STATE OF MICHIGAN
MICHIGAN SUPREME COURT

NONHUMAN RIGHTS PROJECT, INC.,

Plaintiff-Appellant.

Supreme Court No._____

Court of Appeals No. 369247

v

Menominee Circuit Court
LC No. 23-17621-AH

DEYOUNG FAMILY ZOO, LLC and HAROLD L. DEYOUNG,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

Ginny Mikita (P45305)
Mikita Kruse Law Center
6411 Bella Vista Drive NE, Suite 1
Rockford MI 49341
(616) 866-1218
ginnymikita64@gmail.com

Jake Davis (CO Bar No. 54032; AK Bar No. 250526)
Nonhuman Rights Project, Inc.
611 Pennsylvania Avenue SE #345
Washington, DC 20003
(513) 833-5165
jdavis@nonhumanrights.org
(*Temporary admission granted*)

Elizabeth Stein (NY Bar No. 1721083)
Nonhuman Rights Project, Inc.
611 Pennsylvania Avenue SE #345
Washington, DC 20003
(917) 846-5451
lizsteinlaw@gmail.com
(*Temporary admission granted*)

Attorneys for Plaintiff-Appellant

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Exhibit A – October 17, 2025, Decision of the Court of Appeals

Exhibit B – December 12, 2023, Order of the Circuit Court

Exhibit C – December 7, 2023, Plaintiff-Appellant's Complaint for Writ of Habeas Corpus

JUDGMENT APPEALED FROM

Plaintiff-Appellant, Nonhuman Rights Project, Inc. ("NhRP"), seeks leave to appeal from the October 17, 2025 Decision of the Court of Appeals (Ackerman, Swartzle, Trebilcock, JJ.), affirming the December 12, 2023 Order of the Circuit Court summarily denying NhRP's Complaint for a Writ of Habeas Corpus ("Complaint") on behalf of seven chimpanzees imprisoned at the DeYoung Family Zoo ("DeYoung Prisoners"). The Complaint sought the issuance of an order to show cause pursuant to MCL 600.4316 and MCR 3.303(D), which was denied solely on the ground that chimpanzees are not "persons" eligible for habeas relief.

This application is timely under MCR 7.305(C)(2)(a) as it is filed within 42 days after the Decision. Jurisdiction is appropriate pursuant to MCR 7.303(B)(1).

QUESTIONS PRESENTED FOR REVIEW

1. **Did the Court of Appeals err in holding that the Complaint did not establish an entitlement to an order to show cause pursuant to MCL 600.4316 and MCR 3.303(D)?**

   NhRP's answer: Yes.

   Court of Appeals' answer: No.

2. **Did the Court of Appeals err in holding that the DeYoung Prisoners are not "persons" for purposes of habeas relief under this Court's decisions in *Sterling v. Jackson*[1] and *Ten Hopen v. Walker*[2]?**

   NhRP's answer: Yes.

   Court of Appeals' answer: No.

3. **Did the Court of Appeals err in holding that the DeYoung Prisoners cannot be "persons" for purposes of habeas relief because of their inability to bear duties or enter into the social contract?**

   NhRP's answer: Yes.

   Court of Appeals' answer: No.

[1] *Sterling v. Jackson*, 69 Mich. 488, 496 (1888).

[2] *Ten Hopen v. Walker*, 96 Mich. 236, 239 (1893).

4. Should Michigan common law evolve to recognize that the DeYoung Prisoners have the common law right to bodily liberty protected by habeas corpus (and are thus "persons" for purposes of habeas relief)?

NhRP's answer: Yes.

Court of Appeals' answer: No.

INTRODUCTION

The DeYoung Prisoners are seven chimpanzees unjustly deprived of their bodily liberty at a roadside zoo in Wallace, Michigan, enduring immense suffering due to their inability to meaningfully exercise their autonomy. So far, they have been denied the possibility of freedom based on one immutable fact about their biology: they are not human—although they share close to 99% of our DNA. Whether this arbitrary denial of liberty is tolerable under Michigan common law now confronts this Court.

The Complaint seeks to vindicate the DeYoung Prisoners' right to bodily liberty protected by the Great Writ of Habeas Corpus and to remedy their illegal imprisonment, so that they can be released to an accredited sanctuary. Supported by six expert affidavits and declarations from world-renowned primatologists, including the late Dr. Jane Goodall,[3] the Complaint is grounded in what science has irrefutably established: chimpanzees are autonomous, extraordinarily cognitively complex beings whose interest in exercising their autonomy is as fundamental to them as it is to us. For such self-aware, self-determining individuals, the DeYoung Family Zoo is a devastatingly harmful environment. Chimpanzees recall their past and anticipate their future, and like us, when their future is imprisonment, they suffer the anguish of believing it will never end.

Unable to see past chimpanzees' non-human biology, the lower courts treated the DeYoung Prisoners as mere legal things with no inherent value. The trial court refused to allow the case to reach the merits, ruling that, as chimpanzees, the DeYoung Prisoners are not "persons" eligible for

[3] Dr. Goodall, who died in October 2025, was "one of the most famous scientists of the 20th century." Keith Schneider, *Jane Goodall, Who Chronicled the Social Lives of Chimps, Dies at 91*, N.Y. TIMES (Oct. 1, 2025), bit.ly/47U7qOI. She made "discoveries about how wild chimpanzees raised their young, established leadership, socialized and communicated"—work that, in the words of one science historian, "'represents one of the Western world's great scientific achievements.'" *Id*.

habeas relief. In affirming that ruling, the Court of Appeals disregarded foundational principles and values—ignoring science, the Great Writ's inherent flexibility to remedy unjust confinements, and the duty of courts to reexamine and evolve archaic common law. This Court should not.

"Our oath is to do justice, not to perpetuate error." *Montgomery v. Stephan*, 359 Mich. 33, 38 (1960). This means the Court must "see the suffering" here. *Id*. at 49. The legal status of chimpanzees is rooted in the decaying foundations of a bygone era, persisting today only because of blind judicial adherence to an ancient past. It is manifestly unjust. Because Michigan common law should no longer tolerate the DeYoung Prisoners' suffering, intervention by this Court is necessary.

GROUNDS FOR APPEAL

There are two independent grounds for granting NhRP's Application for Leave to Appeal. First, this case involves legal principles of major significance to Michigan's jurisprudence under MCR 7.305(B)(3). Second, the Decision of the Court of Appeals is clearly erroneous and will cause material injustice under MCR 7.305(B)(5)(a).

I. This case involves legal principles of major significance to Michigan's jurisprudence. [MCR 7.305(B)(3)]

The common-law writ of habeas corpus ad subjiciendum, also known as the Great Writ, is "a civil proceeding the main purpose of which is to cause the release of persons illegally confined, to inquire into the authority of law by which a person is deprived of his liberty." *People v. McCager*, 367 Mich. 116, 121 (1962). It is "the most celebrated writ known to the law, and has been justly styled 'the great writ of liberty.'" *Attorney Gen v. Daboll*, 90 Mich. 272, 276 (1892). Inherited from English common law, habeas corpus is "fundamental to personal liberty," establishing "the basic right of freedom from unlawful detention." *Goetz v. Black*, 256 Mich. 564, 567 (1932).

The protection of liberty is of such fundamental importance that habeas corpus is guaranteed by Michigan's Constitution: "The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it." Const. 1963 art. 1, § 12. As the Court of Appeals correctly acknowledged, "the writ must extend at least as

broadly as the Constitution's incorporation of the common law requires."[4] Decision (Exhibit A), p. 10.

This case concerns extending the writ's protection of liberty to seven imprisoned individuals who, though not human, are autonomous beings—as science has firmly established. It concerns whether these individuals have the common law right to bodily liberty protected by the Great Writ; that is, whether they are "persons" for purposes of habeas relief.[5] As discussed fully below, this question involves legal principles of major significance to this state's habeas corpus jurisprudence. It implicates the Great Writ's flexibility to remedy unjust confinements in novel situations (*infra* 19–21, 26), the duty of this Court to reexamine and evolve archaic common law (*infra* 33–36), and the paramount importance of protecting autonomy grounded in the values and principles of justice, liberty, and equality (*infra* 36–39).

In determining whether the scope of habeas corpus encompasses the DeYoung Prisoners, the Court of Appeals looked to English common law since that body of law remains in force in Michigan until it "'expire[s] by [its] own limitation[ ] or [is] changed, amended, or repealed.'" Decision, p. 10 (quoting Const. 1963 art. 3, § 7). English common law treated all nonhuman animals as mere things with no right to bodily liberty, based on a particular interpretation of the Genesis "creation narrative." *Id*. at 11. However, the court did not properly consider whether the common law should evolve with respect to chimpanzees—disregarding what we now know about the autonomous nature of these extraordinary beings. "[O]ur courts have the constitutional authority to change the common law in the proper case," *N Ottawa Cmty Hosp v. Kieft*, 457 Mich.

[4] The right of habeas corpus is implemented through chapter 43 of the Revised Judicature Act (MCL 600.4301 *et seq*) and subchapter 3.300 of the Michigan Court Rules of 1985 (MCR 3.301 *et seq*), though "neither statute nor rule can narrow the constitutional decree." Decision, p. 9.

[5] As explained below (*infra* 18 n. 8), the term "person" in the law is a juridical category that denotes a relevant rightsholder. Possessing the right to bodily liberty necessarily entails being a "person" for purposes of habeas relief, and vice versa. *See* Complaint (Exhibit C), ¶¶ 238–39 (citing authorities explaining legal personhood).

394, 403 n. 9 (1998), and this is such a case. Michigan jurisprudence should conform to present times, not blindly perpetuate archaic common law that produces injustice.[6] *Infra* 33–39.

In novel common law cases, this Court is not limited to considering Michigan case law. *See Local 1064, RWDSU AFL-CIO v. Ernst & Young*, 449 Mich. 322, 330 (1995) ("If Michigan case law were our sole guide to the common law, the common law would cease to embody general precepts of universal import that are derived from reason, custom, and usage and be reduced instead to the mere rule of decision in a particular case."). Opinions from two of NhRP's habeas corpus cases illustrate the significance of the principles involved here.

First, in a case brought on behalf of a chimpanzee named Tommy, Judge Eugene Fahey (ret.) of the New York Court of Appeals recognized that whether "a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus" is a "profound" question, one that "speaks to our relationship with all the life around us." *Nonhuman Rights Project, Inc, on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1059 (2018) (Fahey, J., concurring). "This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention." *Id*. at 1058.

