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Supreme Court
SCWC-24-0000323
09-OCT-2026
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Dkt. 98 EXH

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/Petitioner-Appellant,

v.

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

Respondents/Respondents-Appellees.

CERTIORARI TO THE INTERMEDIATE
COURT OF APPEALS

No. CAAP-24-0000323

Summary Disposition Order: January 28,
2026

Judgment on Appeal: February 26, 2026

ICA judges: Keith K. Hiraoka (Presiding);
Clyde J. Wadsworth; Kimberly T. Guidry

Circuit Court of the First Circuit

No. 1CCV-23-0001418

Judge: Gary W.B. Chang

**BRIEF OF AMICUS CURIAE
ASSOCIATION OF ZOOS AND AQUARIUMS
IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF AMICUS CURIAE	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. A rare Hawaiian bird offers a cautionary tale about Petitioner’s test.	3
A. Nothing in Petitioner’s test excludes the ‘alalā.....	4
B. The ‘alalā exists today only because it was maintained in confinement.	5
C. Petitioner’s test, and the position its amici urge, would turn that confinement into a legal wrong.....	6
II. Petitioner’s claim conflicts with the statute it invokes.	7
A. Chapter 660 reaches people, not animals.....	8
1. A definition the Legislature enacted 11 years before the habeas act gives “person” a human meaning.	8
2. Chapter 660’s procedures presuppose a human prisoner, and the Legislature has drawn the same line elsewhere.	9
3. No common-law writ for animals ever existed, and the Legislature chose not to include animals in Chapter 660.	10
B. Petitioner seeks relief outside what the Legislature enacted.	13
1. Petitioner seeks transfer to a new custodian, not release.	13
2. Habeas reallocates custody only when a court has all claimants before it and a standard to apply.	14
3. Other bodies, not a habeas court, decide where an elephant may go.....	15
III. The Legislature, not a court, should decide whether to extend habeas to animals.	16
IV. Historical and philosophical considerations favor affirmance.....	17
A. Legal systems pair rights with duties.....	18
B. Hawai‘i law already supplies a remedy for a wrongfully detained animal, and that remedy is not habeas corpus.	18
C. Petitioner’s historical authorities do not help it.	19
CONCLUSION.....	20
APPENDIX A: Summary Disposition Order and Concurring Opinion	22

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Berkson v. LePome</i> , 126 Nev. 492, 245 P.3d 560 (2010)	11
<i>Brown v. Goto</i> , 16 Haw. 263 (Haw. Terr. 1904)	8, 11
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014)	18
<i>Chong v. Young</i> , 39 Haw. 527 (Haw. Terr. 1952)	19
<i>Eason v. State</i> , 157 Hawai‘i 252, 576 P.3d 765 (2025)	11, 12, 13
<i>Ex parte Hottentot Venus</i> , 104 Eng. Rep. 344 (K.B. 1810)	19, 20
<i>Gordon v. Maesaka-Hirata</i> , 143 Hawai‘i 335, 431 P.3d 708 (2018)	12
<i>Herring v. Gulick</i> , 5 Haw. 57 (Haw. Kingdom 1883)	10
<i>Hilo Bay Marina, LLC v. State</i> , 156 Hawai‘i 478, 575 P.3d 568 (2025)	16, 17
<i>Hutch v. State</i> , 107 Hawai‘i 411, 114 P.3d 917 (2005)	14, 15
<i>In re Application of Burns</i> , 49 Haw. 20, 407 P.2d 885 (1965)	15
<i>Kahawaiolaa v. Hawaiian Sun Invs., Inc.</i> , 146 Hawai‘i 424, 463 P.3d 1081 (2020)	18
<i>Miller v. Collins</i> , 158 Hawai‘i 435, 593 P.3d 374 (2026)	19
<i>Nonhuman Rts. Project, Inc. v. Breheny</i> , 38 N.Y.3d 555, 197 N.E.3d 921 (2022)	14, 18, 19
<i>Nonhuman Rts. Project, Inc. v. Cheyenne Mountain Zoological Soc’y</i> , 562 P.3d 63 (Colo. 2025)	13
<i>Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons, Inc.</i> , 192 Conn. App. 36, 216 A.3d 839 (2019)	18
<i>Oili v. Chang</i> , 57 Haw. 411, 557 P.2d 787 (1976)	12
<i>Preiser v. Rodriguez</i> , 411 U.S. 475 (1973)	15
<i>Priceline.com, Inc. v. Dir. of Tax’n</i> , 144 Hawai‘i 72, 436 P.3d 1155 (2019)	9, 11
<i>Somerset v. Stewart</i> , 98 Eng. Rep. 499 (K.B. 1772)	19, 20
<i>State v. Aiwohi</i> , 109 Hawai‘i 115, 123 P.3d 1210 (2005)	16
<i>State v. Bolosan</i> , 78 Hawai‘i 86, 890 P.2d 673 (1995)	13
<i>State v. Elliott</i> , 77 Hawai‘i 309, 884 P.2d 372 (1994)	13
<i>State v. LeVasseur</i> , 1 Haw. App. 19, 613 P.2d 1328 (1980)	10
<i>State v. Tolentino</i> , 158 Hawai‘i 321, 592 P.3d 209 (2026)	17
<i>TMJ Haw., Inc. v. Nippon Tr. Bank</i> , 113 Hawai‘i 373, 153 P.3d 444 (2007)	3, 16
<i>United States v. Mett</i> , 65 F.3d 1531 (9th Cir. 1995)	18

