

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

NONHUMAN RIGHTS PROJECT, INC., on
behalf of Mari and Vaigai, individuals,

Petitioner/Petitioner-Appellant,

v.

CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE
SERVICES and its DIRECTOR, DITA
HOLIFIELD, and the HONOLULU ZOO
DIRECTOR, LINDA SANTOS,

Respondents/Respondents-Appellees.

SCWC-24-0000323

CAAP-24-0000323

(Petition for a Common Law Writ of Habeas
Corpus)

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**APPLICATION FOR WRIT OF
CERTIORARI TO REVIEW (1)
JUDGMENT ON APPEAL BY
PRESIDING JUDGE HIRAOKA,
FILED FEBRUARY 26, 2026; (2)
OPINION OF THE COURT BY
PRESIDING JUDGE HIRAOKA,
FILED JANUARY 28, 2026**

INTERMEDIATE COURT OF APPEALS

Hon. Keith J. Hiraoka (Presiding Judge)

Hon. Clyde J. Wadsworth (Associate Judge)

Hon. Kimberly T. Guidry (Associate Judge)

**MOTION OF ANIMAL LAW SECTION OF HAWAI‘I STATE BAR ASSOCIATION
FOR LEAVE TO APPEAR AND FILE *AMICUS CURIAE* BRIEF**

APPENDIX “A”

CERTIFICATE OF SERVICE

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**MOTION OF ANIMAL LAW SECTION OF HAWAI‘I STATE BAR ASSOCIATION
FOR LEAVE TO APPEAR AND FILE *AMICUS CURIAE* BRIEF**

Under Rules 27 and 28(g), Hawai‘i Rules of Appellate Procedure, the Animal Law Section of the Hawai State Bar Association, through its undersigned counsel, move this Court for leave to appear and file a brief as *amici curiae* in support of appellant Nonhuman Rights Project, Inc.’s application for writ of certiorari seeking review of the Intermediate Court of Appeals’ decision affirming the Circuit Court of the First Circuit for appellees. A copy of the proposed amicus brief is attached as Appendix “A.”

The Animal Law Section was established early last year by the HSBA’s Board of Directors to engage in these activities:

- Providing a forum for members to exchange ideas, study, and understand laws, regulations, and case law pertaining to all areas of animal law;
- Conducting continuing-legal-education seminars on animal law;
- Participating in the HSBA annual convention;
- Mentoring or providing scholarships to students interested in the field of animal law;
- Acting as a liaison between the HSBA, its Board of Directors, and animal law sections and committees of national organizations, animal law sections and committees of other nations, states, counties, and cities, and animal law-related organizations;
- Educating HSBA members and the public about laws relating to animals, including the development and modification of existing law;
- Promoting legislation relating to animals through the use of the legal system; and
- Undertaking other services to benefit the section’s members, the HSBA, the legal profession, and the public.

In its first two years of existence, the Animal Law Section has conducted many events for its members, other HSBA members, and the community. The Section has:

- created YouTube and Instagram accounts with regular updates;
- hosted continuing-legal-education programs, informational webinars, board meetings, and volunteer events;
- submitted testimony on animal welfare and rights to the State Legislature’s standing committees; and
- written an article for the April 2026 edition of the Hawai‘i Bar Journal, “Introducing the Animal Law Section.”

This case presents the most significant animal-law matter in the State of Hawai‘i since the Section’s creation.

Through its appearance and filing of an *amicus curiae* brief, the Animal Law Section seeks to complement the parties’ submissions with additional authority and local perspective and to ensure this Court receives a thorough presentation of the issues. The Animal Law Section requests that, if this motion is approved, the Court accepts Appendix “A” as the Section’s *amicus curiae* brief.

This motion is made under HRAP Rules 27 and 28(g) and is based on the attached brief and the records and files.

DATED: Honolulu, Hawai‘i, this 27th day of April, 2026.

