

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

NONHUMAN RIGHTS PROJECT, INC.,

Plaintiff-Appellant.

Supreme Court No. 169351

Court of Appeals No. 369247

v

Menominee Circuit Court

LC No. 23-17621-AH

DEYOUNG FAMILY ZOO, LLC and
HAROLD L. DEYOUNG,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S
MOTION TO FILE PROPOSED REPLY BRIEF IN SUPPORT OF MOTION FOR
RECONSIDERATION

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Counsel for Plaintiff-Appellant, Nonhuman Rights Project, Inc. (“NhRP”), states as follows in support of its request for leave to file the attached proposed reply brief in support of its Motion for Reconsideration:

1. On August 24, 2026, Defendants-Appellees filed their response to the Motion for Reconsideration, which had requested this Court to grant reconsideration of its July 17, 2026 order denying NhRP’s Application for Leave to Appeal. The Application sought leave to appeal the published opinion of *Nonhuman Rights Project, Inc v DeYoung Family Zoo, LLC*, No. 369247, 2025 WL 2957821 (Mich Ct App October 17, 2025).
2. Defendants-Appellees’ response advanced legal and factual contentions that were not part of the Court of Appeals’ opinion, and therefore were not addressed in the Motion for Reconsideration.
3. Leave is requested to file the proposed reply brief to address two of those contentions: First, that the relief sought in this case—relocation of the chimpanzees at the DeYoung Family Zoo to an accredited sanctuary—is not proper habeas corpus relief. Second, that Blackstone’s theological concept of “despotic dominion” is supported by the notion that chimpanzees inherently lack self-determination and their interests cannot be discerned by humans.
4. The proposed reply brief is 2,767 words. Its consideration will assist the Court in resolving the Motion for Reconsideration.

WHEREFORE, Plaintiff-Appellant respectfully requests that this Honorable Court grant NhRP’s motion to file the proposed reply brief in support of its Motion for Reconsideration.

Respectfully submitted,

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Dated: September 8, 2026

Exhibit A

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Menominee Circuit Court

LC No. 23-17621-AH

DEYOUNG FAMILY ZOO, LLC and
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PLAINTIFF-APPELLANT'S PROPOSED REPLY BRIEF IN SUPPORT OF
MOTION FOR RECONSIDERATION

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In support of its Motion for Reconsideration, Plaintiff-Appellant Nonhuman Rights Project, Inc. (“NhRP”) respectfully submits this reply brief to address Defendants-Appellees’ response. This reply focuses on two of their erroneous contentions.¹ First, that the relief sought in this case—relocation of the chimpanzees at the DeYoung Family Zoo (“DeYoung Prisoners”) to an accredited sanctuary—is not proper habeas corpus relief. Second, that Blackstone’s theological concept of “despotic dominion” is supported by the notion that chimpanzees inherently lack self-determination and their interests cannot be discerned by humans.

A. The Great Writ can be used to seek relief short of absolute freedom.

Defendants-Appellees claim habeas relief is unavailable because the DeYoung Prisoners “will *never be* . . . free”; the chimpanzees “will remain confined and dependent on humans for their basic needs for the rest of their lives.” Resp. at 2. According to Defendants-Appellees, because these chimpanzees cannot be freed from all confinement—lacking the necessary survival skills to live in the wild—habeas corpus cannot be used to remedy the harm of their present confinement by relocating them to an accredited sanctuary. *Id.* This argument fails for two reasons.

First, the Court of Appeals did not rely on this argument, and it is therefore irrelevant to whether this Court should reconsider its July 17, 2026 denial order.