Judge Fahey urged courts to "consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect," rather than "a mere resource for human use, a thing the value of which consists exclusively in its usefulness to others." *Id*. This requires looking at the science, which "makes clear that chimpanzees and humans exist on a continuum of living beings." *Id*. at 1059; *see also State v. Fessenden*, 355 Or 759, 769–70 (2014) ("As we continue to learn more about the interrelated nature of all life, the day may come when humans perceive less separation between themselves and other living beings than the law now reflects.").

Second, in a case brought on behalf of an elephant named Happy, two judges on New York's highest court recognized the availability of habeas corpus for a member of another species. *Nonhuman Rights Project, Inc v. Breheny*, 38 N.Y.3d 555, 577–626 (2022) (Wilson, J., dissenting); *id*. at 626–42 (Rivera, J., dissenting). Their opinions—spanning over 80 pages—are grounded in

[6] "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." *Spence v. Three Rivers Builders & Masonry Supply, Inc*, 353 Mich. 120, 133 (1958) (cleaned up).

advances in scientific understanding, the Great Writ's history and flexibility, and the duty of courts to update archaic common law as society evolves.

Now-Chief Judge Wilson understood that "the rights we confer on others define who we are as a society," and that denying rights to wild animals such as Happy "denies and denigrates the human capacity for understanding, empathy and compassion." *Id*. at 626 (Wilson, J., dissenting). Likewise, for Judge Jenny Rivera, Happy's case presented an opportunity "to affirm our own humanity by committing ourselves to the promise of freedom for a living being" with her characteristics. *Id*. at 628 (Rivera, J., dissenting). Recognizing the importance of protecting autonomy, Judge Rivera concluded: "an autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life." *Id*. at 629.

II. The Court of Appeals' Decision is clearly erroneous and will cause material injustice. [MCR 7.305(B)(5)(a)]

The science is well-settled: confining chimpanzees in environments where they cannot engage in species-specific behavior is inherently harmful to their physical and psychological well-being. Complaint (Exhibit C), § II.C. As a result of the Decision, the DeYoung Prisoners continue to be deprived of a life appropriate for their species, trapped in a miserable, unnatural existence that cannot meet their complex physical, emotional, and social needs. *Id*. § II.D. These individuals who have committed no wrong are unable to freely move, forage, or socialize as autonomous, self-determinative chimpanzees. Such severe and unjustifiable curtailment of bodily liberty is a grave injustice, and the Decision perpetuates that injustice. *Infra* 15–17, 24–25.

The Decision is also clearly erroneous, for the reasons summarized here and fully detailed below.

First, the Court of Appeals erred in holding that the Complaint did not establish an entitlement to an order to show cause pursuant to MCL 600.4316 and MCR 3.303(D). The court concluded that because chimpanzees "are not 'persons' possessing the 'personal liberty' interest that habeas vindicates," the trial court was not required to issue the order. Decision (Exhibit A), p. 12. However, recognition of the DeYoung Prisoners' personhood for purposes of habeas relief is not a prerequisite for obtaining an order to show cause—as demonstrated by centuries of habeas

corpus jurisprudence, including the landmark decision of *Somerset v. Stewart*, 1 Lofft. 1 (K.B. 1772), which is part of Michigan common law. Habeas corpus has long been flexibly used to challenge unjust confinements in novel situations, including the confinements of individuals with few or no rights (e.g., enslaved persons, women, and children). Whether the DeYoung Prisoners are "persons" eligible for habeas relief—that is, whether they possess the right to bodily liberty—is a merits question to be decided at a later stage. *Infra* 18–21.

The lower courts should have: (1) assumed, without deciding, that the DeYoung Prisoners could possess the right to bodily liberty because they are autonomous, extraordinarily cognitively complex beings; and (2) evaluated whether the Complaint made a prima facie case that the chimpanzees are being illegally imprisoned—that is, imprisoned in violation of their right to bodily liberty. Because the Complaint made such a case, the trial court was required to issue an order to show cause. *Infra* 22–25.

Second, the Court of Appeals erred in holding that the DeYoung Prisoners are not "persons" for purposes of habeas relief under two of this Court's prior decisions: *Sterling v. Jackson*, 69 Mich. 488, 496 (1888), and *Ten Hopen v. Walker*, 96 Mich. 236, 239 (1893). According to the court, those decisions establish the common law rule that all captured wild animals—including chimpanzees—are treated as property, rendering them ineligible for habeas relief. Decision (Exhibit A), p. 13. However, *Sterling* and *Ten Hopen* have no relevance to this case: neither decision holds that chimpanzees are treated as property; neither decision holds that habeas corpus is inapplicable to property; and neither decision concerns habeas corpus. *Infra* 25–27.

Third, the Court of Appeals erred in holding that the DeYoung Prisoners cannot be "persons" for purposes of habeas relief based on an outlier *philosophical* conception of personhood, one that conditions the possession of rights on the ability to bear duties or enter into the social contract. The court reasoned that because chimpanzees lack this ability, they cannot be "persons" eligible for habeas relief. Decision (Exhibit A), p. 13. But this is absurd: possessing the right to bodily liberty is not dependent upon having that capacity. Numerous individuals who cannot bear duties—including human infants and comatose human adults—are obviously rightsholders with the right to bodily liberty (*infra* 28–29), and the social contract is wholly irrelevant to habeas corpus (*infra* 30–31). Additionally, the court below fundamentally

misunderstood the social contract theories of William Blackstone and Thomas Hobbes, despite invoking them; neither supports the notion that the ability to enter into the social contract is a prerequisite for possessing the right to bodily liberty. *Infra* 31–33.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

I. Proceedings below

A. Order of the Circuit Court

NhRP filed its Complaint on December 7, 2023, seeking an order to show cause pursuant to MCL 600.4316 and MCR 3.303(D). (Exhibit C). On December 12, 2023, the Menominee County 41st Circuit Court summarily denied the Complaint: "It is ordered that this Proposed Order to Show Cause on Plaintiff's Complaint for Writ of Habeas Corpus is denied in that the alleged 'prisoner' chimpanzees are not persons as required by MCR 3.303 and Plaintiff is not entitled to the writ. (MCL600.4316)." (Exhibit B).

B. Decision of the Court of Appeals

Following the denial of the Complaint, NhRP timely appealed. Defendant-Appellees DeYoung Family Zoo, LLC and Harold L. DeYoung did not participate in the appeal. Oral argument was held on October 14, 2025. On October 17, 2025, the panel issued its Decision affirming the trial court's order, holding that "chimpanzees are not 'persons' eligible for habeas relief." Decision (Exhibit A), p. 14.

II. Material facts

A. The DeYoung Prisoners

The seven chimpanzees imprisoned at the DeYoung Family Zoo ("DFZ") are Prisoner A (aka Louie), Prisoner B, Prisoner C, Prisoner D, Prisoner E, Prisoner F, and Prisoner G. Complaint (Exhibit C), § I.A. DFZ is in Wallace, Michigan. *Id*. ¶ 33.

Louie is an approximately 15-year-old male chimpanzee who has been imprisoned at DFZ since 2010, when he was 6 weeks old. From 2010 until at least January 2018, Louie was housed without the companionship of other chimpanzees. *Id*. ¶¶ 24–25.

Prisoner B is an adult female chimpanzee who has been imprisoned at DFZ since at least 2017. In August 2017, Prisoner B gave birth to a female chimpanzee: Prisoner C.

Prisoner C is approximately 8 years old and was removed from Prisoner B's care as an infant by Defendants-Appellees. *Id*. ¶¶ 26–27.

Prisoner D is an adult female chimpanzee, and Prisoners E–G are adult male chimpanzees. They have been imprisoned at DFZ since at least 2017. *Id*. at ¶¶ 28–31.

B. The Expert Scientific Facts

The Complaint is supported by expert affidavits and declarations from six of the world's most renowned experts on chimpanzee cognition and behavior. They are the following primatologists: the late Dr. Jane Goodall, the late Dr. Christophe Boesch, Dr. William McGrew, Dr. Jennifer Fugate, Dr. Tetsuro Matsuzawa, and Dr. Mary Lee Jensvold.

Collectively, their submissions demonstrate that chimpanzees possess autonomy and self-determination, as well as numerous advanced cognitive abilities related to these, including: episodic memory; referential and intentional communication; mental time-travel; numerosity; sequential learning; meditational learning; creativity; mental representation; mental state modeling; visual perspective-taking; object manipulation; anticipating the intentions of others; purposeful vocalizations; analogical reasoning; understanding the experiences of others; intentional action; planning; imagination; empathy; metacognition; working memory; decision-making; imitation; deferred imitation; emulation; innovation; material, social, and symbolic culture; cross-modal perception; tool-use; tool-making; understanding causation; and an awareness of and response to death, including grieving behaviors. Complaint (Exhibit C), ¶ 35.

Writing about the natural life of chimpanzees, Dr. Goodall remarked, "'Theirs is a highly complex society. Their life in the wild provides them with a continually changing environment, both socially and physically, and they are confronted by many challenges, including finding food and maintaining or improving their position in their community.'" *Id*. ¶ 36.

In light of their autonomous nature, confining chimpanzees in non-species-specific living conditions is devastating to their physical and psychological well-being. *Id.* ¶ 38. DFZ is a completely unacceptable place for chimpanzees, and as such, the DeYoung Prisoners should be set

free to a sanctuary accredited by the Global Federation of Animal Sanctuaries so that they can exercise their autonomy and have their complex physical and psychological needs met. *Id*. ¶ 39.

1. Chimpanzees are autonomous, extraordinarily cognitive complex beings.

Autonomy is defined as self-determined behavior that is based on freedom of choice. *Id*. ¶ 41. As a psychological concept, it implies that the individual is directing their behavior based on some non-observable, internal cognitive process, rather than simply responding reflexively. *Id*. Studies of chimpanzee behavior show that chimpanzees are autonomous beings with a highly complex cognitive nature. *Id*. ¶ 40.

Genetic Similarities to Humans

As chimpanzees and humans share close to 99% of their DNA, our brains are very similar. *Id*. ¶ 43. Both: (1) have larger brains than expected for their body size, which means chimpanzees and humans have evolved to possess above-average mental abilities compared to other species of the same body size; (2) share similar circuits in the brain that are involved in language and communication; (3) share several highly specific cell types that are thought to be involved in higher-order thinking; and (4) share several important functional characteristics related to the sense of self. *Id*.

A hallmark of sophisticated communication is brain asymmetry. *Id*. ¶ 46. Chimpanzees and humans possess very similar patterns of asymmetry, including a bias towards right-handedness. *Id*. Both chimpanzee and human brains possess spindle cells in the anterior cingulate cortex, which is involved in emotional learning, processing complex social information, decision-making, awareness, and, in humans, speech initiation. *Id*. ¶ 47.

