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NO. SCWC-24-0000323

IN THE SUPREME COURT OF THE STATE OF HAWAII

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

Petitioner-Appellant-Petitioner,

vs.

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

Respondents-Appellees-  
Respondents.

ON APPLICATION FOR WRIT OF  
CERTIORARI TO THE INTERMEDIATE  
COURT OF APPEALS

APPEAL FROM THE JUDGMENT ON  
APPEAL FILED IN CAAP-24-0000323  
[DKT. 67] ON FEBRUARY 26, 2026

INTERMEDIATE COURT OF APPEALS  
STATE OF HAWAII

HONORABLE KEITH K. HIRAOKA  
Presiding Judge

HONORABLE CLYDE J. WADSWORTH  
Associate Judge

HONORABLE KIMBERLY T. GUIDRY  
Associate Judge



**RESPONDENTS-APPELLEES-RESPONDENTS CITY AND COUNTY OF  
HONOLULU, DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR,  
DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR, LINDA SANTOS'  
RESPONSE TO APPLICATION FOR WRIT OF CERTIORARI**

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**RESPONDENTS-APPELLEES-RESPONDENTS CITY AND COUNTY OF  
HONOLULU, DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR,  
DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR, LINDA SANTOS’  
RESPONSE TO APPLICATION FOR WRIT OF CERTIORARI**

**I. INTRODUCTION**

The City<sup>1</sup> requests that this Court reject NhRP’s Application for Writ of Certiorari (Dkt. 5) (“Application”).<sup>2</sup> In its Summary Disposition Order (ICA Dkt. 61) (“ICA Order”), the Intermediate Court of Appeals (“ICA”) correctly concluded that the writ of habeas corpus does not apply to nonhuman animals. In affirming the Judgment (CC Dkt. 71) of the Circuit Court of the First Circuit (“Circuit Court”), the ICA held that Hawai‘i Revised Statutes (“HRS”) Chapter 660 and the common law writ of habeas corpus apply only to persons, and that elephants are not persons. NhRP’s Application seeks the Court’s review of two questions:

(1) Does HRS Chapter 660 supersede the common law writ of habeas corpus, thereby eliminating habeas corpus as a common law writ?

(2) If habeas corpus exists as a common law writ, can elephants avail themselves of the writ’s protections to seek release from their confinement at the Honolulu Zoo?

This is not the first time that NhRP has sought judicial review of these questions. NhRP has filed at least 15 petitions for habeas relief on behalf of nonhuman animals across the

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<sup>1</sup> Respondents-Appellees-Respondents are the City and County of Honolulu Department of Enterprise Services and its Director, Dita Holifield, and the Honolulu Zoo Director, Linda Santos (collectively, the “City”). Petitioner-Appellant-Petitioner is the Nonhuman Rights Project, Inc., (“NhRP”).

<sup>2</sup> All page number citations refer to the PDF page number of the electronic document. All citations to “CC Dkt.” refer to documents filed in the Circuit Court of the First Circuit, case number 1CCV-23-0001418. All citations to “ICA Dkt.” refer to documents filed before the Intermediate Court of Appeals, case number CAAP-24-0000323.

United States.<sup>3</sup> Every trial court to have considered one of NhRP's petitions has reached the same conclusion: habeas relief is not available to nonhuman animals. Every appellate court to have reviewed those decisions has affirmed the trial court's ruling. NhRP filed a habeas petition

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<sup>3</sup> NhRP had 13 petitions rejected at the time the City filed its Answering Brief before the ICA. Since then, two more petitions were dismissed by the courts, in California and Pennsylvania. The following decisions have found that NhRP's petitions were without merit:

**California:** *In re Nonhuman Rights Project, Inc.*, No. 25CJHC00060-01, *Minute Order* (Cal. Super. Ct., June 12, 2025), available at: <https://www.nonhumanrights.org/wp-content/uploads/2025/08/2025-06-18-Billy-Tina-Order-Denying-Writ.pdf>; ; *In re Nonhuman Rights Project, Inc., ex rel. Amahle, Nolwazi, and Vusmusi*, No. S281614, 2023 Cal. LEXIS 6969 (Cal., Dec. 13, 2023); *Nonhuman Rights Project, Inc. v. Fresno's Chaffee Zoo Corporation et al.*, 22CECG02471, *Order* (Cal. Ct. App., May 18, 2023); *In re Nonhuman Rights Project, Inc., ex rel. Amahle, Nolwazi, and Vusmusi*, 22CRWR686796, *Order* (Cal. Super. Ct., Nov. 15, 2022).

