

IN THE SUPREME COURT OF THE STATE OF HAWAII

**Electronically Filed
Supreme Court**

SCWC-24-0000323

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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)

**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)

**BRIEF OF *AMICUS CURIAE* EXPERTS ON ELEPHANT COGNITION IN SUPPORT
OF PETITIONER-APPELLANT**

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I. INTRODUCTION

Elephants have exceptionally large brains, long lives, sophisticated cognition, complex short and long-distance communication systems, distinct personalities, enduring family relationships, and a demonstrated capacity for empathy, self-awareness, memory, and contemplation. They are autonomous, socially complex, long-distance foragers who have evolved to move through expansive and ecologically varied landscapes. Far from incidental to their well-being, these qualities are precisely what makes confinement in a small, monotonous, and socially restricted zoo environment so harmful to elephants.

The physical harms experienced by captive elephants are familiar and well-documented: foot disease, gait abnormalities, osteoarthritis, obesity, skin and tusk injuries, gastrointestinal disease, infectious disease, and reproduction dysfunction. The corresponding harms to the brain are less visible, but no less serious. A damaged brain is at least as consequential as a damaged knee, and in captive elephants, neural distress often becomes visible through stereotypical behaviors—invariant, repetitive movements such as swaying, rocking, or bobbing that have no apparent goal and are never observed in free-ranging elephants. Those movements do not mean an elephant is “dancing,” as is often suggested by zoo-going laypersons, and they are certainly not evidence of contentment. Stereotypies are outward signs of dysregulated motor control systems attempting to cope with chronic stress and environmental impoverishment.

The scientific literature supports a straightforward conclusion: the captive environment places elephants at substantial risk of physical and psychological damage and dysregulation. Chronic stress alters the neural systems responsible for cognition, emotion, memory, motivation, and movement. Environmental impoverishment disrupts neurotransmitter systems and gene expression, reduces neurotrophic support, impairs neurogenesis and neuroplasticity, diminishes

the complexity and efficiency of neuronal connections, and compromises the cerebral cortex. Captivity also suppresses immune function and increases vulnerability to disease. The result is compromised physical, psychological, and neural well-being.

Zoos may offer “enrichment,” but enrichment cannot supply the scale, ecological diversity, social complexity, sensory stimulation, foraging opportunities, and meaningful choice that elephants have evolved to require. Purported enrichment is an attempted—and failed—treatment for deprivation created by the captive environment, not a cure for that environment. Accredited elephant sanctuaries remain a form of managed care, but they are designed around the multifaceted needs of elephants rather than around public exhibition. They can provide elephants with far more space, natural substrates and vegetation, compatible social opportunities, and, most importantly, the ability to exercise their autonomous nature.

The scientific evidence concerning elephants submitted in this case is uncontroverted and beyond reasonable dispute. That evidence establishes a present-day reality the common law of Hawai‘i cannot ignore: elephants are autonomous and extraordinarily cognitively complex beings with a profound interest in exercising the capacities that define their lives as elephants. Amici therefore urge this Court to recognize that Mari and Vaigai are autonomous, which is the foundation of the common law right to bodily liberty; recognize that Mari and Vaigai possess that right; and remand to the Circuit Court to determine whether their confinement at the Honolulu Zoo violates that right. If it does, Mari and Vaigai should be relocated as quickly as practicality will allow to an accredited elephant sanctuary.

If Respondents legitimately intend to contest the evidence establishing elephant autonomy, that purported dispute only confirms the need for an evidentiary hearing rather than a threshold

dismissal. Accordingly, in the alternative, Amici respectfully urge this Court to reverse and remand with instructions to issue an order to show cause and conduct an appropriate evidentiary hearing.

II. INTEREST OF *AMICI CURIAE*

All Amici contributed to the recent peer-reviewed publication *Putative Neural Consequences of Captivity for Elephants and Cetaceans*, which examines the harmful neurological effects of impoverished captive environments on large-brained mammals.¹

Amici submit this brief to supplement the evidentiary record already before the Court and to demonstrate that independent scientific research continues to support reexamining which beings may possess the common law right to bodily liberty protected by habeas corpus. At a minimum, the scientific evidence warrants this Court's consideration of whether elephant autonomy is a fact properly subject to judicial notice.²

Lori Marino, Ph.D.