/s/ Savannah Sherman

Savannah Sherman, Esq.
Attorney for *Amicus Curiae*
Animal Law Section of the Hawai‘i State Bar Association

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**APPENDIX A: BRIEF OF *AMICUS CURIAE* OF ANIMAL LAW SECTION OF
THE HAWAI‘I STATE BAR ASSOCIATION IN SUPPORT OF PETITIONER-
APPELLANT**

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I. INTRODUCTION

The HSBA’s Animal Law Section is grateful for the opportunity to share with the Supreme Court our perspective on this case. We respectfully urge the Court to return the case to the Circuit Court with instructions to allow captive elephants Mari and Vaigai the opportunity to present their case to escape captivity and enjoy the protections of sanctuary. Such a ruling would advance the Aloha Spirit’s respect for the dignity of nature. And while granting Mari and Vaigai the possibility of habeas relief would be a landmark decision in American jurisprudence, it does not require a legal revolution—just that these two beings be recognized for who they are and not as mere pieces of property. In evaluating this appeal, the Supreme Court may also consider invoking its independent authority to interpret the State Constitution by considering Hawai‘i’s tragic history in the treatment of captive elephants and our society’s evolving understanding of sentience and justice. This brief reflects the views of the Animal Law Section and not necessarily HSBA as a whole.

II. ARGUMENT

A. **The Aloha Spirit, which values nature’s dignity, kindness, and humility, is not advanced through the keeping of elephants in captivity as tourist attractions in Waikiki, thousands of miles from their natural habitat and without access to their natural social structure.**

A cherished part of Hawai‘i’s culture and law is the Aloha Spirit, which encompasses “respect for nature’s dignity.” *Hilo Bay Marina, LLC v. State*, 156 Haw. 478, 511, 575 P.3d 568, 601 (2025) (Eddins, J., concurring) (citing § 5-7.5, Hawai‘i Revised Statutes). The Aloha Spirit—which Supreme Court Justices “in exercising their power . . . may contemplate”—also includes the values of “kindness,” “harmony,” “humility.” § 5-7.5, HRS. In this case, those

values favor recognition of Mari and Vaigai as nonhuman legal persons who deserve the respect of having their case for sanctuary heard.

While the Aloha Spirit is unique, judicial decisions premised on human kindness and humility in the treatment of other animals species are not unprecedented. For example, the Constitutional Court of Colombia justified a decision recognizing animals' legal worth last year based on the societal values of compassion and peace. Nicole Palotta, *Constitutional Court of Colombia Upholds—and Expands—Bullfighting Ban*, Animal Legal Defense Fund, <https://aldf.org/article/constitutional-court-of-colombia-upholds-and-expands-bullfighting-ban/> (last visited April 18, 2026). The court wrote that it was guided by “values and principles that are consistent with the tenets of a society that establishes new rules of conduct and seeks to exclude behaviors that are no longer tolerable, among other reasons, because they occur within contexts of violence and arbitrary aggression against other sentient beings.” *Communiqué 38 of September 3 and 4, 2025*. Published by the Constitutional Court website on September 3, 2025. Case: D-16.101AC, <https://www.suin-juriscol.gov.co/viewDocument.asp?id=30055540> (last visited April 18, 2026).

The Superior Court of Brazil in 2008, in the so-called “Wild Parrot Case,” looked to a variety of legal traditions to determine that respect for a sentient animal’s individual interests is consistent with respecting nature’s dignity. Kristen Stilt, *Rights of Nature, Rights of Animals*, 134 Harv. L. Rev. F. 276, 280 (2021).

The treatment of animals “must be based no longer on human dignity or human compassion, but on the very dignity inherent in the existence of nonhuman animals.” The court brought together two strands of jurisprudence: the protection of animals in the German and Swiss Constitutions and the rights of nature language in the Ecuadorean Constitution and Bolivian Law on the Rights of Mother Earth. By doing so, it reached a language of rights: “This view of nature as an expression

of life in its entirety enables the Constitutional Law and other areas of law to recognize the environment and non-human animals as beings of their own value, therefore deserving respect and care, so that the legal system grants them the ownership of rights and dignity.” The court conceptually moved nonhuman animals out of the environmental constraints of article 225 to attain their own independent status, for which the court advocated both rights and dignity.

