traditions of Europe, the idea that the organic world could be sorted into natural kinds can be traced back to Aristotle [who] noticed the continuity of organic life and articulated a vague ‘hierarchy of being’ into which organisms could be sorted. This came to be called the Great Chain of Being (*Scala Naturae*)—an idea taken up by the Neo-Platonists in

starting from the inanimate world of rocks. Plants came next, then animals, men, angels and, finally, God. It was very detailed with, for example, a ranking of human races; humans themselves ranked above apes above reptiles above amphibians above fish.” Sean Nee, *The Great Chain of Being*, 435 NATURE 429 (2005).¹⁰⁴

127. “The problem with that antiquated, single-file view of how life is organized is that it makes you think of life as evolving in a straight line.” Prosanta Chakrabarty, *The Great Chain of Being: The evolutionary misconception that just won’t go extinct*, BIG THINK (Aug. 9, 2023), available at: <https://bigthink.com/life/great-chain-being-evolutionary-misconception/>. “Even people who accept evolution can get things wrong by taking this linear view. They see all other living things besides us as subordinate precursors leading to humans. They see chimpanzees as a step before humans as if we evolved directly from them.” *Id.* “With that view, they see chimps and other apes as ‘primitive’ antecedents of humans, which they are not. They also see a fish as a step before a frog, and a frog as a step before an alligator or some other reptile.”¹⁰⁵

the early Christian era. In this image of Creation, God is at the top with Man (and we do mean ‘man’) below, and standing atop a hierarchical ordering of Earthly beings. We can still see this thinking in ordinary ways of talking about higher and lower organisms—a bad habit that sneaks into contemporary scientific papers from time to time.” KRISTEN ANDREWS ET AL., *CHIMPANZEE RIGHTS: THE PHILOSOPHER’S BRIEF* 20 (Routledge 2019) (citation omitted).

¹⁰⁴ Available at: <https://arachnid.biosci.utexas.edu/courses/thoc/Nee2005.pdf>.

¹⁰⁵ “The great insight of Charles Darwin . . . was that the differences between species did not reflect discrete categories, but instead were the product of a gradual process of natural selection.” *THE PHILOSOPHER’S BRIEF* at 24. “This results in a slow accumulation of changes, producing distinct varieties within a population, and eventually new species.” *Id.* “Darwin’s emphasis on variety exploded the notion that the members of biological groups *necessarily* had either hard borders or shared a set of essential characteristics.” *Id.* In other words, “[n]o linear Great Chain could possibly exist, as all organisms had descended from a common ancestor. Thousands of phyletic lines of organisms bore no relevance either to humans or to human characteristics. Life evolved not as rungs on a ladder but as a bristling bush. The Great Chain of Being, that ‘grand master metaphor [that had] dominated, perverted, and obstructed European efforts to discover man’s place in nature,’ was destroyed.” Steven M. Wise, *How Nonhuman Animals Were Trapped in A*

Id. “Linear thinking can result not only in a very poor understanding of evolution but also in a distorted sense of ourselves, especially when we push this thinking to include socially constructed views of human races and genders.”¹⁰⁶ *Id.*

128. For example, “[t]he hierarchy of the Great Chain of Being played a particular role in racism, invariably placing Europeans at the top and typically placing Africans at the bottom as the link between the rest of humanity and the apes.” KRISTEN ANDREWS ET AL., CHIMPANZEE RIGHTS: THE PHILOSOPHER’S BRIEF 23 (Routledge 2019). It comes as little surprise that the Great Chain “was a central tool in justifying efforts to colonize, enslave, and even exterminate people.” Lisa Wade, Ph.D., *Whites, Blacks, and Apes in the Great Chain of Being*, SOCIOLOGICAL IMAGES (July 12, 2012).¹⁰⁷

129. One “of the half-dozen most potent and persistent presuppositions in Western thought,” the Great Chain “was, in fact, until not much more than a century ago, probably the most widely familiar conception of the general scheme of things, of the constitutive pattern of the universe; and as such it necessarily predetermined current ideas on many other matters.” ARTHUR O. LOVEJOY, THE GREAT CHAIN OF BEING vii (1933). It is a “perfect example of an absolutely rigid and static scheme of things,” *id.* at 242, and “explicitly and vehemently antievolutionary.” Stephen Jay Gould, *Bound by the Great Chain*, in THE FLAMINGO’S SMILE 282 (1985).

Nonexistent Universe, 1 ANIMAL L. 15, 40 (1995) (citations omitted).

¹⁰⁶ See, e.g., Brigitte Fielder, *Break the Great Chain of Being: On “Becoming Human” and “Being Property Once Myself,”* LOS ANGELES REVIEW OF BOOKS (Nov. 17, 2021), available at: <https://lareviewofbooks.org/article/break-the-great-chain-of-being-on-becoming-human-and-being-property-once-myself/>.

¹⁰⁷ Available at: <https://thesocietypages.org/socimages/2012/07/12/whites-blacks-apes-in-the-great-chain-of-being/>.

130. To state the obvious, the Great Chain of Being is an erroneous concept because it establishes a hierarchical system where the ranking of beings is rooted in an anti-scientific, distorted understanding of the world, resulting in the prioritization of beings based on arbitrary distinctions. Since the Great Chain’s hierarchy is not based on logic or demonstrable scientific fact, beings are organized by notions relating to appearance, presumed capabilities, and spiritual worth—not who they are inherently. Nevertheless, because the Great Chain was adopted into the English common law, it continues to inform much of society’s thinking about nonhuman animals today.

ii. The Great Chain of Being was adopted into English common law and remains the foundational prohibition on conferring legal rights to nonhuman animals

131. Two millennia before Charles Darwin, Roman jurists educated by the Great Chain “conceived that most things were destined by nature to be controlled by man. Such control expressed their natural purpose.” ROSCOE POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 110 (1954). The Romans wrote, *hominim cause omne jus constituitum* (“all law was established for man’s sake”). 1 *The Digest of Justinian*, 15-16 (Theodor Mommsen & Paul Krueger eds., Alan Watson trans., U. Penn. Press 1985). Consequently, Roman law allowed men to obtain title to disenfranchised humans or nonhuman animals through “occupancy,” i.e., seizure of a “thing” whether an enslaved human or a nonhuman animal that belonged to nobody. *The Four Commentaries of Gaius on the Institutes of the Civil Law, Commentary II*, ¶ 66, at: https://droitromain.univ-grenoble-alpes.fr/Anglica/gai2_Scott.htm.

132. The great common law expounders—Bracton, Fleta, Britton, and Blackstone—merely restated the Roman law on the thinghood of nonhuman animals and their occupation.¹⁰⁸ “Since

¹⁰⁸ Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. ENVTL. AFF. L. REV. 471, 518 (1996) (citing HENRY DE BRACON, ON THE LAWS AND CUSTOMS OF ENGLAND 39-49

Blackstone, the legal thinghood of both wild and domestic nonhuman animals in the English common law has continued to incorporate Roman law. In the leading nineteenth-century English case of *Blades v. Higgs*, Lord Chelmsford concluded that, with respect to obtaining the right of property in living wild nonhuman animals, ‘there seems to be no difference between the Roman and common law.’” Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. ENVTL. AFF. L. REV. 471, 528-29 (1996) (citations omitted).

133. Another example is the famous case of *Pierson v. Post*, 3 Cai. R. 175, 178 (N.Y. Sup. Ct. 1805), which noted that wild animals had “natural liberty,” yet still implicitly embraced the erroneous Great Chain while being little more than a disagreement on whether the majority should adopt Republican or Imperial Roman occupancy law. Over half a century after *Pierson*, the Great Chain was embraced again, this time by Chief Justice Roger B. Taney of the United States Supreme Court. He alluded to the Great Chain in the infamous *Dred Scott* case. Writing for the majority, Justice Taney claimed that Black people had long been “looked upon as so far below [whites] in the scale of created beings.” *Dred Scott v. Sandford*, 60 U.S. 393, 409 (1856).

134. The Great Chain’s sentiment would later be echoed in Pennsylvania: “We believe that the Power who created human beings never intended that there should be intermarriage between the races; apparently there was general segregation of the races by the laws of nature, or otherwise, and we can't conceive of any good results coming from the intermarriage of the races.” *In re Frederick's Application*, 19 Pa. D. & C. 569, 570 (Orph. 1933).

(Samuel E. Thome, trans. 1968)) (echoing Ulpian and Justinian, Bracton classified both nonhuman animals and enslaved humans as *res* subject to private ownership); 3 FLETA, BOOKS III AND IV 1-2 (H.G. Richardson & G.O. Sayles, trans. & eds. 1972); FRANCIS MORGAN NICHOLS, BRITTON: AN ENGLISH TRANSLATION AND NOTES 176-77 (John Byrne & Co. 1901); 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, BOOK THE SECOND: OF THE RIGHTS OF THINGS 14 (U. of Chicago Press, 1979).

135. The Great Chain is not legal precedent, and it is not scientifically accurate. Yet this erroneous framework underlies the justification for regarding nonhuman animals as legal “things” under the common law.¹⁰⁹ We must not forget that “Roman law passed into common law ‘The evidence of [the Great Chain] is to be found in every book which has been written for the last five hundred years [and] we still repeat the reasoning of the Roman lawyers, empty as it is, to the present day.’ Its foundation has collapsed, yet its dead hand rules from the rubble.” Wise, 1 ANIMAL L. at 42-43 (citation omitted). Nevertheless, “[s]imply knowing that is the first step towards its ‘deliberate reconsideration’ and the recognition that some nonhuman animals may possess fundamental common law rights.” *Id.* at 43 (citation omitted).

136. Deliberate reconsideration of the Great Chain’s place in law must also be informed by the fact that the Great Chain is contrary to post-Roman, Anglo-Saxon legal traditions.¹¹⁰ For example, English common law has long been in favor of liberty. *See, e.g.*, The 1215 Magna Carta: Clause 39, The Magna Carta Project (H. Summerson et al. trans.) (“No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined . . . except by the lawful judgment of his peers or by the law of the land.”).¹¹¹ Pennsylvania

¹⁰⁹ “[T]he Great Chain of Being underlay the common law's view of animals. Then, after Darwin demonstrated that the universe was not designed for humans, the ‘Great Chain snapped and a door cracked open to the possibility that at least some animals might logically transcend their legal thinghood.’” Henry Cohen, *Book Review: Rattling the Cage: Toward Legal Rights for Animals by Steven M. Wise, Published by Perseus Books, Cambridge, Ma, 2000. 362 Pages, \$25.00.*, FED. LAW. 49 (April 2000).

¹¹⁰ In fact, references to the value of bodily liberty may be found as early as Pericles’ Funeral Oration. Thucydides, *The Complete Writings of Thucydides - The Peloponnesian War*, sec. II. 37, at 104 (1951).

¹¹¹ Available at: http://magnacarta.cmp.uea.ac.uk/read/magna_carta_1215/Clause_39.

common law (which includes English common law) has also long favored liberty.¹¹²

137. Since the Chain is contrary to science, which must inform modern common law jurisprudence, the Court can choose to break it. *Application of F. A. for Marriage License*, 4 Pa. D. & C.2d 1, 5-6 (Pa. Orph. 1956) (“in true common-law tradition, [courts] progress with the advances of science,” in “difficult and inexact field[s] of law and medicine and decide each case on its own facts”). In doing so, the Court will create decisional law based on the scientific method, contemporary ethics, and modern legal theories like justice, liberty, and equality rather than historically inaccurate presuppositions. The result in this case will be common law jurisprudence that appropriately prioritizes the inherent liberty interests of Angeline, Savanna, Tasha, Victoria, and Zuri.