Dr. Marino is a neuroscientist and internationally recognized expert in nonhuman animal behavior and intelligence. She is an Adjunct faculty member in the Animal Studies Program at New York University, the Co-Founder and President of the Whale Sanctuary Project, Founder and Executive Director of the Kimmela Center for Animal Advocacy, and Co-Director of the Animal

¹ See generally Bob Jacobs et al., *Putative Neural Consequences of Captivity for Elephants and Cetaceans*, 33 REV. NEUROSCI. 439 (2022): <https://tinyurl.com/rx6k9v9x>.

² In Hawai'i a "judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." HRS § 626-1, Rule 201. In *Rowley v. City of New Bedford, Massachusetts*, the United States District Court for the District of Massachusetts took judicial notice of facts concerning Asian elephants' physical characteristics, sense of smell, vocal modulation, cognitive complexity, social relationships, and understanding of death, including that "elephants often seem philosophical and perceptive, and appear to have deep feelings." 413 F.Supp.3d 53, 55 (D. Mass. 2019) (citing Vicki Constantine Croke, *Elephant Company: The Inspiring Story of an Unlikely Hero and the Animals Who Helped Him Save Lives in World War II* 22-23 (Random House 2014)).

Law and Science Project at George Washington University. She received her Ph.D. in biopsychology and has published more than 150 peer-reviewed scientific papers, books, chapters, and articles on comparative brain anatomy, cognition, self-awareness, intelligence, human-animal relationships, and the effects of captivity.

Bob Jacobs, Ph.D.

Dr. Jacobs is a neuroscientist and comparative neuroanatomist whose research examines how the environment affects brain structure. He is Professor Emeritus of Neuroscience at Colorado College, where he taught for decades and founded the neuroscience major. Over a career spanning nearly forty years, Dr. Jacobs has mapped the human cerebral cortex and conducted comparative neuroanatomical research involving numerous nonhuman species, including elephants, cetaceans, big cats, and primates, among others. He has published approximately 50 peer-reviewed papers and is one of the seven original declarants in this case.

Catherine Doyle, M.S.

Ms. Doyle is the Director of Science, Research and Public Policy for the Performing Animal Welfare Society (“PAWS”). PAWS operates the 2,300-acre ARK 2000 sanctuary in Northern California, which provides lifetime care for elephants and other captive wild animals and is only open to the public on a hyper-limited basis. Ms. Doyle received her Master of Science in Anthrozoology from Canisius College and has worked in captive-elephant welfare and advocacy for more than two decades. Her work, including published book chapters and peer-reviewed articles, addresses elephant welfare, public policy, the distinction between facilities designed for exhibition and authentic sanctuaries designed to serve the nonhuman animal’s interests, and the ethics of elephant captivity. She has appeared at government hearings, on television, on radio, and

in print, and has lectured on elephants in captivity and the conservation of threatened and endangered species.

Lester O'Brien

Mr. O'Brien is the Director of Palladium Elephant Consulting, Inc., and a former elephant manager at a large Canadian zoological institution. He began his career as a zookeeper and spent approximately two decades working within zoo elephant-management systems before turning his attention to the welfare and conservation of elephants in both captive and free-ranging settings. He has worked with, and learned from, leading elephant scientists and field researchers, and his professional experience includes elephant behavior, husbandry, facility practices, keeper safety, and the marked differences between zoo-managed lives and the lives of free-ranging elephants. Having worked extensively with elephants both within and beyond the zoo industry, Mr. O'Brien has concluded that captive environments cannot adequately meet elephants' complex physical, social, and behavioral needs.

III. ARGUMENT

A. Captivity Compromises the Physical, Psychological, and Neural Well-Being of Elephants.

The relevant question is not whether a zoo can keep an elephant alive, but what confinement does to a nonhuman animal whose neural systems developed under radically different conditions. Free-ranging elephants regulate their lives through continual movement, exploration, foraging, selective social relationships, and decisions about where to go and with whom to associate. Their use of individual vocal sounds, functionally akin to human names, further illustrates the sophistication and individuality of their social lives.³ Zoo confinement sharply

³ See Michael A. Pardo et al., *African Elephants Address One Another with Individually Specific Name-Like Calls*, 8 NATURE ECOLOGY & EVOLUTION 1353, 1353–64 (2024),

restricts these activities and transfers control over space, companions, schedules, and stimulation from the elephant to human managers.

The resulting harm arises not from any single enclosure or management practice, but from the cumulative deprivation inherent in a life characterized by restricted movement, limited choice, environmental predictability, and dependence on human-controlled routines. Chronic exposure to those conditions can dysregulate the neural systems responsible for emotion, memory, motivation, and movement. Stereotypical behaviors such as swaying, rocking, and head bobbing provide visible evidence of that dysregulation. These behaviors are not observed in free-ranging elephants and should not be mistaken for harmless habits or signs of contentment. They demonstrate that an environment may satisfy an elephant's most basic requirements for survival while nevertheless significantly compromising his/her psychological and neurological well-being.

