

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

Nonhuman Rights Project,

Supreme Court No. 169351

Petitioner-Appellant,

v.

DeYoung Family Zoo, LLC and

Court of Appeals No. 369247

Harold L. DeYoung,

Menominee Circuit Court

Respondents-Appellees.

LC No. 23-17621-AH

AMICUS CURIAE BRIEF ON BEHALF OF PROFESSOR MARTHA NUSSBAUM

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
INDEX OF AUTHORITIES	ii
STATEMENT OF INTEREST OF AMICUS CURIAE	v
QUESTIONS PRESENTED FOR REVIEW	vi
STATEMENT OF APPELLATE JURISDICTION.....	vii
STATEMENT OF FACTS	1
INTRODUCTION TO THE ARGUMENT SECTION	3
ARGUMENT	4
I. The Capabilities Approach provides a philosophical and practical basis for granting habeas relief to the DeYoung Prisoners.....	4
A. Chimpanzees are autonomous, cognitively complex beings with extraordinary capabilities.....	6
B. The DeYoung Family Zoo is a highly inappropriate environment for chimpanzees.....	7
C. Granting habeas relief in this case would protect the DeYoung Prisoners’ interest in realizing their capabilities and living a dignified life.	9
D. Being non-human primates does not preclude the DeYoung Prisoners from habeas relief.	9
CONCLUSION.....	12

INDEX OF AUTHORITIES

Cases	Page(s)
<i>Nair v. Union of India, Kerala High Court,</i> no. 155/1999, June 2000	12
<i>Nonhuman Rights Project, Inc. v. DeYoung Family Zoo, LLC,</i> Case No. 2023-17621-AH, (41st Cir. Ct. Dec. 12, 2023).....	2
<i>Nonhuman Rights Project, Inc. v. DeYoung Family Zoo, LLC,</i> No. 369247 (Mich. Ct. App. Oct. 17, 2025); ___ NW3d ___	2
 Statutes	
Animal Welfare Act.....	2, 8
FOIA	1, 2, 8, 9
The Michigan Penal Code, MCL § 750.50(b)(2).....	12
N.Y. Est. Powers & Trusts Law § 7-8.1 (McKinney 1996), Conn. Gen. Stat. § 45a-489a (2018).....	12
 Other Authorities	
Amicus Brief of American and Canadian Law Professors, <i>Nonhuman Rights Project, Inc. v. Breheny</i> , APL 2021-00087, Motion for Leave to File Amicus Brief, at 5 (N.Y. Mar. 18, 2022).	11
<i>Behaviour Of Captive, Zoo-Living Chimpanzees</i> , Faunalytics (June 29, 2011).....	7
Black’s Law Dictionary (11th ed. 2019).....	11

Bodamer, *Key Out: A Chimpanzee's Petition for Freedom, The Chimpanzee Chronicles* (Ed.).....7

Claassen, *Human dignity in the capability approach, The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, 240-249 (Düwell, et al., eds., Cambridge University Press 2014).....5

Fenton, *Human Flourishing and Human Capability: A review of Martha C. Nussbaum's Frontiers of Justice*, *The Hedgehog Review*, Fall 20075

Gradually, nervously, courts are granting rights to animals, *The Economist* (Dec. 22, 2018)12

Haas, *The Movement to Give 'Personhood' Rights to Animals, Reasons to be cheerful* (Oct. 8, 2021)12

Harris, *A Right of Ethical Consideration of Non-Human Animals*, 27 *Hastings Eng. L. J.* 71, 90 (2020)6

MCOA Oral Argument October 14th – Panel 4 (Oct. 14, 2025).....2

MCR 3.303.....11

MCR 7.312(H)(5)1

Nussbaum, *Creating Capabilities: The Human Development Approach* 621-32 (Harvard University Press, 2011)4

Nussbaum, *Justice for Animals: Our Collective Responsibility* (Simon & Schuster, 2022)2

Nussbaum, *The Moral Status of Animals*, *The Chronicle of Higher Education*, Feb. 3, 2006, at 3.....4

Pallotta, *Ecuador's Constitutional Court Rules Wild Animals Are Subjects of
Legal Rights Under the Rights of Nature*, Animal Legal Defense Fund (Jan. 4,
2023)13

Salmond, *Jurisprudence* 318 (10th ed. 1947).....11

STATEMENT OF INTEREST OF AMICUS CURIAE

I am the Ernst Freund Distinguished Service Professor of Law and Ethics, appointed in the Law School and Philosophy Department of the University of Chicago. I am the author of numerous works on animal rights and justice, as well as a recipient of the 2016 Kyoto Prize in Arts and Philosophy, the 2018 Berggruen Prize, the 2021 Holberg Prize, and the 2022 Balzan Prize.