B. This is a common law matter because habeas corpus is a common law writ

138. Whether Angeline, Savanna, Tasha, Victoria, and Zuri may avail themselves of the Great Writ’s protections turns on a substantive common law analysis and not a statutory interpretation analysis of Chapter 65 or another statute. This is because (1) courts are duty-bound to evolve outdated common law, and (2) it would be unconstitutional to exclude elephants from the Great Writ’s protections.

i. Entitlement to the Great Writ is determined by a common law analysis and not by statutory interpretation or yielding to the legislature

¹¹² See, e.g., *Republica v. Betsey*, 1 U.S. 469, 470 (1789) (“[T]he law favors liberty more than property; and that if the case should appear doubtful, the judgment should be in favor of liberty of the negro Betsey.”); *Scott v. Waugh*, 15 Serg. & Rawle 17, 20 (Pa. 1826) (finding that “no one can be partly a slave and partly free”; “he must be either the one or the other,” and “every presumption in favor of liberty and freedom ought to be made”); *Com. ex rel. Hall v. Cook*, 1 Watts 155, 156 (Pa. 1832) (“[I]f presumptions are to be made, they should be in favor of liberty.”); *Foremans v. Tamm*, 1 Grant 23, 24 (Pa. 1853) (“while [the common] law has recognized the existence of slavery, it was imbued with the spirit of liberty, which enabled the slave, in process of time, to acquire his freedom of the right to purchase and hold lands and goods”); *Bert Co. v. Turk*, 298 A.3d 44, 97 (Pa. 2023) (Wecht, J., concurring) (“Slavery itself was incompatible with civil liberty.”).

139. Courts in Pennsylvania have a duty to evolve the common law. *Albert M. Greenfield & Co. v. Kolea*, 475 Pa. 351, 357 (1977) (“‘Courts have a duty to reappraise old doctrines in light of the facts and values of contemporary life particularly old common law doctrines which the courts themselves created and developed. . . . [The common law’s vitality] depends upon its ability to reflect contemporary values and ethics.’”) (citation omitted); *Marion v. Bryn Mawr Tr. Co.*, 288 A.3d 76, 89 (Pa. 2023) (“[I]t is entirely appropriate for this Court to exercise its independent authority to incrementally evolve the common law, and not punt the question to the General Assembly.”). This is true in sister jurisdictions as well. *See, e.g., Woods v. Lancet*, 303 N.Y. 349, 355 (1951) (“Legislative action there could, of course, be, but we abdicate our own function, in a field peculiarly nonstatutory, when we refuse to reconsider an old and unsatisfactory court-made rule.”).
140. The common law’s evolutionary nature is particularly relevant in the context of habeas corpus because the “common-law writ of habeas corpus” is “an implied common-law power, not created by the habeas corpus act . . . but existing both before and since the passage of that act.” *Commonwealth v. Gibbons*, 9 Pa. Super. 527, 533 (1899). Accordingly, the Great Writ evolves like any other common law action, but with added flexibility based on the specifics of the case to which it is applied.¹¹³ *Id.* (“It may be moulded to suit the exigencies of the particular case.”) (citing cases); *id.* at 534 (“But the efficacy of the common-law writ of habeas corpus reaches much farther, and takes many forms, according to the character of the case in which it is applied.”).

¹¹³ *Tincher v. Omega Flex, Inc.*, 628 Pa. 296, 337 (2014) (“[T]he common law ‘develops incrementally, within the confines of the circumstances of cases as they come before the Court.’ . . . Causes of action at common law evolve through either directly applicable decisional law or by analogy and distinction. Among the duties of courts is ‘to give efficacy to the law ... and though they cannot make laws, they may mould the forms of the ancient laws to the exigency of the new case.’”) (citations omitted).

141. In novel habeas corpus matters, the Great Writ evolves to suit new exigencies. *Williamson v. Lewis*, 39 Pa. 9, 29 (1861) (“Let us now notice the common law *habeas corpus ad subjiciendum*. It has a much broader scope than that form of it which is secured by the Habeas Corpus Act; for it may issue in all sorts of cases where it is shown to the court that there is probable cause for believing that a person is restrained of his liberty unlawfully.”). Judge Wilson understood the essence of the common law writ and admonished the *Breheny* majority for deflecting onto the legislature its obligation to evolve the writ in Happy’s novel case:

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. None of those declamations is remotely consistent with our Court’s history, role or duty. Where would we or Judge Cardozo be, had he declined to act for any of those reasons? The 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).

142. His colleague, Judge Rivera, similarly observed: “[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).

143. This Court has an obligation to evolve the Great Writ and allow Angeline, Savanna, Tasha, Victoria, and Zuri to invoke its protections. This Court must not punt the question to the General Assembly even if the writ’s evolution leads to a novel application. “Put another way,

statutory rights may expand existing rights and protections for nonhuman animals—and humans—but the fundamental right to be free is grounded in the sanctity of the body and the life of autonomous beings and does not require legislative enactment.” *Id.* at 634. “[D]ecisional law is principle-driven and not result-driven (although just results are certainly the overarching goal). . . . Candid decision-making articulates governing, and occasionally competing principles, and has the flexibility to reassess a prior principle upon confrontation with nuance, better or different advocacy, or articulation of a previously unperceived principle of salutary value.” *Tincher v. Omega Flex, Inc.*, 628 Pa. 296, 413 (2014).

ii. The Suspension Clause prohibits excluding elephants from the Great Writ’s protections

144. Habeas corpus is guaranteed in Pennsylvania, as it is federally, through a suspension clause. *See* Pa. Const. art. 1, § 14; U.S. Const. art. 1, § 9, cl. 2. The Great Writ “stands under the Constitution of the United States as it was under the common law of English-America, an indefensible privilege, above the sphere of ordinary legislation.” *Gane*, 3 Grant at 450.

145. The Pennsylvania Suspension Clause reads, “the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.” Pa. Const. art. 1, § 14. “[I]t would be difficult indeed to understand how the privilege [of habeas corpus] could be limited or restricted, or its common law rigor in any way lessened unless when authorized by the exigencies provided for [rebellion or invasion], without coming in conflict with the Constitution.” *Gane*, 3 Grant at 449. Indeed, it is well known that a Suspension Clause “is a restriction—a limitation upon the power of the general government.” *Id.* at 449.

146. Therefore, excluding elephants from using the Great Writ would not only improperly lessen the Great Writ’s common law rigor, but it would also unlawfully suspend the writ

contrary to the mandates of the Constitution of Pennsylvania’s Suspension Clause, Pennsylvania’s Habeas Corpus Act, and Pennsylvania case law. *See* Pa. Const. art. I, § 14; 42 Pa.C.S. § 6501; *see, e.g., Myers*, 419 Pa. at 18 (the “writ of habeas corpus is not frozen into statute but, rather, being moldable to the exigencies of the times, is left to the development of the common law”).¹¹⁴

147. Limiting habeas corpus relief to humans would categorically bar elephants from invoking the Great Writ, which would violate the mandates of the cited authorities. This Court must look to the common law and changing social norms, justice, liberty, and equality to determine whether Angeline, Savanna, Tasha, Victoria, and Zuri, autonomous and extraordinarily cognitively complex individuals, are entitled to the protections of the Great Writ.

C. Flood-of-litigation arguments must continue to be rejected

148. Pennsylvania’s common law courts do not wait for legislative action to change the law even when staring down a possible increase in workload. *Niederman v. Brodsky*, 436 Pa. 401, 412 (1970) (“more compelling than an academic debate over the apparent or real increases in the amount of litigation, is the fundamental concept of our judicial system that any such increase should not be determinative or relevant to the availability of a judicial forum for the adjudication of impartial individual rights”).

149. In *Mayle v. Pennsylvania Dep’t of Highways*, 479 Pa. 384 (1978), sovereign immunity was placed under the proverbial blade of the judicial guillotine. The Supreme Court concluded the

¹¹⁴ *See also Fair*, 394 Pa. at 285 (“Nor does one need to search through the books for a precedent for its application. Although the complexities of modern life are constantly expanding, and are now even traveling into spheres of conduct and human relationship reaching into the very spaces of the infinite, the principle of the right to untrammelled freedom of action is still the fixed star in the sky of the English-speaking world. Hence, no matter what may be the situation or how involved the circumstances, any person who claims he is illegally imprisoned or restrained of his liberty may have such claim inquired into by a competent court, and, if his claim is found to be well grounded, he will be discharged and freed of such restraint.”).

“doctrine’s day has long since passed,” as it is “unfair and unsuited to the times.” *Id.* at 386. It considered the Commonwealth’s argument that abolishing the doctrine might “overburden the courts and either bankrupt the Commonwealth or endanger its financial stability.” *Id.* at 394. The Supreme Court was ultimately unconvinced because “[floodgates] speculation cannot support a doctrine so ‘plainly unjust.’” *Id.* (citation omitted). It reminded the Commonwealth that it had “recently rejected the government-bankruptcy and flood-of-litigation arguments when [the Court] abolished local governmental immunity,” *id.* at 395, and reiterated why the fear of excessive litigation cannot be a justification for refusing to evolve the common law:

We must also reject the fear of excessive litigation as a justification for the immunity doctrine. Empirically, there is little support for the concern that the courts will be flooded with litigation if the doctrine is abandoned. . . . It is the business of the law to remedy wrongs that deserve it, even at the expense of a ‘flood of litigation’; and it is a pitiful confession of incompetence on the part of any court of justice to deny relief upon the ground that it will give the courts too much work to do. . . . We place the responsibility exactly where it should be: not in denying relief to those who have been injured, but on the judicial machinery of the Commonwealth to fulfill its obligation to make itself available to litigants.

Id. at 395-96 (cleaned up).

150. Before ultimately dropping the proverbial blade on the doctrine, the Supreme Court made one final point, pertinent to this case. It explained, “[w]ere we to continue to adhere to the doctrine of sovereign immunity in light of its manifest unfairness and our current knowledge that the doctrine is non-constitutional, we would be blindly imitating the past, for no reason better than that this was the way justice was administered in the feudal courts.” *Id.* at 406.
151. If this Court refuses to recognize the elephants’ right to bodily liberty it would be reinforcing the Great Chain’s arbitrary linear hierarchy. Considering current knowledge about the needs of elephants, such a refusal would blindly imitate the past. Blind imitation of the past can never justify the arbitrary deprivation of liberty.

D. The Great Writ has been repeatedly used in novel situations to remedy unjust deprivations of liberty

152. “The writ of *habeas corpus* is regarded as the greatest and most important remedy known to the law. It is the precious safeguard of personal liberty.” *Com. ex rel. Paylor v. Claudy*, 366 Pa. 282, 284 (1951). ““The scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers.”” *Hendrick*, 444 Pa. at 89 (citation omitted). ““The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.”” *Id.* (citation omitted). “[I]n a proper case, it is always grantable.” *Fair*, 394 Pa. at 285.

153. The Great Writ’s importance is unparalleled: “[N]o matter where or how the chains of [] captivity were forged—the power of the judiciary in this state is adequate to crumble them to dust, if an individual is deprived of his liberty contrary to the law of the land.” *Com. ex rel. Webster v. Fox*, 7 Pa. 336, 338 (1847); *Fair*, 394 Pa. at 286 (same). In other words:

There is no locked door which may not be opened by the key of habeas corpus, there is no stone wall which may not be pierced by it, there is no enclosure which may not be entered by the person bearing this writ, which is accepted as the greatest and most important remedy known to jurisprudence and which Blackstone called “the most celebrated writ in the English law.”

Fair, 394 Pa. at 284 (citation omitted); *see also Hendrick*, 444 Pa. at 89 (“the office of the writ is ‘to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints’) (cleaned up).

154. “[H]abeas corpus is a common law writ, and has been used in England from time immemorial, just as it is now.” *Williamson’s Case*, 26 Pa. at 16. It is ““a writ antecedent to statute, . . . throwing its root deep into the genius of our common law.”” *Rasul v. Bush*, 542

U.S. 466, 473 (2004) (citation omitted). “The power to grant habeas corpus relief is innate in our trial courts, because it arises from the ancient common law, and not statute.” *Commonwealth v. Burke*, 261 A.3d 548, 553 (2021).