Id. (citations omitted).

Showing respect for animals’ dignity within nature is a longstanding foundation of the Aloha Spirit’s “life force”—a term used in HRS Section 5-7.5—as seen in traditional Hawaiian principles. “Ancient Kānaka classified Hawai‘i’s landscapes, oceanscapes, and heavenscapes, as well as all plant and animal life, with names reflecting Indigenous knowledge compiled over centuries.” D. Kapua‘ala Sproat & MJ Palau-McDonald, *The Duty to Aloha ‘āina: Indigenous Values As A Legal Foundation for Hawai‘i’s Public Trust*, 57 Harv. C.R.-C.L. L. Rev. 525, 556 (2022).

Native Hawaiians’ ‘aumakua tradition also exhibits inherent respect for animals, consistent with the Aloha Spirit. Karli Uwaine, *Rights of Nature in Hawai‘i: Preserving the Relationship Between Natural Resources and Cultural Significance*, 53 *Envtl. L.* 239, 271 (2023). (“Born in continuing sequential order were all of the plants and animals in Hawai‘i nei, which became ‘aumakua or guardians that continue to watch over Kānaka Maoli.”).

The Aloha Spirit’s expression of human humility is also a Hawaiian tradition:

Native Hawaiians believed the land, sea, animals, and plants were of the same order as people. In addition, they were said to embody the spirit of an ‘aumakua or ancestral spirit, or even an akua or god. Accordingly, native Hawaiians treated the land, plants, and all living creatures with utmost respect while they used the resources to live.

Jodi Higuchi, *Propagating Cultural Kipuka: The Obstacles and Opportunities of Establishing A Community-Based Subsistence Fishing Area*, 31 *U. Haw. L. Rev.* 193, 193–94 (2008).

This Court has observed the reverence for animals expressed in the ‘aumakua tradition. *Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n, State of Hawai‘i*, 94 Haw. 31, 37, 7 P.3d 1068, 1074 (2000), *as amended* (Jan. 18, 2001) (“For some persons, ‘opihi are [a family or personal god].” [Mary Kawena] Pukui & [Samuel H.] Elbert, *Hawaiian Dictionary*, at 32, 292.”).

The Honolulu Zoo does not offer enough space to allow Mari and Vaigai to engage in natural behaviors—which disrespects nature’s dignity and does not advance the values of human kindness—contrary to the Aloha Spirit. Wild Asian elephants occupy ranges of anywhere from six to 500 square miles. *Asian elephant*, Smithsonian’s National Zoo & Conservation Biology Institute, <https://nationalzoo.si.edu/animals/asian-elephant> (last visited Apr. 13, 2026). The elephant enclosure at the Honolulu Zoo sits on just 68,244 square feet, or 0.0024 square miles. *Positive: City Dedicates New Elephant Exhibit*, Hawaii Ahe, <https://hawaiiawe.com/positive-city-dedicates-new-elephant-exhibit/> (last visited Apr. 13, 2026).

Elephants are intelligent, social animals that form highly complex bonds. In the wild, Asian elephants have been observed to form close relationships with up to 50 individuals. Virginia Morell, *Asian Elephants Are Social Networkers*, *Science* (Jul. 26, 2011) <https://www.science.org/content/article/asian-elephants-are-social-networkers>. Asian elephants demonstrate unique personalities, with some elephants choosing to remain loyal to a smaller group of friends, while others socialize with larger groups and move between social circles. *Id.* Much like humans, elephants form bonds with others in their vicinity.

Mari and Vaigai have been held at the Honolulu Zoo since 1982 and 1992, respectively. Sara Yamanaka, *Honolulu Zoo’s Mari, the Asian elephant, made the call — it’s the Bengals*, *Spectrum News* (Feb. 12, 2022), <https://spectrumlocalnews.com/hi/hawaii/community/2022>

/02/10/honolulu-zoo-asian-elephants-made-the-call. They are confined, living unnatural lives for tourists' entertainment in Waikiki's urban jungle. This Court has the chance to grant them the dignity of a life more closely aligned with nature by allowing them to be released to a sanctuary.

