

**Electronically Filed
Supreme Court
SCWC-24-0000323
14-SEP-2026
11:58 AM
Dkt. 63 BAM**

IN THE SUPREME COURT OF THE STATE OF HAWAII

SCWC-24-0000323

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.

INTERMEDIATE COURT OF APPEALS
Case No. CAAP-24-0000323

CIRCUIT COURT OF THE FIRST CIRCUIT
Case No. 1CCV-23-0001418

**BRIEF OF AMICUS CURIAE
ANIMAL LAW SECTION OF THE
LOS ANGELES COUNTY BAR ASSOCIATION
IN SUPPORT OF PETITIONER-APPELLANT**

Adam P. Karp, JD, MS
Animal Law Offices, PLLC
114 W. Magnolia St., Ste. 400-104
Bellingham, WA 98225
888.430.0001
adam@animal-lawyer.com
HSB 11576



TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
A. THE COMMON LAW WRIT OF HABEAS CORPUS IS A FLEXIBLE, EVOLVING REMEDY NOT CATEGORICALLY FORECLOSED TO NONHUMAN ANIMALS WITH DEMONSTRATED AUTONOMY AND COGNITIVE COMPLEXITY.....	3
B. ELEPHANTS’ WELL-DOCUMENTED COGNITIVE, EMOTIONAL, AND SOCIAL CAPACITIES SATISFY ANY RATIONAL THRESHOLD FOR HABEAS STANDING	4
C. THE ICA’S REASONING IS FLAWED AND INCONSISTENT WITH THE PROGRESSIVE TRAJECTORY OF HABEAS JURISPRUDENCE, AS ILLUSTRATED BY THE BREHENY DISSENTS.....	5
D. THE HAWAI’I SUPREME COURT IS WELL-POSITIONED—AND HAS AN INDEPENDENT OBLIGATION—TO DEVELOP HAWAI’I COMMON LAW CONSISTENT WITH JUSTICE AND EVOLVING LEGAL NORMS.....	7
E. COMPARATIVE AND INTERNATIONAL LEGAL DEVELOPMENTS SUPPORT EXTENDING HABEAS PROTECTIONS TO COGNITIVELY COMPLEX ANIMALS.....	8
CONCLUSION	10

TABLE OF AUTHORITIES

CASES

<i>Brown v. Goto</i> , 16 Haw. 263 (1904).....	3
<i>Ex parte Apuna</i> , 6 Haw. 732 (1869)	3, 4
<i>In re Cambridge</i> , 1 Haw. 191 (1855).....	4
<i>Lemmon v. People</i> , 20 N.Y. 562 (1860)	6
<i>Nonhuman Rights Project, Inc. v. Breheny</i> , 38 N.Y.3d 555 (2022)	3-10
<i>Smith v. Smith</i> , 56 Haw. 295 (1975)	7
<i>Somerset v. Stewart</i> , (1772) 98 Eng. Rep. 499 (K.B.)	6
<i>Territory of Hawaii v. Makaaa</i> , 43 Haw. 237 (1959)	8
<i>Vierra v. Campbell</i> , 40 Haw. 86 (1953).....	8

INTERNATIONAL DECISIONS

<i>About the Chimpanzee “Cecilia” – Non human Individual</i> , File No. P.72.254/15 [Third Court of Guarantees, Mendoza, Argentina (November 3, 2016)] https://www.animallaw.info/case/afada-habeas-corpus-cecilia	9
<i>Animal Welfare Board of India v. A. Nagaraja</i> , 7 SCC 547 ¶ 62 [2014]	9
<i>Islamabad Wildlife Mgmt. Bd. v. Metro. Corp., Islamabad</i> , W.P. No. 1155/2019 P L D 2021 Islamabad 6 [Islamabad High Court, Pakistan (2020)] https://pakistanlawyer.com/islamabad-wildlife-protection-preservation-conservation-and-management-rules-1983-r-3i-2021-pld-6-islamabad-writ-petition-no-1155-of-2019-decided-on-21st-may-2020/	9
<i>Rights of Nature and animals as subjects of rights, Estrellita Monkey Case</i> , No. 253-20-JH [Quito, Ecuador, Ecuador Constitutional Court (2022)] https://aldf.org/wp-content/uploads/2023/01/Final-Judgment-Estrellita-w-Translation-Certification.pdf	9

STATUTES AND CONSTITUTIONAL PROVISIONS

Haw. Rev. Stat. § 660-3 (2016)	4, 5
--------------------------------------	------

INTEREST OF AMICUS CURIAE

The Animal Law Section of the Los Angeles County Bar Association (“Amicus” or “the Section”) is a voluntary section of the Los Angeles County Bar Association (“LACBA”), one of the largest voluntary metropolitan bar associations in the United States. The Section’s membership comprises attorneys who practice, study, and advance the field of animal law throughout California and nationally.