Zoo "enrichment" cannot correct this structural problem. A feeding device, novel objects such as tires, or scheduled activity may briefly interrupt monotony, but these do not restore an elephant's control over his/her movement, relationships, surroundings, or daily life. Humans still decide what is provided, when it is provided, and when it is removed. Enrichment therefore cannot reproduce the continuing novelty, complexity, and meaningful choice available to free-ranging elephants. The scientific question is not whether a zoo can make captivity (somewhat) less impoverished, but whether an environment defined by confinement and human control can satisfy the needs of an autonomous, cognitively complex elephant. The available scientific evidence demonstrates that it cannot.

B. The Institutional Purposes Asserted by Zoos Do Not Eliminate the Harms of Captivity.

<https://tinyurl.com/mw9t6b3k>; see also Jayme DeLoss, *Elephants Have Names for Each Other Like People Do, New Study Shows*, Warner College of Natural Resources at Colorado State University (June 10, 2024): <https://tinyurl.com/4a3hybfm>.

Claims that zoos advance conservation or public education are generally unsupported by quantitative data and ultimately do not alleviate the harms that confinement does to the individual elephant.⁴ Put differently, the often-repeated claim made by zoos that having elephants in captivity is a form of conservation is false.⁵ However, even if those institutional purposes are accepted for

⁴ Speaking of quantitative data, Amici respectfully urge this Court to consider a recent study conducted by Born Free at the Honolulu Zoo, which underscores the ever-increasing body of evidence that zoos fail to fulfill their purported central justifications of educating the public about nonhuman animals or inspiring visitors to become conservationists themselves:

Our zoo visitor observations data revealed that, across all the animal exhibits we closely observed including the rhinos, elephants, orangutans, cheetahs, and lions, visitors spent an average of just 52 seconds at each exhibit, with the least amount of time being 21 seconds, and the longest amount of time being one minute and 50 seconds. At the rhino and elephant enclosures, no visitors spent longer than one minute at either of these exhibits. From these results, we wonder: how much visitor education can truly occur when most of the visitors spend less than 60 seconds looking at the animals and zoo signage?

Born Free USA, *Honolulu Zoo Investigation* 25 (July 2026): <https://tinyurl.com/yrz3xf9j>. Writer Emma Marris previously reached a similar conclusion:

The researchers also spied on hundreds of visitors' conversations at the Bronx Zoo, the Brookfield Zoo outside Chicago and the Cleveland Metroparks Zoo. They found that only 27 percent of people bothered to read the signs at exhibits. More than 6,000 comments made by the visitors were recorded, nearly half of which were "purely descriptive statements that asserted a fact about the exhibit or the animal." The researchers wrote, "In all the statements collected, no one volunteered information that would lead us to believe that they had an intention to advocate for protection of the animal or an intention to change their own behavior." People don't go to zoos to learn about the biodiversity crisis or how they can help. They go to get out of the house, to get their children some fresh air, to see interesting animals. They go for the same reason people went to zoos in the 19th century: to be entertained.

Emma Marris, *Modern Zoos Are Not Worth the Moral Cost*, N.Y. TIMES (June 11, 2021): <https://www.nytimes.com/2021/06/11/opinion/zoos-animal-cruelty.html>.

⁵ We know this is a false statement for two simple reasons: (1) no American zoo has ever released an elephant into the wild, and (2) zoo populations of elephants are not self-sustaining and thus constantly require importation of elephants. It's worth mentioning, one does not need to have

the sake of argument, they do not alter elephant biology, reduce the neurological consequences of chronic deprivation, or supply the autonomy that a human-controlled environment removes. A zoo's asserted purpose cannot make an impoverished environment adequate for the nonhuman animal required to live in it.

Public exhibition also presents a distorted picture of the species the zoo purports to present for educational purposes. Visitors observe an elephant responding to increasingly restricted space, fixed routines, and relationships selected by humans. What zoo enclosures do not present are elephants navigating a complex landscape and choosing how to organize their lives. Whatever broader value Respondents attribute to the Honolulu Zoo, that value does not resolve whether confining Mari and Vaigai is consistent with their individual interests in bodily liberty.