Along with 1998 Nobel Prize winner Amartya Sen, I developed a method for conceptualizing well-being for both humans and animals deemed the “capabilities approach.” My own version of the approach, somewhat different from Sen’s, focuses on how any being can survive and thrive in their natural environment. This was the focus for the award of the Balzan Prize. Accordingly, I have a special interest in guiding the evolution of the capabilities approach and in ensuring that the field of animal law develops with the capabilities of each animal at the forefront of the legal system’s understanding of animal lives. I respectfully urge the Court to hear this case by issuing an Order to Show Cause for Louie and the six other DeYoung Prisoners, currently held at a roadside zoo in Wallace, Michigan.

QUESTIONS PRESENTED FOR REVIEW

1. **Are the DeYoung Prisoners entitled to an order to show cause pursuant to MCL 600.4316 and MCR 3.303(D)?**

Court of Appeals' Answer: No.

Plaintiff-Appellant's Answer: Yes.

Amicus curiae's Answer: Yes.

2. **May the DeYoung Prisoners be considered “persons” for purposes of habeas relief under this Court’s decisions in *Sterling v. Jackson*, 69 Mich. 488, 495 (1888) and *Ten Hopen v. Walker*, 96 Mich. 236, 239 (1893)?**

Court of Appeals' Answer: No.

Plaintiff-Appellant's Answer: Yes.

Amicus curiae's Answer: Yes.

3. **Does the DeYoung Prisoners’ inability to bear duties or enter into the social contract preclude them from consideration as “persons” for purposes of habeas relief?**

Court of Appeals' Answer: Yes.

Plaintiff-Appellant's Answer: No.

Amicus curiae's Answer: No.

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)?**

Court of Appeals' Answer: No.

Plaintiff-Appellant's Answer: Yes.

Amicus curiae's Answer: Yes.

STATEMENT OF APPELLATE JURISDICTION

The Michigan Court of Appeals denied plaintiff-appellant's petition to show cause on October 17, 2025. *Amicus curiae* agrees that the Supreme Court of Michigan has jurisdiction over this appeal pursuant to MCR 7.303(B)(1).

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STATEMENT OF FACTS¹

Amicus incorporates the facts found within Petitioner-Appellants' Brief on Appeal and accompanying appendices. *Amicus* additionally offers the following:

For at least the last decade, seven chimpanzee prisoners—Louie (Prisoner A) and Prisoners B, C, D, E, F, and G (the DeYoung Prisoners)—have been unjustly held captive at the DeYoung Family Zoo (DFZ) in Wallace, Michigan.² With no accreditation displayed on its website including any zoological association accreditation, DFZ is properly classified as a roadside zoo.³ As such, it is overseen only by the United States Department of Agriculture (USDA), which does not have rigorous enough standards to address the complex needs and autonomy of captive chimpanzees.⁴

DFZ is a wholly inappropriate place for chimpanzees to live. FOIA records obtained by plaintiffs in 2023 indicate that concerned zoo patrons and animal protection organizations filed numerous animal welfare complaints with the USDA between 2013 and 2023.⁵ One complaint, submitted on June 6, 2016, appears not to have been acted on by the USDA until January of 2018.⁶ When the inspection finally happened, the inspector noted that the mesh surrounding the chimpanzee enclosures was “difficult to see through,” which made it “difficult to fully assess the chimpanzees.”⁷ In a section of the report titled “Unsocialized Chimpanzee,” the inspector wrote that Louie, who was eight years old at the time, was being housed alone, but that DFZ's plan to expand housing to facilitate more social interaction between chimpanzees was nevertheless “reasonable.” The inspector arrived at this conclusion even though Louie had been housed in

¹ In accordance with MCR 7.312(H)(5), *Amicus* states that no counsel for a party to this action authored the brief in whole or in part, nor contributed money that was intended to fund the preparation or submission of this brief. Further, no counsel for a party, nor a party itself, nor any other person, made a monetary contribution intended to fund the preparation or submission of this brief.

² Affidavit of Mary Lee Jensvold, ¶ 86 [Petitioner-Appellant's Appendix, Court of Appeals, 437a-438a].

³ *Id.* ¶ 97. [Petitioner-Appellant's Appendix, Court of Appeals, 441a].

⁴ *Id.* ¶¶ 85-97. [Petitioner-Appellant's Appendix, Court of Appeals, 437a-441a].

