

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

NONHUMAN RIGHTS PROJECT, INC.,

Plaintiff-Appellant.

v.

Supreme Court No. 169351

DEYOUNG FAMILY ZOO, LLC
and HAROLD L. DEYOUNG,

Court of Appeals No. 369247

Menominee Circuit Court
LC No. 23 -176 2 1 -AH

Defendants-Appellees.

DEFENDANTS-APPELLEES' RESPONSE TO
PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION

Timothy Churchill (MI Bar No. P38179)
Churchill, Smith, Gonzalez & Kuhn, LLP
9042 Lewis Ave., P.O. Box 490
Temperance, MI 48182
(734) 847-8080
tchurchill@miohattorneys.com
www.temperancemichiganlaw.com

William White (AL Bar No. asb-6545-h70w)
Boles Holmes White LLC
1929 3rd Ave. North, Suite 500
Birmingham, AL 35203
(205) 502-2000
wwhite@bhw.law
(Temporary admission granted)

Pursuant to MCR 7.311(C), Defendant-Appellees DeYoung Family Zoo, LLC and Harold L. DeYoung files this Response to Plaintiff-Appellant's request asking this Honorable Court to grant reconsideration of its July 17, 2026 denial order ("Denial Order"), and states the following in support:

Habeas Corpus Relief is Entirely Illusory

We begin by reiterating that the relief available in a habeas corpus proceeding is the immediate release of an unlawfully detained person and the restoration of the person's freedom and liberty. For that reason, the relief NhRP seeks is entirely illusory. The one thing that these chimpanzees will *never be* is free. They can never be returned to their natural environment and therefore will not experience the freedom of wild animals. These animals were born in captivity, have never lived in the wild, and lack the skills necessary to survive there. The real question here is how can a court *restore* freedom and liberty that these animals never had in the first instance?

The short answer is that it cannot. The harsh reality is that the chimpanzees will remain confined and dependent on humans for their basic needs for the rest of their lives. NhRP seeks only to move them from one confinement facility to another confinement facility of its own choosing. Justice Welch's dissenting opinion concedes this point, noting that NhRP asks the Court to order the chimpanzees released and relocated to a facility where they can, *to the greatest extent possible*, live as autonomous beings. Therefore, this case is not about freedom versus confinement, which is the core issue in habeas corpus proceedings. At most, it concerns only the uncertain line between various types of confinement.

Despotic Dominion Is The Foundation of this Case

It is truly ironic that NhRP uses the legal system as a forum for *humans* to debate the fate of these animals which, in fact, is the very embodiment of the concept of despotic dominion that it so passionately purports to reject. NhRP exploits the animals in this case and those in other cases,

as pawns in its continuous cycle of fundraising to further its own ideological goals. Further, should NhRP prevail in this case, this Court should be deeply skeptical of its stated intention to immediately relocate the chimpanzees to a state where they will once again be classified and treated as property. Currently, chimpanzee sanctuaries are located in the states of Florida, Louisiana, Texas, Georgia and Kentucky, all of which would be openly hostile to NhRP's push for habeas relief for animals.¹ This is the likely reason why NhRP has never filed a single case in any of these states, and would be unwilling to do so in the future. Further, the sanctuaries located in those states are licensed as "exhibitors" under the Animal Welfare Act, meaning that they exhibit animals to the public for compensation.² Therefore, should NhRP prevail, both it and the

¹ For example, Florida became the first state in the country to criminalize the manufacture, sale or distribution of "cultivated" meat (aka "lab grown meat"), defined as any meat or food product produced by cultivated animal cells. [cite]. In signing the bill into law, Governor DeSantis stated that: "[t]oday, Florida is fighting back against the global elite's plan to force the world to eat meat grown in a petri dish or bugs to achieve their authoritarian goals. Our administration will continue to focus on investing in our local farmers and ranchers, and we will save our beef." <https://www.flgov.com/eog/news/press/2024/governor-desantis-signs-legislation-keep-lab-grown-meat-out-florida> In other statements, he warned that "there's a whole ideological agenda that's coming after, I think, a lot of important parts of our society. And, like, Florida, we have a lot of agriculture." <https://floridaphoenix.com/briefs/desantis-has-no-appetite-for-lab-grown-meat/> The Florida Supreme Court recently upheld the ban on cultivated meat. In light of these developments, it doesn't require a stretch of the imagination to predict the push back from Florida, and similar states, to NhRP's efforts to establish personhood status for animals.

