STATE OF MICHIGAN
MICHIGAN SUPREME COURT

NONHUMAN RIGHTS PROJECT, INC.,

Plaintiff-Appellant.

Supreme Court No. 169351

Court of Appeals No. 369247

v

Menominee Circuit Court
LC No. 23-17621-AH

DEYOUNG FAMILY ZOO, LLC and HAROLD L. DEYOUNG,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S REPLY BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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INTRODUCTION

In its Application for Leave to Appeal ("Application"), Plaintiff-Appellant, Nonhuman Rights Project, Inc. ("NhRP"), established two independent grounds for appeal. First, this case involves legal principles of major significance to Michigan's jurisprudence under MCR 7.305(B)(3). Second, the decision of the Court of Appeals ("Decision") is clearly erroneous and will cause material injustice under MCR 7.305(B)(5)(a). Defendants-Appellees failed to refute these grounds.

Defendants-Appellees primarily argue that the seven chimpanzees unjustly imprisoned at their roadside zoo are not "persons" for purposes of habeas relief. They do so by ignoring NhRP's arguments, repeating the Decision's errors, and advancing contentions not even adopted by the Court of Appeals. Fundamentally, Defendants-Appellees invite this Court to disregard the nature of the Great Writ, which has long been celebrated for its adaptability and potential to evolve. This common-law writ can and should protect the DeYoung Prisoners from the severe deprivation of their bodily liberty.

Notably, Defendants-Appellees do not dispute—and thus effectively concede—that this case involves legal principles of major significance to Michigan's jurisprudence. Application, pp. 3–6.

They also do not dispute that the Decision will cause material injustice. As a result of the Decision, the DeYoung Prisoners remain trapped in a wholly unnatural environment, deprived of the ability to meaningfully exercise their autonomy—unable to freely move, forage, or socialize as self-determining chimpanzees. The science is well-settled: confining chimpanzees in environments where they cannot engage in species-specific behavior is devastating to their well-being. Such severe curtailment of bodily liberty is a grave injustice. Application, p. 6.

I. Defendants-Appellees fail to refute NhRP's arguments that the Decision is clearly erroneous.

A. Defendants-Appellees advance erroneous contentions regarding personhood.

As explained in the Application, the lower courts incorrectly held that recognition of the DeYoung Prisoners' legal personhood is a prerequisite for obtaining an order to show cause. Such a prerequisite contravenes centuries of English common law history—incorporated into Michigan habeas corpus jurisprudence—in which the Great Writ was flexibly used to challenge unjust confinement in novel situations, including the confinement of individuals with few or no rights

(e.g., enslaved persons, women subject to coverture laws, and rightless children). The courts should have assumed, without deciding, that the DeYoung Prisoners could be "persons" for purposes of habeas relief.[1] Application, pp. 6–7, 17–21.

Defendants-Appellees ignore NhRP's argument that the courts did not need to recognize the DeYoung Prisoners as "persons" for this case to reach the merits. Instead, they advance several erroneous contentions.

First, they claim the DeYoung Prisoners do not meet the statutory definition of "prisoner," which is defined in terms of the word "person" in Michigan's habeas statute (MCL 600.4322). Answer, p. 5. They claim "person" must exclude chimpanzees based on an ordinary meaning and context analysis. *Id*. However, whether the DeYoung Prisoners are "persons" is not a statutory definition question, but a common-law question. Application, pp. 5–6. *See Nonhuman Rights Project, Inc v. Breheny*, 38 N.Y.3d 555, 579 (2022) (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 633–34 (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.").

Even the Court of Appeals rejected Defendants-Appellees' definitional analysis. Decision, p. 10. In analyzing whether the DeYoung Prisoners are "persons," the court looked to the common law. It understood that the Michigan Constitution (Const. 1963 art. 1, § 12) preserves habeas corpus as a common-law writ, meaning "the writ must extend at least as broadly as the Constitution's incorporation of the common law requires." *Id*. *See also Breheny*, 38 N.Y.3d at 576–77 ("the courts—not the legislature—ultimately define the scope of the common-law writ of habeas corpus").

