IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

COVER SHEET

Plaintiff(s) Vs

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

Vs.

Defendant(s)

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

GD-25-010963

Case Number :

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Brief in Opposition

Filed on behalf of

Nonhuman Rights Project, Inc.

(Name of the filing party)

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IN THE COURT OF COMMON PLEAS
FOR ALLEGHENY COUNTY

CIVIL DIVISION

NONHUMAN RIGHTS PROJECT, INC., on behalf of Angeline, Savanna, Tasha, Victoria, and Zuri, individuals, Petitioner, v. ZOOLOGICAL SOCIETY OF PITTSBURGH, which owns and operates the Pittsburgh Zoo; and DR. JEREMY GOODMAN, the CEO and President of the Pittsburgh Zoo, Respondents.	Civil Case No. GD-25-010963 **PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

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INTRODUCTION

"There is no locked door which may not be opened by the key of habeas corpus, there is no stone wall which may not be pierced by it, there is no enclosure which may not be entered by the person bearing this writ[.]" *Com. ex rel. Levine v. Fair*, 394 Pa. 262, 284 (1958). Respondents invite this Court to disregard the words of the Pennsylvania Supreme Court.

At stake in this case is the fate of five extraordinary beings suffering an inherently unjust and inhumane confinement, deprived of the ability to meaningfully exercise their autonomy. Their claim for liberty deserves to be heard. Though not human, Angeline, Savanna, Tasha, Victoria, and Zuri are like us in all the ways that matter to warrant seeking the Great Writ's protections. These individuals should have their claim adjudicated on the merits, with all the relevant facts presented before this Court. They should not be denied the key of habeas corpus for possessing—according to Respondents—the wrong biology.

Respondents advance three main contentions in support of their motion to dismiss, each without merit: (A) the elephants are not "persons" for purposes of habeas corpus; (B) Petitioner Nonhuman Rights Project, Inc. ("NhRP") lacks standing to pursue its Verified Petition for a Common Law Writ of Habeas Corpus ("Petition") on the elephants' behalf; and (C) the Petition fails to make a prima facie case that the elephants are entitled to release from their unlawful confinement. These contentions are not only unsupported by Pennsylvania law but contrary to it. Respondents' motion should be denied.

Granting their motion would require this Court to render habeas corpus in Pennsylvania unrecognizable by treating the Great Writ as a mere statutory remedy, divorced from its fundamental evolutionary common-law character. Under the settled jurisprudence of this state, the Court may not do so. Because Respondents provide no basis for summarily dismissing the Petition,

this Court should allow the merits hearing to move forward pursuant to the Rule to Show Cause issued on January 2, 2026.

ARGUMENT

A. This Court must reject Respondents' erroneous contention that Angeline, Savanna, Tasha, Victoria, and Zuri are not "persons" for purposes of habeas corpus.

Respondents contend this Court lacks subject matter jurisdiction over the Petition because the elephants do not have standing to seek habeas relief. MTD Br. 3. And they lack standing, according to Respondents, because the elephants are not "persons" for purposes of habeas corpus. *Id*. at 3–4. Their contention is wrong for three fundamental reasons.

First, this Court has subject matter jurisdiction over the Petition pursuant to 42 Pa.C.S. § 6502(a) and under its innate common law authority.[1] *See Commonwealth v. Burke*, 261 A.3d 548, 553 (Pa. Super. Ct. 2021).

Second, Respondents incorrectly claim if the elephants lack standing then this Court would lack subject matter jurisdiction. In Pennsylvania, "the question of standing is distinct from that of subject matter jurisdiction." *Soc'y Hill Civic Ass'n v. Pennsylvania Gaming Control Bd.*, 593 Pa. 1, 7 (2007) (citing *Payne v. Commonwealth Dep't of Corr.*, 582 Pa. 375, 386 n.5 (2005)); *Bisher v. Lehigh Valley Health Network, Inc.*, 670 Pa. 501, 535 (2021) ("Pennsylvania, however, does not view standing as a jurisdictional question."). Standing is only a jurisdictional prerequisite to an action "when a statute creates a cause of action and designates who may sue." *Grom v. Burgoon*, 448 Pa. Super. 616, 619 (1996). However, as explained below, habeas corpus is not a creature of statute.

[1] 42 Pa.C.S. § 6502(a) provides: "Any judge of a court of record may issue the writ of habeas corpus to inquire into the cause of detention of any person or for any other lawful purpose."

Third, Respondents incorrectly claim the elephants are not "persons" for purposes of habeas corpus. Invoking Pennsylvania's Statutory Construction Act ("SCA"), Respondents claim the SCA's definition of "person" excludes elephants from the protections of habeas corpus. *Id*. Respondents thus erroneously treat the question of whether elephants are "persons" as a statutory interpretation question, rather than a common law question.[2]

Because habeas corpus is a common-law writ whose protections cannot be legislatively curtailed, determining whether the elephants are "persons" requires a common law analysis—meaning it must be determined in accordance with common law considerations, including science, changing societal norms, and the fundamental principles and values of justice, liberty, and equality. Pet. §§ VIII.F–H. Those considerations support recognizing the elephants' common law right to bodily liberty protected by habeas corpus (and therefore as "persons" for purposes of habeas corpus).[3]

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[2] In what can only be described as an egregious misrepresentation, Respondents falsely claim: "NHRP acknowledges that, under Pennsylvania law, only a human being may petition for a writ of habeas corpus." MTD Br. 5. NhRP's central contention is the opposite: human beings are *not* the only beings who may petition for habeas relief—the elephants confined at the Pittsburgh Zoo may as well, grounded in Pennsylvania common law. In support of their misrepresentation, Respondents cite the Petition at ¶ 101 and fn. 119. However, ¶ 101 has no bearing on who may avail themselves of habeas corpus, and fn. 119 explicitly states: the definition of "person" in the SCA "does not apply in this case . . . . Deciding whether the elephants may avail themselves of the protections of the Great Writ (i.e., whether they are 'persons') is up to the judiciary, based on common law principles like justice, liberty, and equality."

[3] Upon recognizing the elephants' right to bodily liberty, they are necessarily "persons" for purposes of habeas corpus. This is because the term "person" used in law denotes a relevant rightsholder: if one possesses a legal right, then one is a "person" for purposes of that right, and vice versa. *See generally* Matthew Liebman, *Animal Plaintiffs*, 108 MINN. L. REV. 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.