Self-awareness

Chimpanzees possess a sense of self, which is an integral part of the ability to have goals and desires, intentionally act towards those goals and desires, and understand whether those goals and desires are satisfied. *Id*. ¶ 48. Chimpanzees can recognize themselves in mirrors and show several capacities that stem from being self-aware, such as metacognition (i.e., the ability to think about and reflect upon one's thoughts and abilities). *Id*. As self-aware, autonomous individuals

who understand that they exist through time, chimpanzees are able to prepare for the future and remember highly specific elements of past events over long periods of time. *Id*. ¶ 50.

Understanding others' minds

Chimpanzees understand the minds and experiences of others. *Id*. ¶ 51. For instance, they can imitate actions and anticipate intentions when watching a human or another chimpanzee try to complete a task. *Id*. Chimpanzees are also capable of "deferred imitation," copying actions they have seen in the past. *Id*. ¶ 92.

Planning for the future

Chimpanzees possess the sophisticated cognitive capacity for "mental time travel," which is thinking about something in the future. *Id*. ¶ 52. Language-trained chimpanzees have been found to make more statements about what they intend to do in the future than human children. *Id*. ¶ 53.

One study showed a chimpanzee in a zoo using intentional deception in preparing for an upcoming event. *Id*. ¶ 54. The chimpanzee stowed away stones to use as projectiles towards visitors, stashing them away in a "calm manner" so as not to be noticed. *Id*. Intentional deception is a hallmark of the ability to take the perspective of and model mental states in others. *Id*.

Just as they can mentally run through steps in their minds to plan for future actions, chimpanzees can remember and mentally re-experience events in the past (also known as episodic memory). *Id*. ¶ 55. Chimpanzees use sophisticated Euclidean mental spatial maps based on long-term episodic memories when foraging in a forest. *Id*. ¶ 56.

Possessing an episodic memory system similar to humans, chimpanzees can re-experience past pains and pleasures as well as anticipate such emotions. *Id*. ¶ 59. They likely can be in pain over an anticipated future event that has yet to occur. *Id*. Chimpanzees also suffer the pain of not being able to fulfill goals, and like humans, they might experience the pain of anticipating a never-ending situation. *Id*.

Communication

Chimpanzee communication skills are rich, revealing the highly cognitively complex and autonomous nature of chimpanzees. *Id*. ¶ 61. Chimpanzees share components of at least three basic cognitive abilities with humans, including: 1) analogical reasoning (using relational devices to organize information at a higher level); 2) shared mental states (understanding that others have

minds and goals and intentions and false beliefs); and 3) causal inference (an ability to intuit hypothetical or causal forces). *Id*. ¶ 63.

Chimpanzees exchange emotional information through vocalizations, facial expressions, gestures, and bodily postures. *Id*. ¶ 61. They have approximately 20–30 different facial expressions, and their vocalizations have been divided into several categories based on morphology and apparent function. *Id*.

Some chimpanzees can communicate using American Sign Language (ASL), and their use of ASL parallels the development of language in human children. *Id*. ¶ 66. Signing chimpanzees begin to sign earlier than children. *Id*. ¶ 69. Both signing and wild chimpanzees understand the give-and-take of a conversation and adjust their communication to the attentional state of the individual with whom they want to communicate. *Id*. ¶ 74.

One chimpanzee named Bruno—caged in a biomedical research facility—used ASL to literally ask for his freedom. Mark Bodamer, *Key out: A Chimpanzee's Petition for Freedom, in* THE CHIMPANZEE CHRONICLES 217, 217–34 (Debra Rosenman ed. 2020). The late Dr. Mark Bodamer encountered Bruno when he visited the facility. In ASL, Dr. Bodamer asked Bruno for his name, but instead of replying with his name, Bruno signed KEY OUT:

> Bruno had signed KEY. He then signed again, pulling one hand out from the grasp of the other—the ASL sign for OUT. I signed NOT UNDERSTAND SIGN AGAIN. Bruno shifted his posture, orienting his body more directly toward me; raised his hands slightly, making it easier to see his signs; then signed again. This time both signs were very clear: OUT KEY OUT. I was spellbound. Bruno began to bob and then crouch by his cage door. He signed OUT OUT, bobbing and crouching even more excitedly. He continued to sign OUT several more times. Of all the phrases Bruno could have signed, he signed KEY OUT. I didn't think his message was by any means random. Bruno wanted out of his tiny cage.
>
> I signed back CAN'T SORRY CAN'T. Bruno's shoulders dropped, and he walked to the back of his cage, crestfallen. . . . Bruno had directly asked me to free him, expressing emotions just like any human who had been wrongfully imprisoned, and I had to say no.

Id. at 228.

Tool making and usage

A key indicator of intelligence is tool making and tool use. Complaint (Exhibit C), ¶ 78. Tool making implies complex problem-solving skills and an understanding of means-end causation, and requires the ability to observe others and acquire skills about how to do things. *Id*.

Chimpanzees demonstrate intelligent tool making and usage. *Id*. ¶ 79. They make tools with vegetation and stone and use them for hunting, foraging, fighting, playing, communicating, courtship, hygiene, and socializing. *Id*.

Chimpanzees can make complex tools (two or more objects are utilized at the same time), compound tools (two or more components are combined into a single working unit), and tool sets (two or more tools are used to achieve a single goal). *Id*. ¶¶ 81, 83. Each chimpanzee group makes and uses a unique combination of tools known as a tool kit, typically comprising up to 20 different tools that perform various functions in daily life. *Id*. ¶ 82. These include sticks to open termite mounds, probes to skewer small mammals, twigs to extract marrow from bones of prey, stone hammer and anvil to crack nuts, and even plants to self-medicate for illness or injury. *Id*.

Emotional complexity

Chimpanzees are capable of highly developed empathic abilities—exhibiting empathy, compassion, and recognition when someone else is trying to help them. *Id*. ¶ 86. Compassionate care and empathy have been observed among wild chimpanzees towards injured individuals, such as wound tending. *Id*. ¶ 88. The signing chimpanzee Washoe signed CRY in a demonstration of empathy toward her human caregiver, after the latter had explained to Washoe that her baby had died. *Id*. ¶ 90.

Empathy is the ability to put oneself in another's situation perceptually and cognitively, and requires not only the sense of self but the ability to attribute feelings to others. *Id*. ¶ 87.

Culture

Culture is a hallmark of higher intelligence, based on several complex cognitive capacities: imitation, emulation, and innovation. *Id*. ¶ 94. It requires significant behavioral flexibility and innovation, social learning, cumulative knowledge, and adherence to traditions. *Id*. Chimpanzees show all these abilities. *Id*. ¶ 95.

Chimpanzee culture includes rituals and traditions, such as the "rain dance" performed by Gombe chimpanzees and the "grooming hand-clasp" observed in Tanzania chimpanzees. *Id*. ¶ 96. Three general cultural domains are found in both humans and chimpanzees: 1) material culture (tool making and tool use); 2) social culture (behavior that allows individuals to develop and benefit from social living); and 3) symbolic culture (specific communicative gestures and vocalizations that arbitrarily reflect particular intentions). *Id*. ¶ 98.

Death Awareness and Grieving Rituals

Chimpanzees understand the irreversibility of death and respond to it much like humans, enacting behaviors which can be described as mournful, respectful, and almost-ritualistic. *Id*. ¶¶ 104–07. After the death of a group member, chimpanzee communities may take collective action by performing what amounts to a funeral ceremony or wake, lasting hours. *Id*. ¶ 106. An understanding of death requires an ability to recognize the continuity of self and others through time. *Id*. ¶ 104.

Humor, Imagination, and Play

Chimpanzees have a sense of humor and are known to laugh under many of the same circumstances as humans, e.g., signing a "joke" or funny statement, during play, when tickled. *Id*. ¶ 111.

Chimpanzees also engage in imaginary play, including in the categories of animation (pretending that an inanimate object is alive) and substitution (pretending that an object has a new identity). *Id*. ¶¶ 113, 115. Captive chimpanzees show an interest in drawing and painting, in which their marks demonstrate balance and respect for boundaries—aspects of aesthetics in human artwork. *Id*. ¶ 114. Imagination is a key component of mental representation, metacognition, and the ability to mentally create other realities. *Id*. ¶ 112.

Duties and responsibilities

Chimpanzees bear duties and responsibilities to one another, as evidenced in areas such as group defense, rescue, assistance to wounded individuals, rewards and punishment in the hunting context, and support for weak individuals. *Id*. ¶ 117. Specific examples include:

- Mothers feed, protect, carry, shelter, and train their offspring for an average of 5.5 years, from birth to weaning. *Id*. ¶ 121.

- Grandmothers participate in the upbringing of their grandchildren. *Id*. ¶ 124.
- Unrelated individuals may adopt orphaned infants. *Id*. ¶ 127.
- Male group members will rescue isolated individuals who have been taken prisoner by intruders. *Id*. ¶ 132.

2. The DeYoung Family Zoo cannot meet the complex needs of chimpanzees.

Chimpanzees possess complex physical and psychological needs, including social needs, habitat needs, and foraging needs. *Id*. ¶¶ 135–50. In captivity, the failure to meet these essential needs causes chimpanzees to suffer physically and psychologically. *Id*. ¶¶ 151–63.

Social Needs: Chimpanzees have a fundamental need to socialize as part of their daily life, engaging in behaviors such as greeting, grooming, and moving together with other chimpanzees. *Id*. ¶ 136. In the wild, they live in groups of 20–200 individuals (and fluid subgroups), with complex relationships that last a lifetime. *Id.* Male chimpanzees are strongly bonded to their mothers, stay in their natal communities for the duration of their lives, and cooperate together in territorial defense. *Id*. ¶¶ 138–39. Chimpanzees spend hours grooming other chimpanzees, which serves to reinforce bonds and decrease stress. *Id*. ¶ 140.

In captivity, chimpanzee groups are typically smaller and less fluid than in the wild. *Id*. ¶ 153. When chimpanzees are provided with inadequate social groups and social stimulation during their formative years, they suffer physically and psychologically. *Id*. ¶¶ 154–55. Chimpanzees raised in social isolation exhibit a variety of abnormal behaviors, including rocking, swaying, thumb-sucking, eye-poking, biting, over-grooming, coprophagy (ingestion of feces), and head banging. *Id*. 155.