B. Recognizing the possibility of legal standing for Mari and Vaigai just requires that they be treated as the sentient beings they are, not that they be treated the same under the law as humans.

Legal personhood is not synonymous with “human.” As commentators often observe, courts and legislatures have granted “limited personhood . . . for certain non-human entities like corporations or ships.” Bailey Soderberg, *Reassessing Animals and Potential Legal Personhood: Do Animals Have Rights or Duties?*, 24 Vt. J. Env'tl. L. 171, 181 (2022) (footnote omitted). “This ‘personhood’ does not necessarily acknowledge sentience or human qualities in these inanimate objects.” *Id.* “The personhood granted to non-human entities simply serves as a mechanism to allow lawyers to bring issues before the court. *Id.* “[P]ersonhood is more of an artificial and juridical construct—often granted, importantly, for the sake of achieving a larger collective or political goal.” Becky Boyle, *Free Tilly: Legal Personhood for Animals and the Intersectionality of the Civil and Animal Rights Movements*, 4 Ind. J. L. & Soc. Equality 169, 186 (2016).

Legal personhood also operates on a spectrum, with some things being afforded different rights than others. For example, a corporation does not have the right to vote. Recognizing the possibility of legal standing for Mari and Vaigai for the purpose of a habeas writ would not elevate elephants to the same status of humans but would confer the basic right of freedom to one of the most psychologically advanced nonhuman animals.

An evolving form of legal personhood grants certain rights to natural features. In the United States, courts have been hesitant to confer standing upon animals and nature. However,

this hesitancy does not restrict this Court. Justice William O. Douglas’s dissent in *Sierra Club v. Morton* highlights this possibility:

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole—a creature of ecclesiastical law—is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a “person” for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.

So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life.

Sierra Club v. Morton, 405 U.S. 727, 742–43, 92 S. Ct. 1361, 1370, 31 L. Ed. 2d 636 (1972) (Douglas, J., dissenting).

Commentators have noted that various types of personhood have been considered for animals, including “similar to that of corporations or some bodies of water.” Heidi Metroz, *When Rights Collide Weighing an Animal Victim’s Rights Against A Criminal Client’s Rights in Animal Cruelty Cases*, Colo. Law., April 2025, at 6, 10.

Some theories would allow for animals to receive legal and constitutional protection, perhaps including the right to habeas relief, even without them receiving full-fledged personhood status:

Legal theorist Tomasz Pietrzykowski argues that animals should be considered “non-person subjects of law,” meaning that they would hold a status that would allow their rights to be taken into consideration and have their own needs considered in all relevant decisions that may affect their interests. Pietrzykowski goes on to explain that at the very least, the animal’s “most vital interest” should be considered, which would enable the animal’s interests to be balanced with a human’s interests.

Id. (citations omitted).

If the ability to possess legal rights is a basis of personhood, animals may already be entitled to classification as legal persons, as commentators and courts have opined. “It is entirely

clear that animals have legal rights, at least of a certain kind.” Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. Rev. 1333, 1335 (2000). “Animals have many legal rights, protected under both federal and state laws.” *Cetacean Community v. Bush*, 386 F.3d 1169, 1175 (9th Cir. 2004). “[L]egal rights confer legal personhood, even if only in a limited capacity . . .” Mason Liddell, *Justice in Colorado: Achieving Animal Plaintiffhood Through the State’s Common Law*, 50 Wm. & Mary Envtl. L. & Pol’y Rev. 43, 68 (2025).

HRS § 660-3 grants this Court the ability to issue writs for habeas relief for persons unlawfully restrained of their liberty. This statute does not outright exclude more general interpretations of the term “person.” Elephants possess extraordinary cognitive ability. They are capable of suffering, forming complex social bonds, and high-level reasoning. This Court has the ability to consider these factors when evaluating this case.

But to grant Mari and Vaigai relief, the Court need not confer them with full-fledged legal personhood. The Court, at a minimum, should “recognize sentient animals’ legal basic rights to bodily integrity, a degree of liberty, and probably life, contextualized by an animal’s species and other characteristics.” Ethan Prall, *Animal Rights Before Legal Personhood*, 110 Cornell L. Rev. 75, 134 (2025).