However, Respondents do not ground their argument in the common law. Their reliance on an irrelevant statutory definition of "person" disregards the common-law nature of habeas corpus as well as the role and duty of common law courts.

1. Whether elephants are "persons" for purposes of habeas corpus is a common law question, not a statutory interpretation question.

Under well-settled precedents, the Pennsylvania Superior Court and the Supreme Court have recognized the common-law nature of habeas corpus: "The power to grant *habeas corpus* relief is innate in our trial courts, because it arises from the ancient common law, not statute." *Burke*, 261 A.3d at 553; *Com. ex rel. Levine v. Fair*, 394 Pa. 262, 278 (1958) ("[T]he Act of 1937 did not displace the common law writ of habeas corpus ad subjiciendum. . . . The common law writ is even more extensive in its scope than that authorized by the Habeas Corpus Act of February 18, 1785[.]").

As the Pennsylvania Supreme Court explained regarding the 1951 predecessor statute of 42 Pa.C.S. § 6502, that statute "deals only with venue and procedure," involving "merely minor regulations of procedure." *Com. ex rel. Stevens v. Myers*, 419 Pa. 1, 17 n.20 (1965). "[I]t in no way restricts judicial freedom to expand the common law confines of the writ," and "undertakes no change of the writ's character as developed by-or developable under-the common law." *Id*. *See id*. at 18 ("our postconviction writ of habeas corpus is not frozen into statute but, rather, being moldable to the exigencies of the times, is left to the development of the common law").[4]

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."); Pet. ¶¶ 171–76 (citing authorities).

[4] *See Williamson v. Lewis*, 39 Pa. 9, 29 (1861) ("Let us now notice the common law *habeas corpus ad subjiciendum.* It has a much broader scope than that form of it which is secured by the Habeas Corpus Act; for it may issue in all sorts of cases where it is shown to the court that there is probable cause for believing that a person is restrained of his liberty unlawfully or against the due course of law.").

Indeed, habeas corpus as a common-law writ is guaranteed by Pennsylvania's constitution through the suspension clause. Pa. Const. art. I, § 14 ("the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it"). This guarantee means statutes "do not confer any power on our courts to grant *habeas corpus* relief that the legislature might annul." *Burke*, 261 A.3d at 553. In other words, the Great Writ of Liberty stands "above the sphere of ordinary legislation." *Com. v. Gane*, 3 Grant 447, 450 (Pa. 1863). In construing Pennsylvania's suspension clause, the Supreme Court "has said that the Legislature may not encumber access to habeas corpus in a fashion which results in a 'practical deprivation' of that right." *Com. ex rel. Swann v. Shovlin*, 423 Pa. 26, 34 (1966) (citation omitted).

The constitutionally-protected status of habeas corpus as a common-law writ has been recognized even by courts that have ruled against NhRP. *See Nonhuman Rts. Project, Inc. v. Breheny*, 38 N.Y.3d 555, 576–77 (2022) ("the courts—not the legislature—ultimately define the scope of the common-law writ of habeas corpus"); *Nonhuman Rights Project, Inc. v. DeYoung Family Zoo, LLC*, 2025 WL 2957821, at *8 (Mich. Ct. App. Oct. 17, 2025) ("We agree with [NhRP] that neither statute nor rule can narrow the constitutional decree. . . . [T]he writ must extend at least as broadly as the Constitution's incorporation of the common law requires[.]").

Accordingly, because habeas corpus is a common-law writ, whether the elephants are "persons" for purposes of habeas corpus is not a statutory interpretation question. This is a normative inquiry, asking whether their right to bodily liberty should be recognized under Pennsylvania common law.[5] It "is not merely a definitional question, but a deep dilemma of ethics

[5] As explained (*supra* 3 n.3), upon recognition of the elephants' right to bodily liberty protected by the Great Writ, they are necessarily "persons" for purposes of habeas corpus. "[I]f animals have legal rights, then they are legal persons," which follows "from the view that persons are the subjects of rights or duties." Liebman, 108 MINN. L. REV. at 1756. *See* JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE LAW 42-43 (2d. 1963) ("[A]nimals may conceivably be legal

and policy that demands our attention." *Nonhuman Rts. Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1058 (2018) (Fahey, J., concurring). *See Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting) ("the legal question presented is whether the detention of an elephant can ever be so cruel, so antithetical to the essence of an elephant, that the writ of habeas corpus should be made available under the common law"); *id*. at 633 (Rivera, J., dissenting) ("[I]t is for this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought. . . . The common law is our bailiwick.").

Contrary to Respondents, if this Court were to determine that the elephants are "persons" who may avail themselves of the Great Writ's protections, the Court would not be "disregard[ing] Pennsylvania's statutory law," namely, the SCA's definition of "person." MTD Br. 5. This is because the statutory definition is simply irrelevant, for the following reasons.

First, and most fundamentally, the SCA definition cannot restrict the substantive scope of habeas corpus. Curtailing the availability of habeas corpus based on a statutory definition necessarily conflicts with the writ's common-law nature, guaranteed by Pennsylvania's suspension clause. Because habeas corpus "'is an implied common-law power,'" the writ "may be molded to suit the exigencies of any particular case," *Fair*, 394 Pa. at 285 (citation omitted), with courts possessing the "judicial freedom to expand the common law confines of the writ." *Myers*, 419 Pa. at 17 n.20. The Pennsylvania Supreme Court has stated:

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

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persons. *First*, legal persons because possessing legal 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."); IV ROSCOE POUND, JURISPRUDENCE 197 (1959) ("The significant feature of legal personality is the capacity for rights.").

Fair, 394 Pa. at 284 (citation omitted). *See id*. at 277 ("the writ of habeas corpus should be left sufficiently elastic so that a court may, in the exercise of its proper jurisdiction, *deal effectively with any and all forms of illegal restraint*") (internal quotations and citation omitted).[6]

Thus, given the writ's common-law nature, the elephants cannot be excluded from the protections of habeas corpus by statutory definition. The definitions in the SCA do not apply where "the context clearly indicates otherwise," 1 Pa.C.S. § 1991, and the common law context here means the SCA definition of "person" cannot apply to exclude them from habeas corpus.[7]

Second, the SCA definition does not actually exclude elephants. For it states: "*Includes* a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person." 1 Pa.C.S. § 1991 (emphasis added).