Habitat Needs: Chimpanzees have a fundamental need to move freely and spend 10–20% of their time traveling. *Id*. ¶ 142. They are an arboreal species, meaning they live off the ground and are natural climbers—in the wild, they spend hours in trees. *Id*. ¶ 144. In captivity, chimpanzees require an appropriate outdoor environment, with access to the sun, water, and various plants and vegetation; climbable surfaces such as catwalks, ropes, and hammocks that create pathways above the ground; multiple connecting habitats; and a socially and physically enriched environment in which they receive 10–20 different objects daily. *Id*. ¶¶ 143–46.

Unenriched, unstimulating environments can result in chimpanzees experiencing stereotypical and numerous other abnormal behaviors, including increased aggression, self-injurious behavior, and abnormal sexual behaviors. *Id*. ¶¶ 157–60. Research shows that chimpanzees who were reared in a deprived environment for 2–2.25 years had cognitive deficits that lasted a lifetime. *Id*. ¶ 158 n. 41.

Foraging Needs: Chimpanzees have a fundamental need to forage freely. *Id*. ¶ 148. In the wild, chimpanzees have the freedom to choose when to eat, what to eat, and where to eat—and they eat hundreds of different foods such as vegetation, fruits, nuts, insects, reptiles, and mammals, using many types of tools to acquire them. *Id*. ¶¶ 148–49. Chimpanzees in captivity must receive a diverse diet with a variety of ingredients, with food presented in ways to promote foraging as enriching activities. *Id*. ¶ 150.

In artificial environments such as zoos, chimpanzees are often denied the ability to forage freely since feeding decisions are made by human caretakers. *Id*. ¶ 161. Enrichment programs that include food puzzles and/or scatter browse are meant to emulate the challenges of food procurement in the wild, although they seldom come close. *Id*.

The DeYoung Family Zoo—unlike a GFAS-accredited sanctuary—simply cannot provide chimpanzees with the highly specialized care necessary to meet their complex needs. *Id*. ¶¶ 164–89. In the words of Dr. Jensvold, who reviewed videos and photographs of the zoo, along with USDA records from 2013–2023: "'The DFZ is a completely unacceptable place for chimpanzees.'" *Id*. ¶ 164. Dr. Matsuzawa similarly concluded: "'[T]he current situation for the chimpanzees at the zoo seems far from acceptable. It does not appear that the DeYoung Family Zoo can provide chimpanzees with a normal life appropriate for their species.'" *Id*.

As Dr. Jensvold observed, there does not appear to be any protected outdoor space at the zoo, which means the chimpanzees are forced to be housed during the winter months—Wallace, Michigan, where the ground is frozen all winter, receives nearly four feet of snow per year. *Id*. ¶ 166. Chimpanzees need access to fresh air and sunshine all year. *Id*. Keeping them inside for many months of the year is extremely harmful to their physical and psychological well-being. *Id*. ¶¶ 166, 176.

Additionally, Prisoner A (aka Louie), who has been at DFZ since he was six weeks old, has essentially lived alone for more than half of his life, if not his entire life. *Id*. ¶ 168. Regarding his isolation, Dr. Jensvold concludes: "'What Louie has endured is highly detrimental to his psychological well-being, mental health, growth, and development.'" *Id*. Providing captive chimpanzees with a rich, dynamic, and stable social environment is likely the single most important element in promoting their well-being. *Id*. ¶ 169.

ARGUMENT

Standard of review applicable to all issues

The issues here are subject to de novo review as they solely concern questions of law. *See People v. Posey*, 512 Mich. 317, 332 (2023).

I. The Court of Appeals erred in holding that the Complaint did not establish an entitlement to an order to show cause pursuant to MCL 600.4316 and MCR 3.303(D).

The central question the Court of Appeals was tasked with deciding was whether the Complaint established an entitlement to an order to show cause pursuant to MCL 600.4316 and MCR 3.303(D), so the case could proceed to a hearing on the merits.

MCL 600.4316 provides: "Any court or judge empowered to grant the writ of habeas corpus shall, upon proper application, grant the preliminary writ (or an order to show cause) without delay, unless the party applying therefor is not entitled to the writ."[7] *See* MCR 3.303(D) (The court may issue an order to show cause "unless it appears that the prisoner is not entitled to relief."). This means "an order to show cause must be issued unless it appears that the prisoner is not entitled to relief. . . . [T]he prisoner is entitled to more than a peremptory guess as to the validity of his or her detention; he or she is entitled to a judicial inquiry unless his or her own application forecloses any question." *Issuance of the writ or order to show cause*, 4 Mich. Ct. Rules Prac., Text § 3303.5 (7th ed.).

In determining whether the Complaint established an entitlement to an order to show cause, the Court of Appeals held that a prerequisite for obtaining the order was the recognition of the

[7] An "order to show cause" and "writ of habeas corpus" are functionally equivalent except that the latter requires the production of the person in custody. MCL 600.4325.

DeYoung Prisoners' personhood for purposes of habeas relief—meaning they must already have the right to bodily liberty protected by habeas corpus. Decision (Exhibit A), p. 12 (trial court was not required to issue an order to show cause because chimpanzees "are not 'persons' possessing the 'personal liberty' interest that habeas vindicates"). This is incorrect. Under Michigan habeas corpus jurisprudence, issuance of an order to show cause does not first require recognition of personhood. The trial court needed only to assume, without deciding, that the DeYoung Prisoners *could* possess the right to bodily liberty. Whether they are "persons" eligible for habeas relief is a merits question to be decided at a later stage.[8]

When the lower courts assessed the Complaint at this preliminary stage, they should have: (1) assumed, without deciding, that the DeYoung Prisoners could possess the right to bodily liberty because they are autonomous, extraordinarily cognitively complex beings; and (2) evaluated whether the Complaint made a prima facie case that the chimpanzees are being illegally imprisoned—that is, imprisoned in violation of their right to bodily liberty. Because the Complaint made such a case, the trial court was required to issue an order to show cause.

A. Under centuries of habeas corpus jurisprudence, including *Somerset v. Stewart*, recognition of personhood is not a prerequisite for obtaining an order to show cause.

Michigan habeas corpus jurisprudence incorporates the writ's English common law history. "The earliest colonists brought it to this country as a part of the common law, and it became, and ever since remained, the law of the land." *Goetz*, 256 Mich. at 567. As the Court of Appeals acknowledged, "the writ must extend at least as broadly as the Constitution's incorporation of the

[8] Possessing the right to bodily liberty protected by habeas corpus necessarily entails being a "person" for purposes of habeas relief, and vice versa. This is because the term "person" in the law is a juridical category that denotes a relevant rightsholder: if one possesses a legal right, then one is necessarily a "person" for purposes of that right. *See generally* Matthew Liebman, *Animal Plaintiffs*, 108 M INN. L. R EV. 1707, 1755 (2024) ("a legal person is a nonbiological concept that can refer to any entity to whom the law confers rights or from whom the law demands obligations"); *Person*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("'[A] person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not[.]'") (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)); 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.").

common law requires." Decision (Exhibit A), p. 10; *see In re Jackson*, 15 Mich. 417, 439 (1867) ("As [habeas corpus] came from no statute, it is not confined in its scope to any prescribed limits, but is co-extensive with the cases to which its principles can be applied, and in which it can afford a remedy.") (opinion by Cooley, J.).

Under English common law, the Great Writ was flexibly used to challenge unjust confinements in novel situations, including the confinements of individuals with few or no rights. "Most fundamentally, the writ was used to grant freedom to slaves, who were considered chattel with no legal rights or existence. . . . Similarly, 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 fathers." *Breheny*, 38 N.Y.3d at 588–89 (Wilson, J. dissenting). "[H]abeas 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*. at 589. Common law courts used it "as a tool for innovation and social change." *Id*. at 592.

One of the most revered decisions in habeas corpus history is the landmark case of *Somerset v. Stewart*, 1 Lofft. 1 (K.B. 1772), http://bit.ly/3jpLmkH. There, Lord Mansfield ordered the enslaved individual James Somerset freed after finding that "[t]he state of slavery is . . . so odious, that nothing can be suffered to support it" under the common law. *Id*. at 19. *Somerset* "stands as an example of just how powerful the common law writ of habeas corpus could be, not only in protecting—but also expanding—liberty." AMANDA L. TYLER, HABEAS CORPUS: A VERY SHORT INTRODUCTION 27 (2021). *Somerset* is part of Michigan common law, Const. 1963, art. 3, § 7, and is celebrated as "that famous decision which will live, and justly so, as long as history does, as that particular glory of Lord Mansfield's judicial diadem." *Love v. Phalen*, 128 Mich. 545, 548 (1901).

Especially significant is the fact that *Somerset* became a case at all. Despite Somerset's status as an enslaved individual—lacking the right to bodily liberty and thus legal personhood—Lord Mansfield did not summarily dismiss the habeas petition filed on his behalf. Instead, he issued a writ of habeas corpus requiring Somerset's enslaver to justify his detention, and then proceeded to evaluate the detention's legality. By issuing the writ, Lord Mansfield did not recognize

Somerset's personhood; rather, he necessarily assumed, without deciding, that Somerset could possess the right to bodily liberty.

The novel use of habeas corpus in *Somerset* was unsurprising in the Great Writ's common law tradition, which is a tradition defined by novel uses of the writ to examine all forms of detention:

> 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 [in *Somerset*] had any doubts about the propriety of doing so for a slave, they could look back on more than a century of novel uses found for the writ by the same process of reasoning that radiated from this core proposition. This way of conceiving and using habeas corpus had enabled the court repeatedly to explore detention situations in which there were no alleged wrong: to confront violence in families or to handle detentions aboard his majesty's ships. . . . [T]here was nothing any more surprising about using the writ for a slave trapped on a ship in the Downs than there was for a sailor trapped on a ship in the same waters.

PAUL HALLIDAY, HABEAS CORPUS: FROM ENGLAND TO EMPIRE 176 (2010); *see id*. at 207–08 ("[N]either free nor slave status, nor apparent place of birth, precluded using habeas corpus. . . . Subject status, or the lack of it, points more vividly than any other factor to the absence of concern about the legal nature of the detainee using habeas corpus.").[9]

Cases from Michigan and sister jurisdictions involving enslaved individuals accord with the Great Writ's tradition in not requiring the recognition of the right to bodily liberty before issuing the writ. *See*, e.g., *In The Matter of Elizabeth Denison, et al., No. 60.,* 1807 WL 1109, at *1 (1807) (writ of habeas corpus issued for enslaved children to inquire into their detention, although relief was ultimately denied); *In re Kirk*, 1 Edm.Sel.Cas. 315, 332 (1846) ("I was bound to allow the writ of habeas corpus [for an enslaved child], even if I had been fully convinced of the legality of the imprisonment").[10]

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[9] "[C]ommon-law habeas corpus was, above all, an adaptable remedy," with its "precise application and scope" changing "depending upon the circumstances." *Boumediene v. Bush*, 553 US 723, 779 (2008).