² The term "exhibitor" means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary. 7 U.S.C. § 2132 (h).

sanctuaries where they are relocated will use the chimpanzees for their own exploitative fundraising campaigns.

The famous “monkey-selfie” case illustrates the extent to which so-called animal advocacy organizations may exploit the very animals they claim to protect. In that case, British wildlife photographer David Slater left his camera on a tripod in Indonesia, and Naruto, a male Crested Macaque, took several self-portraits. People for the Ethical Treatment of Animals (PETA) then sued on behalf of Naruto under the Copyright Act, arguing that macaques are highly intelligent, thinking, and sophisticated beings capable of owning intellectual property. The Court of Appeals for the 9th Circuit ultimately ruled that Naruto lacked statutory standing because the Copyright Act does not authorize animals to file copyright infringement lawsuits.

On appeal, PETA sought to dismiss the case based on its own interests, resulting in the following scathing footnote (FN3):

We feel compelled to note that PETA’s deficiencies in this regard go far beyond its failure to plead a significant relationship with Naruto. Indeed, if any such relationship exists, PETA appears to have failed to live up to the title of “friend.” After seeing the proverbial writing on the wall at oral argument, PETA and Appellees filed a motion asking this court to dismiss Naruto’s appeal and to vacate the district court’s adverse judgment, representing that PETA’s claims against Slater had been settled. It remains unclear what claims PETA purported to be “settling,” since the court was under the impression this lawsuit was about Naruto’s claims and per PETA’s motion, Naruto was “not a party to the settlement,” nor were Naruto’s claims settled therein. Nevertheless, PETA apparently obtained something from the settlement with Slater, although not anything that would necessarily go to Naruto: As “part of the arrangement,” Slater agreed to pay a quarter of his earnings from the monkey selfie book “to charities that protect the habitat of Naruto and other crested macaques in Indonesia.” But now, in the wake of PETA’s proposed dismissal, Naruto is left without an advocate, his supposed “friend” having abandoned Naruto’s substantive claims in what appears to be an effort to prevent the publication of a decision adverse to PETA’s institutional interests. Were he capable of recognizing this abandonment, we wonder whether Naruto might initiate an action for breach of confidential relationship against his (former) next friend, PETA, for its failure to pursue his interests before its own. Puzzlingly, while representing to the world that “animals are not ours to eat, wear, experiment on, use for entertainment, or abuse in any other way,” PETA seems to employ Naruto as an

unwitting pawn in its ideological goals. Yet this is precisely what is to be avoided by requiring next friends to have a significant relationship with, rather than an institutional interest in, the incompetent party. (internal citations omitted)

Naruto, a Crested Macaque, by and through his Next Friends, People for the Ethical Treatment of Animals, Inc. v. David Slater, et al., 888 F.3d 418, FN3 (9th Cir. 2018).

In conclusion, while NhRP attempts to repudiate Blackstone's "archaic" despotic dominion concept as a legitimate basis for justifying the ineligibility of habeas relief because it is based in scripture, NhRP's entire existence and legal theories are actually grounded in that exact concept. Specifically, because humans are superior beings, they are free to exploit animals to further their own ideological purposes or other goals, such as organizational fundraising, and that, through nothing more than sheer arrogance, somehow believe that they can discern how animals think and determine their future fate. This is particularly true here, where NhRP has absolutely no relationship with the chimpanzees that are the subject of this lawsuit, as evidenced by the fact that the complaint failed to even provide the names of several chimpanzees. But, more importantly, events have shown, time and time again, that human understanding of the animal kingdom is nascent at best, and errors in human judgment have resulted in tragic consequences for animals. Experts have long acknowledged that managing chimpanzees in captivity pose tremendous challenges because of their intelligence, impulsive nature, strength and violent tendencies that can result in death or euthanasia for chimpanzees that are the victims of unpredictable attacks by other chimpanzees. And, when those attacks occur, due to human errors based on the lack of understanding of the complex social structure of chimpanzees, sanctuaries inevitably brush it off, citing the fact that such deaths happen more frequently in the wild. (See, e.g., <https://apnews.com/article/science-us-department-of-agriculture-louisiana-animals-animal-rights-2e3a065c2bb59ee52ebef8197486e2cc>).