⁵ U.S. Dep't of Agric., FOIA Request Response No. 2023-APHIS-03696-F, at 68-98 (2023) (on file with Nonhuman Rights Project) available at [USDA-DFZ-Records-II.pdf](#). The 2018 complaint, filed by PETA, makes reference to Tommy, a chimpanzee and former NhRP client who was donated to DFZ in 2015, and Louie, then a juvenile chimpanzee. According to a witness, both chimpanzees appeared to be housed in isolation, in direct violation of USDA animal welfare regulations.

⁶ *Id.* at 68-79.

⁷ *Id.* at 77.

isolation for at least three years⁸—and likely for his entire life⁹—up to that point. In the eyes of a USDA inspector, Louie’s predicament did not merit further inquiry despite this troubling pattern, perhaps because everything that was happening to him and to the other DeYoung Prisoners was legal under current animal welfare laws.

The DeYoung Prisoners are entitled to more than just the minimum satisfaction of their basic needs. In that spirit, plaintiff-appellant brought a habeas complaint on behalf of the seven DeYoung Prisoners in December 2023, seeking an order to show cause for their unjust confinement. The District Court dismissed the case in a one-sentence opinion.¹⁰ NhRP appealed to the Court of Appeals, who heard oral arguments on October 14, 2025. Despite the Court’s comment that the argument was “very well presented,”¹¹ the Court ultimately denied NhRP’s request for an order to show cause.¹² This case is now presented on appeal to the Michigan Supreme Court. *Amicus* writes in support of plaintiff-appellant’s request that the seven DeYoung Prisoners be released from unjust confinement at DFZ and be transferred immediately to a sanctuary accredited by the Global Federation of Animal Sanctuaries (GFAS).

⁸ A complaint submitted by PETA resulted in a 2015 USDA inspection of DFZ. The inspectors “rationalized Louie’s isolation” at the time “because he was provided with a few enrichment items, he was housed by other primates, and ‘[t]he licensee and the director of the zoo also will go in with Louie and play with him.’” Two years later, in 2017, Louie was still held in isolation, housed next to a crested macaque—a primate of a species that would never naturally be sympatric with chimpanzees. Even though USDA inspectors charged with protecting captive chimpanzees like Louie were aware of his living conditions at DFZ, they allowed him to continue living in isolation, in direct violation of regulations implementing the Animal Welfare Act, 7 U.S.C. § 2131 *et seq.* FOIA Request Response No. 2023-APHIS-03696-F, at 99.

⁹ FOIA Request Response No. 2023-APHIS-03696-F, at 79, 89, 98. *See also* Petitioner’s Complaint ¶¶ 24-25 [Petitioner-Appellant’s Appendix, Court of Appeals, 30a]. The 2018 inspection records also indicated that Louie, despite being housed alone, was “very well behaved,” and that they did not observe any stereotypic behavior. FOIA Request Response No. 2023-APHIS-03696-F, at 79. However, a layperson visiting the DeYoung Family Zoo may not always be able to tell that Louie and the other DeYoung Prisoners are suffering. Nonhuman animals can display adaptive preferences to a lower standard of living to their surroundings over time, caused by conditions of deprivation. Both humans and nonhuman animals “adapt” in this way because their surroundings lead them to believe that this is all they can attain. Martha C. Nussbaum, *Justice for Animals: Our Collective Responsibility*, 48 (Simon & Schuster, 2022).

¹⁰ *Nonhuman Rights Project, Inc v DeYoung Family Zoo, LLC*, unpublished opinion of the 41st Circuit Court, issued December 12, 2023 (Case No. 2023-17621-AH). [Petitioner-Appellant’s Appendix, Court of Appeals, 1a].

¹¹ *MCOA Oral Argument October 14th – Panel 4*, at 24:30 (Oct. 14, 2025), available at https://www.youtube.com/watch?v=6khy8_Hi9VA.

¹² *Nonhuman Rights Project, Inc v DeYoung Family Zoo, LLC*, unpublished opinion of the Court of Appeals, issued October 17, 2025 (Docket No. 369247); ___ NW3d ___.

INTRODUCTION TO THE ARGUMENT SECTION

A core issue of this case is whether the DeYoung Prisoners are entitled to the common law right to bodily liberty protected by habeas corpus, notwithstanding their biological status as nonhuman animals. *Amicus* answers this question in the affirmative—the DeYoung Prisoners do possess such a right, and Michigan common law should evolve to recognize it. Modern science recognizes that nonhuman animals are sentient: they possess the capacity for subjective, conscious experience, sensing, and feeling pain and pleasure. And modern philosophy has moved well beyond the Cartesian idea that nonhuman animals are simply complex biological machines that lack the capacity to experience suffering. Philosophers today are instead preoccupied with exploring the moral status of nonhuman animals.