155. The history of the writ “demonstrates that courts have used and should use it to enhance liberty when a captivity is unjust, even when the captor has statutory or common law rights authorizing such captivities in general.” *Breheny*, 38 N.Y.3d at 580 (Wilson, J., dissenting). Meaning, “[c]ourts did not base their habeas corpus decisions on whether detention was illegal under existing statutory or common law,” but “conducted a case-by-case analysis for each habeas petition.” *Id.* at 589. “Running throughout these qualities of the Great Writ is the maxim that habeas corpus is an innovative writ—one used to advocate for relief that was slightly or significantly ahead of the statutory and common law of the time.” *Id.*

156. General examples of the Great Writ’s usage in situations analogous to this matter are many. First, “the writ was used to grant freedom to slaves, who were considered chattel with no legal rights or existence.” *Id.* at 588. Second, “the writ was used 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 father.” *Id.* at 589. Third, “the writ was flexibly used to transfer custody when circumstances demanded it, particularly in the case of children.” *Id.* These aspects of the writ’s usage were not only true at common law in England, but they were also true at common law in Pennsylvania. *See, e.g., Republica v. Betsey*, 1 U.S. 469, 479 (1789) (“I would not wish to press an argument against liberty, I must declare my voice to be in favor of the discharge of the Negroes.”); *Com. ex rel. Piper v. Edberg*, 346 Pa. 512, 516-17 (1943) (“It is not difficult to conceive of a situation in which imminent danger to the welfare of a child

might call for the summary remedy afforded by a writ of habeas corpus.”).¹¹⁵

i. The Great Writ remedied unjust deprivations of liberty for enslaved humans

157. Specific examples of the Great Writ’s usage in situations analogous to this matter are also many and “show how the Great Writ was flexibly used by the courts as a tool for innovation and social change.” *Breheny*, 38 N.Y.3d at 592 (Wilson, J., dissenting). Notably, the writ was used to grant freedom to enslaved humans in matters like *Somerset* and *Lemmon*.
158. In *Somerset*, Lord Mansfield of the Court of King’s Bench ordered the enslaved human James Somerset freed, ruling that “[t]he state of slavery is . . . so odious, that nothing can be suffered to support it” under the common law.¹¹⁶ 1 Lofft. at 19.
159. In *Lemmon*, the New York Court of Appeals famously relied on *Somerset* in affirming a decision granting habeas corpus relief to eight enslaved humans. The court ruled that “slavery is repugnant to natural justice and right, has no support in any principle of international law, and is antagonistic to the genius and spirit of republican government.” 20 N.Y. at 617. *Lemmon* “illustrates how courts have used and should use the common-law writ of habeas corpus to

¹¹⁵ In analogizing this case to those habeas corpus cases involving “humans who were denied full rights under the law,” *Breheny*, 38 N.Y.3d at 632 (Rivera, J., dissenting), the NhRP does not “seek to make a facile comparison between the elephants and those disenfranchised humans,” Minter and Wolfson Brief at 6, and “do not undermine in any way the dignity of those individuals or diminish their struggles for equality and the right to live free.” *Breheny*, 38 N.Y.3d at 632 (Rivera, J., dissenting). Rather, we seek to underscore “the flexibility of the historical uses of the writ” “to protect against unjust captivity and to safeguard the right to bodily liberty,” and that “those protections are not the singular possessions of human beings.” *Id.*

¹¹⁶ Lord Mansfield famously stated, “fiat justitia, ruat ccelum” (“let justice be done though the heavens may fall”). *Somerset*, 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.”).

expand liberty interests that were not just controversial at the time, but denied by ‘positive’ law legitimizing slavery.” *Breheny*, 38 N.Y.3d at 594 (Wilson, J., dissenting) (explaining that *Lemmon* directly conflicted with the United States Supreme Court’s infamous decision in *Dred Scott*, 60 U.S. 393).

160. The result of the principled decisions in *Somerset* and its progeny was not lost on Pennsylvania’s courts: “By the common law, no one can be carried out of the realm of England without his consent, whatever obligation there might have been upon him, or interest in another to have him taken out. The case of *Somerset v. Stewart*, Loft’s Reports, shews this.” *Com. v. Edwards*, 6 Binn. 202, 205 (Pa. 1813).

ii. The Great Writ remedied unjust deprivations of liberty for wives and children

161. The writ was used to grant freedom to wives and children in matters like those of Catherine Marsden, Lady Rawlinson, and Anne Bissell, to name a few. “Habeas corpus freed Catherine Marsden, for example, when her husband—who had abandoned her but, upon learning that she had begun proceedings in the church courts seeking to have him pay maintenance to support her and their children, lured her to his city on the pretense of reconciliation and then locked her in a hayloft.” *Breheny*, 38 N.Y.3d at 597, (Wilson, J., dissenting). Lady Rawlinson was kidnapped and hidden in a remote location by her groom. *Id.* “[A]lthough the common law gave her husband legal dominion over her,” and King’s Bench accepted the groom’s argument that ““by law, the husband has coercive power over the wife,”” the court still ordered Lady Rawlinson freed. *Id.* (citation omitted).

162. “Anne Bissell was a six-year-old child at the center of a custody dispute in 1774.” *Id.* Anne’s father sought custody of the child, but Lord Mansfield ““assigned custody in defiance of the father’s expectation, supported by common law, that custody should be his,”” in favor of

the child's best interests and to her mother. *Id.* at 598 (citation omitted). These principles are also understood by Pennsylvania's courts: "Historically, however, that writ is designed to secure the release of one held in custody, whether it be in prison or any other institution, or in a private home by a private individual, where the legal right of such custodian to hold relator is challenged, not in situations where relator is held after judgment and sentence by due process of law." *Com. ex rel. Clancy v. Myers*, 10 Pa. D. & C.2d 550, 561 (Quar. Sess. 1958).

163. The writ was also used to transfer custody of children in matters like that of "Bridget Hyde—a young teenager living with her mother and stepfather . . . but claimed by John Emerton as his wife." *Breheny*, 38 N.Y.3d at 589-99 (Wilson, J., dissenting). "Lord Chief Justice Hale, in a striking bit of innovation, 'bad[e] her take her choice who she would go to.'" *Id.* at 599 (citation omitted). "Indeed, other decisions by Chief Justice Hale further reflect an understanding that the writ could innovate to meet society's evolving notions of fairness." *Id.* "Parents also used habeas corpus to regain custody of children who enlisted in the Civil War without their consent." *Id.* at 601. The same has been true of Pennsylvania's courts: "We are moreover clearly of opinion that the State courts have power to discharge, on habeas corpus, minors who are held to service under invalid contracts of enlistment. These and numerous other cases place this principle beyond doubt." *Case of Shirk*, 3 Grant 460, 461 (Pa. 1863) (citations omitted).

iii. The Great Writ can be used to remedy the unjust deprivation of liberty for Angeline, Savanna, Tasha, Victoria, and Zuri

164. These specific, tip-of-the-iceberg historical examples powerfully support extending the writ's use here.¹¹⁷ That habeas corpus protections have yet to be extended to an elephant in

¹¹⁷ That the Great Writ's protections should extend to some nonhuman animals is well grounded in the jurisprudential literature. *See generally*, Steven M. Wise, *The Struggle for the Legal Rights*

Pennsylvania—as they had once yet to be extended to enslaved humans, women, and children—demonstrate only that this case is novel, and a case’s novelty does not render it without merit. For example:

[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. More broadly, novel common law cases—of which habeas is a subset—have advanced the law in countless areas. The . . . argument—“this has never been done before”—is an argument against all progress, one that flies in the face of legal history. The correct approach is not to say, “this has never been done” and then quit, but to ask, “should this now be done even though it hasn’t before, and why?”

Breheny, 38 N.Y.3d at 584 (Wilson, J., dissenting). *See also id.* at 629 (Rivera, J., dissenting) (“[N]ovel questions merely present opportunities to develop the law. . . . I write to emphasize my view that prior decisions do not foreclose Happy’s petition and instead compel our acknowledgment of the availability of the writ to a nonhuman animal to challenge an alleged unjust confinement.”).

165. Pennsylvania courts share this sentiment. “The essential characteristic of the common law . . . is its flexibility. Under the common law, we are not powerless to cope with novel situations not comprehended or contemplated by the legislators. In his work on the common law, Justice Holmes noted that, ‘The first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community, whether right or wrong.’”¹¹⁸ *Keller*,

of Nonhuman Animals Begins-the Experience of the Nonhuman Rights Project in New York and Connecticut, 25 ANIMAL L. 367 (2019); Steven M. Wise, *A New York Appellate Court Takes A First Swing at Chimpanzee Personhood: And Misses*, 95 DENV. L. REV. 265 (2017); Craig Ewasiuk, *Escape Routes: The Possibility of Habeas Corpus Protection for Animals Under Modern Social Contract Theory*, 48 COLUM. HUM. RTS. L. REV. 69 (2017).

¹¹⁸ *See, e.g., End Happy the Elephant’s 10 Years of Solitary Confinement*, Change.org, at: <https://www.change.org/p/end-happy-the-elephant-s-10-years-of-solitary-confinement> (In an analogous case, almost 1.5 million individuals called for the release of an elephant named Happy from the Bronx Zoo to a GFAS-accredited sanctuary.).

35 Pa. D. & C.2d at 615. “Indeed, ‘[t]here is not a rule of the common law in force today that has not evolved from some earlier rule of common law, gradually in some instances, more suddenly in others, leaving the common law of today when compared with the common law of centuries ago as different as day is from night.’” *Marion*, 288 A.3d at 87 (citation omitted).

166. Habeas corpus is a common law writ and “[a]lthough steeped in tradition, the writ is not insensitive to change. . . . [P]resent judgment[s] must be based on today’s needs which the writ is capable of meeting in satisfying the present demands of justice.” *Myers*, 419 Pa. at 16. As “[o]ld forms will not entirely suit new classes of cases, but must be moulded to suit them,” *id.* (citation omitted), it is “a proper judicial use of the writ to employ it to challenge conventional laws and norms that have become outmoded or recognized to be of dubious or contested ethical soundness.” *Breheny*, 38 N.Y.3d at 602 (Wilson, J., dissenting).

167. Simply, “[t]he writ of habeas corpus in Pennsylvania may be molded to suit the exigencies of *any* particular case.” *Fair*, 394 Pa. at 285 (emphasis added). The analysis has already been completed for molding the Great Writ to the exigencies of this particular case:

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. 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.

Breheny, 38 N.Y.3d at 631 (Rivera, J., dissenting) (citations omitted).

E. Legally, the word “person” is not synonymous with the word “human”

168. “Any judge of a court of record may issue the writ of habeas corpus to inquire into the cause of detention of any person or for any other lawful purpose.” 42 Pa.C.S. § 6502(a).

Consistent with the fact that habeas corpus is a common law writ, “person” is undefined in Chapter 65, which merely sets forth the procedure for filing a petition. The question of who may invoke the Great Writ is a substantive matter for this Court to decide under a common law analysis without reference to statutory authority.¹¹⁹ *Myers*, 419 Pa. at 18 (“Our common law writ,” “is left to the development of the common law.”); *Gane*, 3 Grant at 449 (“for the meaning of the term habeas corpus, resort may unquestionably be had to the common law”). In other words, the term “person” in Chapter 65 is merely a placeholder for any individual who may avail themselves of the protections of the common law writ.

169. “Unfortunately, thus far, the courts have not asked, as they should, whether the subject of the petition has a *liberty interest* that habeas must protect, but, formalistically, whether the subject is a person.” Minter and Wolfson Brief at 7. “By focusing instead on whether an animal can be considered a person—a question that itself is more complex than a superficial first instinct may suggest—courts have evaded the more fundamental question of whether

¹¹⁹ Although “person” is defined in the Statutory Construction Act (“SCA”) as including “a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person,” the definition does not apply in this case because the “context clearly indicates otherwise.” 1 Pa.C.S. § 1991. Deciding whether the elephants may avail themselves of the protections of the Great Writ (i.e., whether they are “persons”) is up to the judiciary, based on common law principles like justice, liberty, and equality. The term “person” in Chapter 65 “in no way restricts judicial freedom to expand the common law confines of the writ.” *Myers*, 419 Pa. at 17 n. 20. Nor can it, given the Suspension Clause. *See Com. ex rel. Swann v. Shovlin*, 423 Pa. 26, 34 (1966) (“the Legislature may not encumber access to habeas corpus in a fashion which results in a ‘practical deprivation’ of that right”). Applying the SCA’s definition of “person” in the habeas context would restrict judicial freedom to expand the common law writ and contravene the court’s ability to mold the writ “to suit the exigencies of any particular case.” *Fair*, 394 Pa. at 285 (citation omitted). *Frank Burns, Inc., v. Interdigital Commc’ns Corp.*, 704 A.2d 678, 681 (Pa. Super. Ct. 1997) (finding the “term ‘person’ does not include corporations when the context clearly indicates otherwise”), and *Doe v. Franklin Cnty.*, 644 Pa. 1, 23 (2017) (finding the undefined term “person” in the Uniform Firearms Act does not include the local sheriff because context indicates otherwise), are illustrative of non-habeas cases where the SCA’s definition of “person” did not apply because context indicated otherwise.

intelligent, self-aware, social creatures such as [elephants] have a liberty interest that the common law of habeas is capacious enough to protect.” *Id.*

170. In determining whether Angeline, Savanna, Tasha, Victoria, and Zuri are “persons” for purposes of Chapter 65, this Court’s substantive inquiry must turn on whether the elephants have the common law right to bodily liberty protected by habeas corpus and not whether they fit within a statutory definition of “person.” *See Breheny*, 38 N.Y.3d at 588 (Wilson, J., dissenting) (“At its core, this case is about whether society’s norms have evolved such that elephants like Happy should be able to file habeas petitions to challenge unjust confinements. It is not about whether Happy is a person.”).