[10] *See Lemmon v. People*, 20 N.Y. 562 (1860) (writ obtained for eight enslaved persons); *Commonwealth v. Aves*, 35 Mass. 193 (1836) (writ obtained for enslaved child); *Jackson v. Bulloch*, 12 Conn. 38 (1837) (writ obtained for enslaved woman); *Republica v. Blackmore*, 2 Yeates 234

More recently, New York trial courts have issued habeas orders to show cause for imprisoned nonhuman animals, doing so without recognizing them as "persons."

In 2015, an order to show cause was issued for two chimpanzees, Hercules and Leo, who were imprisoned in a state university laboratory—marking the first time such an order was issued for a nonhuman animal in the United States. The court explained: "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.'" *Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc 3d 746, 748 (2015). Relying on the "'great flexibility and vague scope'" of habeas corpus, the court exercised its "discretion in favor of hearing from both sides." *Id*. at 755 (citation omitted). Ultimately, the court dismissed the petition based on appellate precedent but recognized that "[e]fforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed." *Id*. at 772–73.

In 2018, an order to show cause was issued for the elephant Happy, who was imprisoned at the Bronx Zoo.[11] Following a transfer of venue and thirteen hours of oral argument held over three days, a trial court found itself "[r]egrettably" bound by appellate precedent to deny the petition on Happy's behalf. It agreed that "Happy is more than just a legal thing," recognizing her as "an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty." *The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735 at *10 (N.Y. Sup. Ct. 2020).

The foregoing authorities make clear that requiring the recognition of personhood as a prerequisite for obtaining an order to show cause contravenes centuries of habeas corpus jurisprudence. Contrary to the courts below, the DeYoung Prisoners do not need to be recognized as "persons" (i.e., rightsholders) for this case to reach the merits.

(Pa. 1797) (writ obtained for two enslaved persons); *State v. Lasselle*, 1 Blackf. 60 (1820) (writ obtained for enslaved woman).

[11] Mallory Diefenbach, *Orleans County issues first habeas corpus on behalf of elephant*, The Daily News (Nov. 21, 2018), https://bit.ly/3AwkCWV.

B. The lower courts should have assumed, without deciding, that the DeYoung Prisoners could be "persons" for purposes of habeas relief because they are autonomous, extraordinarily cognitively complex beings.

In accordance with *Somerset* and the Great Writ's history, the courts below could have assumed, without deciding, that the DeYoung Prisoners could be "persons" for purposes of habeas relief—meaning the chimpanzees could possess the right to bodily liberty. They *should* have made this assumption given what science tells us about who chimpanzees are.

Long gone are the ancient days when prominent thinkers believed all nonhuman animals are insentient, unfeeling machines that "'eat without pleasure, cry without pain, grow without knowing it, desire nothing, fear nothing, and know nothing.'" *Breheny*, 38 N.Y.3d at 607 (Wilson, J., dissenting) (quoting STEVEN NADLER, THE CAMBRIDGE COMPANION TO MALEBRANCHE 42 (2000)). Long gone, too, are the days when "human understanding of animal intelligence was minimal," when "humans regarded themselves as 'unique in their sociality, individuality, and intelligence.'" *Id*. at 606 (citation omitted). Advancing scientific knowledge on the cognitive and emotional capacities of nonhuman animals has begun "to discredit the notion of human exceptionalism," *id*. at 606, and "the contrast between what we now know and the paucity of information in earlier times must inform our analysis." *Id*. at 607.

Today, we now know the "intrinsic nature of chimpanzees as a species." *Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring). Science has firmly established that they are autonomous, extraordinarily cognitively complex beings, possessing traits once deemed uniquely human. Complaint (Exhibit C), § II.A–B. As Judge Fahey recognized, chimpanzees possess "advanced cognitive abilities," including:

> being able to remember the past and plan for the future, the capacities of self-awareness and self-control, and the ability to communicate through sign language. Chimpanzees make tools to catch insects; they recognize themselves in mirrors, photographs, and television images; they imitate others; they exhibit compassion and depression when a community member dies; they even display a sense of humor. . . . [C]himpanzees demonstrate autonomy by self-initiating intentional, adequately informed actions, free of controlling influences.

Tommy, 31 N.Y.3d at 1058 (Fahey, J., concurring).

This science is significant because autonomy is a supreme common law value, one that lies at the heart of the right to bodily liberty. *See generally* Complaint (Exhibit C), § V.D; *Stanley*, 49 Misc.3d at 753 ("The great writ of habeas corpus lies at the heart of our liberty, and is deeply rooted in our cherished ideas of individual autonomy and free choice.") (internal citations and quotations omitted). In a variety of contexts, Michigan courts have recognized the importance of autonomy and their accompanying duty to protect its exercise from unjustified interference. *See*, e.g., *People v. Nixon*, 42 Mich. App. 332, 340 n.17 (1972); *In re Rosebush*, 195 Mich. App. 675, 680 (1992); *In re Martin*, 450 Mich. 204, 215 n. 8 (1995). *Infra* 37.

For the reasons detailed in the Complaint, the autonomous nature of chimpanzees—together with evolving societal norms and the fundamental principles and values of justice, liberty, and equality—ultimately supports recognizing the DeYoung Prisoners' right to bodily liberty. Complaint (Exhibit C), § V. At the very least, it supports the lower courts assuming, without deciding, that they could have this right. Plausibly, they are "persons" who can invoke the Great Writ.

C. The lower courts should have evaluated whether the Complaint made a prima facie case that the DeYoung Prisoners are being imprisoned in violation of their right to bodily liberty, and concluded that the Complaint made such a case.

Had the lower courts appropriately assumed, without deciding, that the DeYoung Prisoners could possess the right to bodily liberty, they should have then evaluated whether the Complaint made a prima facie case that the chimpanzees are being illegally imprisoned—that is, imprisoned in violation of their right. Because the answer is "yes," the Complaint established an entitlement to an order to show cause. Complaint (Exhibit C), § IV.

A habeas complaint can only be summarily denied if "the party applying therefor is not entitled to the writ [or an order to show cause]." MCL 600.4316. This standard is analogous to the one for evaluating a motion to dismiss for failure to state a claim under MCR 2.116 (C)(8), which "determines whether the opposing party's pleadings allege a prima facie case." *Radtke v. Everett*, 442 Mich. 368, 373 (1993). When considering such a motion, "[a]ll well-pleaded facts are accepted as true and are construed in the light most favorable to the nonmoving party." *Madejski v. Kotmar Ltd*, 246 Mich. App. 441, 444 (2001) (citation omitted). Similarly, when evaluating whether the

Complaint should be summarily denied, the lower courts were required to accept all of the well-pleaded facts as true and construe them in the light most favorable to the DeYoung Prisoners.

Those facts—based on expert affidavits and declarations submitted by world-renowned primatologists—establish that the DeYoung Prisoners are imprisoned in a wholly unnatural environment where they cannot meaningfully exercise their autonomy, resulting in their immense suffering. Such severe deprivation of autonomy constitutes a violation of their right to bodily liberty and, as such, renders their imprisonment illegal. Complaint (Exhibit C), ¶¶ 221–23, § II.C–D.

As detailed in the Complaint, chimpanzees naturally lead a cognitively and socially rich, stimulating life in the wild: they confront challenges provided by a continually changing physical and social environment, form life-long relationships, and live in complex fission-fusion societies with groups of 20–200 individuals (and fluid subgroups). *Id*. ¶ 221. They have complex essential needs, including the need to socialize freely with other chimpanzees as part of their daily life, to move freely on and off the ground, and to forage freely for a varied and diverse diet. *Id*. § II.C. When these needs are not met, chimpanzees suffer physically and psychologically. *Id*. ¶¶ 151–63.

In captivity, chimpanzees who are unable to exercise their autonomy can exhibit stereotypical and abnormal behaviors, aberrant self-directed behaviors (such as self-manipulation, self-scratching, self-grasping, and self-injurious behavior), increased aggression, decreased exploration, low dominance rank, and reduced or abnormal sexual behaviors. *Id*. ¶ 222. They also have substantially shorter lives than their wild counterparts. *Id*. ¶ 222. Only in a highly specialized environment—an authentic sanctuary where respect for chimpanzees' autonomy is foundational to their philosophy and operations—can the essential needs of chimpanzees be met in captivity. *Id*. § II.E.

As Dr. Jensvold attested, "'The DFZ is a completely unacceptable place for chimpanzees.'" *Id*. ¶ 164. It is simply impossible for chimpanzees to live a normal life appropriate for their species at a roadside zoo. *Id*. § II.D. For instance, chimpanzees need access to fresh air and sunshine all year, but during the winter months in Wallace, Michigan, the DeYoung Prisoners must remain inside due to the apparent lack of sheltered outdoor space. *Id*. ¶ 166. Keeping chimpanzees indoors for many months every year is extremely harmful to their physical and psychological well-being.

Id. ¶¶ 166, 176. So, too, is holding chimpanzees in isolation: Louie (Prisoner A) has essentially lived alone for more than half his life, if not his entire life. *Id*. ¶¶ 168–71.

Accordingly, the Complaint's well-pleaded facts establish a prima facie case that the DeYoung Prisoners are being imprisoned in violation of their right to bodily liberty, by virtue of the severe deprivation of their autonomy. The courts below were obligated not to ignore this injustice, but to require an order to show cause and allow a merits hearing. *Cf*. *Breheny*, 38 N.Y.3d at 620 (Wilson, J., dissenting) ("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," entitling her to a merits hearing); *id*. at 643 (Rivera, J., dissenting) ("[NhRP] has made the case for Happy's release and transfer to an elephant sanctuary, and the writ should therefore be granted. . . . [The submitted affidavits] establish Happy's autonomy and the inherent harm of her captivity in the Zoo.").

II. The Court of Appeals erred in holding that the DeYoung Prisoners are not "persons" for purposes of habeas relief under this Court's decisions in *Sterling v. Jackson* and *Ten Hopen v. Walker*.