**Colorado:** *Nonhuman Rights Project, Inc., v. Cheyenne Mountain Zoological Society and Bob Chastain*, 2023CV31236, *Order* (Colo. Dist. Ct., Dec. 03, 2023).

**Connecticut:** *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, (*Commerford II*) 231 A.3d 1171 (Conn. App. Ct. 2020), *leave to appeal denied*, 235 A.3d 525 (Conn. 2020); and *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, (*Commerford I*) 216 A.3d 839 (Conn. App. Ct. 2019), *leave to appeal denied*, 217 A.3d 635 (Conn. 2019).

**Michigan:** *Nonhuman Rights Project Inc. v. DeYoung Fam. Zoo*, LC No. 23-17621-AH, *Order* (Mich. Cir. Ct., Dec. 12, 2023), appeal docketed, No. 369247 (Mich. Ct. App., Jan. 02, 2024).

**New York:** *Nonhuman Rights Project, Inc. ex rel. Happy v. Breheny*, 197 N.E.3d 921 (N.Y. 2022); *Nonhuman Rights Project, Inc. v. Lavery*, 54 N.Y.S.3d 392 (N.Y. App. Div. 2017), *leave to appeal denied*, 100 N.E.3d 846 (N.Y. 2018); *Nonhuman Rights Project, Inc. ex rel. Hercules and Another v. Stanley*, 16 N.Y.S.3d 898 (N.Y. Sup. Ct. 2015); *People ex rel. Nonhuman Rights Project, Inc., ex rel. Tommy v. Lavery*, 998 N.Y.S.2d 248 (N.Y. App Div. 2014), *leave to appeal denied*, 38 N.E.3d 828 (N.Y. 2015); *Nonhuman Rights Project, Inc., ex rel. Kiko v. Presti*, 999 N.Y.S.2d 652 (N.Y. App. Div. 2015), *leave to appeal denied*, 38 N.E.3d 827 (N.Y. 2015).

**Pennsylvania:** *Nonhuman Rights Project, Inc., v. Zoological Society of Pittsburgh, et al.*, Case No. GD-25-010963, *Order* (Allegheny C.P., Feb. 12, 2026), available at: <https://www.nonhumanrights.org/wp-content/uploads/2026/02/PA-Order-Granting-MTD.pdf>.

(“Petition”) in Hawai‘i, hoping for a different result. The ICA correctly reviewed Hawai‘i law on habeas relief and affirmed the Circuit Court’s dismissal of NhRP’s Petition. The ICA did not gravely err, and this Court should reject NhRP’s Application.

## **II. COUNTER-STATEMENT OF PRIOR PROCEEDINGS**

The City generally concurs with NhRP’s description of prior proceedings.<sup>4</sup>

## **III. COUNTER-STATEMENT OF THE CASE**

On October 31, 2023, NhRP filed its Petition in the Circuit Court “[p]ursuant to the common law of Hawaii and Chapter 660 of the Hawaiian Revised Statutes [sic],” on behalf of two elephants at the Honolulu Zoo, Mari and Vaigai. *See* Application, Appendix C, at 62. The ultimate relief sought was an order transferring the elephants from the Honolulu Zoo to an elephant sanctuary.<sup>5</sup> *Id.* at 163.

In its Petition, NhRP used the terms “writ of habeas corpus” and “order to show cause” interchangeably; while NhRP conceded that the two are functionally equivalent, it specifically requested the latter. *Id.* at 65 n.4; *see also* ICA Dkt. 19 at 20–21 n.7. In so doing, NhRP seeks a lengthy and time-consuming evidentiary hearing. However, such a hearing would not alter the ultimate legal conclusion that NhRP’s Petition fails as a matter of law, because HRS Chapter 660 and the common law writ of habeas corpus apply only to persons, and elephants are not persons.

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<sup>4</sup> The City took no position as to the *pro hac vice* applications before the Circuit Court and the ICA. CC Dkt. 43; ICA Dkt. 27 at 9.

<sup>5</sup> NhRP’s Application does not appeal the ICA’s finding that another reason that habeas relief was not appropriate was because “NRP did not seek the elephants’ release into the wild; it sought their transfer to another form of confinement.” *See* ICA Order at 2 n.2 (citing *Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Soc’y*, 562 P.3d 63, 70 (Colo. 2025) (“The fact that NRP merely seeks the transfer of the elephants from one form of confinement to another is yet another reason that habeas relief is not appropriate here.”)).