171. As a juridical concept, the term “person” is authoritatively defined in relation to a being’s rights or duties rather than their species membership: “[A] person is any being whom the law regards as capable of rights or duties [] whether a human being *or not*.” *Person*, BLACK’S LAW DICTIONARY (12th ed. 2024) (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)) (emphasis added).¹²⁰ Accordingly, the Court’s recognition of the elephants’ right to liberty necessarily makes them “persons” for purposes of Chapter 65.

172. Legal persons possess inherent value; legal things, which possess merely instrumental

¹²⁰ *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.”). Accordingly, “animals may conceivably be legal persons” if they possess legal rights, and there may be “systems of Law in which animals have legal rights.” JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE LAW 42-43 (2d ed. 1963).

value, exist solely for the sake of legal persons. Importantly, legal personhood is a legal concept and not a biological concept, which means “person” is not a synonym for “human.”¹²¹ Believing legal personhood to be a biological concept is why it took hundreds of years in the United States for enslaved individuals,¹²² Indigenous Americans,¹²³ women,¹²⁴ and children¹²⁵ to acquire the status of legal persons. David DeGrazia, *Elephants, Personhood, and Moral Status*, 66:1 PERSPECTIVES IN BIOLOGY AND MEDICINE 3, 4 (2023) (“As we know from history, prevailing interpretations of who qualifies as persons and who deserves legal standing are not infallible.”).¹²⁶

¹²¹ See MacKenzie Holden, *Nonhuman Personhood: Recognizing Liberty Interests for Highly Sentient Animals*, 55:4 ARIZ. ST. L. REV. 1571, 1597 (2024) (“U.S. courts, therefore, are incorrectly denying habeas corpus standing to animals by claiming that ‘persons’ is synonymous with ‘human beings.’ Stated simply, ‘nonhuman personhood’ is not an oxymoron. Rather, it refers to a legal status which acknowledges certain unique rights to nonhuman animals.”).

¹²² Before the Civil War, human slaves were not legal persons. See, e.g., *Jarman v. Patterson*, 23 Ky. 644, 645-46 (1828) (“Slaves, although they are human beings, are by our laws placed on the same footing with living property of the brute creation. However deeply it may be regretted, and whether it be politic or impolitic, a slave by our code, is not treated as a person, but (*negotium*), a thing, as he stood in the civil code of the Roman Empire. In other respects, slaves are regarded by our laws, as in Rome, not as persons, but as things.”).

¹²³ See, e.g., *United States ex rel. Standing Bear v. Crook*, 25 F. Cas. 695, 697 (D. Neb. 1879) (Indigenous Americans are “persons” within the meaning of the Federal Habeas Corpus Act.).

¹²⁴ See, e.g., *Nairn v. University of St. Andrews*, A.C. 147 (1909) (“It is incomprehensible to me that anyone acquainted with our laws or the methods by which they are ascertained can think, if anyone does think, there is room for argument of such a point [that] all persons [include women].”).

¹²⁵ See, e.g., *Com. v. Robinson*, 1 Serg. & Rawle 353, 356 (Pa. 1815) (referring to an apprenticed human minor as “property”).

¹²⁶ See also Leah Edgerton, *What Is the Most Effective Way to Advocate Legally for Nonhuman Animals?*, ANIMAL CHARITY EVALUATORS (Aug. 19, 2016), available at: <https://animalcharityevaluators.org/blog/what-is-the-most-effective-way-to-advocate-legally-for-nonhuman-animals/> (“Legal history demonstrates that the only way a human’s most fundamental interests can be properly protected is through personhood and fundamental legal rights. That is why much of the civil rights work over the last few centuries were attempts to transform every

173. Today, legal personhood is a global legal concept inclusive of humans, nonhumans, and inanimate entities. Macarena Montes Franceschini, *Traditional Conceptions of the Legal Person and Nonhuman Animals*, 2590 *ANIMALS* 12 (2022) (“the law does not consider the terms human and legal person as the same”). See, e.g., Charlotte Graham-McLay, *A New Zealand mountain is granted personhood, recognizing it as sacred for Māori*, AP NEWS (Jan. 31, 2025) (“The law passed Thursday gives [the mountain] Taranaki Maunga all the rights, powers, duties, responsibilities and liabilities of a person. Its legal personality has a name: Te Kāhui Tupua.”); *id.* (“New Zealand was the first country in the world to recognize natural features as people when a law passed in 2014 granted personhood to Te Urewera, a vast native forest on the North Island.”).
174. In other words, the struggle over legal personhood and thus the ascription of legal rights has never been over whether legal personhood is synonymous with being human, but if under the circumstances justice demands that the subject count in law. Legal persons *do* count in the law, whether they are humans, mountains, natural features, sacred texts, mosques, or idols;¹²⁷ legal things, like virtually all nonhuman animals today, do not count.

human ‘thing’ into a human ‘person.’ It is why Article 6 of the Universal Declaration of Human Rights provides that ‘(e)veryone has the right to recognition everywhere as a person before the law.’ . . . Legal human slavery has ended. However, the battle to transform nonhuman animal ‘things’ into ‘persons’ only [just] began.”); *id.* (“‘Personhood allows for the protection of those fundamental interests without which no being can flourish. Humans are not legally killed, enslaved, or routinely exploited as nonhuman animals are for a single reason: they are ‘persons.’”).

¹²⁷ See, e.g., *Shiromani Gurdwara Parbandhak Committee Amritsar v. Som Nath Dass*, A.I.R. 2000 S.C. 421 (Indian Supreme Court) (a common law Indian court designated the Sri Guru Granth Sahib—the sacred text of Sikhism—as a legal person with the capacity to sue and be sued and to own and possess property); *Masjid Shahid Ganj & Ors. v. Shiromani Gurdwara Parbandhak Committee, Amritsar*, A.I.R. 1938, 369 (Lahore High Court, Full Bench) (recognizing a mosque as a legal person with the capacity to sue and be sued); *Pramath Nath Mullick v. Pradyunna Nath Mullick*, 52 Indian Appeals 245, 264 (1925) (recognizing a Hindu idol as a legal person with the capacity to sue and be sued).

175. Recognizing an elephant’s right to bodily liberty and thereby making the elephant a “person” is well-grounded legally and philosophically:

In the 17th century, John Locke was well aware that “man” (referring to human beings in general) and “person” were distinct concepts. In his *Essay Concerning Human Understanding* (1694), Locke influentially defined a person as a “a thinking intelligent being, that has reason and reflection, and can consider itself, as itself, the same thinking thing, in different times and places” (Book II, chap. 27, sect. 9). . . . I read Locke as defining persons as beings with the capacities for consciousness, reason, introspection, and self-awareness over time.

DeGrazia at 5. After all, elephants possess all these capacities. *Supra* at ¶¶ 22-23.

176. “It is worth underscoring that the descriptive sense of personhood does not build species membership into the meaning.” *Id.* at 6. For example, “Locke understood that an apparently rational and fully conversant parrot might persuade us (correctly) that he was a person.” *Id.* Moreover, “[f]or anyone who might be inclined to retain the dogma that only human beings can be persons, it is worth pressing the issue of who should count as a human being. Human corpses? Hardly. Human embryos and early fetuses? Moral and political conservatives might accept such inclusivity but liberals are likely to reject it.” *Id.* The point being, “[i]t quickly becomes apparent that the term ‘person,’ in its descriptive use, does not simply mean ‘human being,’ even if the referents of the two terms are frequently coextensive.”¹²⁸ *Id.* at 5.

177. The recognition of the right to bodily liberty for Angeline, Savanna, Tasha, Victoria, and Zuri would not encompass any other rights. “As many Native American tribes have recognized,

¹²⁸ 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 PATTON, 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.” GRAY at 39. The same is true of nonhuman animals: “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.” *Breheny*, 38 N.Y.3d at 631 (Rivera, J., dissenting).

legal personhood of animals recognizes them as living, sentient beings, instead of merely property. Thus, the legal personhood of animals does not grant them identical rights as humans (or, for that matter, other nonhuman animals) because their inherent rights are derived from their unique ability to suffer.”¹²⁹ Holden, 55:4 ARIZ. ST. L. REV. at 1597. “What would it mean, practically, for elephants to be legal persons?” DeGrazia at 10. It simply means that Angeline, Savanna, Tasha, Victoria, and Zuri would be entitled to “freedom from captivity.” *Id.*

178. In Happy’s case, Judge Wilson and Judge Rivera prudently recognized that the question of whether a nonhuman animal can employ the protections of habeas corpus is not answered by focusing on whether the nonhuman animal is a “person.” *See Breheny*, 38 N.Y.3d at 582 (Wilson, J., dissenting) (explaining that the undefined term “person” in CPLR article 70, New York’s habeas corpus procedural statute, “was meant to have no substantive component,” and “[j]ust as ‘person’ is used in a juridical sense to refer to any entity, real or fictional, as to which a statute or rule of the common law applies, ‘person’ in CPLR article 70 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.”).

179. In the NhRP’s chimpanzee case, Judge Fahey wrote that the right to bodily liberty must be the focus of the court’s substantive inquiry, rather than the definition of “person”:

The better approach in my view is to ask 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

¹²⁹ *See, e.g.,* Roger Boyd, *The indigenous and modern relationship between people and animals*, RESILIENCE (Jan. 17, 2014) (“The Yup’ik Eskimo of Alaska view animals as non-human persons.”) (citation omitted).

of the intrinsic nature of chimpanzees as a species.

Tommy, 31 N.Y.3d at 1057 (Fahey, J., concurring).

180. “The ‘reasoned judgment’ of the common law judge on the momentous issue of legal personhood should not turn on the mechanical operation of a narrow legal rule.” WISE, RATTLING THE CAGE 116. “No being should ever be denied legal personhood just because others like him were denied it before or have always been denied it.” *Id.* “This blindly perpetuates the most pernicious and invidious biases of which we humans are capable.” *Id.*
181. Significantly, many nonhuman animals are rightsholders and thus “persons.” They include domestic and pet animals in Pennsylvania, who are legal persons because they can be beneficiaries of fully enforceable trusts with the statutory right to the trust corpus. *See generally* 20 Pa.C.S. § 7738. *See, e.g.*, California (Cal. Prob. Code § 15212), Colorado (C.R.S. § 15-11-901), Hawai‘i (Haw. Rev. Stat. § 554D-408(a)), Massachusetts (M.G.L. 203E § 408), Nevada (Nev. Rev. Stat. § 163.0075), New York (EPTL § 7-8.1), and Virginia (Va. Code § 64.2-726). As will be discussed, courts around the world have recognized that many nonhuman animals possess various legal rights, thereby making them legal persons.¹³⁰
182. In short, being a “person” is merely the necessary consequence of possessing at least one legal right. The focus of this Court’s substantive inquiry must be on determining whether Angeline, Savanna, Tasha, Victoria, and Zuri have the common law right to bodily liberty protected by habeas corpus, not whether they fall within the definition of the term “person” in

¹³⁰ In late September 2023, the Ojai City Council, in Ojai, California, passed a historic ordinance—the first of its kind—recognizing the right to bodily liberty for elephants. 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>. Of course, although the legislature can expand legal protections for nonhuman animals, that is no reason for this Court to deflect its duty to change archaic common law. “[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.” *Breheny*, 38 N.Y. at 633 (Rivera, J., dissenting).