Unlike philosophy and science, the law remains largely undecided on the predicament of nonhuman animals. Are they beings with the capacity to experience pain, or are they merely unfeeling “things”? The former view would suggest that nonhuman animals possess at least some rights that the law should—and does—protect, via the enactment of, for example, animal cruelty and animal welfare laws. The latter view comfortably relegates nonhuman animals to mere property status—sadly reinforced by many modern-day laws—and precludes the possibility that they could ever bear legal rights.

It is well past time for the law to comport with our modern scientific and philosophical understanding that nonhuman animals have the capacity to suffer, feel emotion, foster relationships, create communities, and form a conception of self. Chimpanzees are highly complex, autonomous beings that suffer immensely when not living in species-appropriate environments. This brief argues that the proper mechanism by which to modernize the law is to recognize the right to bodily liberty of the DeYoung Prisoners by granting plaintiff-appellant’s petition for habeas relief. *Amicus*’s capabilities approach will lay out the framework this Court may use to conclude that the DeYoung Prisoners are entitled to such relief by (1) considering the unique capabilities of chimpanzees; (2) asking whether the seven DeYoung Prisoners have meaningful opportunities to exercise their capabilities in their current environment, and (3) providing the basis for the relief sought and that is within this Court’s power to effectuate.

ARGUMENT

I. The Capabilities Approach provides a philosophical and practical basis for granting habeas relief to the DeYoung Prisoners.

Amicus developed the capabilities approach to ethics, a framework that draws from philosophy and economics principles to assess the welfare of both human and nonhuman animals. Originally developed as a political philosophy about human flourishing, the capabilities approach begins with the question, “What are people actually able to do and to be?” From here, the approach, as developed by *Amicus*, is concerned with a set of ten “central capabilities” that each human must have the option to exercise in order to flourish.¹³ While any individual human being may not have the desire to exercise any particular capability, it is the ability to do so that matters—if one so chooses.¹⁴

The capabilities approach argues that society should examine the capabilities of each being and protect those capabilities, because doing so is necessary to flourish, to live a meaningful life that one would value, and to preserve dignity. Dignity is at the core of the capabilities approach. In the human context, for example, simply having access to resources—food, water, and shelter—while necessary, does not make for a dignified *human* life. Instead, humans must have real opportunities to realize their unique human potential—access to healthcare, education, and political control, to name a few. To the extent that governments or societies fail to guarantee a threshold level of capability to function in key human areas, such governments and societies are unjust.¹⁵

Though originally applied in the context of global ethics and development economics, the capabilities approach is a useful framework for developing the legal foundation for animal rights. *Amicus* uses the notion of dignity to extend capability entitlements to nonhuman animals, recognizing that dignity and flourishing exist in nonhuman animals as much as in humans. And,

¹³ Nussbaum, *The Moral Status of Animals* (The Chronicle of Higher Education, Feb. 3, 2006), p 3. In the human context, *Amicus* defines ten central capabilities that are necessary for a *human* to flourish, including: life; bodily health; bodily integrity; senses/imagination/thought; emotions; practical reason; affiliation; relationships with other species; play; and control over one’s political and material environment. Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press, 2011), pp. 621-32.

¹⁴ Nussbaum, *Creating Capabilities*, *supra* note 13, pp. 621-32.

¹⁵ Fenton, *Human Flourishing and Human Capability: A review of Martha C. Nussbaum’s Frontiers of Justice* (The Hedgehog Review, Fall 2007), available at <https://hedgehogreview.com/issues/human-dignity-and-justice/articles/martha-c-nussbaums-frontiers-of-justice#>.

as with humans' inviolable dignity, the inviolable dignity of nonhuman animals entitles them to respect and rights to a set of capabilities.¹⁶ Conveniently, perhaps, the capabilities approach offers a pathway for tailoring sets of rights to different species of nonhuman animals. In this way, the capabilities approach can provide guidelines for judges and other lawmakers who are hesitant to grapple with the concept of "rights" for nonhuman animals without knowing which rights or which animals. In the context of the DeYoung Prisoners, for example, the law may protect their capabilities of toolmaking and climbing by granting habeas relief, without extending that same protection to chickens, who have a different set of capabilities, not at issue in this case.