C. Under Hawai‘i’s agile Constitution and evolving common law, this Court can recognize the possibility of habeas rights for nonhuman animals in certain circumstances.

“The privilege of the writ of habeas corpus” is recognized in the State Constitution. Haw. Const. art. I § 15. So, as in other states, the right to a writ of habeas corpus “is a common law right made a constitutional right.” *See Witte v. Dowd*, 102 N.E.2d 630, 633 (Ind. 1951). And the Supreme Court of Hawai‘i “will not hesitate to recognize . . . appropriate protections as a matter of state constitutional law.” *State v. Lessary*, 75 Haw. 446, 453, 865 P.2d 150, 154 (1994).

The interpretation of state constitutional provisions is not rigid. “Hawai‘i’s Constitution is agile. Norms, values, and experiences change over time. A constitution adapts.” *Hilo Bay Marina, LLC v. State*, 156 Haw. 478, 510, 575 P.3d 568, 600 (2025) (Eddins, J., concurring).

The state’s common law also changes with the courts’ understanding of prevailing principles. “The common law’s tradition evolves, and courts make decisions to reflect societal values.” *Guieb v. Guieb*, 156 Haw. 162, 169, 571 P.3d 382, 389 (2025).

No U.S. court has yet recognized habeas rights for nonhuman animals. So this case presents an opportunity for this Court to exercise independent judgment and reach a landmark ruling by holding that, under some conditions, nonhuman animals may be protected by the writ of habeas corpus.

A milestone decision in this case would be consistent with this Court’s tradition of being willing to be guided by sound legal reasoning, even in the absence of precedent.

State courts are an important means of “getting to justice,” even beyond state borders, as exhibited by the Supreme Court of Hawai‘i’s role in sparking national and international debate on same-sex marriage through its landmark opinion in *Baehr v. Lewin*, 74 Haw. 530, 536, 852 P.2d 44, 48 (1993). Justice Sabrina Shizue McKenna, *The Importance of State Constitutions: Our Role in Preventing Malpractice and Getting to Justice*, Judges’ J., Spring 2025, at 6, 7. “After *Baehr* came other state apex court opinions favorable to same-sex couples” McKenna, Judges’ J., Spring 2025, at 7. And despite initial political backlash, commentators credit this Court’s action with provoking a discussion that led to federal recognition of same-sex-marriage rights. Shai Dothan, *Courts and Social Justice*, 58 Loy. L.A. L. Rev. 481, 512–13 (2025); Scott Dodson, *The Supreme Court and Public Opinion*, 111 Iowa L. Rev. 117, 135–36 (2025).

This Court may consider Hawai‘i’s history with captive elephants. Mari and Vaigai are not the only elephants to have suffered in Hawai‘i. A 1994 circus performance at the Blaisdell Center ended in tragedy for humans and Tyke the elephant:

[W]hen Tyke the elephant escaped from her confines in 1994, killing one of her Circus International handlers and injuring a dozen spectators, journalists arrived on the scene in time to record Tyke being shot over 100 times and finally killed by Honolulu police officers on the street abutting the circus arena.

Ethan Carson Eddy, *Privatizing the Patriot Act: The Criminalization of Environmental and Animal Protectionists As Terrorists*, 22 Pace Env’tl. L. Rev. 261, 327 (2005).

Following the Tyke tragedy, this Court stated its “aware[ness] of the damage that a rampaging elephant, loosed from a cage, can do to humans and property, and what unhappy fate awaits such an imprudent animal.” *State v. Medeiros*, 89 Haw. 361, 368–69, 973 P.2d 736, 743–44 (1999).