Second, Defendants-Appellees claim NhRP attempts to "equate business entities with natural persons" for purposes of habeas relief based on statutes defining such entities as "persons." Answer, p. 6. This is not NhRP's argument. As just explained, whether the DeYoung Prisoners

[1] Possessing the common law right to bodily liberty protected by habeas corpus necessarily entails being a "person" for purposes of habeas relief, and vice versa. Application, 18. n.8. The term "person" in the law denotes a relevant rightsholder: if one possesses a legal right, then one is a "person" for purposes of that right. *See*, e.g., IV ROSCOE POUND, JURISPRUDENCE 197 (1959) ("The significant feature of legal personality is the capacity for rights.").

have the right to bodily liberty—and are thus "persons" for purposes of habeas relief—is not a question of statutory definition. It asks whether Michigan common law should evolve. That question must be answered in accordance with the common law's evolutionary nature, grounded in science, evolving societal norms, and the values and principles of justice, liberty, and equality.[2] Application, pp. 3–6, 33–39.

Third, Defendants-Appellees claim chimpanzees are not "persons" because "animals are treated as property." Answer, p. 6. In support of this contention, they merely repeat the Decision's reliance on *Sterling v. Jackson*, 69 Mich. 488, 496 (1888) and *Ten Hopen v. Walker*, 96 Mich. 236, 239 (1893), *id*. at 9, while ignoring NhRP's arguments showing the irrelevance of those cases. Application, pp. 7, 25–27.

Whether the DeYoung Prisoners are owned by Defendants-Appellees has no bearing on their ability to invoke the Great Writ. "[O]wnership does not prevent the application of habeas corpus to the owned subject." *Breheny*, 38 N.Y.3d at 583 (Wilson, J. dissenting). "[C]ourts can use habeas corpus to grant rights to anyone regardless of their legal status as a person"—for throughout 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)." *Id*. at 602. Application, pp. 19–20, 26–27.

Fourth, Defendants-Appellees claim—citing no authority—that the Complaint's requested relief would "implicate the DYZ's Constitutional rights prohibiting the 'taking' of property without just compensation." Answer, p. 9. The Court of Appeals did not consider this unbriefed argument, and neither should this Court. *See Wilson v. Taylor*, 457 Mich. 232, 243 (1998) ("[A] mere statement without authority is insufficient to bring an issue before this Court. It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'") (citation omitted).

Fifth, Defendants-Appellees claim every other court considering habeas corpus petitions brought by NhRP "has reached the same conclusion based on the same rationale as the Court of

[2] *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.").

Appeals in this case." Answer, p. 6 (citing NhRP's prior cases). This is false.[3] It is also irrelevant because prior decisions concluding that chimpanzees and elephants are not "persons" lack persuasive value. They are grounded in erroneous conceptions of personhood: either (i) a statutory conception, according to which the common-law writ's scope is determined by a statutory definition of the term "person"; or (ii) a philosophical conception, according to which the common-law writ's scope is determined by the ability to bear duties in exchange for rights. Neither is consistent with Michigan law. Application, pp. 4–5, 18–20, 28–29. *See also Berger v. Weber*, 411 Mich. 1, 12 (1981) ("Lack of precedent cannot absolve a common-law court from responsibility for adjudicating each claim that comes before it on its own merits.").

B. Defendants-Appellees fail to refute the Complaint's prima facie case that the DeYoung Prisoners are being illegally imprisoned.

As explained in the Application, the DeYoung Prisoners are plausibly "persons" who can invoke the Great Writ. The autonomous nature of chimpanzees—established by the scientific evidence detailed in the Complaint—justifies assuming, without deciding, that the DeYoung Prisoners could have the right to bodily liberty. Application, pp. 22–23. The Complaint made a prima facie case that the chimpanzees are being imprisoned in violation of their common law right, by virtue of the severe deprivation of their autonomy. It thus established entitlement to an order to show cause. *Id*. at 23–25. Defendants-Appellees fail to refute this showing.

First, they claim the Complaint attempts to modify the requirement that habeas relief be based on "illegal" restraint to a different standard of "unjust" restraint. Answer, p. 7–8. This is incorrect. The violation of one's common law right to bodily liberty *is* illegal, and thus the violation of the DeYoung Prisoners' right to bodily liberty renders their imprisonment illegal. *See* Decision, p. 8 (Blackstone identified "the injury of false imprisonment"—i.e., illegal imprisonment—with "the violation of the right of personal liberty," noting such injury can be remedied by habeas corpus) (cleaned up).[4]

[3] Defendants-Appellees cite two decisions from New York that made no conclusions regarding personhood (*Presti* and *Tommy*), and one decision from Colorado in which the rationale for concluding that elephants are not "persons" is that they do not meet the statutory definition of the term (*Cheyenne Mountain Zoological Society*). Answer, pp. 6–7 n.1.