When used in a statute, "[t]he term 'include' is to be dealt with as a word of enlargement and not limitation." *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 963 (2011) (cleaned up); *id*. ("'A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means.' . . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically

[6] Respondents cite the proposition in *Com. ex rel. Fortune v. Dragovich*, 792 A.2d 1257, 1259 (2002), that "the availability of habeas corpus is prescribed and limited by statute." MTD Br. 3. However, this does not mean statutes can limit the writ's availability under the common law. By "statute," *Dragovich* was referring to 42 Pa.C.S. §§ 6502 and 6503. 792 A.2d at 1259. The Superior Court in *Burke* explained that those very statutes "do not confer any power on our courts to grant *habeas corpus* relief that the legislature might annul," since the power to grant such relief "arises from the ancient common law, not statute." 261 A.3d at 548.

[7] Following a merits hearing on the Petition, this Court may conclude the elephants are not "persons" for purposes of habeas corpus, but it must reach that conclusion based on a common law analysis.

enumerated.'") (citation omitted); *see also Include*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("To contain as a part of something," and "[t]he participle *including* typically indicates a partial list.").

Given the term "includes," the SCA definition should not be read as excluding entities not specifically enumerated, such as elephants. Respondents irrelevantly assert, "'person' is clearly understood to be defined as an individual human being." MTD Br. 3. But no one disputes that "person" includes individual humans—the question is whether "person" is *limited* to humans or *excludes* elephants. Nine of the ten entities included within the SCA definition are nonhuman entities, and the sole excluded entity is "the Commonwealth," not elephants. *See MFW Wine Co., LLC v. Pennsylvania Liquor Control Bd.*, 276 A.3d 1225, 1233 (Pa. Commw. Ct. 2022) ("SCA's definition of *person* excludes only 'the Commonwealth.'") (citation omitted). At the very least, the statutory definition is ambiguous with respect to elephants, not "clear and unambiguous" as Respondents contend.[8] MTD Br. 4.

Regardless, the definition of "person" is irrelevant to determining whether Angeline, Savanna, Tasha, Victoria, and Zuri have the right to bodily liberty (and are thus "persons" for purposes of habeas corpus). Because habeas corpus is a common-law writ, the question necessarily requires a common law analysis; that is, engagement with the common law considerations detailed in the Petition. Respondents fail to demonstrate otherwise.

[8] Sometimes, the word "includes" in a statute can be "interpreted as a word of enlargement ... as well as a word of limitation," thus rendering the statute ambiguous. *Velocity Express v. Pennsylvania Hum. Rels. Comm'n*, 853 A.2d 1182, 1185 (Pa. Commw. Ct. 2004) (cleaned up) ("we conclude that [the statutory definition] is ambiguous" because of the word "includes").

2. The lack of on-point precedent cannot justify summarily dismissing the Petition.

Respondents irrelevantly state: "Respondents are not aware of any common law that supports NHRP's legal theories." MTD Br. 5. Their contention constitutes an argument for dismissal based on the lack of on-point precedent recognizing nonhuman animals as "persons" for purposes of habeas corpus. It fails for a simple reason. In a common law case such as this, the role and duty of courts is to consider whether the law should change—regardless of whether there is direct precedent on point, and even in the face of negative precedent. Lack of on-point precedent alone cannot justify summarily denying relief.

In Pennsylvania, the novel contention that elephants may avail themselves of the Great Writ's protections has never been tested. The lack of supporting direct precedent is therefore unsurprising. But one does not "need to search through the books for a precedent for [the writ's] application. . . . The writ of habeas corpus in Pennsylvania may be molded to suit the exigencies of any particular case." *Fair*, 394 Pa. at 285. *See Com. v. Hess*, 489 Pa. 580, 586 (1980) (The Great Writ's "function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints.") (internal citation and quotations omitted).

Fundamentally, Respondents' argument is antithetical to the evolutionary nature of Pennsylvania common law: "'One of the great virtues of the common law is its dynamic nature that makes it adaptable to the requirements of society at the time of its application in court.'" *Hack v. Hack*, 495 Pa. 300, 319 (1981) (citation omitted). *See Anderson v. Bushong Pontiac Co.*, 404 Pa. 382, 387 (1961) ("'The common law has established itself in the history of jurisprudence because of its flexibility in its recognition of and adaptation to changing times and mores[.]'") (citation omitted); *Saltsburg Gas Co. v. Borough of Saltsburg*, 138 Pa. 250, 259 (1890) ("The common law

is the living science of justice, and adapts the application of fixed principles to changes in the affairs of men.").[9]

By its nature, "'the common law requires that each time a rule of law is applied it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it the instrument of injustice.'" *Hack*, 495 Pa. at 319 (citation omitted). This is why courts even have a duty to repudiate court-created rules "at odds with every precept of natural justice." *Flagiello v. Pennsylvania Hosp.*, 417 Pa. 486, 513 (1965). "[J]ustice recoils before much of what was done in the past under the name of law," and time does not "petrif[y] into unchanging jurisprudence a palpable fallacy." *Id*. at 511. *See Albert M. Greenfield & Co. v. Kolea*, 475 Pa. 351, 357 (1977) ("[T]he continued vitality of the common law . . . depends upon its ability to reflect contemporary values and ethics.") (cleaned up).

In a common law case that seeks to address an injustice by asserting a previously unrecognized right, the lack of on-point precedent is no argument for dismissal: "the [n]ovelty of an asserted right and lack of common-law precedent are no reasons for denying its existence." *K.H. ex rel. H.S. v. Kumar*, 122 A.3d 1080, 1096 n.7 (2015) (cleaned up). Such is the situation here.