Second, the argument is based on a fundamental misunderstanding of habeas relief. The Great Writ is not, contrary to Defendants-Appellees, limited to situations where a prisoner seeks absolute freedom from all confinement. *See generally* Complaint ¶¶ 307–10 (citing cases). This is evident from the language in Michigan’s habeas statute: “If no legal cause is shown for the restraint, or for the continuation thereof, the court or judge shall discharge the person restrained *from the restraint under which he is held.*” MCL 600.4352(1) (emphasis added). In other words, habeas corpus targets liberty restraints that are illegal, and freeing a prisoner from an illegal restraint does not necessarily mean freeing the prisoner from all possible restraints.² *See, e.g., Goodchild v Foster*, 51 Mich 599, 600 (1883) (children illegally committed to state public school “were properly restored” to their mother on latter’s habeas corpus petition); *In re Kemmerer*, 309

¹ This reply does not address Defendants-Appellees’ other irrelevances and erroneous—often incoherent—contentions, which are all red herrings.

² The Complaint established a *prima facie* case that the DeYoung Prisoners, because they are plausibly “persons” who can invoke the Great Writ, are being illegally imprisoned in violation of their common law right to bodily liberty. Application for Leave to Appeal, pp. 22–25.

Mich 313, 317 (1944) (prisoner with “uncontrollable habit of committing sex offenses” is “unfit to enter society,” but is entitled to receive proper care; “[i]f he is not receiving it and is suffering any unusual punishment, he can always present a petition for habeas corpus”).

The Great Writ has long been recognized as “an adaptable remedy,” one whose “precise application and scope [at common law] changed depending upon the circumstances.” *Boumediene v Bush*, 553 US 723, 779 (2008). This flexibility permits Michigan courts to fashion appropriate relief for the DeYoung Prisoners, by ordering their relocation to a specialized facility where the chimpanzees can live as autonomous beings to the greatest extent possible. *See Nonhuman Rights Project, Inc v Breheny*, 38 NY3d 555, 640 (2022) (Rivera, J., dissenting) (“the writ is flexible and has been applied innovatively by courts to achieve a just and workable outcome,” and thus it “allows for consideration of the proper conditions of a release when, as here, the captive is a nonhuman animal and cannot live as a free being within human society”).

B. The scientific evidence establishing the autonomous nature of chimpanzees eliminates any possible justification for relying on Blackstone’s theological concept of “despotic dominion.”

One of the Court of Appeals’ central errors was its reliance on Blackstone’s “despotic dominion” concept of property, which serves as the foundation for justifying the DeYoung Prisoners’ ineligibility for habeas relief. Mot. Recons. ¶¶ 12–18. Defendants-Appellees agree with the court below, writing: “Despotic Dominion is the Foundation of this Case.” Resp. at 2. In defending this theological concept, they attempt to place it on a non-theological footing, via an assertion that chimpanzees “inherently lack self-determination” and their interests cannot be discerned by humans. *Id.* at 7. Defendants-Appellees therefore attempt to deny, by mere assertion, what science has established: that “chimpanzees possess autonomy, self-determination, and numerous advanced cognitive abilities,” *Nonhuman Rights Project, Inc v Deyoung Family Zoo, LLC*, 37 NW3d 109, 110 (Mich 2026) (Welch, J., dissenting), and these are beings who “can think, feel, love, grieve, and yearn.” *Id.* at 114.

After decades of scientific research, primatologists have gained a robust understanding of chimpanzees’ autonomous nature—including their complex abilities and needs. Application for Leave to Appeal, pp. 9–17. That understanding disproves Defendants-Appellees’ anti-scientific contention, and is reflected in the affidavits and declarations supporting the Complaint. Excerpts from those submissions—from six world-renowned experts on chimpanzee cognition and

behavior—are reproduced below to demonstrate that, in fact, chimpanzees possess self-determination and humans can discern their interests.³

- Declaration of the late Dr. Jane Goodall⁴:

15. During this period of continuous study [in Gombe National Park] my colleagues and I have learned much of enormous significance about chimpanzee behaviour, their personalities, intelligence and emotions. Theirs is a highly complex society. Their life in the wild provides them with a continually changing environment, both socially and physically, and they are confronted by many challenges, including finding food and maintaining or improving their position in their community[.]