Chapter 65. Once this Court recognizes that these elephants possess the right to bodily liberty, they are necessarily legal persons for purposes of Chapter 65 and are therefore protected by the Great Writ.

F. This Court should recognize Angeline, Savanna, Tasha, Victoria, and Zuri’s common law right to bodily liberty protected by habeas corpus based on theories of justice and changing societal norms

183. “‘The common law relies in individual cases upon clear iterations of the facts and skillful advocacy, and evolves in principle by analogy, distinction, and reasoned explanation. This is the essence of justice at common law.’” *Salsberg v. Mann*, 310 A.3d 104, 119-20 (Pa. 2024) (citation omitted). In other words, “[t]he common law is the living science of justice, and adapts the application of fixed principles to changes in the affairs of men.” *Saltsburg Gas Co. v. Borough of Saltsburg*, 138 Pa. 250, 259 (1890).¹³¹

184. The world’s foremost elephant scientists have clearly established the factual basis for this case. The record shows that Angeline, Savanna, Tasha, Victoria, and Zuri are autonomous and extraordinarily cognitively complex individuals, and it is an objective injustice to continue their confinement at the Pittsburgh Zoo. There is simply “no justification for the deprivation of autonomy and free movement that results” from keeping elephants in captivity. Poole Decl. ¶ 57. In fact, “there is no logical reason to believe that the large, complex brains of animals such as elephants would react any differently to a severely stressful environment than does the human brain.” Jacobs Decl. ¶ 16; *see also* Moss Decl. ¶ 25 (“evidence demonstrates that along

¹³¹ The law is a rule of action that commands what is right and prohibits what is wrong. *Woodruff v. Trapnall*, 51 U.S. 190, 202 (1850). “Justice” is defined as the “quality of being fair or reasonable.” *Justice*, BLACK’S LAW DICTIONARY (12th ed. 2024). Accordingly, the “law cannot be divorced from morality” because “it clearly contains, as one of its elements, the notion of right to which the moral quality of justice corresponds.” *Id.* (citation omitted). *See* Jack B. Weinstein, *Every Day Is a Good Day for a Judge to Lay Down His Professional Life for Justice*, 32 FORDHAM URB L. J. 131, 131 (2004) (The “moral judge” “embraces his professional life most fully when he is prepared to fight-and be criticized or reversed—in striving for justice.”).

with these common brain and life-history characteristics, elephants share many behavioural and intellectual capacities with humans”). “Thus, elephants should either remain free (and protected) or, if already in captivity, they should be released into well-designed sanctuaries.” Jacobs Decl. ¶ 20.

185. Leading civil rights attorneys and a now-retired judge of the New York Court of Appeals have provided the skillful advocacy and reasoned explanation that the common law relies upon in cases like this. For example, legendary attorneys Shannon Minter and Evan Wolfson write that it is unjust for courts reviewing issues of this nature to refuse a merits analysis: “Because animals have not brought habeas petitions in the past, they cannot bring them now. Because the petitioners are animals rather than people, their assertion of any liberty interest must be dismissed out of hand, regardless of the potential strength of such a claim on the merits. This is not justice, nor is such blindness to injustice and suffering compelled by our Constitution or the law in all its majesty and scope.” Minter and Wolfson Brief at 10. “Courts must not so casually evade their duty to apply principle and logic to do justice.” *Id.* at 14.

186. Judge Eugene Fahey (ret.) of the New York Court of Appeals understood the application of justice to a case like this one. In considering whether a chimpanzee could invoke the protections of habeas corpus, he found that “[t]he reliance on a paradigm that determines entitlement to a court decision based on whether the party is considered a ‘person’ or relegated to the category of a ‘thing’ amounts to a refusal to confront a manifest injustice. Whether a being has the right to seek freedom from confinement through the writ of habeas corpus should not be treated as a simple either/or proposition.” *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring). Accordingly, whether “an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do [has] the right to the protection of the law against arbitrary

cruelties and enforced detentions visited on him or her,” “is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention.”¹³² *Id.* at 1058.

187. To resolve such a dilemma, Judge Fahey suggested looking at the *nature* of the habeas corpus petitioner instead of their species membership. “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.” *Id.* “Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect.” *Id.* The same approach must be used here. *Flagiello v. Pennsylvania Hosp.*, 417 Pa. 486 (1965) (“Surely, the orderly development of the law must be responsive to new conditions and to the persuasion of superior reasoning.”) (citation omitted).

188. Justice under the common law means this Court should find it irrelevant that the right to bodily liberty has not yet been recognized in an elephant. “The nature of the common law requires that each time a rule of law is applied it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it the instrument of injustice.” *Hack v. Hack*, 495 Pa. 300, 319 (1981) (citation omitted).¹³³ Without

¹³² “In the common-law system, there is often not a sharp boundary between doctrine and policy – that is, between existing law (‘what do the cases say?’) and an analysis of the social effects of the law (‘what legal rule would be a good idea in our society?’). In fact, considerations of policy – along with other types of analysis, like considerations of morality and experiential knowledge – are one of the primary motivations for the creation and ongoing development of legal doctrine.” SHAWN BAYERN, *AUTONOMOUS ORGANIZATIONS* 135-36 (2021) (citing MELVIN EISENBERG, *THE NATURE OF THE COMMON LAW* 14-19 (1988)); see also *Hack*, 495 Pa. at 318 (Under the common law, “[p]recedent speaks for the past; policy for the present and the future. The goal which we seek is a blend which takes into account in due proportion the wisdom of the past and the needs of the present.”) (quoting Walter V. Schaefer, *Precedent and Policy*, 34 U. CHI. L. REV. 3, 24 (1966)).

¹³³ See also *Flagiello*, 417 Pa. at 513 (“When a rule offends against reason, when it is at odds with every precept of natural justice, and when it cannot be defended on its own merits, but has to

the common law, Pennsylvania’s “jurisprudence would be little more than a constitutional and statutory skeleton, largely deficient in material substance and life.” *Gibbons*, 9 Pa. Super at 532; *Commonwealth v. Ladd*, 402 Pa. 164, 174 (1960) (“If the common law cannot change it cannot live.”). In giving liberty and thus *life* to these elephants, this Court reaffirms the life of the common law in Pennsylvania.

189. Justice under the common law also means this Court should find it irrelevant that a favorable decision might lead to increased litigation for nonhuman animals. Although there is no empirical evidence for such a belief, and notable revolutionary habeas corpus cases like *Somerset* did not lead to increased litigation,¹³⁴ this point is worth mentioning again because Pennsylvania law requires justice be done no matter the cost. “If a procedure is authorized and justified under the law, it is no argument to say that such a procedure would place a burden on the courts. The courts are open to do justice under the law, regardless of burden, and every aggrieved person has the right to be heard, especially if he claims he is being illegally deprived of his freedom. Justice is not limited by the size of the courtroom and freedom is not measured by the strength of a judge’s back.” *Fair*, 394 Pa. at 268; *see also Ayala v. Philadelphia Bd. of Pub. Ed.*, 453 Pa. 584, 595 (1973) (“We obviously do not accept the ‘too much work to do’ rationale.”).

190. The time has come for the common law of Pennsylvania—the living science of justice—to adapt and reflect the modern, irrefutable understanding that elephants are autonomous and

depend alone on a discredited genealogy, courts not only possess the inherent power to repudiate, but, indeed, it is required, by the very nature of judicial function, to abolish such a rule.”).

¹³⁴ *Breheny*, 38 N.Y.3d at 623 (Wilson, J., dissenting) (“As ‘[h]abeas corpus, by its nature, could not enable a judge to declare illegal an entire system of bondage,’ the following year only two enslaved persons received freedom during habeas corpus proceedings-and through settlement agreements, not through merits decisions.”).

extraordinarily cognitively complex beings; for the deprivation of their bodily liberty through their wholly unnatural confinement at the Pittsburgh Zoo becomes more deleterious every day they remain there.¹³⁵ See Poole Decl. ¶ 57 (“Active more than 20 hours each day [wild] elephants move many miles across [varied] landscapes . . . Holding them captive and confined prevents them from engaging in normal, autonomous behavior and can result in the development of arthritis, osteoarthritis, osteomyelitis, boredom, and stereotypical behavior.”). This injustice, along with changing societal norms and the evolving legal status of nonhuman animals, compels the recognition of Angeline, Savanna, Tasha, Victoria, and Zuri’s common law right to bodily liberty protected by habeas corpus.

i. The Pittsburgh Zoo’s elephant exhibit is barren, devoid of substance, and does not provide Angeline, Savanna, Tasha, Victoria, and Zuri with anything close to what an elephant needs to thrive

191. “Scientific knowledge about elephant intelligence has been increasing rapidly in the past decade: what we currently know is only a tiny fraction of what elephant brains are likely capable of, and yet more amazing abilities are still likely to be discovered.” Bates & Byrne Decl. ¶ 61.¹³⁶ Indeed, “[w]hether an elephant could have petitioned for habeas corpus in the

¹³⁵ *Loughner v. Allegheny Cnty.*, 436 Pa. 572, 581 n.6 (1970) (Pomeroy, J., dissenting) (“In truth, the common law, as a science, must be forever in progress; It is its true glory, that it is flexible, and constantly expanding with the exigencies of society; that it daily presents new motives for new and loftier efforts; that it holds out for ever an unapproached degree of excellence; that it moves onward in the path towards perfection, but never arrives at the ultimate point.”) (cleaned up).

¹³⁶ “More recently, hard science has begun to reveal just how radically the elephant’s outwardly plodding appearance belies the exquisiteness of its senses and sensibilities. Neuroimaging has shown that elephants possess in their cerebral cortex the same elements of neural wiring we long thought exclusive to us, including spindle and pyramidal neurons, associated with higher cognitive functions like self-recognition, social awareness and language. This same circuitry, of course, renders elephants susceptible to the various psychic pathologies that afflict imprisoned humans: extreme boredom and depression, stereotypical behaviors like manic pacing and rocking and heightened aggression.” Charles Siebert, *Zoos Called It a ‘Rescue.’ But Are the Elephants Really Better Off?*, N.Y. TIMES (July 9, 2019), <https://nyti.ms/3qmjuRJ>.

eighteenth 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.” *Breheny*, 38 N.Y.3d at 603 (Wilson, J., dissenting).

192. The Expert Declarations prove that elephants are autonomous and extraordinarily cognitively complex individuals with intricate physical, psychological, and social needs. However, the elephants’ lives at the Pittsburgh Zoo are nothing but a succession of boring and frustrating days, damaging to their bodies and minds. Lindsay Decl. ¶ 67. There is no variety in their lives, no challenge to employ their mental capacity for exploration, spatial memory, or problem-solving; and no opportunity to employ their wide range of vocalizations to communicate and interact with a range of other elephants over distance. *Id.* Accordingly, the behavioral repertoire of the five elephants at the Pittsburgh Zoo is extremely limited, and *widely* divergent from that of free-ranging elephants. *Id.* (emphasis added).

193. To live as evolutionary nature intended for elephants to live, these five individuals need the opportunity to plan their futures, travel great distances, forage for unique and varied food sources, socialize with whom they choose, and live in the ecosystems they were born to exist in (and which have evolved positively because of elephants living in them); in other words, they need the ability to exercise their autonomy. Yet, the Pittsburgh Zoo has forced these individuals to exist in a wholly unnatural, impoverished, and sterile environment that deprives them of their autonomy, causing immense physical and psychological pain.

194. To remedy the injustice of Angeline, Savanna, Tasha, Victoria, and Zuri’s confinement at the Pittsburgh Zoo, this Court must evolve the common law and recognize their right to bodily liberty, allowing them to invoke the protections of the Great Writ and seek release from their cruel cages. “Such holding is based upon the common sense of the situation and in line with

the most rudimentary principles of justice.” *Reitmeyer v. Sprecher*, 431 Pa. 284, 291 (1968).