The Section has a strong institutional interest in the sound and progressive development of animal law across all American jurisdictions, including Hawai‘i. The Section’s members include practitioners in appellate litigation, constitutional law, environmental law, and civil rights—all areas implicated by this case. Members of the Section have written and advocated on issues of legal personhood, the proper scope of habeas corpus, and the evolving status of nonhuman animals under the law.

This case presents a question of first impression in the Hawai‘i Supreme Court: whether the common law writ of habeas corpus may be invoked to protect the bodily liberty of cognitively complex, autonomous nonhuman animals. The Section submits this brief to offer this Court a jurisprudential framework—drawn principally from the powerful dissenting opinions in *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555 (N.Y. 2022)—for why the Intermediate Court of Appeals (“ICA”) erred and why this Court should reverse.

This brief reflects the views of the Animal Law Section and not necessarily those of LACBA as a whole.

SUMMARY OF ARGUMENT

Amicus respectfully urges this Court to reverse the ICA’s Summary Disposition Order and to remand with instructions to issue an order to show cause. The ICA’s categorical foreclosure of habeas corpus relief for nonhuman animals is legally unsound, historically uninformed, and inconsistent with the progressive trajectory of habeas jurisprudence. Five principal arguments support reversal:

First, habeas corpus is a flexible, evolving common law remedy. Its historical arc demonstrates expansion, not contraction. As Judge Wilson observed in his dissent in *Breheny*, at 580, “The history of the Great Writ demonstrates that courts have used and should use it to enhance liberty when a captivity is unjust[.]” The writ is not categorically foreclosed to nonhuman animals with demonstrated autonomy.

Second, the uncontroverted scientific evidence establishes that Mari and Vaigai are autonomous, cognitively complex beings capable of self-awareness, empathy, grief, and intentional behavior. These capacities satisfy any rational threshold for habeas standing.

Third, the ICA’s reliance on the “rights and duties” framework—that only beings capable of bearing legal duties may hold legal rights—is historically contingent, logically flawed, and contradicted by existing law. As Judge Wilson demonstrated, “the proposition that animals cannot have rights because they cannot bear responsibilities . . . confuses who can confer rights with who can hold rights.”

Fourth, the Hawai‘i Supreme Court has an independent obligation to develop Hawai‘i common law consistent with justice and evolving social norms. This Court is not bound by other jurisdictions’ rejections of habeas relief for nonhuman animals, and Hawai‘i’s own precedents recognize that courts “in the face of changing conditions are not chained to ancient formulae.”

Fifth, comparative and international legal developments—including judicial decisions in Argentina, Pakistan, India, and Ecuador—support recognizing habeas protections for cognitively complex animals, confirming that the extension of legal personhood to nonhuman animals is not radical but rather a developing global norm.

ARGUMENT

A. THE COMMON LAW WRIT OF HABEAS CORPUS IS A FLEXIBLE, EVOLVING REMEDY NOT CATEGORICALLY FORECLOSED TO NONHUMAN ANIMALS WITH DEMONSTRATED AUTONOMY AND COGNITIVE COMPLEXITY

The ICA dismissed the Petition below on the ground that habeas corpus is available only to “persons” and that elephants are not persons. This reasoning treats the boundaries of the writ as fixed and immutable. But the history of habeas corpus tells a different story—one of continual expansion to reach new forms of unjust captivity.

As Judge Wilson explained in his powerful dissent in *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 380 (N.Y. 2022) (Wilson, J., dissenting):

The history of the Great Writ demonstrates that courts have used and should use it to enhance liberty when a captivity is unjust, even when the captor has statutory or common-law rights authorizing such captivities in general;

Judge Wilson identified the critical methodological error in the majority’s approach—and in the ICA’s reasoning below. The question is not whether this has been done before, but whether it should be done now:

The correct approach is not to say, “this has never been done” and then quit, but to ask, “should this now be done even though it hasn’t before, and why?”

Id. at 583.