To determine the capabilities of an animal of a given species, one can look to how an animal of that species might normally thrive in the wild. This may involve asking questions such as:

What life span is normal for that species in the wild? What is the physical condition of the healthy animal? What human [or non-human] acts invade or impair the bodily integrity of that sort of animal? What types of movement from place to place are normal and more pleasurable for that sort of animal? What sensory and imaginative stimulation does this animal seek, and what is to keep the animal in an unacceptably deficient sensory environment? What is it for this sort of animal to live in a crippling and intolerable fear or depression, or with a lack of bonds of concern? What type of affiliation does this animal seek in the wild, what sorts of groups, both reproductive and social, [do they] form? What types of communication does the animal engage in, using what sensory modalities? What is it for the animal to be humiliated and disrespected? What is it for the animal to play and enjoy [themselves]? Does the animal have meaningful relationships with other species and the world of nature? What types of objects does the animal use and need to control if [they are] to live [their] life?¹⁷

These questions, when applied to Louie and Prisoners B, C, D, E, F, and G, clearly demonstrate that zoo captivity does not, and cannot, provide the DeYoung prisoners with meaningful opportunities to exercise their species-specific capabilities. Continuing to allow their confinement is therefore an unjust violation of their basic rights.

¹⁶ Claassen, *Human dignity in the capability approach*, in *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Düwell M., et al, eds., Cambridge University Press 2014), pp 240-249, available at https://dspace.library.uu.nl/bitstream/handle/1874/414313/human_dignity_in_the_capability_approach.pdf.

¹⁷ Harris, *A Right of Ethical Consideration of Non-Human Animals*, 27 *Hastings Eng. L. J.* 71, 90 (2020).

A. Chimpanzees are autonomous, cognitively complex beings with extraordinary capabilities.

The science on chimpanzee cognition unequivocally supports the conclusion that chimpanzees are autonomous beings. Chimpanzees possess a sense of self, make choices, and plan for the future.¹⁸ They are capable of self-control and delayed gratification—a skill only available to humans and nonhumans with a sufficiently sophisticated sense of self and autobiographical memory.¹⁹ Chimpanzees who have acquired comprehension and production of American Sign Language demonstrate contingent communication with humans at the same level as young human children.²⁰ They can even use these skills to communicate about past and future events—indeed, language-trained chimpanzees have been found to make more statements about what they intend to do in the future than human children.²¹ One chimpanzee, Bruno, who had been imprisoned in a laboratory for 16 years, famously signed “KEY OUT” to a researcher, in a clear demonstration of his desire for freedom and autonomy to choose his own life.²²

Science is also clear that chimpanzees, because of their advanced cognitive capabilities, have complex physical, psychological, and social needs. The failure to meet these needs—that is, the failure to provide meaningful opportunity to exercise these capabilities—is physically and psychologically harmful to chimpanzees.²³ For example, in nature, chimpanzees live in groups of 20 to 200 individuals.²⁴ Species-typical social interactions of chimpanzees include greetings upon meeting others and hours spent grooming, which serve to reinforce bonds and decrease stress.²⁵ Because of this, it is highly detrimental to a chimpanzee’s psychological wellbeing to be socially isolated.

Chimpanzees also have a fundamental need for movement and travel. They need access to the sun, water, and various plants and vegetation, so an appropriate outdoor environment is essential.²⁶ As an arboreal species, chimpanzees are natural climbers and spend much of their time

¹⁸ Petitioner’s Complaint ¶ 13, *Nonhuman Rights Project, Inc v DeYoung Family Zoo, LLC* (41st Cir Ct, 2023). [Petitioner-Appellant’s Appendix, Court of Appeals, 26a-27a].

¹⁹ Affidavit of Mary Lee Jensvold, ¶ 42. [Petitioner-Appellant’s Appendix, Court of Appeals, 417a-418a].

²⁰ Petitioner’s Complaint ¶ 66. [Petitioner-Appellant’s Appendix, Court of Appeals, 42a].

²¹ *Id.* ¶ 53. [Petitioner-Appellant’s Appendix, Court of Appeals, 38a].

²² Bodamer, *Key Out: A Chimpanzee’s Petition for Freedom*, in *The Chimpanzee Chronicles* (Ed.).

²³ *The Behaviour of Captive, Zoo-Living Chimpanzees*, Faunalytics (June 29, 2011), available at <https://faunalytics.org/how-abnormal-is-the-behaviour-of-captive-zoo-living-chimpanzees/>.

²⁴ Petitioner’s Complaint ¶ 137. [Petitioner-Appellant’s Appendix, Court of Appeals, 64a].

²⁵ *Id.* ¶ 140. [Petitioner-Appellant’s Appendix, Court of Appeals, 65a].

²⁶ *Id.* ¶ 143. [Petitioner-Appellant’s Appendix, Court of Appeals, 65a].

in trees. In captivity, therefore, they must have access to adequate climbable surfaces, including sturdy fencing, catwalks, hoses, ropes, and hammocks.²⁷ Variety in the environment is key, and in captivity, this would look like a myriad of objects to explore or use in the creation of tools or toys.²⁸

In the wild, chimpanzees are able to satisfy their need to forage freely for hundreds of different foods such as vegetation, fruits, nuts, insects, reptiles, and mammals.²⁹ In nature, they make tools with vegetation and stone, which they use to hunt, forage, fight, play, communicate, and to carry out courtship rituals and hygiene routines.³⁰ When given the opportunity, chimpanzees in captivity also use a myriad of tools, such as screwdrivers, paintbrushes, hammers, forks, spoons, crayons, clothing, hairbrushes, toothbrushes, and even iPads.³¹ In captivity, food and environmental objects must be presented in ways that promote such foraging and toolmaking capabilities.