This novel common law case seeks to address a manifest injustice. As detailed in the Petition, the elephants confined at the Pittsburgh Zoo have for decades been subjected to a wholly unnatural and miserable environment, suffering from the severe deprivation of their autonomy (which has manifested in brain damage, among other ailments)—all because they possess the

[9] *See also Tincher v. Omega Flex, Inc.*, 628 Pa. 296, 415–16 (2014) (the common law "evolves in principle by analogy, distinction, and reasoned explication"); *Com. v. Ladd*, 402 Pa. 164, 174 (1960) ("If the common law cannot change it cannot live."); *Com. v. Hegedus*, 44 Pa. Super. 157, 164–65 (1910) ("Its flexibility and capacity for growth and adaptation are the peculiar boast and excellence of the common law.").

wrong biology. Only the Great Writ can remedy this injustice, through the recognition of the elephants' right to bodily liberty (and thus personhood). While their right to bodily liberty has not yet been recognized, that is no reason for denying its existence.

Respondents' contrary "argument—'this has never been done before'—is an argument against all progress, one that flies in the face of legal history." *Breheny*, 38 N.Y.3d at 584 (Wilson, J. dissenting). It assumes novel common law cases must fail. As the Great Writ's history shows, this is not true:

> [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. *See id*. at 629 (Rivera, J., dissenting) ("[P]rior decisions do not foreclose Happy's petition and instead compel our acknowledgment of the availability of the writ to a nonhuman animal to challenge an alleged unjust confinement.").

The Great Writ has long been "flexibly used by courts as a tool for innovation and social change." *Id*. at 592 (Wilson, J., dissenting). And this flexibility, discussed *supra*, has been recognized in Pennsylvania. *See Myers*, 419 Pa. at 17 n.20; *Fair*, 394 Pa. at 285; *Burke*, 261 A.3d at 553.

Given the common law's evolutionary nature, "courts can use habeas corpus to grant rights to anyone regardless of their legal status as a person"—for throughout its history, the writ has been "invoked on behalf of chattel (enslaved persons) or persons with negligible rights and no independent legal existence (women and children)." *Breheny*, 38 N.Y.3d at 602 (Wilson, J. dissenting). The writ "has always been used to challenge confinement at the boundaries of evolving social norms." *Id*. at 618. Such was the case in England, as historian Paul Halliday has explained:

> [N]either free nor slave status, nor apparent place of birth, precluded using habeas corpus. . . . [W]hat modern law would call 'standing' was simply not an issue. 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.

PAUL HALLIDAY, HABEAS CORPUS: FROM ENGLAND TO EMPIRE 207–08 (2010). *See Breheny*, 38 N.Y.3d at 630 (Rivera, J., dissenting) ("[T]he writ has long been available to those whose humanity was never fully recognized by law," including women in eighteenth-century England when they were "legally subservient to their husbands, subject to violence without legal recourse").[10]

There is perhaps no better example of the common law's evolutionary nature in the habeas corpus context than the landmark case of *Somerset v. Stewart*, 1 Lofft 1 (KB 1772), available at http://bit.ly/3jpLmkH. There, Lord Mansfield ordered an enslaved individual freed after finding that "[t]he state of slavery is . . . so odious, that nothing can be suffered to support it" under the common law. 1 Lofft at 19. The novel case "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). *See* HALLIDAY at 176 ("King's Bench issued the writ [in *Somerset*] 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").[11]

In light of the foregoing authorities, Respondents' argument must fail: the lack of on-point precedent cannot justify summarily dismissing the Petition. For this is a common law case, one

[10] "[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 U.S. 723, 779 (2008). *See also Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 764 (N.Y. Sup. Ct. 2015) ("[T]he concept of legal personhood, that is, who or what may be deemed a person under the law, and for what purposes, has evolved significantly since the inception of the United States.").

[11] *Somerset* is part of Pennsylvania common law. *Kauffman v. Oliver*, 10 Pa. 514, 517 (1849).

invoking the law's most sacred values and principles that Pennsylvania courts are duty-bound to uphold. Pet. §§ VIII.F–H.

Respondents cite the erroneous Michigan Court of Appeals' decision in *DeYoung Family Zoo* for the contention that "the common law simply ***does not*** support NHRP's claim."[12] MTD Br. 5.

In *DeYoung Family Zoo*, the court—unlike Respondents here—correctly began its analysis by recognizing the common-law nature of habeas corpus. 2025 WL 2957821 at *6–8. It treated the question of whether seven confined chimpanzees are "persons" as a common law question, not a matter of statutory interpretation. *Id*. at *8. For guidance, the court looked to English common law "to derive the legitimate scope of habeas relief." *Id*.

The court relied heavily on the views of William Blackstone, who explained that English common law treated all nonhuman animals as things with no right to bodily liberty based on the Genesis "creation narrative."[13] *Id*. Per Blackstone, humans possess "despotic dominion" over nonhuman animals, granted to them by God, encompassing the right to pursue and subjugate wild animals. *Id*. at *8–9. However, the court erroneously disregarded the evolutionary nature of the common law. While all nonhuman animals were treated as mere objects of property under English common law, this does not mean chimpanzees in Michigan—or elephants in Pennsylvania—should be treated the same under today's common law.

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[12] The decision is currently the subject of a pending leave application in the Michigan Supreme Court. NhRP's *Application for Leave to Appeal* (Mich. Sup. Ct. Nov. 28, 2025), available at https://bit.ly/3LDIsuo.

[13] *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).

The common law is not an anachronism. It is not meant to remain frozen in the ancient ignorance of centuries past, immune to societal change and the evolving demands of justice. When confronting archaic common law, the role and duty of courts is to do justice, not to perpetuate error. This is true in Michigan,[14] and it is certainly true in Pennsylvania. *See*, e.g., *Flagiello*, 417 Pa. at 511–13; *Hack*, 495 Pa. at 319.

3. The decisions in NhRP's prior habeas corpus cases cannot justify summarily dismissing the Petition.

Respondents cite the decisions in NhRP's prior cases concluding that nonhuman animals are not "persons" for purposes of habeas corpus. MTD Br. 4–6. As out-of-state cases, these decisions obviously have no precedential force in Pennsylvania. They also lack persuasive value.

Those decisions are grounded in one of two fundamentally distinct conceptions of personhood: (i) a statutory conception, according to which personhood is determined by a statutory definition of the term "person"; and (ii) a non-statutory conception, according to which personhood is determined by the ability to bear duties in exchange for rights. Both conceptions are erroneous, and neither is consistent with Pennsylvania law.