We would respectfully suggest an investigation of the tragedy would reveal human imprudence. But in any case, the Tyke tragedy has had a lasting impact in our state, leading to a ban on the importation of animals into Hawai‘i for circuses. Hughes Caelan, *30 years ago, a circus elephant who went on a rampage in Honolulu was killed; Tyke the elephant’s tragic end prompted greater awareness and advocacy for animal rights*, Hawaii News Now (Aug. 20, 2024); *Governor Amends Rules to Prohibit Dangerous Wild Animals for Circuses and Carnivals, Board of Agriculture, State of Hawaii*, <https://dab.hawaii.gov/blog/main/nr18-17wildanimals/> (last visited Apr. 19, 2026).

While importing animals across the sea to be exhibited in Hawai‘i was once an acceptable practice, we now know that such an action may lead to tragedy for humans and animals alike. And we have seen no evidence that the public has any broad interest in returning

to the past practice of captive-animal exhibition. Society has evolved, just as this Court’s understanding of animals’ status can.

We urge the Supreme Court to consider its independent authority and its traditions in considering the plight of Mari and Vaigai and resolving this case.

D. The ICA’s holding that nonhuman animals are mere property nearly a half-century ago in *State v. LeVasseur* should be revisited.

The view that animals are mere property was adopted by the Intermediate Court of Appeals forty-six years ago. *State v. LeVasseur*, 1 Haw. App. 19, 29, 613 P.2d 1328, 1335 (1980), and cited by the ICA in this case. *Nonhuman Rts. Project, Inc. on behalf of Mari v. City & County of Honolulu*, 158 Haw. 15, 583 P.3d 456 (Ct. App. 2026) (unpublished disposition). Concluding that sentient beings are mere property and thus lack legal interests is not well reasoned and should be reconsidered.

Where sentience has been examined, jurists have found that animals are more than mere property—contrary to *LeVasseur*—even before the ICA issued its opinion in that case. For instance, a New York state court held a year before *LeVasseur* “that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.” *Corso v. Crawford Dog & Cat Hosp., Inc.*, 415 N.Y.S.2d 182, 183 (Civ. Ct. 1979).

The court saw a distinction between inanimate objects, such as jewelry or other tangible property, and sentient beings:

An heirloom while it might be the source of good feelings is merely an inanimate object and is not capable of returning love and affection. It does not respond to human stimulation; it has no brain capable of displaying emotion which in turn causes a human response . . . But a dog--that is something else. To say it is a piece of personal property and no more is a repudiation of our humaneness.

Id.

Contrary to the *LeVasseur* view of animals as mere property, commentators have noted that that animals' individual interests are often recognized in courts:

In all states, they may presently be the financial beneficiary of an owner's trust at the death of the owner. In five states, the "best interest of the animal" may be taken into account by a judge when deciding custody of a companion animal during the property settlement for a divorce. They already receive the full protection of the criminal anti-cruelty laws in all states.

David Favre, *The Future of Animal Law*, Mich. B.J., July/August 2025, at 26.

The ICA's concurring opinion in this case lists instances in which animals' legal interests are already considered in state law. *Nonhuman Rts. Project, Inc. on behalf of Mari v. City & County of Honolulu*, 158 Haw. 15, 583 P.3d 456 (Ct. App. 2026) (Wadsworth and Guidry, JJ., concurring separately). The list can be construed as an admission that animals are more than mere property in Hawai'i. While the concurring judges directed animal advocates to the legislature for relief, a commentator has suggested that that type of directive "glosses over the power and relevance of courts in the United States." Prall, *Animal Rights Before Legal Personhood*, *supra*, at 130. "As with any minority right, persuading a majority of the public to adopt a rule limiting its own rights to protect those with little power from harm is challenging." *Id.* (citation omitted).

The *LeVasseur* opinion and similar rulings have been critiqued as avoiding independent reasoning and instead relying on "ancient Roman law." Emma A. Maddux, *Time to Stand: Exploring the Past, Present, and Future of Nonhuman Animal Standing*, 47 Wake Forest L. Rev. 1243, 1251 (2012).