B. The DeYoung Family Zoo is a highly inappropriate environment for chimpanzees.

The DeYoung Family Zoo is a highly inappropriate environment for chimpanzees to live given their complex psychological needs. Despite their fundamental need for social connection, tendency to roam in groups of 20 to 200, and need to interact with various social subgroups, the DeYoung Prisoners are limited to the small group of seven chimpanzees at DFZ—if anyone at all. USDA records indicate that Louie, for example, has lived alone for more than half his life, if not his entire life. In the first few years of his life, Louie was used as a prop in photo opportunities and made to interact with children and other zoo patrons, all the while chained to a leash.³² In a 2018 inspection report, a USDA inspector noted that Louie and Tommy³³ were separated from each other, and from the other chimpanzees, both effectively housed in isolation.³⁴ In 2018, Louie was

²⁷ *Id.* ¶ 144. [Petitioner-Appellant’s Appendix, Court of Appeals, 65a-66a].

²⁸ *Id.* ¶ 146. [Petitioner-Appellant’s Appendix, Court of Appeals, 66a].

²⁹ *Id.* ¶ 148. [Petitioner-Appellant’s Appendix, Court of Appeals, 67a].

³⁰ *Id.* ¶ 79. [Petitioner-Appellant’s Appendix, Court of Appeals, 47a].

³¹ *Id.* ¶ 149. [Petitioner-Appellant’s Appendix, Court of Appeals, 67a].

³² *Id.* ¶ 24. [Petitioner-Appellant’s Appendix, Court of Appeals, 30a].

³³ Tommy was an adult chimpanzee and a former client of NhRPs, who had been imprisoned in a cement cage in Gloversville, New York. The records indicate that Tommy was “donated” to DFZ in September, 2015. U.S. Dep’t of Agric., FOIA Request Response No. 2023-APHIS-03696-F, at 80-83. Tommy died at DFZ in 2022—alone, according to the records—curled up in a sleeping spot in his cell. Believed to have been born in the early 1980s, Tommy would have been a mere 40 years old when he died in captivity. In the wild, chimpanzees can live over 60 years, but in captivity, their average lifespan is 45 years. Declaration of Tetsuro Matsuzawa, ¶ 29. [Petitioner-Appellant’s Appendix, Court of Appeals, 272a].

³⁴ U.S. Dep’t of Agric., FOIA Request Response No. 2023-APHIS-03696-F, at 76.

housed with humans, which is completely inappropriate for a chimpanzee and is equivalent to solitary housing. In another instance of interference with social development, a female chimpanzee who had been born at the zoo was removed from her mother in 2018 to be hand-raised by the zoo owners.³⁵ Raising a chimpanzee this way without proper social housing is highly detrimental to a chimpanzee's psychological and social development and is a violation of their fundamental need for meaningful social interaction.

In addition, the DeYoung Family Zoo does not provide its chimpanzee prisoners with an environment adequate to support their needs for movement. A USDA inspection report from 2018 observed that chimpanzees were not among the list of animals that had access to outdoor enclosures during the winter.³⁶ The inspector made note that, in general, during the winter, primates were "in smaller holding areas than their outdoor enclosures, which is fairly common for indoor housing at exhibitor facilities."³⁷ One expert observed, based on video footage and photographs of the zoo, that there "does not appear to be any protected outdoor space."³⁸ It is very likely, then, that Louie and Prisoners B, C, D, E, F, and G are stuck inside for many months during the winter, with no access to the outdoors. Without access to the outdoors, the DeYoung Prisoners would suffer physical and psychological harm, given their fundamental need for movement and travel, and their need for fresh air and sunshine all year.

It is also unlikely that the DeYoung Prisoners' need to forage for their food is being met. In most zoo environments, feeding decisions are made by human caretakers, denying chimpanzees their ability to forage freely and the freedom to choose when to eat.³⁹ And, diets for chimpanzees in zoos and laboratories are typically inadequate, consisting largely of highly processed kibble,⁴⁰ hardly reminiscent of the plethora of nutritious and varied food options chimpanzees have in the wild.