16. There is ample proof from studies of chimpanzee behavior, both in the wild and in captivity, that chimpanzees are autonomous beings with a highly complex cognitive nature, which can be illustrated by their ability to perform complex tasks.

- Declaration of Dr. William McGrew⁵:

22. [...] [C]ulture is a set of behaviors transmitted by observational learning, which becomes characteristic of a group or population, resulting in societal traditions. Culture is a hallmark of higher intelligence, based on several complex cognitive capacities: Imitation (direct mimicking of bodily actions), emulation (attending to the results of another's actions, then achieving results in an alternative, often better, way), and innovation (inventing new techniques of doing things, often by combining elements). Chimpanzees show all these abilities (McGrew).

39. Based on my 40 years (1972-2012) of observing wild chimpanzees, I believe that chimpanzees understand and carry out duties and responsibilities to their peers. They knowingly assume obligations and honor them.

40. The rich and complex life of chimpanzees in the wild is not possible in captivity, but efforts can be made to offer captive apes as much opportunity as possible to live good and happy lives (Pruetz & McGrew 2001). Anything short of that entails misery, even in the best zoos (Birkett & Newton-Fisher 2011). Captive facilities and practices vary immensely, but the best conditions are found in sanctuaries, which are basically retirement homes (Feliu et al. 2022). No chimpanzee should be kept otherwise.

³ Petitioner-Appellant's Appendix of Exhibits to Brief on Appeal (04/23/2024), Exhibits 1–6, MCOA Appx. 133a–478a. Available at: <https://www.nonhumanrights.org/wp-content/uploads/2026/09/Michigan-Appendix-Filed-version.pdf>

⁴ MCOA Appx. 137a.

⁵ MCOA Appx. 182a–83a, 189a.

- Affidavit of Dr. Jennifer Fugate⁶:

12. [...] The accumulation of evidence suggests that the emotional systems of chimpanzees may have become specialized to cope with the increasing demands of complex social organization and more elaborate relationships. During social interactions, chimpanzees exchange emotional information mainly through vocalizations, facial expressions, gestures, and bodily postures (see Kret et al., 2020 for a review), and the ability to exchange such information reveals the highly cognitively complex and autonomous nature of chimpanzees.

- Declaration of Dr. Tetsuro Matsuzawa⁷:

20. [...] There is abundant and robust evidence that chimpanzees possess a sense of self, as they have repeatedly demonstrated the ability to recognize themselves in mirrors (Gallup, 1970; Povinelli et al., 1993) and show several capacities that stem from being self-aware, such as metacognition, that is, the ability to think about and reflect upon one's thoughts and memories (Beran et al., 2013; Call, 2010; Call and Carpenter, 2001).

32. Chimpanzees are autonomous and highly cognitively complex beings, possessing complex physical, psychological, and social needs. When held in captivity, chimpanzees must be kept in a suitable environment that can meet their complex needs, including [freedom to socialize, freedom to move, and freedom to forage] [.]

33. The failure to meet these essential needs of chimpanzees [freedom to socialize, freedom to move, and freedom to forage] causes them to suffer physically and psychologically.

- Declaration of the late Dr. Christophe Boesch⁸:

12. The scientific work on chimpanzees over the past decades shows they are an especially sophisticated species, sharing a surprisingly number of psychological attributes with human beings. The limitless inventiveness of their behavior and ability to adapt to different environments, ranging from dense rainforest to open mosaic savannas, is nothing short of astonishing.

14. [...] In light of their autonomous nature, confining chimpanzees in non-species specific living conditions is devastating to their physical and psychological well-being.

⁶ MCOA Appx. 234a–35a.

⁷ MCOA Appx. 266a, 274a, 275a.

⁸ MCOA Appx. 328a, 329a, 332a–33a.