[4] "Underlying the legal recourse available for false imprisonment is that no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his or her own person, free from all restraint or interference of others,

Imprisoning these self-aware, autonomous beings is also an injustice. Unjust imprisonments are redressable by the Great Writ. 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 138 (2016) ("all other cases of unjust imprisonment [those not involving criminal charges]" are "left to the *habeas corpus* at common law"); NANETTE B. PAUL, THE HEART OF BLACKSTONE: OR PRINCIPLES OF THE COMMON LAW 150 (1915) (habeas may be employed to "remove every unjust restraint of personal freedom in private life").

Second, Defendants-Appellees claim the Complaint presented no evidence that they violated animal welfare statutes. Answer, p. 8. This is true but irrelevant to the illegality here. An imprisonment that violates one's common law right to bodily liberty is illegal even if it involves no statutory violation. In *Somerset v. Stewart*, 1 Lofft. 1, 19 (K.B. 1772), which is part of Michigan common law (Const. 1963, art. 3), Lord Mansfield freed an enslaved individual through habeas corpus after finding slavery "so odious, that nothing can be suffered to support it" under the common law. Application, pp. 19–20 (discussing *Somerset*). "[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); *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").

Defendants-Appellees also falsely suggest the DeYoung Prisoners continue to be protected under the federal Animal Welfare Act ("AWA"). Answer, p. 8–9. They claim that between 2014 and 2025, the United States Department of Agriculture ("USDA"), which enforces the AWA, inspected the zoo and found no violations relating to chimpanzees. *Id*. at 9. However, the USDA has not inspected the DeYoung Prisoners since November 1, 2023.[5] This is likely because the chimpanzees are not being used for exhibition purposes per the zoo, *see* Answer, p. 3, and as such, even the minimal—and wholly insufficient—protections of the AWA do not apply to them. *See id*. at 8 (noting that the AWA regulates the treatment of animals "used for exhibition purposes").

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unless by clear and unquestionable authority of law." *Janetsky v. Co of Saginaw*, 2025 WL 2095369, at *11 n.19 (Mich, July 25, 2025) (cleaned up).

[5] This was the last date when chimpanzees were listed on a USDA Inspection Report for the DeYoung Family Zoo. Inspection reports of the zoo from November 2023 to December 2025 can be viewed here: https://bit.ly/3OoTt3Q.

Third, Defendants-Appellees claim the DeYoung Prisoners are not being illegally confined since they "are not being held as a result of any legal process whatsoever." Answer, p. 10. This claim rests on the incorrect assertion that in a habeas corpus proceeding, an "illegal" confinement means only being "restrained as a result of defects in the legal process that led to the restraint." *Id*. The Great Writ is not so limited; it also reaches private detentions, which are restraints not resulting from any legal process. *See generally* Decision, pp. 8–9; *Boumediene v. Bush*, 553 U.S. 723, 780 (2008) ("the common-law habeas court's role was most extensive in cases of pretrial and noncriminal detention, where there had been little or no previous judicial review of the cause for detention").

C. Defendants-Appellees erroneously claim relocation to an accredited sanctuary is inappropriate habeas relief.

To remedy the DeYoung Prisoners' illegal imprisonment, the Complaint seeks their relocation to a chimpanzee sanctuary accredited by the Global Federation of Animal Sanctuaries ("GFAS"), where they can exercise their autonomy to the greatest degree possible. Only in such an environment can the chimpanzees receive the specialized care necessary to satisfy their complex social, emotional, and physical needs. Complaint, ¶¶ 164–76, 307–14.

Defendants-Appellees erroneously contend the Complaint's requested remedy is inappropriate habeas relief because it does not seek the chimpanzees' absolute release. Answer, pp. 10–11. Defendants-Appellees cite the irrelevant holding in *Phillips v. Warden, State Prison of Southern Michigan*, 153 Mich. App. 557, 565 (1986), that habeas corpus is proper to challenge the fact of confinement but not the "conditions of confinement."[6] However, the Complaint does not challenge the conditions of the DeYoung Prisoners' confinement: it challenges the fact of their confinement, seeking their release from the zoo. *Phillips* does not stand for the proposition that habeas relief is limited to absolute release. The Great Writ is "an adaptable remedy," and at common law its "precise application and scope changed depending upon the circumstances." *Boumediene*, 553 U.S. at 779. This flexibility permits the relief sought. *See generally* Complaint, ¶¶ 307–10 (citing cases).