Representing the statutory conception is the decision in *Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Soc'y*, 2025 CO 3, ¶ 25 (Feb. 10, 2025), in which the Colorado Supreme Court held: "Given the statutory definition of the term 'person' and the plain and ordinary meaning of the term found in the dictionary, we conclude that the General Assembly's choice of the word 'person' demonstrates its intent to limit the reach of [Colorado's habeas corpus statute] to human beings." In applying a statutory conception of personhood, the Colorado Supreme Court erroneously disregarded the common-law nature of habeas corpus—by treating the Great Writ as

[14] *See Montgomery v. Stephan*, 359 Mich. 33, 38 (1960) ("Our oath is to do justice, not to perpetuate error.").

a mere statutory remedy—as well as the evolutionary nature of the common law. Respondents attempt to perpetuate the same errors here.

Representing the non-statutory conception is the decision in *Breheny*, 38 N.Y.3d at 572, in which the New York Court of Appeals (by a 5–2 vote) held that nonhuman animals lack personhood because of their inability to bear duties in exchange for rights: "[L]egal personhood is often connected with the capacity . . . to assume legal duties and social responsibilities. . . . . [N]onhuman animals cannot—neither individually nor collectively—be held legally accountable or required to fulfill obligations imposed by law." This is an outlier philosophical conception of personhood based on an incorrect understanding of social contract theory. In applying it, the *Breheny* majority recognized the common-law nature of habeas corpus but erroneously disregarded the evolutionary nature of the common law.[15]

This Court is in a unique position to ignore these irrational out-of-state decisions.[16] Relying on them requires this Court to either: (1) disregard the common-law nature of habeas corpus, in contravention of one line of binding authorities (e.g., *Myers*, 419 Pa. at 17 n.20; *Fair*, 394 Pa. at

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[15] The majority of courts in NhRP's prior cases have applied this non-statutory—philosophical—conception of personhood, including the Michigan Court of Appeals in *DeYoung Family Zoo*. 2025 WL 2957821 at *11 (reasoning that because chimpanzees are incapable of bearing duties in exchange for rights, they cannot be "persons" eligible for habeas relief). This conception has been subjected to decisive criticism. *See Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring); *Breheny*, 38 N.Y.3d at 584–87 (Wilson, J., dissenting); *id*. at 631 (Rivera, J., dissenting); NhRP's *Application for Leave to Appeal*, *supra* 13 n.12, at 27–35. Not even Respondents rely on it here.

[16] *Cf. The NonHuman Rights Project v. Breheny*, 2020 WL 1670735, at *10 (N.Y. Sup. Ct. 2020) ("This Court agrees that [the elephant] Happy is more than just a legal thing, or property. She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty. Nonetheless, we are constrained by the caselaw to find that Happy is not a 'person' and is not being illegally imprisoned."); *Stanley*, 49 Misc.3d at 772–73 ("Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed. . . . [H]owever, given the precedent to which I am bound, it is hereby ordered that the petition for a writ of habeas corpus is denied and the proceeding is dismissed[.]").

285), (2) disregard the evolutionary nature of the common law, in contravention of another line of binding authorities (e.g., *Flagiello*, 417 Pa. at 511–13; *Hack*, 495 Pa. at 319), or (3) both. None of these options is defensible.

In resolving the personhood question, this Court should adopt the position in harmony with Pennsylvania's jurisprudence. The *Breheny* dissenting opinions by now-Chief Judge Rowan Wilson and Judge Jenny Rivera, and the *Tommy* concurring opinion by their former colleague Judge Eugene Fahey (ret.), have tremendous persuasive force. Those well-reasoned opinions are grounded in principles and values recognized as fundamental under Pennsylvania law—unlike the decisions cited by Respondents. *Cf. Kine v. Zuckerman*, 4 Pa. D. & C. 227 (Pa. Com. Pl. 1924) ("[T]he weight of authority, from the standpoint of numbers, is against the existence of a right of action in such a case as this. On the other hand, we have been impressed by the cogent arguments of those decisions which sustain the right of recovery, and are of opinion that this view is supported by the more potent reasoning.").[17]

B. NhRP has standing on behalf of Angeline, Savanna, Tasha, Victoria, and Zuri pursuant to 42 Pa.C.S. § 6503(a).

NhRP filed the Petition pursuant to 42 Pa.C.S. § 6503(a), which provides: "Except as provided in subsection (b), an application for habeas corpus to inquire into the cause of detention may be brought by or on behalf of any person restrained of his liberty within this Commonwealth under any pretense whatsoever."[18] Pet. ¶ 92.

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[17] *See also Gray v. Grunnagle*, 423 Pa. 144, 152 (1966) ("'Reason is the soul of the law.'") (citation omitted); *Kituskie v. Corbman*, 552 Pa. 275, 285 (1998) ("this Court finds the reasoning of the minority position to be more persuasive").

[18] The inapplicable exception in subsection (b) states: "Where a person is restrained by virtue of sentence after conviction for a criminal offense, the writ of habeas corpus shall not be available if a remedy may be had by post-conviction hearing proceedings authorized by law."

The statutory language places no restriction on who may petition on another's behalf, and the phrase "on behalf of" has not been construed to impose any limitations on the identity of the third-party petitioner.[19] This accords with the traditional common law rule effective for centuries in English-speaking jurisdictions that ordinarily, unrelated third parties may seek habeas corpus on behalf of individuals restrained of their liberty:

> Anyone could tell a story about someone else to touch off the writ's issuance. . . . [A]ny person, regardless of his or her social standing, could tell a story to justify the court's concern that it should learn more about a person's confinement by anyone, anywhere. Who told the story mattered little, if at all.

HALLIDAY 45–46. *See* II HALSBURY'S LAWS OF ENGLAND, §1476, p. 783 (4th ed. 1976) ("Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment[.]"); JUDITH FARBEY ET AL., THE LAW OF HABEAS CORPUS 237–38 (3d ed. 2011) (Where "a prisoner is being held in circumstances which do not allow for resource to the courts," "an application from a third party will be entertained where it is shown . . . that the prisoner is so confined as to be unable to initiate proceedings."); ROLLIN C. HURD, A TREATISE ON THE RIGHT OF PERSONAL LIBERTY, AND ON THE WRIT OF HABEAS CORPUS 203 (1876) ("[N]o legal relation is required to exist between the prisoner and the person making the application."); Pet. ¶ 93 n.90 (citing cases).