16. A wealth of experimental evidence shows that chimpanzees plan for the future. For instance, in a sequential numbering task it was found that their performance was only explainable if the chimpanzees were planning their responses one step ahead (Beran et al., 2004). . . . In [one] study, a male chimpanzee in a zoo collected and stowed away sharp stones in his display area for use as projectiles thrown at visitors (Osvath, 2009). The chimpanzee also engaged in deceptive behavior by stashing the stones in a “calm manner” so as not to be noticed (Osvath and Karvonen, 2012). Therefore, chimpanzees are not only able to mentally prepare for an upcoming event and alter the future but they are able to use intentional deception in the process.

23. [...] Years of independent observations of wild chimpanzees in the Taï forest and elsewhere in Africa lead to the conclusion that chimpanzees realize dead individuals do not move and do not need help anymore, and that they will remain in that state. Once they come to this realization they enact behaviors which can be described as mournful, respectful, and almost-ritualistic (Boesch, 2012; Goodall, 1986).

- Affidavit of Dr. Mary Lee Jensvold⁹:

12. Chimpanzees in captive environments who are unable to exercise their autonomy can suffer severe physical and psychological harm, including stereotypical and abnormal behaviors, aberrant self-directed behaviors (such as self-manipulation, self-scratching, self-grasping, and self-injurious behavior), increased aggression, decreased exploration, low dominance rank, and reduced or abnormal sexual behaviors.

24. Imagination is a key component of mental representation (the ability to represent an object or concept in one’s mind), metacognition (the ability to reflect upon one’s own thoughts), and the ability to mentally create other realities. There are several reports of imaginary play in captive chimpanzees (Bodamer et al., 1994; Fouts et al., 1991; Gardner and Gardner, 1969; Hayes, 1952; Jensvold & Fouts, 1993), . . . and wild chimpanzees (Goodall, 1986; Hayaki, 1985). . . . A compelling observation from a chimpanzee field researcher (Wrangham, 2022) is of an 8-year-old (childhood age) chimpanzee carrying a log like a doll; the chimpanzee carried the log on his back like chimpanzee mothers carry their babies, played tickle games with it like chimpanzee mothers do with their babies, and placed it in a little nest that he made in the trees.

50. Because chimpanzees are physically and psychologically complex, their care in captivity requires a sound knowledge of the species and standards of care.

⁹ MCOA Appx. 402a, 409a–10a, 421a, 422a, 424a, 427a–28a.

52. Davenport (1979) found that chimpanzees reared in environmentally deprived conditions exhibited many behavioral abnormalities and problems not exhibited by chimpanzees reared by their mothers. The deprived chimpanzees typically developed stereotypies (abnormal, repetitive, seemingly meaningless behaviors) such as rocking and head banging. Chimpanzees who were reared in a deprived environment for 2-2.5 years had deficits that lasted a lifetime.

57. As autonomous beings, free-living chimpanzees lead a cognitively and socially rich stimulating life that requires them to engage in constant problem-solving, tool making, and tool use (Sanz & Morgan; Whiten et al., 1999). . . . Therefore, a lack of stimulation in the social realm and object/physical realm presents a risk of harm to captive chimpanzees.

65. Chimpanzees are an arboreal species, meaning they live off the ground and are natural climbers. They live in the forest and walk on the ground, but spend more time in the trees. They build nests in the trees at night and sometimes during the day (Goodall, 1986). Research on captive chimpanzees shows they prefer to spend time off the ground in captivity (Jensvold, Sanz, Fouts & Fouts, 2001; Goff, Howell, Fritz & Nankivell, 1994; Traylor-Holzer & Fritz, 1985; Tecot, et al.; Ross, Calcutt, Schapiro & Hau, 2011). This means they need adequate structures and surfaces to allow for that species-typical behavior. When such furnishings and conditions are lacking, the captive chimpanzee will likely suffer physiological harm.