The Court of Appeals acknowledged this case "seeks a novel application" of the Great Writ. Decision (Exhibit A), p. 14. As a case of first impression, by definition, this is one "'that presents the court with an issue of law that has not previously been decided by any controlling legal authority *in that jurisdiction*.'" *Sabbagh v. Hamilton Psychological Servs., PLC*, 329 Mich. App. 324, 368 (2019) (quoting Black's Law Dictionary (11 ed.)); *see also Saginaw Mfg Co v. Deland*, 226 Mich. 1, 5 (1924) ("[N]one of the authorities cited is controlling. The case as here presented is one of first impression in this state.").

Despite that acknowledgment, the Court of Appeals claimed it was bound by this Court's precedents in *Sterling* and *Ten Hopen* to hold that chimpanzees are not "persons." Decision (Exhibit A), p. 13. It believed those decisions establish the common law rule that all captured wild animals—including chimpanzees—are treated as property, rendering them ineligible for habeas relief. *Id*. The court highlighted the following passages:

> The Supreme Court has recognized that "by the law of nature every man, of whatever rank or station, has an equal right of taking, for his own use, all creatures fit for food that are wild by nature, so long as they do no injury to another's rights." *Sterling v Jackson*, 69 Mich. 488, 496, 37 N.W. 845 (1888). While *Sterling* spoke

> in terms of animals "fit for food," that phrasing reflected the issue in dispute. The Court has more broadly observed that "[i]t is settled in this State that dogs ... are the property of the owner *as much as any other animal which one may have or keep.*" *Ten Hopen v Walker*, 96 Mich. 236, 239, 55 N.W. 657 (1893) (emphasis added).

Id. at 12.

These cases have no relevance here.

First, those decisions do not hold that all captured wild animals are treated as property. *Sterling* referred only to animals "fit for food," which do not include chimpanzees. *Ten Hopen*'s vague reference to "any other animal which one may have or keep" does not identify which animals those are, and the decision does not hold that chimpanzees are such animals. That statement rests on a single citation to *Heisrodt v. Hackett*, 34 Mich. 283 (1876), a case concerning the recovery of damages for the killing of dogs.

Second, those decisions do not hold that habeas corpus is inapplicable to property. Indeed, as the history of the writ demonstrates, "ownership does not prevent the application of habeas corpus to the owned subject." *Breheny*, 38 N.Y.3d at 583 (Wilson, J., dissenting); *see id*. at 617 (habeas "has always been used to challenge confinement at the boundaries of evolving social norms, even by petitioners with the legal status of chattel (enslaved persons) or no legal identity or capacity to sue on their own (wives and children)"); *id*. at 630 (Rivera, J., dissenting) ("[T]he writ has long been available to those whose humanity was never fully recognized by law. An African enslaved by whites was mere 'chattel' property without rights of self-determination, but our Court, and others of this state, recognized that the writ still applied within this framework of legal white supremacy").

Third, those decisions do not concern nonhuman animals seeking habeas relief—or even habeas corpus at all—and thus are not binding authorities on the question of whether chimpanzees can invoke the Great Writ's protections. "[D]ecisions are not binding authorities as precedents, upon propositions which should have been, but which were not, considered." *Moinet v. Burnham, Stoepel & Co*, 143 Mich. 489, 491 (1906); *see Bostrom v. Jennings*, 326 Mich. 146, 156–57 (1949) ("When a question necessarily involved in a case and answered by our holding was neither considered by the court nor discussed in our opinion, the answer thus arrived at is not binding as

a precedent.") (citations omitted); *Sizemore v. Smock*, 430 Mich. 283, 291 n.15 (1988) ("[T]he doctrine of stare decisis . . . has no bearing on the Court's decision in this case. The question presented here, although closely related to the question decided [previously], is clearly not the same one.").[12]

In short, neither *Sterling* nor *Ten Hopen* establishes anything relevant. The question of whether the DeYoung Prisoners can invoke the Great Writ is not controlled by any prior decision: it is novel. "Cases that do not raise an issue cannot be taken to resolve something never at issue," and "cases allowing that humans may own animals do not establish that owned beings can have no justiciable rights." *Breheny*, 38 N.Y.3d at 584 (Wilson, J., dissenting). Moreover, the issue's novelty "does not doom it to failure:"

> [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.

Id.

III. The Court of Appeals erred in holding that the DeYoung Prisoners cannot be "persons" for purposes of habeas relief based on their inability to bear duties or enter into the social contract.

While acknowledging that existing common law can evolve, the Court of Appeals offered an absurd *philosophical* justification for maintaining the legal status quo. The court claimed personhood requires the ability to bear duties or enter into the social contract, and reasoned that because chimpanzees lack this ability, they cannot be "persons" eligible for habeas relief. Decision (Exhibit A), p. 13.

The court not only misunderstood personhood but also employed reasoning that must be rejected as morally abhorrent. Reliance on vague, poorly understood philosophy to justify denying seven suffering autonomous beings the possibility of freedom is contrary to proper judicial

[12] *Cf. Paige v. City of Sterling Hts*, 476 Mich. 495, 523 (2006) (Court of Appeals was required to follow prior decision that "*directly addressed* the proper interpretation of [a statute] with regard to the issue presented here") (emphasis added).

decision-making. It is uncomfortably reminiscent of rationalizations once used by courts to justify slavery and other injustices. *See* Anita L. Allen and Thaddeus Pope, *Social Contract Theory, Slavery, and the Antebellum Courts*, *in* A COMPANION TO AFRICAN-AMERICAN PHILOSOPHY 132 (2006) (Nineteenth-century judges "deploy[ed] the apparatus of social contract theory to lend support to slavery in the United States"); Anita L. Allen, *Social Contract Theory in American Case Law*, 51 FLA. L. REV. 1, 13 (1999) ("[J]udges' reliance on social contractarianism has served the interests of injustice—even extremes of injustice. Past errors of inadequate rationalization and injustice are easily repeated, so long as the myths and metaphors of social contract theory retain force.").

A. The ability to bear duties is not a prerequisite for being a "person" for purposes of habeas relief.

One source of the Court of Appeals' misconception of personhood derives from the following statement in the *Breheny* majority opinion: "'Unlike the human species, which has the capacity to accept social responsibilities and legal duties, nonhuman animals cannot—neither individually nor collectively—be held legally accountable or required to fulfill obligations imposed by law.'" Decision (Exhibit A), p. 13 (quoting 38 N.Y.3d at 572). This erroneous understanding of personhood, as requiring the ability to bear duties in order to possess rights, is an unprecedented outlier with no support in Michigan law.[13]

First, the assertion that "the human species" has "the capacity to accept social responsibilities and legal duties" is incoherent. There is no such entity as "the human species" with the capacity to accept responsibilities and duties; only *individual members* of our species possess that capacity. Duties are attributed to individual humans, not to humanity at the collective species level.

[13] Until NhRP's habeas corpus cases on behalf of chimpanzees and elephants, no court had ever adopted a conception of personhood that conditions the right to bodily liberty on the ability to bear duties.

Second, not all individual humans can bear duties, nor do they need to in order to be rightsholders and thus legal persons.[14] Numerous individuals lack the capacity to bear duties yet obviously have rights, including the right to bodily liberty. *See Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring) ("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.") (citations omitted); *Breheny*, 38 N.Y.3d at 631 (Rivera, J., dissenting) ("We afford legal protections to those unable to exercise rights or bear responsibilities, such as minors and people with certain cognitive disabilities."); *id*. at 586–87 (Wilson, J., dissenting) ("[T]he holder of a right need not have a duty at all. . . . [W]e can, and constantly do, grant rights to living beings who bear no responsibilities and may never be able to do so.").

Put another way, "being a 'moral agent' who can freely choose to act as morality requires is not a necessary condition of being a 'moral patient' who can be wronged and may have the right to redress wrongs." *Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring) (citation omitted). This is certainly true of Michigan's habeas corpus law, whose scope has long reached vulnerable humans. *See*, e.g., *Ex parte Courtright*, 167 Mich. 689, 693 (1911) (infant placed in institution ordered released into the custody of foster parent); *Walls v. Dir of Institutional Servs. Maxie Boy's Training Sch*, 84 Mich. App. 355, 360 (1978) ("juvenile with limited capacity to read" ordered released from training school); *see also Baker v. Alt*, 374 Mich. 492, 505 (1965) (while infants under seven years old can sue for negligence, they are incapable of contributory negligence).

In short, the ability to bear duties is not a prerequisite for being a "person" for purposes of habeas relief. "The human/nonhuman binary relied upon by the [*Breheny*] majority depends on a 'rights and duties' framework that has no support in the historical application of the writ," 38 N.Y.3d at 630 (Rivera, J., dissenting), and this Court should take the opportunity to repudiate that framework.

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[14] As explained above (*supra* 18 n. 8), possessing rights entails being a legal person. *See also* IV ROSCOE POUND, JURISPRUDENCE 197 (1959) ("The significant fortune of legal personality is the capacity for rights."); 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.").

B. The ability to enter into the social contract is not a prerequisite for being a "person" for purposes of habeas relief.

The other source of the Court of Appeals' misconception of personhood derives from its misunderstanding of the social contract, specifically as articulated in William Blackstone's *Commentaries*[15] and Thomas Hobbes's *Leviathan*.[16] Decision (Exhibit A), p. 13.

At the most general level, the social contract is an agreement among participants to give up some of the freedoms that exist in the state of nature—a hypothetical state before the establishment of society—in exchange for the benefits of government and civilization. *Breheny*, 38 N.Y.3d at 585 n. 5 (Wilson, J., dissenting). The social contract is not a real contract. It is "a legal or theoretical fiction--a metaphoric or symbolic idea connoting a sense of connectedness and unity in purpose and belief among members of a society." Martha Albertson Fineman, *The Social Foundations of Law*, 54 EMORY L.J. 201, 202 (2005). To be sure, the social contract is an important philosophical thought experiment, one that theorists have used to explore the legitimacy and limits of government power. *See generally* Celeste Friend, *Social Contract Theory*, Internet Encyclopedia of Philosophy, https://bit.ly/481gOjD. But "judges and law clerks [should be] more self-conscious about their uses and potential abuses of social contractarian reasoning." Allen, 51 FLA. L. REV. at 40.

Case law illustrates the irrelevance of the social contract to habeas corpus. In *Jackson v. Bulloch*, 12 Conn. 38 (1837), the Connecticut Supreme Court interpreted a provision in that state's constitution concerning the social contract: "All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community." Conn Const art. I, § 1. *Jackson* held that the broad language in this social compact did not include "[s]laves," who "cannot be said to be parties to that compact, or to be represented in it." 12 Conn. at 43. Enslaved individuals were also not considered one of "the people" protected against unreasonable searches or seizures by the state's Bill of Rights. *Id*. Yet, despite those

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[15] 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, BOOK I OF THE RIGHTS OF PERSONS.