Respondents erroneously contend that because NhRP "has not alleged any facts to show that it has a significant relationship with the elephants," we lack standing to represent them. MTD

[19] Construing New York's similar habeas corpus statute, CPLR 7002(a), a trial court found that NhRP had standing on behalf of two chimpanzees. *See Stanley*, 49 Misc.3d at 755–76 ("As the statute places no restriction on who may bring a petition for habeas corpus on behalf of the person restrained, and absent any authority for the proposition that the statutory phrase 'one acting on his behalf' is modified by a requirement for obtaining standing by a third party, petitioner has met its burden of demonstrating that it has standing.").

Br. 10. 42 Pa.C.S. § 6503(a) contains no "significant relationship" requirement, and Respondents cite no authority construing such a requirement in the statute.

1. *Whitmore*'s "significant relationship" dicta has not been adopted as a standing requirement in habeas corpus cases outside the PCRA context.

In support of their contention that NhRP must have a "significant relationship" with the elephants to seek habeas relief on their behalf, Respondents focus on Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. § 9541. MTD Br. 9. The PCRA provides for "an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief." § 9542. The elephants have not been convicted of any crimes nor are they serving any sentences, and the Petition is not seeking to obtain collateral relief. Accordingly, the PCRA has no relevance to this case.

Yet, Respondents rely on cases brought under the PCRA that have invoked the federal next friend standing requirements articulated in *Whitmore v. Arkansas*, 495 U.S. 149, 163–64 (1990). Those requirements—including *Whitmore*'s "significant relationship" dicta[20]—have been adopted as next friend standing requirements for claims brought under the PCRA. *See Com. v. Haag*, 570 Pa. 289, 303 (2002). Based on this adoption, Respondents erroneously contend the "significant relationship" requirement must exist in this case since "the PCRA subsumes habeas relief." MTD Br. 9.

Their unqualified assertion is simply false: the PCRA does not subsume all claims for habeas relief. As Respondents' own cited authority explains, "the PCRA subsumes the remedy of habeas corpus with respect to remedies offered under the PCRA . . . . [W]e agree that the legislature

[20] "[*Whitmore*] also noted *in dicta* that 'it has been further suggested that a 'next friend' must have some significant relationship with the real party in interest,' but did not opine on that issue." *Am. Civil Liberties Union Found. on behalf of Unnamed U.S. Citizen v. Mattis*, 286 F.Supp.3d 53, 57 (D.D.C. 2017) (quoting 495 U.S. at 163–64).

intended that the writ would continue to exist as a separate remedy," in "cases in which there is no remedy under the PCRA." *Com. v. Peterkin*, 554 Pa. 547, 552 (1998). In other words, "[t]he common law writ of *habeas corpus* has not been eliminated. . . . [C]laims that fall outside the sphere of the PCRA can be advanced via a writ of *habeas corpus.*" *Com. v. Taylor*, 65 A.3d 462, 466 n.3 (2013). Precisely the case here.

The Petition does not seek remedies under the PCRA. It seeks relief for the elephants under common law habeas corpus pursuant to Pa.C.S. § 6503(a), and no Pennsylvania authority holds that *Whitmore*'s "significant relationship" dicta is a standing requirement in such cases.[21]

2. Child custody habeas corpus cases do not establish that NhRP needs to have a "significant relationship" with the elephants for standing.

In support of their contention that NhRP must have a "significant relationship" with the elephants, Respondents also cite irrelevant authority concerning child custody habeas corpus cases. They write, "Pennsylvania courts have historically required a petitioner to establish standing when pursuing habeas relief on behalf of a child in a child custody dispute." MTD Br. 9. Standing in the child custody context means having "a prima facie legal right to such custody," a right grounded in a "natural right, blood tie or kinship, [or] any contractual right to custody of the child." *Com. ex rel. Ebel v. King*, 162 Pa.Super. 533, 537 (1948). Child custody cases instituted through habeas

[21] Even in the PCRA context, Pennsylvania courts have not addressed whether the requirement applies in extreme circumstances, such as where the prisoner lacks any significant relationships (except to their captors). It is not an absolute, inflexible rule in federal courts. *See, e.g., Sam M. ex rel. Elliott v. Carcieri*, 608 F.3d 77, 91 (1st Cir. 2010) ("because these foster care children lack significant ties with their parents and have been placed under the state's legal custody and guardianship, a significant relationship need not be required as a prerequisite to Next Friend status"); *Mattis*, 286 F.Supp.3d at 59 ("[T]he circumstances in this case preclude someone with a significant relationship from serving as the detainee's next friend. . . . Aside from two visits from the Red Cross, the detainee has had no contact with anyone other than armed forces and law enforcement personnel.").

corpus are *not* brought on behalf of the child but "for possession of the child." *Com. ex rel. Children's Aid Soc. v. Gard*, 362 Pa. 85, 93 (1949). "'These cases are not decided upon the legal right of the petitioner to be relieved from unlawful imprisonment or detention[.]'" *Id*. (citation omitted). In other words, they are not about remedying the violation of the right to bodily liberty.

NhRP is not seeking custody or possession of the elephants, but rather their freedom from unlawful confinement. Remedying the violation of their fundamental right to bodily liberty is the Petition's core purpose. Pet. ¶¶ 5–8. Respondents' assertion that NhRP "has absolutely no cognizable legal right to, nor cognizable legal interest in, the elephants" is therefore completely irrelevant to the issue of NhRP's standing. MTD Br. 10–11.

Finally, Respondents claim they are the ones who have a significant relationship with the elephants because the Pittsburgh Zoo "houses the elephants" and "funds, provides, and cares for" them. MTD Br. 10. In so claiming, Respondents suggest their relationship to the elephants is analogous to that of a caring parent to children, rather than a prison warden to inmates. This suggestion is fundamentally contrary to the Petition's factual allegations, which must be accepted as true at this procedural posture (*see infra*).

C. The Petition makes a prima facie case that Angeline, Savanna, Tasha, Victoria, and Zuri are entitled to release from their unlawful confinement.

This Court must reject Respondents' contention that the Petition fails to make a prima facie case. MTD Br. 11–13.