The DeYoung Family Zoo is wholly inadequate to satisfy the species-specific needs and capabilities of the DeYoung Prisoners when viewed through the lens of the capabilities approach. Even if Louie and Prisoners B, C, D, E, F, and G were all technically healthy and well-adjusted to

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Affidavit of Mary Lee Jensvold, ¶ 70 [Petitioner-Appellant's Appendix, Court of Appeals, 430a]; *see also* Petitioner's Complaint, ¶ 166 [Petitioner-Appellant's Appendix, Court of Appeals, 72a].

³⁹ Petitioner's Complaint, ¶ 161. [Petitioner-Appellant's Appendix, Court of Appeals, 70a].

⁴⁰ *Id.* ¶ 162. [Petitioner-Appellant's Appendix, , Court of Appeals, 70a-71a].

their surroundings, receiving what current law determines to be adequate care, that does not mean they are thriving or unharmed. They are forced to yield to a diminished life, unable to flourish, and thereby subjected to emotional suffering. Louie and Prisoners B, C, D, E, F, and G cannot live meaningful lives and engage in the behaviors and capabilities that are fundamental to their species in such a deprived environment. By allowing their confinement to continue, we allow the degradation of their dignity—and their suffering—to continue. Based on the principles of equality, justice, and bodily autonomy, the DeYoung Prisoners should be freed from their current captive status at DFZ and should be transferred to a GFAS-accredited sanctuary.

C. Granting habeas relief in this case would protect the DeYoung Prisoners' interest in realizing their capabilities and living a dignified life.

One may question how transferring the DeYoung Prisoners to a sanctuary would fulfill a request for relief under habeas corpus. A sanctuary is not the wild, and may appear at first to be another form of “confinement.” While a human being requesting habeas relief may seek ultimate freedom upon their release, the DeYoung Prisoners can no longer be released into the wild. However, a GFAS-accredited sanctuary is a far cry from the confinement of a zoo, in the best of ways. At a proper chimpanzee sanctuary, the DeYoung Prisoners would be able to exercise their autonomy and cognitive complexity to the greatest extent possible. There, they would have space to roam, trees to climb, and the specialized care necessary to satisfy their complex social, emotional, and physical needs for the duration of their lives. They would be housed with other chimpanzees—beings of their kind—instead of in isolation. This would enable them to form relationships and exist in the complex societies in which they thrive. Most importantly, it would give them a freedom that they do not currently have at DFZ—the freedom to carry out their natural behaviors, the freedom to exercise their capabilities, and the freedom to be chimpanzees. These freedoms—to have autonomy over one’s own body—are the freedoms at the core of the common law doctrine of habeas corpus.

D. Being non-human primates does not preclude the DeYoung Prisoners from habeas relief.

The lower court ruled that the DeYoung Prisoners are not entitled to the substantive right to bodily liberty protected by habeas corpus because they are not “persons” under the Court’s interpretation of MCR 3.303. There is, however, long-held jurisprudential recognition that “a person is any being whom the law regards as capable of rights or duties . . . *whether a human being*

or not.”⁴¹ This definition of “person” makes clear that habeas corpus protections can extend to persons who are not members of the human species, and that such persons need not be capable of both rights *and* duties, but rather, that they may be capable of one or the other. A conception of “person” that requires one to be capable of duties in order to have rights would completely strip certain subsets of humans of their rights, like people with disabilities, people under the age of eighteen, and people who are not criminally liable by reason of insanity—a result that clearly would not be tolerated by modern society.⁴² In addition, were it the case that one must be capable of duties in order to have rights, nonhuman animals could not have the right not to be cruelly abused or neglected, or the right to be named the beneficiary of a trust. And yet, these laws already exist.⁴³

If this Court sides with the DeYoung Prisoners, it would not be the first time nonhuman beings were granted legal rights and protections. Numerous international courts have recognized the rights of some nonhuman animals upon reviewing clear evidence of their inability to thrive in captivity. In June 2000, over two decades ago, the High Court of the State of Kerala in India recognized circus animals as persons under constitutional law: “Though not homosapiens, they are also beings entitled to dignified existence . . . therefore . . . it is [] our fundamental duty . . . to recogni[z]e and protect their rights . . . If humans are entitled to fundamental rights, why not animals?”⁴⁴ In 2014, the criminal appeals court of Argentina held that an orangutan named Sandra was a non-human person.⁴⁵ In November 2016, an Argentinian court granted habeas corpus relief to an imprisoned chimpanzee, Cecilia, declared her a “nonhuman legal person,” and ordered her transfer to a sanctuary.⁴⁶ In May 2020, the Islamabad High Court ordered the release of an

⁴¹ Black’s Law Dictionary (11th ed. 2019) (quoting Salmond, *Jurisprudence* (10th ed. 1947), p 318) (emphasis added).