[16] HOBBES, LEVIATHAN (Richard Tuek ed, rev student ed) (Cambridge: University Press, 1996).

exclusions, the *Jackson* court ordered an enslaved woman freed pursuant to habeas corpus. *Id*. at 54.

The Court of Appeals erred by invoking the social contract at all, which has no relevance to whether chimpanzees (or any individuals) may avail themselves of the Great Writ's protections. The court also fundamentally misunderstood the philosophy it applied. Neither Blackstone nor Hobbes supports the notion that the ability to enter into the social contract is a prerequisite for possessing the right to bodily liberty.

Blackstone

As the Court of Appeals noted, Blackstone recognized the social contract in the following passage, describing man's transition into society from the state of nature:

> [E]very man, when he enters into society, *gives up a part of his natural liberty*, as the price of so valuable a purchase; and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform to those laws, which the community has thought proper to establish.

Decision (Exhibit A), p. 11 (quoting Blackstone) (emphasis added). The court cited this to claim that a "central aspect of personhood is mankind's capacity" to give up part of his natural liberty and to conform to laws, in exchange for legal protections, and that chimpanzees cannot be persons because they "are incapable of making this exchange." *Id*. at 13.

What the Court of Appeals failed to understand is that, for Blackstone, man gives up only "part of his natural liberty."[17] When entering into the social contract, there are certain natural rights that are *not* given up—one of which is "the right of personal liberty." 1 Blackstone 125. These natural rights exist prior to the social contract and are always retained: Blackstone refers to them as being part of "that *residuum* [remainder] of natural liberty, which is not required by the laws of society to be sacrificed to public convenience." *Id*. With regard to the right to personal liberty, Blackstone states:

> This personal liberty consists in the power of loco-motion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law. . . . [I]t is a right

[17] "Natural liberty" is the absolute right to do whatever one pleases. Blackstone defined it as an inherent natural right that consists "'in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature.'" Decision, p. 10 (quoting Blackstone).

> strictly natural; that the laws of England have never abridged it without sufficient cause; and, that in this kingdom it cannot ever be abridged at the mere discretion of the magistrate, without the explicit permission of the laws.

Id. at 131.

Thus, according to Blackstone, the right to bodily liberty is an inherent natural right whose possession is not contingent upon an exchange—precisely the opposite of what the court below claimed. *See id*. at 120 (describing the "absolute *rights* of individuals," which include the right of personal liberty, as those that "would belong to their persons merely in a state of nature, and which every man is *intitled to enjoy whether out of society or in it*") (emphasis added).

Hobbes

Citing Hobbes, the Court of Appeals quoted the following from his *Leviathan*: "'To make Covenant with bruit Beasts, is impossible; because not understanding our speech, they understand not, ... and without mutuall acceptation, there is no Covenant.'" Decision (Exhibit A), p. 13. The court assumed this statement implies that, for Hobbes, the inability of nonhuman animals to enter into the social contract means they cannot have rights. But this is incorrect.

For Hobbes, the purpose of the social contract is to escape the intolerable state of nature, a pre-political state of absolute freedom characterized by never-ending war. This is accomplished by establishing the sovereign, a monarch invested with absolute authority who can ensure security through laws. Individuals form the contract by agreeing with one another to renounce all of their rights in the state of nature, except the right to self-defense, and to imbue all power into the sovereign. After the contract is formed, the sovereign alone determines and enforces the laws. *See generally* Craig Ewasiuk, *Escape Routes: The Possibilities of Habeas Corpus Protection for Animals Under Modern Social Contract Theory*, 48.2 COLUM. HUM. RTS. L. REV. 70, 87–95 (2017); Friend, *Social Contract Theory*, *supra* 30.

What the court below failed to understand is that, for Hobbes, the sovereign can grant rights to whomever it chooses—including to those incapable of participating in the formation of the contract (e.g., animals and certain humans). Ewasiuk, 48.2 COLUM. HUM. RTS. L. REV. at 87 (the sovereign has "the absolute power to grant legal personhood—and hence rights—to whatever entities it chooses"). In other words, the presumed inability of animals to contract does not mean they lack rights:

> An entity may have rights in a Hobbesian system even though it lacks the capacity to contract. For example, Hobbes writes, "Likewise, children, fools, and madmen that have no use of reason may be personated by guardians or curators. . . ." (L, XVI, 10, 103). . . . [Hobbes] allows that these non-agents might be protected by Hobbesian agents—acting as their guardians. It is quite possible, then, that a Hobbesian could say that the same protection is afforded to animals.

Shane D. Courtland, *Hobbesian Justification for Animal Rights*, 8.2 ENV'T PHIL. 23, 25 (2011); *see* Ewasiuk, 48.2 COLUM. HUM. RTS. L. REV. at 94–95 (The sovereign can "give personhood to whomever it chooses, in the way that guardians can be appointed to represent children and the mentally ill, and inanimate things can be appointed representatives to act in their interest. . . . Th[e] inability [of animals to make contracts] does not preclude the possibility of animal rights within the polity, granted by the sovereign.").

Hobbes's theory thus does not support conditioning the right to bodily liberty on the ability to contract. We do not live in such a legal system.

IV. Michigan common law should evolve to recognize that the DeYoung Prisoners have the common law right to bodily liberty protected by habeas corpus (and are thus "persons" for purposes of habeas relief).

"This Court has often recognized its authority, indeed its duty, to change the common law when change is required," *People v. Stevenson*, 416 Mich. 383, 390 (1982), and such change is required here.

The common law is not static, stuck in the archaic past, but adapts to changing circumstances. *Price v. High Pointe Oil Co, Inc*, 493 Mich. 238, 242 (2013). Its "'most significant feature'" is the "'inherent capacity . . . for growth and change.'" *Beech Grove Inv Co v. Civil Rights Comm'n*, 380 Mich. 405, 429 (1968) (citation omitted). Rather than "'consist[ing] of definite rules which are absolute, fixed, and immutable,'" the common law is "'a flexible body of principles which are designed to meet, and are susceptible of adaptation to, among other things, new institutions, public policies, conditions, usages and practices, and changes in mores, trade, commerce, inventions, and increasing knowledge, as the progress of society may require.'" *Id*. at 430 (citation omitted). *See Local 1064*, 449 Mich. at 330 (the common law refers to the "'embodiment of principles and rules inspired by natural reason, an innate sense of justice, and the dictates of convenience'") (citation omitted).

As the principal steward of Michigan common law, this Court has "not hesitated to . . . alter [common-law] doctrines where necessary." *Adkins v. Thomas Solvent Co*, 440 Mich. 293, 317 (1992). The common law's evolutionary nature means it is also well-equipped to address novel situations: "[t]he fact that no case remotely resembling the one at issue is uncovered does not paralyze the common-law system, which is endowed with judicial inventiveness to meet new situations." *Beech Grove*, 380 Mich. at 429. Indeed, "'[c]hanging conditions may give rise to new rights under the law.'" *Id*. at 430 (citation omitted).

When confronting archaic common law, this Court abides by the principle: "Our oath is to do justice, not to perpetuate error." *Montgomery*, 359 Mich. at 38. Perpetuating unjust rules established in a bygone era is anathema to this Court's role and duty. *See*, e.g., *Womack v. Buchhorn*, 384 Mich. 718, 724 (1971) (recognizing "'duty to reexamine a question where justice demands it'") (citation omitted); *Williams v. City of Detroit*, 364 Mich. 231, 250 (1961) (opinion by Edwards, J.) (eliminating "ancient rule inherited from the days of absolute monarchy which has been productive of great injustice in our courts").

It is time for Michigan common law to evolve. The Great Writ's use has long been "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). "[I]ts history is inextricably intertwined with the growth of fundamental rights of personal liberty," functioning "to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints." *Fay v. Noia*, 372 U.S. 391, 401 (1963), *overruled on other grounds* by *Wainwright v. Sykes*, 433 U.S. 72 (1977); *see also* HALLIDAY at 132 ("The writ, and judgments on it, had been and always would be only what individual justices made it.").

Given our evolved understanding of the "intrinsic nature of chimpanzees as a species," *Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring), their treatment as mere things with no right to bodily liberty is archaic and profoundly unjust. "[W]e should not lower the status of other highly intelligent species." *Id*. The DeYoung Prisoners are proven to be autonomous, extraordinarily cognitively complex beings, yet excluded from the Great Writ's protections for no reason other than their species membership. Such arbitrary exclusion fails to align with our most fundamental values and principles, including justice, liberty, and equality. Complaint (Exhibit C), § V.C–E. This

Court must not abandon them when considering "whether a chimpanzee is an individual with inherent value who has the right to be treated with respect." *Tommy*, 31 N.Y.3d at 1058 (Fahey, J., concurring).

A. The autonomous nature of chimpanzees compels recognizing the DeYoung Prisoners' right to bodily liberty.

Whether the Great Writ's scope encompasses chimpanzees must be informed by advances in scientific understanding of who these extraordinary beings are, rather than the ancient ignorance of centuries past. *See Womack*, 384 Mich. at 725 (updating common law "[i]n the light of the present state of science"); *Stevenson*, 416 Mich. at 392 (common law rule rendered obsolete by "advances of modern medical science"); *Montgomery*, 359 Mich. at 38 (rejecting precedents "from the dusty books" that treated women as "part chattel, part servant").

That ancient ignorance was present in English common law, incorporated into this state, which treated nonhuman animals as categorically distinct from human animals—as mere legal things for human use. *See generally* Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. ENV'T. AFF. L. REV. 471, 525–29 (1996) (describing the legal thinghood of nonhuman animals under English common law). As the court below explained, English common law treated nonhuman animals as objects of property, defined as "'that sole and despotic dominion which one man claims and exercises over the external things of the world[.]'" Decision (Exhibit A), p. 11 (quoting Blackstone[18]). This "despotic dominion" over animals was grounded exclusively in theology, specifically, a particular interpretation of the Genesis "creation narrative." *Id*. According to Blackstone, God had gifted all living beings to mankind and thereby granted humans the right to pursue and subjugate wild animals. *Id*. Nonhuman animals were thus regarded as existing for the sake of man, an idea rooted in Roman law that continues to dominate Western jurisprudence. *See* Wise, 23 B.C. ENV'T. AFF. L. REV. at 472–73.