#### IV. DISCUSSION

##### A. **The ICA Correctly Determined that Habeas Relief is Unavailable to Nonhuman Animals Under HRS Chapter 660**

The ICA properly affirmed dismissal of NhRP’s Petition because (1) the plain meaning of HRS Chapter 660 limits habeas relief to “persons,” and “persons” does not include nonhuman animals; and (2) HRS Chapter 660 supersedes the common law writ because HRS Chapter 660 provides a complete remedy. Contrary to NhRP’s assertion, *see* Application at 10–11, dismissal on statutory grounds does not conflict with article I, section 15 of the Hawai‘i Constitution (the “Suspension Clause”). Thus, NhRP’s request for an evidentiary hearing would not alter the legal conclusion that the Petition fails as a matter of law because HRS Chapter 660 applies only to persons, and elephants are not persons.

First, the ICA’s analysis began with the plain language of the statute, consistent with Hawai‘i law governing statutory interpretation. *See Morgan v. Planning Dep’t, Cnty. of Kauai*, 104 Hawai‘i 173, 185, 86 P.3d 982, 994 (2004) (“this court must presume that the legislature meant what it said and is further barred from rejecting otherwise unambiguous statutory language”); *State v. Wheeler*, 121 Hawai‘i 383, 390, 219 P.3d 1170, 1177 (2009) (the plain language of a statute is “the fundamental starting point of statutory interpretation”); *see also* HRS § 1-14 (“The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning.”).

HRS Chapter 660 codifies the scope of habeas relief in Hawai‘i, and provides:

**Issuable by whom.** The supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which *persons* are unlawfully restrained of their liberty; provided that *persons* committed or detained by order of the family court or under chapter 334 [(“Mental Health, Mental Illness, Drug Addiction, and Alcoholism”)] may, and if the

jurisdiction of the family court is exclusive, shall, prosecute their applications in the family court.

HRS § 660-3 (2016) (bold italics added.). Thus, to establish a prima facie case for habeas relief, NhRP's Petition would have to show that, as a matter of law, elephants are "persons" for whom writs of habeas corpus may be issued. *See id.*

Reviewing de novo,<sup>6</sup> the ICA correctly concluded that the plain language of HRS Chapter 660 limits habeas relief to "persons." Although "person" is not defined in HRS Chapter 660, the plain meaning of the word does not include nonhuman animals. *See ICA Order* at 3. The ICA further recognized that this interpretation is consistent with how the legislature has defined "persons" throughout the HRS. *See ICA Order* (citing "Cf. *State v. LeVasseur*, 1 Haw. App. 19, 24–25, 613 P.2d 1328, 1332–33 (1980) (a dolphin is not "any other person" for purposes of choice of evils defense to theft prosecution); *see also* HRS § 142-96 (2023) (imposing fine upon one who "frightens, exasperates, or animates a horse or other animal, and thereby endangers the personal safety or the personal property of any person, or the animal itself, being that of another"); HRS § 707-700 (2014) (defining "deviate sexual intercourse" to include "any act of sexual gratification between a person and an animal")). Thus, NhRP's argument that "the term 'person' as used in the habeas corpus context does not have a plain meaning, it has a legal meaning," *see Application* at 16–17, is without merit.<sup>7</sup> The Court's review of statutory language is not an exercise in futility. The purpose of statutory interpretation is to determine the legal

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<sup>6</sup> *See ICA Order* at 3 (citing *Eason v. State*, 157 Hawai'i 252, 263, 576 P.3d 765, 776 (2025)).

<sup>7</sup> Only a single opinion from Argentina has granted a nonhuman animal habeas relief. *See Application* at 1. All American courts presented with this question have found that habeas relief is unavailable to nonhuman animals under the common law. *See supra* Introduction, n.3; *see also* HRS § 1-1 ("The common law of England, as ascertained by *English and American decisions*, is declared to be the common law of the State of Hawaii in all cases [...] (emphasis added)).

meaning. Here, that meant that nonhuman animals are not entitled to habeas relief. The ICA correctly concluded that the plain meaning of “person,” consistent with other statutory provisions, does not include nonhuman animals.