⁴² Amicus Brief of American and Canadian Law Professors, *Nonhuman Rights Project, Inc v Breheny*, APL 2021-00087, Motion for Leave to File Amicus Brief (N.Y. Mar. 18, 2022), p 5, available at <https://www.nonhumanrights.org/wp-content/uploads/Law-Professors-Amici-Happy-Court-of-Appeals-March-2022.pdf>.

⁴³ The Michigan Penal Code, MCL § 750.50(b)(2); NY Est Powers & Trusts Law § 7-8.1 (McKinney 1996), Conn Gen Stat § 45a-489a (2018).

⁴⁴ *Nair v Union of India*, Kerala High Court, no. 155/1999, June 2000; see also *Frontiers of Justice*, *supra* note 57, p 325.

⁴⁵ *Gradually, nervously, courts are granting rights to animals*, The Economist (Dec. 22, 2018), available at <https://www.economist.com/international/2018/12/22/gradually-nervously-courts-are-granting-rights-to-animals>.

⁴⁶ Haas, *The Movement to Give ‘Personhood’ Rights to Animals, Reasons to be cheerful* (Oct. 8, 2021), available at <https://reasonstobecheerful.world/legal-personhood-rights-animals/>.

imprisoned elephant from a zoo to a sanctuary, stating “without hesitation” that he is the subject of legal rights.⁴⁷

Most recently, in January of 2023, the Constitutional Court of Ecuador ruled that individual wild animals are the subjects of legal rights under Ecuador’s “rights of nature” constitutional provision. This ruling arose out of an appeal from the denial of a petition for habeas corpus on behalf of a woolly monkey, Estrellita. Estrellita had been taken from the wild as a baby and kept unlawfully in a private home for 18 years. Authorities seized her from the home following a citizen complaint and transported her to a zoo, where she died after a short time. The Constitutional Court of Ecuador, recognizing that animals are individuals with intrinsic value, and can therefore be the subjects of rights, held that Estrellita’s rights to life and integrity were violated when she was removed from her natural habitat, kept in an urban home, and, shortly before her death, seized by authorities and transferred to a zoo.⁴⁸ These international changes in the law demonstrate a deeper understanding of the rights of nonhuman animals in global legal and judicial communities. There is no reason that the United States cannot join them.

By ordering the DeYoung Prisoners’ transfer to a sanctuary, this Court would contribute to evolving the law to comport with our modern scientific and philosophical understanding of nonhuman animals. For too long, the judicial system has denied nonhuman animals the ethical consideration they deserve, demonstrating the antiquity of the laws that view nonhuman animals as mere property and make it legal to hold the DeYoung Prisoners in a roadside zoo. This Court should instead use the capabilities approach to find that the DeYoung Prisoners, at the very least, have the rights to fully realize their species-specific capabilities in the safety of a GFAS-accredited sanctuary. Denying them opportunities to thrive by allowing their confinement at DFZ is an injustice and a violation of these rights, particularly in the case where a viable alternative exists. Granting their release to a GFAS-accredited sanctuary would vindicate these rights, and the Court should do so today.

⁴⁷ *Id.*

⁴⁸ Pallotta, *Ecuador’s Constitutional Court Rules Wild Animals Are Subjects of Legal Rights Under the Rights of Nature*, Animal Legal Defense Fund (Jan. 4, 2023), available at <https://aldf.org/article/ecuadors-constitutional-court-rules-wild-animals-are-subjects-of-legal-rights-under-the-rights-of-nature/>.

CONCLUSION

Louie and Prisoners B, C, D, E, F, and G are autonomous, cognitively complex, and sentient beings, each with the possibility of a rich life of his or her own. Their membership in a nonhuman species does not make them any less entitled to bodily autonomy than any human. Each form of life is worthy of respect, and it is a problem of justice when an individual—human or not—does not have the opportunity to unfold their valuable power, flourish in their own way, and to lead a life with dignity. The capabilities approach centers this concept and takes as its basic premise a concern for sentient life, to ensure that each living thing flourishes as the sort of thing it is. Under the capabilities approach, the DeYoung Prisoners have the fundamental right to flourish and to thrive as the chimpanzees that they are.

Today, the Court cannot return to the past and restore the DeYoung Prisoners to their families and homes in the wild. The time to remedy that injustice has long passed. Instead, today, the Court has the chance to remedy another injustice by granting plaintiff-appellant's petition for habeas corpus on the DeYoung Prisoners' behalf, and to finally give them a chance to live the fulfilling, meaningful, and dignified lives that they were always meant to live.

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Respectfully Submitted,

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Per MCR 7.212(B)(3), I certify that this brief is under the word count limit at 5,930 words.