This Court’s own precedents confirm that habeas corpus is a common law writ in Hawai‘i. In *Brown v. Goto*, 16 Haw. 263, 265 (1904), this Court held that habeas corpus “is a common law writ” and that “[u]ndoubtedly the right to the writ could not be taken away by

statute[.]” In *Ex parte Apuna*, 6 Haw. 732, 735-736 (1869), the court recognized that “[t]he 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.” And in *In re Cambridge*, 1 Haw. 191, 192 (1855), this Court affirmed its “power to do whatever justice may seem to require....”

The ICA’s conclusion that HRS Chapter 660 “supersedes the common law writ” misapprehends the relationship between statute and common law. HRS § 660-3 prescribes the *procedure* for issuing the writ; it does not purport to abrogate the common law’s substantive content, including the common law’s capacity to evolve. As this Court itself recognized, the writ’s power derives from the common law, and the legislature cannot take that power away. *Brown*, 16 Haw. at 265.

B. ELEPHANTS’ WELL-DOCUMENTED COGNITIVE, EMOTIONAL, AND SOCIAL CAPACITIES SATISFY ANY RATIONAL THRESHOLD FOR HABEAS STANDING.

The uncontroverted expert declarations submitted with the Petition establish that Mari and Vaigai are “autonomous and extraordinarily cognitively complex beings.” The scientific evidence—including studies demonstrating self-awareness, mirror self-recognition, empathy, grief, and intentional communication—is not in dispute.

Judge Wilson’s dissent in *Breheny* recognized the dispositive significance of this evidence:

Whether an elephant could have petitioned for habeas corpus in the eighteenth century is a different question from whether an elephant can do so today because we know much more about elephant cognition, social organization, behaviors and needs than we did in past centuries...

Breheny, 38 N.Y.3d at 603 (Wilson, J., dissenting).

Judge Rivera was equally emphatic about the relevance of elephants’ cognitive capacities to the legal question:

Although not true for all nonhuman animals, there are some with advanced cognitive skills, who display self-determinative behavior, with an awareness of death and a capacity to grieve. These animals are autonomous beings.

Id. at 630 (Rivera, J., dissenting).

The scientific record demonstrates that elephants possess: (1) self-awareness and mirror self-recognition—a capacity shared by very few species; (2) intelligence, long-term memory, and intentional communication; (3) complex social structures organized around matriarchal, multi-generational family groups; (4) empathy, substantial emotional responses, and “true ideation”; and (5) awareness of death and grieving behaviors “akin to human responses.”

These are not marginal capacities. They are the very attributes that make confinement in a zoo—separated from conspecifics, deprived of adequate space and social structure—a form of suffering for which habeas corpus is the appropriate remedy. As Judge Rivera wrote: “[Happy] is held in an environment that is unnatural to her and that does not allow her to live her life as she was meant to: as a self-determinative, autonomous elephant in the wild.” *Id.* at 642.

C. THE ICA’S REASONING IS FLAWED AND INCONSISTENT WITH THE PROGRESSIVE TRAJECTORY OF HABEAS JURISPRUDENCE, AS ILLUSTRATED BY THE *BREHENY* DISSENTS.

The ICA’s conclusion rested principally on two premises: (1) that “person” in HRS § 660-3 excludes nonhuman animals as a matter of plain meaning; and (2) that the common law writ applied only to “persons” who were human. Both premises are undermined by the *Breheny* dissents and by the historical record.

1. The “rights and duties” framework is historically contingent and logically flawed.

The unstated premise of the ICA’s holding—that legal personhood requires the capacity to bear duties and social responsibilities—was the central pillar of the *Breheny* majority’s

reasoning. The dissents dismantled it. Judge Wilson observed that the proposition that animals cannot have rights because they cannot bear responsibilities:

confuses who can confer rights with who can hold rights. Elephants cannot confer rights on humans, but humans can—and do—confer rights on animals in abundance.

Breheny, 38 N.Y.3d at 585 (Wilson, J., dissenting).

Judge Wilson illustrated the point with devastating simplicity:

If society determines that humans should not torture dogs, then dogs have a right to be free from torture. The dogs’ right to be free from torture does not emanate from their ability to take on duties or responsibilities; instead, it emanates from society’s determination that a sphere of action—the ability of dogs to exist without being subjected to torture by humans—is a right worthy of protection.

Id. at 588.