Second, the plain meaning of HRS Chapter 660 is dispositive because this statute supersedes the common law. NhRP contends that substantive entitlement to habeas corpus relief must be governed by common law, such that this Court must ignore the plain language of HRS § 660-3. *See* Application at 12 n.5, 16. This is irrelevant,<sup>8</sup> but it is also incorrect. There is no question that the Legislature can displace the common law,<sup>9</sup> and that when the statutory remedy is complete, the statute supersedes the common law remedy. *See* HRS § 1-1 (“The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, *except as otherwise expressly provided* by the Constitution or laws of the United States, or *by the laws of the State . . .*” (emphases added)); *see also Priceline.com, Inc. v. Dir. of Taxation*, 144 Hawai‘i 72, 82, 436 P.3d 1155, 1165, (2019) (“[The] common law may generally be overridden by statute.”); *Herring v. Gulick*, 5 Haw. 57, 58 (1884) (“The rule of the law is that when the remedy provided by statute is complete, the common law remedy is superseded by the statute, and the person injured must pursue the course pointed out by the Act. In such case the statutory remedy is not merely cumulative upon the common law action, but an entire substitution for it, and must be exclusively pursued.” (citation and internal quotation signals omitted)); *Pogoso v. Sarae*, 138 Haw. App. 518, 520, 382 P.3d 330, 332 (2016) (“The law is clear that legislative enactments have priority over and supercede [sic]

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<sup>8</sup> As discussed in section B, this argument is irrelevant because the common law and statute say the same thing when it comes to non-human animals.

<sup>9</sup> “The NhRP does not dispute that the legislature may displace common law doctrines in certain circumstances.” Application at 10 n.4.

the common law. . . . [The courts] are constrained to give effect to the plain meaning of the statute that is consistent with the legislative purpose, even if it results in the derogation of a common law rule.” (cleaned up)).

The ICA correctly concluded that HRS Chapter 660 supersedes the common law writ because it provides a complete statutory remedy. *See* ICA Order at 4. A statutory remedy is complete when it “is not merely cumulative upon the common law action, but an entire substitution for it, and must be exclusively pursued.” *Herring v. Gulick*, 5 Haw. 57, 58 (1884). Here, HRS Chapter 660 provides a complete remedy for habeas relief because it establishes the sole means available for obtaining a writ of habeas corpus by prescribing “by what courts, in what manner and under what conditions, within reasonable limits, [the writ] may be exercised.” *See Brown v. Goto*, 16 Haw. 263, 265 (1904). The ICA correctly concluded that “HRS Chapter 660 is complete[,]” and that it “prescribes the sole means available for obtaining a writ of habeas corpus from a Hawai‘i state court.” *See* ICA Order at 4.

Lastly, the ICA’s holding does not conflict with the Suspension Clause of the Hawai‘i Constitution. Article I, section 15 limits the circumstances under which the Legislature can *suspend*<sup>10</sup> access to habeas relief altogether:

The privilege of the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it.

The power of suspending the privilege of the writ of habeas corpus, and the laws or the execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe.

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<sup>10</sup> SUSPEND, Black’s Law Dictionary (12th ed. 2024) (“1. To interrupt; postpone; defer. 2. To temporarily keep (a person) from performing a function, occupying an office, holding a job, or exercising a right or privilege.”).

Haw. Const. Art. I, § 15. Finding that animals were never entitled to habeas relief in the first instance is not a “suspension” of the writ, but rather a judicial review of the writ’s parameters.<sup>11</sup> Once again, NhRP’s argument fails because HRS chapter 660 is fully consistent with the Legislature’s authority to determine “in what manner and under what conditions [the writ] may be exercised.” *Brown*, 16 Haw. at 265.

Therefore, NhRP failed to make a prima facie case in its Petition.<sup>12</sup> And ultimately, as discussed in IV.B, the statutory, constitutional, and common law analyses reach the same result: habeas relief does not apply to nonhuman animals.

**B. The ICA Correctly Determined that Habeas Relief Is Also Unavailable to Nonhuman Animals at Common Law**

Even if this Court were to rely solely on English common law, NhRP’s claims would still fail for the same reason: the ancient writ of habeas corpus was (and is) only available to human beings. *See, generally, In re Apuna*, 6 Haw. 732, 735-36 (1869) (“The rights of *persons* in this Kingdom under writs of *habeas corpus* are. . . as fully secured by Constitutional and Statutory provisions as if the famous English guaranties and enactment. . . were spread upon our statute books . . . . The writ of *habeas corpus* enjoyed here is the same in substance with the original writ as secured and vivified by the English Acts, Bills and Charters.” (emphasis added));

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<sup>11</sup> Further, as discussed in Section B, there is nothing to “suspend” given that non-human animals have never been entitled to habeas relief.