A writ of habeas corpus may not be refused to one who shows a prima facie case entitling them to discharge. *Com. ex rel. Penland v. Ashe*, 341 Pa. 337, 340 (1941). A prima facie case is made when a petition for habeas relief avers "facts which, if true, would entitle the relator to an award of a writ of habeas corpus and a hearing thereon." *Balsamo v. Mazurkiewicz*, 417 Pa.Super. 36, 40 (1992). "A habeas corpus court, in determining whether a petition for a writ requires a

hearing, must accept as true all allegations of fact contained in the petition which are non-frivolous, specific, and not contradicted by the record." *Myers*, 423 Pa. at 4.

On January 2, 2026, this Court properly issued a Rule to Show Cause requiring "Respondents to show cause why the Petitioner is not entitled to the relief requested in the Verified Petition." This is because the Petition's factual allegations (accepted as true) establish a prima facie case that the elephants are entitled to release from their unlawful confinement. Specifically, those allegations establish: confinement at the Pittsburgh Zoo violates the elephants' fundamental common law right to bodily liberty protected by habeas corpus by depriving them of the ability to meaningfully exercise their autonomy—including the freedom to choose where to go, what to do, and with whom to be. Pet. ¶¶ 74–85, 233–236. When evaluating the prima facie case, this Court can assume (without deciding) that the elephants have the right to bodily liberty (*see infra* 22–24).

Elephants are autonomous, extraordinarily cognitively complex beings, possessing complex physical and psychological needs.[22] Pet. ¶¶ 15–75. As the expert evidence detailed in the Petition demonstrates, the elephants at the Pittsburgh Zoo are suffering in a wholly unnatural environment that is antithetical to the basic needs of their species. Elephants in the wild travel a dozen or more miles per day (sometimes more than 60 miles), are active up to 18 hours every 24-hour period, and live complex lives characterized by rich social interactions, widely diverse sensory experiences, and challenges requiring exploration, spatial memory, and problem-solving. Pet. ¶¶ 70, 78, 192. Yet at the Pittsburgh Zoo, the elephants are trapped in a barren, tightly-controlled environment with no ability to make meaningful choices. *Id*. ¶¶ 76–85. They have

[22] Contrary to Respondents, there is no "scientific debate" on whether elephants have complex cognitive abilities. MTD Br. 4. It is now an established scientific consensus, the result of decades of research. *See generally*, *Elephants are extraordinary*, ElephantVoices, https://bit.ly/49tNbbo (last visited Jan. 18, 2026) (describing the complex cognitive abilities of elephants, with numerous references to the scientific literature).

access to approximately 0.75 acres of outdoor space, are kept in a concrete-floored indoor barn almost all day on cold winter days, and have little to do. *Id*. ¶¶ 78–79. Their lives are nothing but a succession of boring and frustrating days, damaging to their minds and bodies. *Id*. ¶ 192.

That these elephants have endured chronic stress is indicated by their exhibiting stereotypies, behaviors consisting of aberrant, repetitive movements never observed in free-living elephants (e.g., head bobbing, swaying, continuous walking the same path). Pet. ¶¶ 73, 76–77, 83. Stereotypies are the physical manifestations of brain damage. *Id*. ¶ 77.

Accordingly, the Petition's factual allegations (accepted as true) demonstrate that the elephants' fundamental right to bodily liberty is being violated, thereby rendering their confinement unlawful. They are entitled to a merits hearing. *See Breheny*, 38 N.Y.3d at 620 (Wilson, J., dissenting) ("[H]as Happy [the elephant] made a prima facie showing of possible unjust confinement that grants her a full hearing to decide the merits of her habeas petition? She has. . . . Happy has established a prima facie case that her confinement at the Bronx Zoo stunts her needs in ways that cause suffering so great as to be deemed unjust."); *id*. at 642 (Rivera, J., dissenting) ("[Happy] is held in an environment that is unnatural to her and that does not allow her to live her life as she was meant to: as a self-determinative, autonomous elephant in the wild. Her captivity is inherently unjust and inhumane.").

1. This Court can assume (without deciding) that the elephants could be "persons" for purposes of habeas corpus.

Respondents argue this Court need not reach the question of whether the Petition sets forth a prima facie case because the elephants are not "persons" for purposes of habeas corpus. MTD. Br. 11. For the reasons previously explained (*supra* 4–8), Respondents' contention that the elephants are not "persons"—and thus lack the right to bodily liberty—is erroneous. Their contention that the elephants must first be recognized as "persons" before the case can reach the

merits hearing is also erroneous. Personhood is a merits determination. At this preliminary stage, the Court can assume (without deciding) that the elephants could be "persons" (i.e., could have the right to bodily liberty). Pet. ¶¶ 7, 105–10.

Making this assumption accords with the Great Writ's use throughout history, including its use in challenging the confinement 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 was used flexibly to address myriad situations in which liberty was restrained." *Id*. at 613.

In the famous case of *Somerset v. Stewart*, discussed *supra*, Lord Mansfield did not summarily dismiss a habeas corpus petition filed on behalf of an enslaved individual—someone whose right to bodily liberty (and thus legal personhood) had not been previously recognized. He issued a writ of habeas corpus to inquire into James Somerset's detention. In doing so, Lord Mansfield did not initially recognize Mr. Somerset's personhood; rather, he necessarily assumed (without deciding) that Mr. Somerset could possess the right to bodily liberty.

More recently, New York trial courts have issued habeas orders to show cause to inquire into the detention of nonhuman animals without recognizing them as "persons." Pet. ¶¶ 111–12; *Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 748 (N.Y. Sup. Ct. 2015) ("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 [chimpanzees] Hercules and Leo are persons in order to issue the writ and show cause order.'"); Mallory Diefenbach, *Orleans County issues first habeas corpus on behalf of elephant*, The Daily

News (Nov. 21, 2018), https://bit.ly/3AwkCWV ("[T]he Orleans County Supreme Court issued a habeas corpus order on behalf of an elephant and scheduled a hearing to determine whether she should be released from her imprisonment in the Bronx Zoo.").[23]

Centuries of habeas corpus jurisprudence therefore confirm that the Court does not need to first recognize the elephants' personhood for the case to proceed to a merits hearing. This is also confirmed by the broad language in 42 Pa.C.S. § 6502(a): "Any judge of a court of record may issue the writ of habeas corpus to inquire into the cause of detention of any person or for any other lawful purpose."