Another commentator examined the historical basis for the view of animals as property, which is venerable but also premised on outdated notions:

Its lineage lays in antiquity. Steven Wise, in several articles dealing with, among other things, the history of the legal status of animals, notes that the present view

of animals as property is based on the ancient Stoic view of the world. In this vision, the world was created for the benefit of humans who crown the natural hierarchy. Humans, being endowed with reason, are in an exalted place in the natural order and, thus, can without moral compunction, tyrannize the whole of nature. Roman law was consistent with this Stoic view; it provided that animals were property and only men who were not slaves were “persons.” The Old Testament also reflects the idea that humans have a central place in the universe and top the natural hierarchy with the attendant privilege of controlling the environment and its occupants. It is a combination of Aristotelian, Stoic, and Biblical beliefs that prevails to the present day.

Thomas G. Kelch, *Toward A Non-Property Status for Animals*, 6 N.Y.U. Env'tl. L.J. 531, 534 (1998) (footnotes omitted).

The Supreme Court in this case does not need to further this limited historical conception of property and can avoid doing so by revisiting *LeVasseur*. Cf. *Pub. Access Shoreline Hawaii by Rothstein v. Hawai‘i Cnty. Plan. Comm’n by Fujimoto*, 79 Haw. 425, 447, 903 P.2d 1246, 1268 (1995) (acknowledging that not all “western concepts of property” apply in Hawai‘i).

The *LeVasseur* precedent has had distressing consequences for animals. For example, Kama the dolphin was sent to Hawai‘i in the 1980s to be used by the U.S. military. Matthew Liebman, *Animal Plaintiffs*, 108 Minn. L. Rev. 1707, 1722-23 (2024) (citing *Citizens to End Animal Suffering & Exploitation, Inc. v. New England Aquarium*, 836 F. Supp. 45 (D. Mass. 1993) (referenced as *Kama v. New England Aquarium*)). To challenge the military’s use, in 1991, “[a]nimal protection attorney Steven Wise filed the first case to name an individual animal as a plaintiff[.]” *Id.* Kama was dismissed from the case in part based on *LeVasseur*. *Id.* “The court looked to the law of both states, concluding that in each state ‘animals are treated as the property of their owners, rather than entities with their own legal rights.’” Liebman, *Animal Plaintiffs*, *supra*, at 1722 . (quoting *Citizens to End Animal Suffering & Exploitation, Inc.*, 836 F.Supp. at 49-50.).

Kama's fate is unknown, and many military dolphins have been used in combat. Matt Fratus, *The Hero Dolphins Who Cleared Mines During the 2003 Iraq Invasion*, *Coffee or Die Magazine* (July 18, 2023). Some military animals, including Maikai the dolphin and Reckless the horse, have been recognized as heroes—a status not afforded to property. Mackenzie Wolf, *Mine-seeking Navy dolphin euthanized at SPAWAR facility in San Diego*, *Navy Times* (Apr. 14, 2017); Kathy Smith, *Sergeant Reckless: A True Hero and Inspiration*, *Horse Journals Magazine* (Nov. 7, 2025). Yet, in part because of the *LeVasseur* precedent, they are still too often treated by the law as if they were inanimate objects.

Almost fifty years after *LeVasseur*, the opinion's reasoning has never been examined by this Court. We urge the Court to take advantage of the opportunity to do so afforded by this case.

III. CONCLUSION

The Animal Law Section of HSBA respectfully urges this Court to return this case to the Circuit Court with instructions to allow the Petitioner the opportunity to present its case. Captive elephants Mari and Vaigai are not human, but nonetheless may be granted the limited protections of habeas relief. This Court is not bound by other courts' rejections of habeas relief for nonhuman animals. We respectfully ask this Court to recognize the advanced cognitive abilities of Mari and Vaigai and interpret Hawai'i's Constitution as to allow this claim to proceed for two individuals who demonstrate the very capacities that writs of habeas corpus were created to protect.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the MOTION OF ANIMAL LAW SECTION OF HAWAI'I STATE BAR ASSOCIATION FOR LEAVE TO APPEAR AND FILE *AMICUS CURIAE* BRIEF was served upon all parties, through their respective counsel of record, via electronic filing (JEFS) on April 27, 2026.

DATED: Honolulu, Hawai'i, this 27th day of April, 2026.

/s/ Savannah Sherman

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