195. Recognizing the elephants’ right to bodily liberty will allow them to spend the rest of their lives at a GFAS-accredited elephant sanctuary where their autonomy and extraordinary cognitive complexity will be respected to the greatest extent possible. “[A]n autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life.” *Breheny*, 38 N.Y.3d at 629 (Rivera, J., dissenting).

ii. Courts have recognized the injustice of confining elephants in zoos

196. Relying on the affidavits from many of the same experts as in this case, the court in *Breheny*, *Trial Court* found that Happy “is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty.” 2020 WL 1670735 at *10. The court further recognized the injustice of Happy’s confinement at the Bronx Zoo, calling it her “plight.” *Id.*

197. On appeal, Judge Wilson concluded that the scientific evidence submitted by the NhRP shows that “Happy is a being with highly complex cognitive, social and emotional abilities. She has self-awareness, social needs and empathy,” and that she “has established a prima facie case that her confinement at the Bronx Zoo stunts her needs in ways that cause suffering so great as to be deemed unjust.” *Breheny*, 38 N.Y.3d at 620 (Wilson, J., dissenting).

198. Judge Rivera similarly recognized the injustice of continuing “Happy’s decades-long confinement in an unnatural habitat where she is held for the sole purpose of human entertainment.” *Id.* at 628 (Rivera, J., dissenting). She pointedly stated, “the question here is about an unjust confinement.” *Id.* at 634. “Happy has committed no crime. She has not forfeited her right to liberty by inflicting harm on humans or even another animal. To the contrary, Happy has done nothing but be born an elephant, and thereby attracted human curiosity.” *Id.*

According to Judge Rivera, the injustice of Happy’s confinement is profoundly harmful: the “desire to observe Happy at the pleasure of and on the terms set by human beings has come at a great cost to her and to our society.” *Id.*

199. Members of New York’s judiciary are not alone in recognizing the injustice of keeping elephants confined in a zoo. A California judge found that three elephants confined at the Los Angeles Zoo were “neither thriving, happy, nor content.” *Leider v. Lewis*, Case No. BC375234 at 30 (L.A. Cnty. Sup. Ct. July 23, 2012), available at: <https://bit.ly/3KRQfln>.¹³⁷ The injustice of the elephants’ confinement was clear; their lives were “empty, purposeless, boring, and occasionally painful.” *Id.* at 45. The court added: “*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*.” *Id.* at 30 (emphasis added).

200. In 2020, 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.” *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>. 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.” *Id.* at 12-13. Similar pain and suffering are part of the factual record in this case.

201. In February 2025, Mexico’s highest court recognized the immense suffering caused to elephants by zoo captivity, and prioritized the interests of an elephant named Ely over those of

¹³⁷ The California Supreme Court reversed on legal grounds because “the Legislature did not intend to overturn the long-established law governing equitable relief for violations of penal law.” *Leider v. Lewis*, 2 Cal.5th 1121, 1137 (2017).

her captor, the San Juan de Aragón Zoo; the court emphasized that the protection of Ely's interests is a relevant matter within the framework of the constitutional right to a healthy environment.¹³⁸ This marks a significant legal advance in Mexico, aligning with the global trend calling for justice in the treatment of nonhuman animals, specifically elephants.

iii. Societal norms toward elephant captivity are changing, the legal status of nonhuman animals continues to evolve, and the common law must evolve accordingly

202. “The law must not be reluctant to remain abreast with the developments of society.” *Conway v. Dana*, 456 Pa. 536, 539 (1974). ““One of the great virtues of the common law is its dynamic nature that makes it adaptable to the requirements of society at the time of its application in court.”” *Hack*, 495 Pa. at 319 (citation omitted). “Judges, like all others, live and work in a real flesh and blood world, tempered by the social and cultural climate of the day. ‘(T)here comes a point where this Court should not be ignorant as judges of what we know as men.’” *Estate of Grossman*, 486 Pa. 460, 472 (1979) (citation omitted).
203. In *Breheny*, Judge Wilson aptly observed: “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.” 38 N.Y.3d. at 606 (Wilson, J., dissenting). For example: “Elephant mothers whose calves perish will often mourn their loss for days, attempt to revive the dead and stand guard over the body for days at a time. Elephants' ritualistic funeral practices further offer support for the notion that they are mentally and socially complex beings.”¹³⁹ *Id.*

¹³⁸ Suprema Corte de Justicia de la Nación [Supreme Court of Justice of the Nation] Feb. 26, 2025, case no. 697/2024, at para 59 (Mex.).

¹³⁹ “A deepening pool of scientific research gives clear evidence that elephants and other animals are smarter, more aware, and more emotional than previously thought. . . . Elephants are intelligent and empathetic. They use tools, have close family ties, comfort their friends, and even appear to mourn their dead.” Rachel Fobar, *A person or a thing? Inside the fight for animal personhood*,

at 608 (citation omitted).

204. Whether Angeline, Savanna, Tasha, Victoria, and Zuri can successfully use the Great Writ to challenge their confinement “arises within our country’s history of evolving norms and knowledge about animals. Those evolving norms and our deepening understanding about animals, along with legal developments that reflect them, provide the essential context for deciding this case.” *Id.* at 610. Societal norms toward keeping elephants in captivity, along with the legal status of nonhuman animals, have evolved. It is time for the common law to evolve accordingly.
205. Society is finally beginning to appreciate how horrifying captivity is for elephants. “The physical ailments that afflict captive elephants — foot sores and infections, joint disorders, a high incidence of tuberculosis — have been well known for years. . . . [A] 2012 Seattle Times investigation found that 390 elephants had died in accredited zoos in the previous 50 years, a majority of them from captivity-related injuries and diseases.” Charles Siebert, *Zoos Called It a ‘Rescue.’ But Are the Elephants Really Better Off?*, N.Y. TIMES (July 9, 2019), <https://nyti.ms/3qmjuRJ> (emphasis added). The number of elephants dying because they are forced to languish in captivity has only continued to climb over the last thirteen years.
206. Since 1991, more than forty North American zoos have closed or are in the process of closing their elephant exhibits. *Closed or closing elephant zoo exhibits*, IN DEFENSE OF ANIMALS, <https://bit.ly/30P8hjI>. Lion Country Safari, for example, closed its elephant exhibit

NAT. GEO. (Aug. 4, 2021), <https://on.natgeo.com/3Fqukwg>. One of many examples showing the advanced cognition of elephants can be seen in the response elephants have to the murder of their own kind. Specifically, “[a] herd as far away as a hundred miles from a cull — the brutal practice of gunning down elephants in those areas where their numbers interfere with human settlements — can both emit and hear alarm calls outside our ears’ register about the unfolding cataclysm. In the aftermath of such slaughters, when the body parts are locked away in sheds for later sale, other elephants have been known to return to break in and retrieve the remains for proper burials.” Siebert, N.Y. TIMES.

in 2006, with its director of wildlife explaining: “If we can’t keep elephants in captivity properly, we shouldn’t And we’ve proven that we can’t.” Jill Lepore, *The Elephant Who Could Be A Person*, THE ATLANTIC (Nov. 16, 2021), <https://bit.ly/3oDpw0M>.

207. In Happy’s case before the New York Court of Appeals, one hundred and forty-six distinguished scholars, habeas corpus experts, philosophers, lawyers, and theologians submitted amicus briefs supporting her release from the Bronx Zoo to a sanctuary.¹⁴⁰ This prompted the *Breheny* majority to observe, “this case has 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 577.¹⁴¹

208. Historian Jill Lepore described Happy’s habeas corpus case as the “most important animal rights case of the 21st century,” observing that her “misery comprises forms of distress that many humans, just now, understand better than they used to. In this 21st-century Planet of the Apes moment, humans have so ravaged the planet that many feel themselves caged, captive, isolated, and alone, dreading each dawn . . . seeing in Happy a reflection of their own despair.” Lepore, THE ATLANTIC.¹⁴²

209. In a radio interview, Lepore added: “I have come — in looking at [Happy’s] case carefully, to believe it is a necessary part of the political journey and the history of humankind toward

¹⁴⁰ *Amicus Support for the fight to #FreeHappy*, NONHUMAN RIGHTS BLOG (Apr. 25, 2022), <https://bit.ly/3Mm5Z0U>.

¹⁴¹ A Change.org petition to free Happy has gathered nearly 1.5 million signatures, of which almost 1 million had been added since the NhRP filed its habeas petition on behalf of Happy. Available at: <https://bit.ly/3qgkx1Y>.

¹⁴² Jill Lepore is a prize-winning professor of American History at Harvard University, an award-winning author, a staff writer at The New Yorker, a prolific essayist, and a past president of the Society of American Historians, among other notable achievements. *Jill Lepore Biography*, HARVARD UNIVERSITY, <https://bit.ly/3t1rwCr>.

granting rights to more than just the people in power. . . . We are in a long moral journey as a species and I think we have taken some terribly, terribly bad turns on this road.” Jill Lepore (interviewed by Melissa Harris-Perry), *Happy the Elephant Could Change the Face of Animal Rights*, WYNC STUDIOS: THE TAKEAWAY (Dec. 14, 2021), <https://bit.ly/3s3CJlw>.

210. Internationally, courts have begun recognizing the rights of some nonhuman animals.¹⁴³

For example:

- In November 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. *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>.
- 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. *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>. That decision was subsequently nullified on due process grounds and the nullification was confirmed by the Colombian Constitutional Court in a 7-2 decision. *Tutela Action Filed by the Botanical and Zoological Foundation of Barranquilla (FUNDAZOO) against the Supreme Court of Justice*,

¹⁴³ The Supreme Court of Pennsylvania has looked to international legal trends when asked to evolve the common law. *Falco v. Pados*, 444 Pa. 372, 376 (1971) (In abrogating the doctrine of parental immunity for personal torts, the Supreme Court recognized that “[m]odern decisions in Scotland and Canada have recognized such personal injury suits.”).

SU016/20 (Constitutional Court of Colombia, Jan. 23, 2020) [English translation], available at: <https://bit.ly/3yzWTog> (*Tutela Action*). Magistrate Diana Fajardo Rivera powerfully dissented based on 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.” *Id.* at ¶¶ 117, 118 (Fajardo, J., dissenting).¹⁴⁴ An official court announcement regarding the Tutela Action indicated that 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.” *Report No. 03*, SU016/20 at 7 (Constitutional Court of Colombia, Jan. 23, 2020) [English Translation], available at: <https://bit.ly/3GZgocT>.

- In 2020, the Islamabad High Court ordered the release of an imprisoned Asian elephant named Kaavan from the Marghazar Zoo to an elephant sanctuary, stating “without any hesitation” that Kaavan is the subject of “legal rights.” *Islamabad Wildlife Mmgt. Bd.*, W.P. No. 1155/2019 at 62, available at: <https://bit.ly/3tXu4zT>.
- In 2022, Ecuador’s highest court—the Constitutional Court—decided an appeal from the denial of a writ of habeas corpus for a chorongo monkey named Estrellita.¹⁴⁵ *Judgment No.*

¹⁴⁴ Magistrate Fajardo cited the 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).

¹⁴⁵ 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 para. 9 (Dec. 22, 2020) [English translation], available at: <https://bit.ly/3LYoMf8>.

253-20-JH/22 *Rights of Nature and animals as subjects of rights, ‘Estrellita Monkey’ Case* (Constitutional Court of Ecuador, 2022), available at, <https://bit.ly/3MhkBw6>. 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.

Id. at ¶ 173, p. 53.