Central to the religious notion of a divinely prescribed hierarchy were dogmatic views regarding the cognitive capacities of nonhuman animals. For example, Augustine of Hippo, whose writings profoundly influenced Christian thought, denied rationality to animals while maintaining

[18] 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, BOOK II OF THE RIGHTS OF THINGS.

that "only humans could memorize, deliberately recall, imagine, or know whether what they perceived was true." Steven M. Wise, *How Nonhuman Animals Were Trapped in A Nonexistent Universe*, 1 ANIMAL L. 15, 33 (1995); *see also* RICHARD SORABJI, ANIMAL MINDS & HUMAN MORALS: THE ORIGINS OF THE WESTERN DEBATE 201 (1993) ("In the Latin West it was Augustine above all who stamped the test of rationality into Christian discussions of how to treat animals."). Echoing Augustine, Blackstone claimed nonhuman animals have "neither the power to think, nor to will," while referring to man as "the noblest of all sublunary beings, a creature endowed with both reason and freewill." 1 Blackstone 39.

These centuries-old beliefs—grounded in theology—cannot justify denying the DeYoung Prisoners' ability to seek relief through habeas corpus, as judicial rulings cannot legitimately rely on the application of religious principles. *See Charles Reinhart Co. v. Winiemko*, 444 Mich. 579, 600 (1994) ("The rulings of this Court are legitimate only as long as they rely primarily on the application of *neutral principles* originating from . . . the common law.") (emphasis added). What should matter is our evolved understanding of who chimpanzees are. As Judge Wilson observed in NhRP's case on behalf of Happy:

> Whether an elephant could have petitioned for habeas corpus in the 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, and our laws and norms have changed in response to our improved knowledge of animals.

Breheny, 38 N.Y.3d at 603 (Wilson, J., dissenting); *see also id*. at 580 ("as with our society's changed understanding of the rights of enslaved persons, women and children, our understanding of the cognitive and emotional makeup, needs and capabilities of elephants is far different than it was in bygone times").

Science has similarly established the autonomous nature of chimpanzees, proving that they are cognitively complex and self-determining beings who naturally live rich emotional and social lives. Complaint (Exhibit C), § II.A–C; *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring) (chimpanzees "are autonomous, intelligent creatures"). This proven autonomy is significant given the judicially recognized importance of protecting autonomy from unjustified interference.

Autonomy is a supreme common law value, which lies at the heart of the right to bodily liberty: "'[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, free from all restraint or interference of others, unless by clear and unquestionable authority of law.'" *Nixon*, 42 Mich. App. at 340 n. 17 (quoting *Union Pac R Co v. Botsford*, 141 U.S. 250, 251 (1891)). "'The right to one's person may be said to be a right of complete immunity; to be let alone.'" *Botsford*, 141 U.S. at 251 (quoting Cooley, Torts, 29); *see Janetsky v. Cnty. of Saginaw*, No. 166477, 2025 WL 2095369, at *11 (Mich., July 25, 2025) (false imprisonment—by interfering with one's liberty interest—interferes with "'autonomy and thus dignity'") (citation omitted).

In Michigan, the protection given to one's autonomy is of such importance that it can even trump the State's interest in life itself. *See In re Rosebush*, 195 Mich. App. at 680 ("there is a right to withhold or withdraw life-sustaining medical treatment as an aspect of the common-law doctrine of informed consent"); *In re Martin*, 450 Mich. at 215 n. 8 (regarding "a patient's prerogative to spurn life-preserving treatment," "the object remains to honor individual dignity by promoting self-determination and choice").

Given the paramount importance of autonomy, what Blackstone believed about nonhuman animals is particularly archaic, repugnant, and irrelevant here. "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." *Tommy*, 31 N.Y.3d at 1058 (Fahey, J., concurring). The autonomous nature of the DeYoung Prisoners compels rejecting their status as things, so that their autonomy can be safeguarded from unjust imprisonment. Michigan common law can and should evolve to recognize their right to bodily liberty. *See Montgomery*, 359 Mich. at 49 ("[The ancient precedents] are out of harmony with the conditions of modern society. They do violence to our convictions and our principles. . . . The reasons for the old rule no longer obtaining, the rule falls with it.").[19]

[19] As "habeas corpus is inherently a case-by-case process," *Breheny*, 38 N.Y.3d at 623 (Wilson, J., dissenting), recognition of the DeYoung Prisoners' right to bodily liberty would be "consonant with the 'incremental process of common-law adjudication as a response to the facts presented.'" *Tkachik v. Mandeville*, 487 Mich. 38, 65 (2010) (citation omitted). This Court must judge their

B. Excluding the DeYoung Prisoners from the Great Writ's protections because of their species membership is arbitrary and unjust.

Nothing about the nature of habeas corpus requires limiting its application to members of our species. "[T]he Great Writ serves to protect against unjust captivity and to safeguard the right to bodily liberty," and given its flexibility, "those protections are not the singular possessions of human beings." *Breheny*, 38 N.Y.3d at 632 (Rivera, J., dissenting). The common-law writ safeguards the right to bodily liberty by protecting autonomy.

As autonomous beings, chimpanzees are relevantly similar to humans for purposes of habeas relief; their interest in exercising their bodily liberty is as fundamental to them as it is to us. One chimpanzee named Bruno even used ASL to beg for his release from confinement. *Supra*, 12.

Excluding the DeYoung Prisoners from the Great Writ's protections for having the wrong biology is therefore arbitrary and unjust, as it privileges species membership—an irrelevant characteristic—over the supreme importance of protecting autonomy. Such exclusion violates the fundamental principle of equality, which prohibits distinctions between relevantly similar individuals based on irrelevant characteristics. *See Montgomery*, 359 Mich. at 38 (rejecting inequitable common law precedents "from the dusty books" that allowed husbands to recover for loss of consortium while denying the same right to wives); *id*. at 41 ("'Decision founded upon the assumption of a bygone inequality are unrelated to present-day realities, and ought not to be permitted to prescribe a rule of life.'") (citation omitted); *People v. Merriweather*, 447 Mich. 799, 811 (1994) ("the principle of equality" requires "treating like cases alike").

"[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." KRISTIN ANDREWS

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habeas claim on its own merits, "'rather than engag[e] in gloomy speculation as to where it will all end.'" *Berger v. Weber*, 411 Mich. 1, 15 (1981) (citation omitted) (rejecting floodgates argument that creation of a new cause of action may increase litigation); *see Breheny*, 38 N.Y.3d at 620 (Wilson, J., dissenting) (rejecting floodgates argument for denying an elephant the right to invoke habeas corpus, calling the imagined scenarios "so facially preposterous that they hardly deserve a response"); *id*. at 641 n.8 (Rivera, J., dissenting) (rejecting same; "Happy's captivity, half a world away from her native habitat in an utterly unnatural setting, serves no purpose upon which society depends.").

ET AL., CHIMPANZEE RIGHTS: THE PHILOSOPHERS' BRIEF 34 (2019). *See Tommy*, 31 N.Y.3d at 1057 (Fahey, J. concurring) (criticizing a lower court's "conclusion that a chimpanzee cannot be considered a 'person' and is not entitled to habeas relief" as being "based on nothing more than the premise that a chimpanzee is not a member of the human species"); *Breheny*, 38 N.Y.3d at 580 (Wilson, J., dissenting) (criticizing majority's "conclusion that the writ must be limited to humans, no matter how sophisticated, intelligent, self-aware or capable of suffering an elephant is and no matter how severe the conditions of its confinement are").

Indeed, "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." *Breheny*, 38 N.Y.3d at 628–29. As Judge Rivera explained:

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

Id. at 631 (citations omitted); *see also Presented by A.F.A.D.A. About the Chimpanzee "Cecilia" – Nonhuman Individual*, File No. P.72.254/15 at 32 (Third Court of Guarantees, Mendoza, Argentina, Nov. 3, 2016) [English translation], https://bit.ly/3mkkSmy (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).

Not allowing the DeYoung Prisoners to invoke the Great Writ devalues its noble promise of freedom. Such denial perpetuates a present injustice as well as an archaic past, one whose "intellectual foundations are so unprincipled and arbitrary, so unfair and unjust, that it is crumbling." STEVEN M. WISE, RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS 5 (2000). It is out of harmony with a society entering the second quarter of the twenty-first century. Recognizing the DeYoung Prisoners' right to bodily liberty is a much-needed evolution of Michigan common law, required by the demands of justice and fully in accord with the Great Writ's tradition.

RELIEF REQUESTED

For the foregoing reasons, NhRP respectfully requests that this Court issue a preemptory order reversing the Decision and remanding the matter back to the trial court, with directions to issue an order to show cause pursuant to MCL 600.4316 and MCR 3.303(D). Alternatively, NhRP respectfully requests that this Court grant its Application for Leave to Appeal and, following full briefing, reverse the Decision and remand the matter back to the trial court with directions to issue an order to show cause, together with such other relief as may be deemed warranted by the Court.

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Respectfully submitted,

/s/Ginny Mikita

Ginny Mikita (P45305)
Mikita Kruse Law Center
6411 Bella Vista Drive NE, Suite 1
Rockford MI 49341
(616) 866-1218
ginnymikita64@gmail.com

Jake Davis (CO Bar No. 54032; AK Bar No. 250526)
Nonhuman Rights Project, Inc.
611 Pennsylvania Avenue SE #345
Washington, DC 20003
(513) 833-5165
jdavis@nonhumanrights.org
(*Temporary admission granted*)

Elizabeth Stein (NY Bar No. 1721083)
Nonhuman Rights Project, Inc.
611 Pennsylvania Avenue SE #345
Washington, DC 20003
(917) 846-5451
lizsteinlaw@gmail.com
(*Temporary admission granted*)

Attorneys for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation set forth in MCR 7.212(B)(1) and with the format requirements of MCR 7.212(B)(5). According to the word-processing system used to produce this document, there are 15,147 words in this brief.

/s/ Ginny Mikita

Ginny Mikita (P45305)
Mikita Kruse Law Center
6411 Bella Vista Drive NE, Suite 1
Rockford MI 49341
(616) 866-1218
ginnymikita64@gmail.com

PROOF OF SERVICE

I certify that a copy of Plaintiff-Appellant's Application for Leave to Appeal, along with the accompanying Appendix, was served by USPS Express Mail to:

DeYoung Family Zoo, LLC and Harold L. DeYoung
N5406 County Road 577,
Wallace, MI 49893

I also certify that a notice of the filing of Plaintiff-Appellant's Application for Leave to Appeal was served on the clerks of the Court of Appeals and the Menominee County 41st Circuit Court.

/s/ Ginny Mikita

Ginny Mikita (P45305)
Mikita Kruse Law Center
6411 Bella Vista Drive NE, Suite 1
Rockford MI 49341
(616) 866-1218
ginnymikita64@gmail.com