<sup>12</sup> NhRP’s argument that an evidentiary hearing would then establish their prima facie case is backwards. *See* Application at 16. NhRP is asking the Court to accept its *legal* conclusion as true – that is, the contention that non-human animals are entitled to habeas relief – and require the Circuit Court to hold a lengthy evidentiary hearing. Whether non-human animals are eligible for habeas relief is a legal question. An order to show cause would result in an evidentiary hearing that could not change the legal principle that non-human animals are not entitled to habeas relief. NhRP did not – and cannot – establish a prima facie case.

*See also In re Apuna*, 6 Haw. 732, 734 (1869) (“In many of the United States there are statutes defining [the writ of habeas corpus’] nature and force; but they are all essentially alike, and are all in substance the same with the English Statute of 31 Car. II.”).

Courts across the nation have reflected on the common law derived from England and determined that nonhuman animals are not entitled to the protections it confers onto persons. *See, e.g., Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Soc’y*, 2025 CO 3, ¶¶ 27, 562 P.3d 63, 69, *reh’g denied* (Feb. 10, 2025) (“Indeed, even if the right to habeas corpus relief in Colorado was defined solely by the common law, we would still not be persuaded. This is because nothing in the common law supports NRP’s position, which rests primarily on a concurring opinion and two dissenting opinions in its unsuccessful efforts to extend the writ of habeas corpus to nonhuman animals.”). For example, as the New York State Court of Appeals explained:

[D]espite the awesome power of the writ of habeas corpus and its enduring use throughout the centuries, no court of this state—or any other—has ever held the writ applicable to a nonhuman animal. Nothing in our precedent or, in fact, that of any other state or federal court, provides support for the notion that the writ of habeas corpus is or should be applicable to nonhuman animals. . . . [T]he Great Writ protects the right to liberty of humans *because* they are humans with certain fundamental liberty rights recognized by law. . . . While it is true that the courts—not the legislature—ultimately define the scope of the common-law writ of habeas corpus. . . [the statutory distinctions between human beings and nonhuman animals] reflect the abiding view that nonhuman animals are not persons with a common-law right to liberty that may be secured through a writ of habeas corpus.

*Nonhuman Rights Project, Inc. ex rel. Happy v. Breheny*, 197 N.E.3d 921, 927–931 (NY 2022).

*Accord Justice v. Vercher*, 518 P.3d 131, 136 (Or. Ct. App. 2022) (“Under the English common law, only human beings and legal entities created by human beings were considered ‘persons’ capable of holding and asserting legal rights”); *Nonhuman Rights Project, Inc. v. R.W.*

*Commerford & Sons, Inc.*, 216 A.3d 839, 840 (Conn. App. Ct. 2019), *leave to appeal denied*, 217 A.3d 635 (Conn. 2019) (“[T]here is no instance in our common law in which a nonhuman animal or representative for it has been permitted to bring a lawsuit to vindicate the animal’s own purported rights, and animals under Connecticut law, as in all other states, have generally been regarded as personal property; moreover, because an elephant is incapable of bearing duties and social responsibilities, as required under the social compact theory.”).

As summarized by Judge Bentley of Colorado, ultimately, the relief sought by NhRP should be directed at the Legislature, not the courts:

Notwithstanding those dissenting opinions, the overwhelming weight of legal precedent is against the NHRP. Because the NHRP seeks an expansion of existing legal rights rather than enforcement of already-existing rights, its project is appropriately directed to the legislature, not to this Court. Existing law, which it is this Court’s responsibility to interpret and apply, compels dismissal.

*Nonhuman Rights Project, Inc., v. Cheyenne Mountain Zoological Society and Bob Chastain*, 2023CV301236, Order at PDF page 9 (Colo. Dist. Ct., Dec. 03, 2023). NhRP may advocate for policy changes at the Legislature and the Honolulu City Council, but NhRP cannot use a habeas petition to accomplish its policy goals.

Whether habeas relief under the common law could include non-human animals has been thoroughly reviewed. NhRP’s argument has been rejected every time.

**V. CONCLUSION**

For the foregoing reasons, the City requests that this Court deny NhRP’s Application.

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//

DATED: Honolulu, Hawai‘i, May 11, 2026.

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CITY AND COUNTY OF HONOLULU,  
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DIRECTOR, LINDA SANTOS,

Respondents-Appellees-  
Respondents.

**CERTIFICATE OF SERVICE**

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I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon the following parties via electronic filing in the Judiciary Electronic Filing and Service System (JEFS), or via U.S. Mail, postage prepaid, as indicated on the date below:

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