- Also in 2022, Argentinian courts recognized a cougar named Lola Limon as a subject of rights,¹⁴⁶ and fifty-five dachshunds (and their later-born puppies) as the subjects of rights. In the dachshund case, the court did not mince words when it said, “the new current of animal rights movements argues that it is not enough to treat animals well or to ensure their welfare but that animals, regardless of their species, are subjects of rights, a category that has historically been reserved for natural and legal persons, i.e., human beings.” Jake Davis, *Argentina court recognizes dogs as rightsholders*, NhRP Blog (Sep. 16, 2022), at: <https://www.nonhumanrights.org/blog/argentine-court-dogs-rightsholders/>.
- In 2025, a court in Buenos Aires, Argentina, held that seven birds of the canary species were sentient beings and the subjects of rights. The court drew attention to “the wide range

¹⁴⁶ Lauren Choplin, *Argentina court recognizes cougar as rightsholder*, NhRP Blog (Sep. 1, 2022), at: <https://www.nonhumanrights.org/blog/argentina-cougar-rights/>.

of international standards that recognize non-human animals as sentient beings, proclaim respect for their welfare . . . and recognize them as subjects of rights.” Juzgado de Primera Instancia en lo Penal Contreventual y de Faltas No. 1 [Court of First Instance in Criminal, Misdemeanor and Petty Offense Matters No.1] Jan. 21, 2025, “Rego, Ricardo Fabián sobre 1- Ley de Protección al Animal. Malos tratos o actos de crueldad,” case no. IPP 55954/2023-0 (Arg.) (listing international treatises). The court added, “it is not unreasonable to state that animals are subjects of rights” because, *inter alia*, “[t]his position has been upheld in various academic works,” “promoting the European trend to release animals from the status of things.” *Id.* at 4. Finally, it bears mentioning that the court made its findings although “the recognition of sentient beings as subjects of rights is not expressly established in the local sphere.” *Id.* at 3.

211. Justice, changing societal norms, and the evolving status of nonhuman animals demand the recognition of Angeline, Savanna, Tasha, Victoria, and Zuri’s right to bodily liberty protected by habeas corpus as autonomous and extraordinarily cognitively complex individuals. *See Soffer v. Beech*, 487 Pa. 255, 263 (1979) (citation omitted) (“The modern tendency of jurisprudence is to look through shadows to substance to eliminate technicalities in the interest of substantial justice.”). “[W]here justice demands, reason dictates, equality enjoins and fair play decrees a change in judge-made law, courts will not lack in determination to establish that change.” *Flagiello*, 417 Pa. at 515.

212. Indeed, courts have had “the fortitude and wisdom to effectuate changes in the law where ‘reason and a right sense of justice’ recommend it.” *Falco v. Pados*, 444 Pa. 372, 382 (1971). Accordingly, this Court can change the status quo that has for too long kept elephants in zoo captivity—justice, reason, and a sense for what is right compel such a change.

G. Liberty means Angeline, Savanna, Tasha, Victoria, and Zuri have the common law right to bodily liberty protected by habeas corpus

213. Judges who “supremely value liberty, equality, and reasoned judgment, who despise slavery, genocide, and who may even be disturbed by abortion, should be prepared to analyze every claim for common law personhood, above all other claims, through those prisms of fundamental principles.” WISE, RATTLING THE CAGE at 117. Indeed: “More than a century ago, the United States Supreme Court recognized that ‘[n]o 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.’” *In re Fiori*, 543 Pa. 592, 600 (1996) (quoting *Union P. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891)).
214. Although the Supreme Court’s time-honored statement concerning the protection of an individual’s autonomy was not the result of a habeas corpus petition, the sanctity of autonomy is consistent with the Great Writ’s application, “justly esteemed the great bulwark of personal liberty.” *Gane*, 3 Grant at 449. It is precisely why “[t]his writ is beneficially construed, and is applied to every case of illegal restraint, *whatever* it may be.” *Id.* (emphasis added).
215. The importance of protecting autonomy under the common law must guide this Court’s decision on whether to protect Angeline, Savanna, Tasha, Victoria, and Zuri. That the elephants are autonomous—and their autonomy is being severely and unjustifiably curtailed at the Pittsburgh Zoo—is precisely why the Great Writ should be construed in their favor here.¹⁴⁷ Elephants desperately need the ability to choose how to spend their days because they have evolved to move great distances over varied landscapes. Poole Decl. ¶¶ 57-58. In fact, elephants have evolved with increasingly longer legs because striding over large areas is

¹⁴⁷ The NhRP argues that autonomy is sufficient, not necessary, for the recognition of the right to bodily liberty.

accomplished most efficiently with longer legs. Lindsay Decl. ¶ 18. When denied their liberty, autonomy, and evolutionary needs, including the ability to move great distances, they quite literally lose their minds. Jacobs Decl. ¶ 21(g).

216. The value placed on autonomy by Pennsylvania courts is rightfully tremendous. Even an incapacitated individual may decline life-saving medical treatment. *In re Fiori*, 543 Pa. at 602 (The state’s interest in preserving life “does not outweigh the PVS [persistent vegetative state] patient’s interest in self-determination. . . . We thus hold that the state’s interest in preserving life does not outweigh the right of the PVS patient to refuse medical treatment.”); *see also In re Duran*, 769 A.2d 497, 500 (Pa. Super. Ct. 2001) (patient’s “refusal of blood transfusion therapy is protected by Pennsylvania common law and that the trial court erred when it appointed an emergency guardian to abridge this right”). Moreover, Pennsylvania’s common law courts have time and again reaffirmed the importance of protecting an individual’s autonomy. *Fiori*, 543 Pa. at 600 (“we choose to follow the example set by the courts which have relied solely on the common-law basis for the right to self-determination”); *Coleman v. W.C.A.B.*, 577 Pa. 38, 46 (2004) (“Under the common law, all persons have a right to be free of bodily invasion and to refuse medical treatment.”).¹⁴⁸ The supreme value of protecting autonomy has led to the establishment of other essential doctrines. *In re Duran*, 769 A.2d at

¹⁴⁸ *See also Brown v. Unemployment Comp. Bd. of Rev.*, 276 A.3d 322, 333 (Pa. Commw. Ct. 2022) (McCullough, J., dissenting) (“Pennsylvania recognizes a common law right to exercise autonomy over the medical treatment to be utilized by an individual, also referred to as the doctrine of self-determination. . . . [O]ur Pennsylvania Supreme Court has chosen to follow the example set by the courts that have relied solely on the common law basis for the right to self-determination. *See Shinal v. Toms*, 640 Pa. 295, 333 (2017) (recognizing right to medical self-determination); *Coleman v. Workers’ Compensation Appeal Board (Indiana Hospital and Phico Services Company)*, 577 Pa. 38, 48 (2004) (recognizing importance of safeguarding a workers’ compensation claimant’s right of self-determination). *See also In re Estate of Border*, 68 A.3d 946, 955 (Pa. Super. Ct. 2013) (“the right to self-determination does not cease upon one’s incapacitation”).

503 (“The right to control the integrity of one’s body spawned the doctrine of informed consent.”); *Rideout v. Hershey Med. Ctr.*, 30 Pa. D. & C.4th 57, 71 (Com. Pl. 1995) (“This doctrine [of informed consent] is rooted in the concept of bodily integrity and is deeply ingrained in common law.”).

217. In the case of *In re Jane Doe*, 45 Pa. D. & C.3d 371 (Pa. Com. Pl. 1987), the Court of Common Pleas made the following observation: “‘Worse than the agony of such a life is the frustration, bodily insult and the humiliation of having a stranger or some other authority decide contrary to one’s own wishes the quality, the nature, the form and the manner of one’s own future life.’” (citation omitted). This observation epitomizes Angeline, Savanna, Tasha, Victoria, and Zuri’s lives.

218. But living, suffering, and then dying behind bars at the Pittsburgh Zoo does not need to be their fate. This Court can choose to rule in favor of liberty by affirming the right to bodily liberty for a group of autonomous individuals who cannot flourish without the recognition of that right. The writ’s malleability to the exigencies of this case permits such a ruling. *See Breheny*, 38 N.Y.3d at 632 (Rivera, J., dissenting) (“[T]he 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.”).

219. In *Tommy*, Judge Fahey recognized that autonomy lies at the heart of whether a chimpanzee “has the right to liberty protected by habeas corpus,” noting the answer requires looking at the scientific evidence. 31 N.Y.3d at 1057 (Fahey, J. concurring). He recognized the “unrebutted 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.” *Id.* 1057- 58 (citations omitted). They are “autonomous, intelligent creatures.” *Id.* at 1059. Courts should thus consider whether chimpanzees have “inherent value who have the right to be treated with respect.” *Id.* at 1058.

220. In *Breheny*, Judge Wilson understood the central importance of autonomy to an elephant’s right to petition for her liberty: “Happy has a level of autonomy, intelligence and understanding that could make suffering particularly acute.” 38 N.Y.3d at 619 (Wilson, J., dissenting). Judge Rivera concluded that the NhRP “made the case for Happy’s release and transfer to an elephant sanctuary, and the writ should therefore be granted, based on “submitted affidavits from several internationally renowned elephant experts [establishing] Happy’s autonomy and the inherent harm of her captivity in the Zoo.” *Id.* (Rivera, J., dissenting).

221. While elephants cannot make the decisions like those discussed in *Fiori*, *Duran*, and *Coleman*, they can make decisions concerning their autonomy, which habeas corpus protects. For example, they speak to one another by using individual names the same way humans address one another. *Supra* at ¶ 42. They can discuss where to go, when to go, with whom, and what to do once they arrive. Pool Decl. ¶¶ 44-46. They prefer liberty to captivity because freedom is inherent to their nature. *See, e.g.,* Dr. Rob Atkinson and Dr. Keith Lindsay, *Expansive, Diverse Habitats are Vital for the Welfare of Elephants in Captivity*, ZOOCHECK (June 2022), at:

<https://www.zoocheck.com/wp-content/uploads/2022/11/Expansive-Diverse-Habitats-for-Elephants-in-Captivity-2022.pdf> (“Life in captivity thwarts what we know from studies of wild elephants are highly motivated social behaviours.”).

222. The Expert Declarations irrefutably establish that Angeline, Savanna, Tasha, Victoria, and Zuri are autonomous and extraordinarily cognitively complex beings. Autonomy is a supreme

and cherished value under Pennsylvania common law. It is also the foundation for the common law right to bodily liberty, and habeas corpus protects the right to bodily liberty, especially the bodily liberty of individuals who have committed no wrong warranting a loss of freedom. Accordingly, the Great Writ must protect Angeline, Savanna, Tasha, Victoria, and Zuri's right to bodily liberty, too.

H. Equality means Angeline, Savanna, Tasha, Victoria, and Zuri have the common law right to bodily liberty protected by habeas corpus

223. "Our 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). Simply, our "institutions are founded upon the doctrine of equality." *Loving v. Virginia*, 388 U.S. 1, 11 (1967) (citation omitted); see also *James v. Commonwealth*, 12 Serg. & Rawle 220, 230 (Pa. 1825) ("the common law . . . stamps freedom and equality upon all who are subject to it"); *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 individual right.").¹⁴⁹
224. Equality requires that entitlement to a legal right be determined by comparing one's situation to the situation of another who already possesses that right. Equality is violated when relevantly similar individuals are treated unlike because of arbitrary distinctions. "[E]quality demands that situations or beings be compared. If alikes are treated differently or if unalikes

¹⁴⁹ See also *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.*, 570 N.E.2d 198, 388 (N.Y. 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."); *Denver & R.G.R. Co. v. Outcalt*, 2 Colo.App. 395, 400 (1892) ("a fundamental principle of, the common law, [is] the inviolability of the equality of all persons before the law"); *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).

are treated the same way for no good and sufficient reason, equality is violated.” WISE, RATTLING THE CAGE at 82; *see also Commonwealth v. Petrick*, 655 Pa. 335, 348 n.9 (2019) (“A just legal system seeks not only to treat different cases differently but also to treat like cases alike.”) (citation omitted). Accordingly, equality in cases of this nature must be blind to species membership and other immutable characteristics.¹⁵⁰ *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.”).