Judge Rivera was equally direct: “The human/nonhuman binary relied upon by the majority depends on a ‘rights and duties’ framework that has no support in the historical application of the writ.” *Id.* at 630 (Rivera, J., dissenting, cit. om.). She noted that this framework is historically contingent—a product of a specific era’s assumptions, not a timeless principle of law.

2. Historical parallels demonstrate the writ’s capacity to reach those previously excluded from legal personhood.

The history of habeas corpus is replete with examples of the writ being extended to beings who lacked full legal personhood under the prevailing law of the time:

Enslaved persons. In *Somerset v. Stewart* (1772), 98 Eng. Rep. 499 (K.B.), Lord Mansfield granted habeas corpus on behalf of James Somerset, an enslaved Black man who was legally classified as property. Lord Mansfield declared that slavery “is so odious, that nothing can be suffered to support it, but positive law.” In *Lemmon v. People*, 20 N.Y. 562 (1860), the New York Court of Appeals upheld a habeas petition freeing eight enslaved persons.

Women under coverture. Married women, who had no independent legal personhood under the doctrine of coverture, used habeas to escape abusive confinement by their husbands—including Catherine Marsden, who was freed from a hayloft, and Lady Rawlinson, who was freed after kidnapping.

Children. Children under absolute paternal authority used habeas to secure their freedom and custody arrangements. *See Rex v. Bissell* (1774) (K.B.) (unreported) (cited in *Breheny*, *supra*, 38 N.Y.3d at 597-598 (dis. opn. of Wilson, J.), citing Paul D. Halliday, *Habeas Corpus: From England to Empire* 131 [2010] (Lord Mansfield assigned custody “in defiance of the father’s expectation”).

Judge Rivera drew the essential parallel: “If an enslaved human being with no legal personhood [examples given] can all seek habeas corpus relief, so can an autonomous nonhuman animal.” *Breheny*, 38 N.Y.3d at 631 (Rivera, J., dissenting, *cit. om.*).

The ICA cited no historical analysis to the contrary. Its reasoning—that “person” has always meant “human”—ignores that the writ was historically deployed to protect beings who *were not recognized as persons* under the prevailing legal framework. The writ’s genius lies precisely in its capacity to transcend the legal categories of its era.

D. THE HAWAI‘I SUPREME COURT IS WELL-POSITIONED—AND HAS AN INDEPENDENT OBLIGATION—TO DEVELOP HAWAI‘I COMMON LAW CONSISTENT WITH JUSTICE AND EVOLVING LEGAL NORMS.

This Court is not bound by the decisions of other state courts that have rejected habeas relief for nonhuman animals. Hawai‘i follows the common law as an independent sovereign. *Smith v. Smith*, 56 Haw. 295, 303 (1975) (“We follow the common law in this jurisdiction.”). The common law of Hawai‘i develops according to Hawai‘i’s own values, precedents, and needs.

This Court has long recognized the common law’s inherent capacity for growth. In *Vierra v. Campbell*, 40 Haw. 86, 89 (1953), this Court held that “courts in the face of changing conditions are not chained to ancient formulae but may enforce conditions deemed to have been wrought in the common law itself by force of changing conditions[.]”

And in *Territory of Hawaii v. Makaaa*, 43 Haw. 237, 240 (1959), this Court explained, refencing *Welsh v. Campbell*, 41 Haw. 106 (1955):

[T]he common law is a system of legal logic rather than a code of rules, and ... its principles have been determined by the social needs of the community and have changed with changes in such needs.

The ICA’s deference to the legislature—its suggestion that NhRP “can petition the legislature for the change in the law it seeks”—abdicated the judiciary’s own responsibility to develop the common law. Judge Wilson addressed this precise argument:

[N]ovel common-law cases—of which habeas is a subset—have advanced the law in countless areas...

Breheny, 38 N.Y.3d at 584 (Wilson, J., dissenting). He further noted that “common-law courts are especially good at developing doctrines to deal with slippery slopes,” *id.* at 621—directly addressing the concern that recognizing habeas standing for elephants would open an unmanageable floodgate.

The fact that other jurisdictions have denied habeas relief for nonhuman animals is not dispositive. Legal development is uneven. What matters is whether the principles of Hawai‘i’s own common law—its commitment to justice, its recognition that law evolves with changing social needs, and its tradition of judicial innovation—support recognizing the claim presented here. They do.