C. Authentic Sanctuaries Offer a More Appropriate Alternative.

Because elephants who have lived in captivity generally lack the skills necessary to survive independently in the wild, returning Mari and Vaigai to their natural habitat is not necessarily a realistic option.⁶ Relocation to an accredited elephant sanctuary is. Although sanctuaries remain a form of managed care, authentic sanctuaries are designed around the needs of elephants rather than the demands of public exhibition. They can provide substantially more space, natural substrates and vegetation, compatible social opportunities, and greater freedom to decide where to move, what to investigate, and with whom to associate.

captive elephants in order to conserve elephants in the wild. Moreover, removing elephants from their natural habitat and placing them in zoos has negative environmental consequences because elephants are a keystone species who play a crucial functional role in their ecosystem.

⁶ Amici qualify this statement with “not necessarily” because they are aware that the Nonhuman Rights Project has, in cases filed after this one, been working with Declarant Brett Mitchell who runs the Elephant Reintegration Trust. If Mr. Mitchell is willing to evaluate Mari and Vaigai for rewilding, Amici urge this Court, or another, to afford him that opportunity.

No sanctuary can fully recreate the wild, but it can offer Mari and Vaigai a materially more appropriate life: grasslands crossed by butterflies, the cool mud of wetlands, natural sounds and smells, the distant call of another elephant, and the freedom to choose where to go. The critical distinction is not the complete absence of human care, but the restoration of meaningful choice. Rather than requiring Mari and Vaigai to remain in an environment that restricts the exercise of their autonomy, relocation would permit them to experience more fully what it means to live as elephants.

D. The Court Should Take Judicial Notice of Elephant Autonomy, Recognize Mari and Vaigai's Right to Bodily Liberty, or, at Minimum, Order an Evidentiary Hearing.

Elephant autonomy is a scientifically grounded capacity, not an abstract characterization. It describes the ability and the motivation to make meaningful choices about movement, social relationships, foraging, and other aspects of daily life. Because autonomy is the foundation of the common law right to bodily liberty, the Petition's evidence establishing elephant autonomy also establishes a prima facie case for relief. At this stage, that showing requires the Court to direct issuance of an order to show cause and allow the Circuit Court to consider, on a full evidentiary record, whether Hawai'i's common law should evolve as a matter of liberty, equality, and science to recognize Mari and Vaigai possess the common law right to bodily liberty.

If Respondents do not intend to challenge the science establishing elephant autonomy, as they would be wise not to do, this Court may take judicial notice of Mari and Vaigai's autonomous nature and recognize their right to bodily liberty as a matter of law. The Court should then remand with instructions to issue an order to show cause and conduct an evidentiary hearing solely to determine whether Mari and Vaigai's confinement at the Honolulu Zoo violates that right.

IV. CONCLUSION

The scientific evidence establishes that elephants are autonomous, extraordinarily cognitively complex individuals whose physical, psychological, and neural well-being depends on movement across vast and varied landscapes, sophisticated social interactions, foraging encompassing dozens of behavioral modalities, and meaningful choice. Neither the ad-hoc enrichment nor the institutional purposes asserted by zoos can eliminate the deprivation inherent in an environment defined by confinement and human control. Because the science of elephant autonomy cannot be legitimately challenged, Amici respectfully urge this Court to recognize that Mari and Vaigai possess the common law right to bodily liberty and remand with instructions to issue an order to show cause for a determination as to whether their confinement at the Honolulu Zoo violates that right. Alternatively, the Court should reverse and remand with instructions to issue an order to show cause and allow an evidentiary hearing to proceed to determine if Mari and Vaigai possess the asserted right.

Amici file this brief in their individual capacity. Institutional affiliations are included for identification purposes. Views expressed should not be regarded as the position of their respective institutional affiliations.

Lori Marino, Ph.D.

Founder and Executive Director, Kimmela Center for Animal Advocacy
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Bob Jacobs, Ph.D.

Professor Emeritus of Neuroscience, Colorado College

Catherine Doyle, M.S.

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Lester O'Brien

Director, Palladium Elephant Consulting, Inc.

Amici respectfully request that this Court reverse the Intermediate Court of Appeals and recognize Mari and Vaigai possess the common law right to bodily liberty protected by habeas corpus and are allowed to move forward to challenge the legality of their confinement at the Honolulu Zoo.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the EXPERTS ON ELEPHANT COGNITION
AMICUS CURIAE BRIEF was served upon all parties, through their respective counsel of
record, via electronic filing (JEFS) on September 17, 2026.

DATED: Honolulu, Hawai‘i, this 17th day of September, 2026.

/s/ James Akira Honda

James Akira Honda, Esq.
Attorney for *Amicus Curiae*
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