225. Comparing Angeline, Savannah, Tasha, Victoria, and Zuri to humans shows that both species are alike but treated unlike when it comes to the common law right to bodily liberty protected by habeas corpus. Elephants and humans are treated unlike because of their respective species, an immutable characteristic and thus arbitrary distinction in violation of equality. Equality requires this Court to consider who the elephants are inherently: “All can agree that an elephant is not a member of the homo sapiens species. . . . So the correct question becomes: given what we know about the qualities an elephant has . . . should the law afford her certain rights through habeas corpus?” *Breheny*, 38 N.Y.3d at 581 (Wilson, J., dissenting). The answer must be “yes” because Angeline, Savannah, Tasha, Victoria, and Zuri are autonomous and extraordinarily cognitively complex individuals who—in accordance with equality—cannot be treated unlike humans because of an arbitrary distinction. Pennsylvania courts have remedied situations where alike are treated differently; they can do so again here.
226. In *Hack*, 495 Pa. at 303, the Supreme Court of Pennsylvania was asked to decide “whether interspousal immunity for personal injuries . . . should continue as part of the common law of this Commonwealth.” It decided against maintaining the “outmoded and unwarranted

¹⁵⁰ Immutable characteristics can include “race, gender, or ethnic background,” *Com. v. Peterkin*, 511 Pa. 299, 321 (1986), and even “intelligence level.” *Com. v. Ennis*, 394 Pa. Super. 1, 22 (1990).

doctrine” that was contrary to “the basis of law, logic, [and] public policy.” *Id.* The doctrine had only survived because it “adhered to outmoded common law concepts.” *Id.* at 304.” Today, the inequality that existed between relevantly similar groups (i.e., married couples and unrelated parties) is no more because it was an arbitrary distinction.

227. In *Falco*, 444 Pa. at 376, the Supreme Court of Pennsylvania “concluded that the doctrine of parental immunity has no rational purposes today, and henceforth will not be recognized in Pennsylvania.” The Supreme Court reasoned, “it doesn’t necessarily follow that a rule [prohibiting unemancipated minors from suing their parents] merely established by precedent is infallible. Moreover, the courts should not perpetrate error solely for the reason that a previous decision, although erroneous, has been rendered on a given question.” *Id.* at 383. Today, the inequality that once existed between relevantly similar groups (i.e., unemancipated minors and the public) is no more because it was an arbitrary distinction.¹⁵¹

228. Three judges on New York’s highest court understood that chimpanzees and elephants are relevantly similar to humans and should be treated alike in the habeas context. Judge Fahey accepted the unrebutted evidence from eminent primatologists proving “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

¹⁵¹ The common law of sister jurisdictions accords with the principle that relevantly similar individuals must be treated alike. *See, e.g., Millington v. S.E. Elevator Co.*, 22 N.Y.2d 498, 505 (1968) (overruling prior precedent to acknowledge “the equal right of the wife to damages as a result of her loss of consortium,” thus treating married women and married men equally for purposes of loss of consortium); *Klein v. Klein*, 376 P.2d 70, 71 (Cal. 1962) (abrogating interspousal immunity for negligent torts, thus treating spouses and non-spouses equally for tort purposes); *Falcone v. Middlesex Cnty. Med. Soc.*, 34 N.J. 582, 598 (N.J. 1961) (affirming judgment requiring a physician to be admitted to full membership in a private medical society, since he met all of the qualifications prescribed in the organization’s by-laws, thus treating him and admitted members equally for purposes of membership).

language.” *Tommy*, 31 N.Y.3d. at 1058 (Fahey, J., concurring). He added that chimpanzees are “autonomous, intelligent creatures,” *id.* at 1059, “who think[] and plan[] and appreciate[] life as human beings do.” *Id.* at 1058.

229. He then found that given the autonomous nature of chimpanzees, denying them the right to bodily liberty solely because they are not human is arbitrary. *Id.* at 1057 (criticizing 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”).¹⁵² “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.” *Id.* at 1058. In other words, it is to regard the chimpanzee as if concepts like the Great Chain—instead of fundamental common law principles like equality—still determine worth.

230. Judge Wilson explained that recognized researchers in the twentieth century “began to discredit the notion of human exceptionalism” when scientists discovered 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.’” *Breheny*, 38 N.Y.3d at 606-07 (Wilson, J., dissenting) (citation omitted). These advances in scientific understanding made it no longer tenable for humans to regard “themselves as ‘unique in their sociality,

¹⁵² “[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.” KRISTEN ANDREWS ET AL., at 34.

individuality, and intelligence.’”¹⁵³ *Id.* at 606.

231. Judge Rivera epitomized the essence of equality when she found that if “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). She then exposed the *Breheny* majority’s “incoherence” and “circular logic” for its arbitrary, inequitable position that elephants are not relevantly similar to humans for habeas corpus relief:

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 633.

232. Angeline, Savanna, Tasha, Victoria, and Zuri are no different from humans for purposes of the common law right to bodily liberty protected by habeas corpus, and to treat them differently because they are not human violates equality. *Tempora mutantur et leges mutantur in illis* (“Times change and the laws change with them”). “As years can give no sturdiness to a decayed tree, so the passing decades can add no convincing flavor to the withered apple of

¹⁵³ The idea that human exceptionalism means we should forego legal rights for all other species, no matter how deserving, is little more than the position that might makes right. “[H]uman exceptionalism holds that humans possess a unique moral worth that endows them alone, among all living creatures, with the right never to be treated merely as means to the ends of others.” Angus Taylor, *Review of Wesley J. Smith's A Rat is a Pig is a Dog is a Boy: The Human Cost of the Animal Rights Movement*, BETWEEN THE SPECIES 233 (2010). It is “not a statement of fact, but an assertion of domination.” *Id.* at 234.

sophistry clinging to the limb of demonstrated wrong.” *Flagiello*, 417 Pa. at 51; *Falco*, 444 Pa. at 383 (“Judicial honesty dictates corrective action.”). It is time that elephants and humans be treated alike here.

I. Habeas corpus relief permits rewilding the elephants or relocating them to a GFAS-accredited elephant sanctuary upon finding that their confinement at the Pittsburgh Zoo is unlawful

233. Angeline, Savanna, Tasha, Victoria, and Zuri’s confinement at the Pittsburgh Zoo is unlawful, not because it violates any statute, but because it violates their common law right to bodily liberty protected by habeas corpus, not any statute. *See Breheny*, 38 N.Y.3d at 642 (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.”). Pittsburgh Zoo confinement deprives these elephants of their 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.

234. They cannot plan for the future, they cannot properly forage, they cannot travel, they cannot choose whom they socialize with, and they cannot partake in activities even remotely acceptable for a member of their species. There is no variety in their lives, no challenge to employ their mental capacity for exploration, spatial memory, or problem-solving, and no opportunity to employ their wide range of vocalizations, to communicate and interact with a range of other elephants over distance. They simply cannot act as nature intended—autonomously. *See supra* at ¶¶ 81-87.

235. The unlawfulness of the elephants’ confinement is further made manifest by the exhibition of stereotypical behavior, behavior that has never been observed in free-living elephants.

Jacobs Decl. ¶ 17. Stereotypies “reflect underlying (abnormal) disruption of neural mechanisms.” *Id.* They are caused by chronic stress from captivity and are “a direct reflection of the dysregulation of motor control circuitry in the brain, that is, a form of brain damage.” *Id.* at ¶ 18. In layman terms, stereotypical behavior is the physical manifestation of brain damage due to impoverished and sterile living conditions. *See also* Jacobs Decl. ¶ 16 (“Stress from captivity often fosters learned helplessness and conditioned defeat.”).

236. Since the elephants are being unlawfully confined to the point of physical and psychological suffering, this Court must order them released from Respondents’ custody. The flexibility of the Great Writ means a court can grant habeas corpus relief that falls short of unconditional release: “The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Hendrick*, 444 Pa. at 89 (citation omitted).

237. In other words, that the elephants cannot be released into the streets of Pittsburgh does not preclude habeas corpus relief here. *Com. v. Ross*, 13 Pa. D. 493, 496 (Pa. O. & T. 1903) (“Habeas corpus is recognized as being a proper mode of removal of a prisoner from one place to another.”); *Lewis*, 39 Pa. at 26-27 (“Yet the common law efficacy of the habeas corpus goes far beyond this; and the writ takes many forms, according to the character of the case to which it is applied”). The writ “allows for consideration of the proper conditions of a release when, as here, the captive is a nonhuman animal and cannot live as a free being within human society.” *Breheny*, 38 N.Y.3d. at 640 (Rivera, J., dissenting).

238. This Court should order the elephants rewilded or sent to a GFAS-accredited elephant sanctuary where their right to bodily liberty will be respected to the greatest extent possible,

allowing them to lead lives far closer to what nature intended.¹⁵⁴ See Poole Decl. ¶ 70 (“the orders of magnitude of greater space” offered in sanctuaries “permits autonomy and allows elephants to develop more healthy social relationships and to engage in near natural movement, foraging, and repertoire of behavior.”). Moreover, due to its common law nature, the Great Writ can be moulded to suit the exigencies of the cases in which it is invoked. *Myers*, 419 Pa. at 16 (“We do not believe that mere historical considerations, now outdistanced by modern conditions, should be allowed to control the scope of a writ which in this state is clearly adaptable to the exigencies of the times when the writ is used in a new class of cases.”).

239. Those exigencies have led to many forms of habeas corpus relief, including transfer from one type of confinement to another.¹⁵⁵ See, e.g., *Hendrick*, 444 Pa. at 87 (“The court [correctly] ordered that Bryant and Goldstein be transferred within 48 hours to ‘some other prison’ or failing that, to be discharged from custody.”); *Com. ex rel. DiEmilio v. Shovlin*, 449 Pa. 177 (1972) (writ of habeas corpus successful in transferring a clinically insane individual from a maximum security hospital to a less secure facility). See also *Breheny*, 38 N.Y.3d at 598 (Wilson, J., dissenting) (“underscoring the flexibility of the Great Writ, its history evinces that habeas corpus could be used to transfer custody from one confinement, if determined to be unlawful, to another type of custody; habeas petitions were not required to seek or result in total liberation as the remedy”).

¹⁵⁴ There are GFAS-accredited elephant sanctuaries in the United States and in Brazil.

¹⁵⁵ See also *Fair*, 394 Pa. at 284 (“[R]elief from illegal restraint is not limited to cases falling within the scope of the criminal code. . . . The causes include but are not limited to controversies involving the custody of children, the legality of exclusion or deportation of aliens, the jurisdiction of draft and exemption boards, the detention of persons arrested in civil actions, the enlistment of minors in military service, the question of excessive bail, the contempt of legislative bodies, patients in hospitals, guardians over incompetent persons, the legality and detention of alien enemies, drunkards, persons restrained by ne exeat, paupers, seamen, slaves, peons, and others.”).

240. Judge Rivera concluded that the inherent flexibility of habeas corpus permits the relief sought by the NhRP:

The fact that Happy cannot be set totally free on the streets of New York City is a consequence of human beings' attempts to exert such unnatural control over her. Humans removed her as a calf from her natural habitat. Humans separated her from her herd. After a lifetime of captivity, in which humans have controlled every aspect of her life, she cannot return, 50 years later, and simply live as would any elephant who grew up in a wild environment. However, a court can order the most practical and humane alternative: transfer to an elephant sanctuary.

38 N.Y.3d at 641 (Rivera, J., dissenting).

241. Here, proper habeas corpus relief requires ordering Angeline, Savanna, Tasha, Victoria, and Zuri released from their unlawful confinement at the Pittsburgh Zoo. This Court can rewild the elephants or relocate them to an appropriate GFAS-accredited elephant sanctuary where they will exercise their right to bodily liberty and thus their autonomy to the greatest extent possible—allowing them to finally live as elephants have evolved to live. Science, justice, liberty, and equality demand nothing less from this Court.

PRAYER FOR RELIEF

WHEREFORE, the NhRP respectfully requests that this Court:

- (1) issue an OSC requiring Respondents to appear and show cause for the confinement or restraint of Angeline, Savanna, Tasha, Victoria, and Zuri;
- (2) grant the Petition by ordering Angeline, Savanna, Tasha, Victoria, and Zuri released from their unlawful confinement at the Pittsburgh Zoo and rewilded or relocated to an elephant sanctuary accredited by the Global Federation of Animal Sanctuaries; and,
- (3) grant such other relief as this Court may deem just, proper, and equitable.

/s/ Kenneth Cramer-Cohen

Kenneth Cramer-Cohen

Attorney for Angeline, Savanna, Tasha, Victoria, and Zuri

VERIFICATION

Pursuant to 231 Pa. Code Rule 1024, I, Kenneth Cramer-Cohen, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: Oct. 21, 2025

Signature: /s/ Kenneth Cramer-Cohen
Kenneth Cramer-Cohen