[6] In *Philips*, the habeas plaintiff inappropriately sought "a determination of the *form* his continued custody should take—a matter for the parole board—and not whether his continued custody is legal." 153 Mich. App. at 566.

Defendants-Appellees also inappropriately attempt to create a factual dispute by suggesting a particular GFAS-accredited sanctuary may not be suitable for chimpanzees. Answer, pp. 11–13. Whether or not this is true is a factual question, resolvable only at a merits hearing. It has no bearing on whether the Application should be granted.

II. Defendants-Appellees effectively concede this case involves legal principles of major significance to Michigan's jurisprudence.

This case raises the novel question of whether the DeYoung Prisoners can invoke the Great Writ, which this Court has recognized as "fundamental to personal liberty," establishing "the basic right of freedom from unlawful detention." *Goetz v. Black*, 256 Mich. 564, 567 (1932). That is, do they possess the common law right to bodily liberty—and are therefore "persons" for purposes of habeas relief?

This normative question involves legal principles of major significance to Michigan's jurisprudence. Whether the DeYoung Prisoners have the right to bodily liberty—or must remain mere things—is a question that implicates the Great Writ's flexibility to remedy unjust confinements in novel situations, this Court's duty to evolve archaic common law, and the paramount importance of protecting autonomy grounded in the values of justice, liberty, and equality. Application, p. 4.

Notably, Defendants-Appellees do not dispute that the Application satisfied the ground for appeal in MCR 7.305(B)(3).

Instead, they invite the Court to disregard principles this Court is duty-bound to uphold. In contending that Michigan common law should not evolve, Defendants-Appellees point to what they claim is "the core difference between humans and animals" that "fully justifies" excluding chimpanzees from the Great Writ's protections:

> [C]himpanzees [lack] the cognitive ability to understand the complex, reciprocal nature underlying the social contract and to consciously accept a duty to be bound by laws passed by human beings in exchange for receiving rights under those laws.

Answer, pp. 13–14. This odious philosophical argument merely repeats the one made in the Decision, without addressing NhRP's criticisms. Application, pp. 7–8, 27–33.

More fundamentally, Defendants-Appellees' contention is anathema to common law adjudication. Michigan common law is not frozen in the archaic past, but adapts to conform with justice as society evolves—reflecting, among other things, advances in scientific understanding.

Application, pp. 4–5, 33–39. This Court cannot disregard the common law's evolutionary nature. *See Beech Grove Inv Co v. Civil Rights Comm*, 380 Mich. 405, 429 (1968) ("'The inherent capacity of the common law for growth and change is its most significant feature.'") (citation omitted).

When confronting archaic common law, this Court is bound by a fundamental principle: "Our oath is to do justice, not to perpetuate error." *Montgomery v. Stephan*, 359 Mich. 33, 38 (1960). *See id*. at 49 ("[The ancient precedents] are out of harmony with the conditions of modern society. They do violence to our convictions and our principles. . . . The reasons for the old rule no longer obtaining, the rule falls with it.").

Michigan common law should no longer tolerate treating the DeYoung Prisoners as mere things. Such archaic treatment—grounded in dogmatic theology—is manifestly unjust, incompatible with our evolved scientific understanding of who chimpanzees are: autonomous, extraordinarily cognitively complex beings whose interest in exercising their bodily liberty is as fundamental to them as it is to us. Because autonomy is a supreme common law value, the DeYoung Prisoners' autonomous nature compels recognizing their right to bodily liberty. They should not be excluded from the Great Writ's protections for possessing the wrong biology. Application, pp. 22–23, 35–39.

Whether these extraordinary beings can invoke habeas corpus is a profound issue deserving of this Court's attention. "[T]he rights we confer on others define who we are as a society," and denying the DeYoung Prisoners the right to challenge their inherently harmful confinement "denies and denigrates the human capacity for understanding, empathy and compassion." *Breheny*, 38 N.Y.3d at 626 (Wilson, J., dissenting); *see id.* at 629 (Rivera, J., dissenting) ("an autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life").

It is time for this Court to "consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect." *Nonhuman Rights Project, Inc, on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1058 (2018).

CONCLUSION

For the foregoing reasons, NhRP respectfully requests that this Court grant the relief requested in the Application.

Dated: March 6, 2026 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the format requirements of MCR 7.212(B)(5) and the word limitation set forth in MCR 7.305(E)(3). According to the word-processing system used to produce this document, there are 3,194 words in this brief.

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