E. COMPARATIVE AND INTERNATIONAL LEGAL DEVELOPMENTS SUPPORT EXTENDING HABEAS PROTECTIONS TO COGNITIVELY COMPLEX ANIMALS.

While international decisions are not binding on this Court, they constitute persuasive authority demonstrating that the extension of habeas protections to nonhuman animals is neither unprecedented nor radical. A growing body of global jurisprudence recognizes legal rights for cognitively complex animals:

Argentina (2016): In *About the Chimpanzee “Cecilia” – Non human Individual*, P.72.254/15 [Third Court of Guarantees (2016)], an Argentine court granted habeas corpus for Cecilia, a chimpanzee, declaring her *sujeto de derecho no humano* (non human legal person) and ordering her transfer to a sanctuary.

Pakistan (2020): In *Islamabad Wildlife Management Board v. Metropolitan Corporation, Islamabad*, W.P. No. 1155/2019 P L D 2021 Islamabad 6, the Islamabad High Court ordered the release of Kaavan, an elephant, to a sanctuary, stating “without any hesitation” that Kaavan has “legal rights.” The court reasoned that animals are not merely property but beings entitled to judicial protection from suffering.

India (2014): In *Animal Welfare Bd. of India v. A. Nagaraja*, 7 SCC 547 ¶¶ 26¹, 62² [2014], the Supreme Court of India recognized that all nonhuman animals possess certain constitutional rights and applied the *parens patriae* doctrine to protect animal welfare.

Ecuador (2022): In a 7-2 decision, the Ecuador Constitutional Court ruled in *Rights of Nature and animals as subjects of rights, Estrellita Monkey Case*, No. 253-20-JH [2022] that

¹ “Court has also a duty under the doctrine of parents patriae (sic) to take care of the rights of animals, since they are unable to take care of themselves as against human beings.”

² “Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word ‘life’ has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution.”

“Animals are subjects of rights protected by the rights of Nature,” holding that individual animals have judicially enforceable rights independent of human interests. *Id.*, ¶ 181.

These decisions reflect an emerging global consensus that the legal systems of civilized nations must evolve to address the unjust confinement of cognitively complex, autonomous beings. As Judge Wilson warned in *Breheny*:

When the majority answers, “No, animals cannot have rights,” I worry for that animal, but I worry even more greatly about how that answer denies and denigrates the human capacity for understanding, empathy and compassion.

Breheny, 38 N.Y.3d at 626 (Wilson, J., dissenting).

This Court has the opportunity—and, Amicus submits, the obligation—to join this growing jurisprudential movement and to hold that the common law writ of habeas corpus is not categorically unavailable to autonomous, cognitively complex nonhuman animals like Mari and Vaigai.

CONCLUSION

For the foregoing reasons, Amicus respectfully urges this Court to reverse the ICA’s Summary Disposition Order, vacate the Circuit Court’s dismissal of the Petition, and remand to the Circuit Court with instructions to issue an order to show cause why Mari and Vaigai should not be released to an accredited elephant sanctuary.

Mari and Vaigai deserve their day in court. The scientific evidence of their autonomy and cognitive complexity is uncontroverted. The common law’s capacity for growth is established. The historical precedents for extending habeas to previously excluded beings are clear. And the moral imperative is urgent.

As Judge Rivera wrote:

A gilded cage is still a cage...

Her captivity is inherently unjust and inhumane. It is an affront to a civilized society, and every day she remains a captive—a spectacle for humans—we, too, are diminished.

Breheny, 38 N.Y.3d at 628, 642 (Rivera, J., dissenting).

This Court should not permit that diminishment to continue.

DATED: Bellingham, Washington, September 14, 2026.

ANIMAL LAW OFFICES, PLLC



Adam P. Karp, HSB No. 11576
Animal Law Offices, PLLC
Attorney for Amicus Curiae
The Animal Law Section
Los Angeles County Bar Association

CERTIFICATE OF SERVICE

I certify having served the foregoing brief upon Cheryl A. Nolan (attorney for Nonhuman Rights Project) and Daniel M. Gluck, Jacqueline Michelle de Leeuw Huang, and Patricia A.V. Sendao (attorneys for Honolulu Zoo, Department of Enterprise Services, Dita Holifield, and City and County of Honolulu) by JEFS on 9.14.26.

Submitted this September 14, 2026.

ANIMAL LAW OFFICES, PLLC



Adam P. Karp, HSB No. 11576
Animal Law Offices, PLLC
Attorney for Amicus Curiae
The Animal Law Section
Los Angeles County Bar Association