There may be a time and a place to debate whether NhRP's position accepting an 18th century British jurist's views of the "Great Writ" were wise, but their argument that his incorporation of concepts based on the "Great Book" (i.e., the "Holy Bible") were not. But, this is neither the time or place to do so because the reality is that these chimpanzees are now, have always been, and will always be, subject to human dominion.

The Court of Appeals Did not Err by Relying on Social Contract Theory

NhRP's argument rejecting the social contract theory cited not only by the Court of Appeals in this case, but every other court in this country that has considered this issue, is based on the false premise that any living being "incapable" of consciously giving up part of their liberty to oblige themselves to conform to society's laws is neither a legal person nor a party eligible for a writ of habeas corpus. This is simply not true. Our legal system incorporates a variety of protective mechanisms for incapacitated persons without denying their status as legal persons, including the right to plead not guilty of a crime by reason of insanity, the appointment of legal guardians, the right to legal representation by an attorney with a fiduciary duty to their client, and the right to due process under law. These protections are grounded in a "millennia of experience understanding the interests and desire of humankind." *Justice v. Vercher*, 321 Or. App. 439, at 448 (2022) quoting J. Smith concurrence in *Naruto* at 432. In contrast, no human can ever "credibly articulate [an animal's] interests or goals." *Id.* "An animal such as a horse inherently lacks self-determination and the ability to express its wishes in a manner that the legal system would recognize. That incapacity exists in perpetuity such that it would be difficult to say that a court — or any human being — may actually discern the animal's own interest in pursuing a legal action." *Justice* at 446. And, as the 9th Circuit noted in *Naruto*, animal next-friend standing is "particularly

susceptible to abuse” and organizations could “use it to advance their own institutional goals with no means to curtail those actions.” *Naruto* at 432.

In conclusion, as the Court of Appeals noted, democratic societies are grounded in a conceptual social contract under which rights are conferred in exchange for an implied agreement to submit to societal duties and responsibilities, including compliance with legal mandates. Our legal system has successfully integrated protective measures for incapacitated persons who lack the ability to understand societal duties and responsibilities and those measures are based on the thousands of years of shared knowledge and experience of humankind. Therefore, the argument that reliance on the social contract theory will somehow strip incapacitated humans of their status as “persons” lacks merit and should be soundly rejected. The real risk lies in conferring rights on animals who inherently lack self-determination and relying on humans who lack the ability to discern the animal’s interest with full freedom to advance their individual or institutional goals.

Based on the foregoing, we respectfully request the Court to deny Plaintiff-Appellant’s Motion for Reconsideration.

Respectfully Submitted,

/s/ Timothy Churchill

Timothy Churchill (MI Bar No. P38179)
Churchill, Smith, Gonzalez & Kuhn, LLP
9042 Lewis Ave., P.O. Box 490
Temperance, MI 48182
(734) 847-8080
tchurchill@miohattorneys.com

PROOF OF SERVICE

I certify that a copy of Defendants-Appellees' Response to Plaintiff-Appellant's Motion for Reconsideration via USPS Mail to: Ginny Mikita, Mikita Kruse Law Center, 6411 Bella Vista Drive NE, Suite 1 Rockford MI 49341 I also certify that a notice of the foregoing filing was served on the clerks of the Court of Appeals and the Menominee County 41st Circuit Court.

/s/ Timothy Churchill

Timothy Churchill (MI Bar No. P38179)
Churchill, Smith, Gonzalez & Kuhn, LLP
9042 Lewis Ave., P.O. Box 490
Temperance, MI 48182
(734) 847-8080
tchurchill@miohattorneys.com