Accordingly, at this preliminary stage, this Court can assume (without deciding) that Angeline, Savanna, Tasha, Victoria, and Zuri could have the right to bodily liberty.[24]

2. The elephants' confinement is unlawful because it violates their common law right to bodily liberty protected by habeas corpus.

Respondents erroneously contend the elephants are not unlawfully confined because NhRP "presents no evidence that animal welfare laws are being violated." MTD Br. 12. Such evidence is irrelevant to the illegality identified in the Petition: the violation of the elephants' common law right to bodily liberty protected by habeas corpus.[25] Pet. ¶¶ 8, 100, 233–35.

A confinement that violates a common law right is unlawful even if it involves no statutory violation. *See Kauffman v. Oliver*, 10 Pa. 514, 517 (1849) (recognizing that in the *Somerset* habeas

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[23] Orleans County Supreme Court Order available at https://bit.ly/4aYd0kV.

[24] Plausibly, the elephants are "persons" who can invoke the Great Writ. For the reasons detailed in the Petition, the science establishing the autonomous nature of elephants—together with changing societal norms and the fundamental principles and values of justice, liberty, and equality—supports recognizing their right to bodily liberty. Pet. §§ VIII.F–H.

[25] As the Petition does not ground any claim in the Eighth Amendment of the United States Constitution, Respondents' assertion that this constitutional provision "does not apply to elephants" is also irrelevant. MTD Br. 12.

case, adopted into Pennsylvania common law, an enslaved individual was freed under the common law). "[H]istorically, the Great Writ of habeas corpus was used to challenge detentions that violated no statutory right and were otherwise legal but, in a given case, unjust." *Breheny*, 38 N.Y.3d at 579. (Wilson, J., dissenting).

Accordingly, the question here is not whether a statute is being violated, but whether the elephants' common law right is being violated. *See id*. at 637 (Rivera, J. dissenting) (recognizing NhRP's "core argument that the writ should issue because Happy's confinement at the Zoo was a violation of her right to bodily liberty as an autonomous being, regardless of the care she was receiving"); *id*. at 642 ("Confinement at the Zoo is harmful, not because it violates any particular regulation or statute relating to the care of elephants, but because an autonomous creature such as Happy suffers harm by the mere fact that her bodily liberty has been severely—and unjustifiably—curtailed.").

3. The Petition seeks appropriate habeas relief to remedy the elephants' unlawful confinement.

Respondents erroneously contend habeas relief is inappropriate here because the Petition does not seek to turn the elephants out into the streets of Pittsburgh. MTD Br. 12. Their contention—unsupported by any citations to Pennsylvania authority—falsely assumes habeas relief is limited to absolute, unconditional release. It treats the Great Writ as a rigid, inflexible remedy, contrary to settled precedent. *See generally* Pet. ¶¶ 140, 152–53, 236–41.

The Supreme Court of Pennsylvania has recognized: "The writ of habeas corpus in Pennsylvania may be molded to suit the exigencies of any particular case." *Fair*, 394 Pa. at 285. The Great Writ's very nature "demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Com. ex rel. Bryant v. Hendrick*, 444 Pa. 83, 89 (1971). *See id*. ("The scope and flexibility of the writ—

its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers."); *Myers*, 419 Pa. at 16; *Burke*, 261 A.3d at 553.[26]

Given the Great Writ's flexibility in molding remedies for injustices, the fact that Angeline, Savanna, Tasha, Victoria, and Zuri cannot be allowed to roam the city streets does not preclude the Petition's requested relief: rewilding (release into native lands after requisite habitation), or if rewilding is not feasible, relocation to an elephant sanctuary accredited by the Global Federation of Animal Sanctuaries ("GFAS"). These options will allow the elephants to either roam as wild elephants do or exercise their autonomy to the greatest extent possible while under human care. Pet. ¶¶ 8, 86–90, 241. By seeking the elephants' placement in environments where they can heal from the trauma caused by their unjust confinement, the Petition's requested remedies accord with the demands of justice as well as the writ's flexible, innovative character. They are appropriate forms of habeas relief.

Respondents also misrepresent the Petition's requested relief. They claim NhRP "is not actually seeking for the elephants to obtain 'liberty' – i.e., freedom from 'captivity' or life in human care." MTD. Br. 12. This is incorrect because the Petition seeks the rewilding of the elephants. Declarant Brett Mitchell, founder of The Elephant Reintegration Trust, explains that rewilding has three components: Rehabilitation, Reintegration, and Rewilding. Mitchell Decl. ¶ 14. The last component—Rewilding—is "the release of reintegrated elephants into a wild system without any interference by humans, in which the elephant has full autonomy." *Id*. Moreover, for the reasons

[26] "[N]o matter what may be the situation or how involved the circumstances, any person who claims he is illegally imprisoned or restrained of his liberty may have such claim inquired into by a competent court, and, if his claim is found to be well grounded, he will be discharged and freed of such restraint." *Fair*, 394 Pa. at 284.

just explained, should the elephants require lifetime human care at a GFAS-accredited sanctuary (because rewilding is not feasible), this would not render relocation to such a sanctuary inappropriate habeas relief.

Finally, Respondents attempt to create a factual dispute by asserting that NhRP demands the elephants' transfer "without regard to the effect this will have on the animals." MTD Br. 12. This can only be interpreted as a contention that the elephants are better off confined at the Pittsburgh Zoo rather than rewilded or placed in an accredited sanctuary—contrary to the Petition's factual allegations (which must be accepted as true). *See* Pet. ¶¶ 76–89. At this procedural posture, Respondents' contention is improper. Whether it is in the elephants' best interests to live out their remaining days in a zoo environment or in one requested in the Petition presents a factual issue that can only be resolved at a merits hearing.

CONCLUSION

For the foregoing reasons, Respondents' motion to dismiss should be denied.

Dated: January 22, 2026

Respectfully submitted,

/s/ Kenneth Cramer-Cohen
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—and—
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: January 22, 2026

Respectfully,

/s/ Kenneth Cramer-Cohen
Kenneth Cramer-Cohen

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2026, a true and correct copy of the foregoing Petitioner's Brief in Opposition to Respondents' Motion to Dismiss was served via email to the following recipients:

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