66. In order to provide opportunities for climbing in captivity, enclosures need to include various types of structures, hoses, ropes, and hammocks that create places and pathways above the ground. There should be sufficient and adequate resting ledges and platforms to allow chimpanzees to comfortably recline and sit in these places. There also should be climbable surfaces, such as sturdy fencing, and furniture or catwalks so they can access height by clinging, climbing, and hanging (Jensvold et al., 2001; Sanz et al., 1999; GFAS 2022)[.] GFAS recommends heights of 20 ft. for outdoor enclosures if they have a closed top, and 15 ft for indoor. Chimpanzees spend 10-20% of their time traveling, so they need adequate opportunities to move around both on and off the ground (Doran & Hunt, 1994). All the chimpanzees I have known build night and day nests in tunnels or resting platforms off the ground. That is where they prefer to be and this allows for adequate rest and restful sleep. Sleep is important for good physiological and mental health.

67. [...] Even the largest chimpanzee enclosures are a small fraction of the size of chimpanzee home ranges (Ross & Shender, 2016). GFAS sanctuaries have a variety of enclosures usually larger than zoos. (Fultz et al., 2023). Some include multi-acre outdoor enclosures (e.g., Chimp Haven, Chimpanzee Sanctuary Northwest, Project Chimps) while other have features such as elevated chutes (e.g., Center for Great Apes, Fauna Foundation) and others have islands (e.g., Save the Chimps, Fauna Foundation). When a group of chimpanzees in a sanctuary moved from a 27.87 m²

(200 sq. ft.) to a 587m² (7000 sq. ft.) facility, travel behavior nearly doubled (Jensvold et al., 2001). Additionally, two of the chimpanzees gained notable strength and agility one year after the move (Jensvold & Fouts, 1994). This points to the significance of a large and varied space for chimpanzees and the relationship of space to exercise.

These excerpts represent a fraction of the rich body of evidence presented in this case demonstrating what we now know about humankind’s closest living relative: “that chimpanzees are remarkably intelligent, that they are self-aware, that they plan for the future, that they exhibit empathy and compassion toward other living beings, and that they grieve the loss of loved ones.” *Deyoung Family Zoo, LLC*, 37 N.W.3d at 110 (Welch, J., dissenting). *See also Nonhuman Rights Project, Inc. on Behalf of Tommy v Lavery*, 31 NY3d 1054, 1058 (2018) (Fahey, J., concurring) (recognizing, based on evidence from eminent primatologists, “that chimpanzees have advanced cognitive abilities, including being able to remember the past and plan for the future, the capacities of self-awareness and self-control, and the ability to communicate through sign language”). Defendants-Appellees’ denial of this scientific reality is absurd.¹⁰

Accordingly, there is no justification for grounding Michigan common law upon “an eighteenth-century British jurist’s interpretation of the Book of Genesis[.]” *Deyoung Family Zoo, LLC*, 37 N.W.3d at 113 (Welch, J., dissenting). Courts cannot legitimately rely on scripture for their rulings as explained in the Motion for Reconsideration, and the scientific evidence establishing the autonomous nature of chimpanzees eliminates any possible rationale for such reliance here.

¹⁰ Their denial is the modern restatement of Blackstone’s archaic views, who described nonhuman animals as “creatures that have neither the power to think, nor to will,” in contrast his description of “man”: “the noblest of all sublunary beings, a creature endowed with both reason and freewill[.]” 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 39 (Oxford Edition).

C. Conclusion

For the foregoing reasons, Defendants-Appellees' contentions must be rejected. Plaintiff-Appellant respectfully requests that its Motion for Reconsideration be granted.

Respectfully submitted,

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Dated: September 8, 2026

CERTIFICATE OF COMPLIANCE

I certify that this reply brief complies with the word limitation and format requirements set forth in MCR 7.212(B)(1) and (5). According to the word-processing system used to produce this document, there are 2,767 words in this brief.

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