Constitutional Provisions

Haw. Const.

art. I, § 15	12, 13
art. VI, § 7	12
art. IX, § 10	17

Statutes and Session Laws

7 U.S.C. §§ 2131 et seq.....	16
------------------------------	----

16 U.S.C. §§ 1531 et seq.....	16
-------------------------------	----

Haw. Rev. Stat.

§ 1-1	11
§ 1-14	8
§ 1-19	2, 8, 9, 10, 18
§ 5-7.5(a).....	17
ch. 141.....	16
ch. 142.....	16, 17
ch. 150A.....	16
ch. 183D.....	17
§ 195D-5(f).....	5, 17
§ 378-69	11
§ 602-59	14
§ 654-1(a).....	18
ch. 660.....	<i>passim</i>
§ 660-3	8, 9, 11
§ 660-5	8, 9
§ 660-6	8, 9
§ 660-7	4, 8, 9, 14
§ 660-17	8, 9
§ 660-20	9
§ 660-24	9
§ 660-28	14
§ 660-29	8, 9, 13, 14
§ 660-30	9, 13, 14
§ 660-31	9, 13, 14
§ 660-32	10, 13, 14
§ 701-118	10
§ 711-1100	9, 17
§ 711-1108.5	17
§ 711-1109	17

1870 Haw. Sess. Laws 39	8
-------------------------------	---

Civil Code of 1859.....	2, 8
-------------------------	------

Rules and Regulations

9 C.F.R. pt. 3	16
Haw. Code R.	
ch. 4-29	16
§ 4-71-6.5	16, 17
Haw. R. Penal Proc. 40	12, 15

Other Authorities

<i>Black’s Law Dictionary</i> (12th ed. 2024).....	18
Eston Ellis, <i>Flying Free—Again</i> , S.D. Zoo Wildlife All. (Dec. 5, 2017), https://sandiegozoowildlifealliance.org/story-hub/zoonooz/flying-free-again	5
Serene Gunnison, <i>Voices of the Forest</i> , Haw. Mag. (Sep. 8, 2026), https://www.hawaiimagazine.com/maui-forest-bird-recovery-project/	6
Haw. Dep’t of Land & Nat. Res., ‘ <i>Alalā</i> , https://dlnr.hawaii.gov/wildlife/birds/alala/	4
Haw. Dep’t of Land & Nat. Res., ‘ <i>Alalā Project: Release</i> , https://dlnr.hawaii.gov/alalapproject/release/	5
Haw. Dep’t of Land & Nat. Res., News Release NR20-156, <i>Adaptation Is Key to Overcoming Challenges Faced in ‘Alalā Recovery Program</i> (Oct. 5, 2020), https://dlnr.hawaii.gov/blog/2020/10/05/nr20-156/	5, 6
Haw. Dep’t of Land & Nat. Res., News Release NR25-137, <i>Two ‘Alalā Added to Wild Flock on Maui</i> (Nov. 26, 2025), https://dlnr.hawaii.gov/blog/2025/11/26/nr25-137/	6
<i>Historic First Release of ‘Alalā on Maui</i> , Maui Now (Dec. 4, 2024), https://mauinow.com/2024/12/04/historic-first-release-of-%CA%BBalala-on-maui/	6
Barbara C. Klump et al., <i>Preliminary Observations of Tool-Processing Behaviour in Hawaiian Crows</i> <i>Corvus hawaiiensis</i> , 11 <i>Communicative & Integrative Biology</i> , art. no. e1509637 (2018)	4
Erin Nolan, <i>Hawai‘i’s Critically Endangered Crow Is Soaring in Maui Forests</i> , Honolulu Civ. Beat (Jan. 9, 2026), https://civilbeat.org/2026/01/hawaiis-critically-endangered-crow-is-soaring-in-maui-forests/	6
Christian Rutz et al., <i>Discovery of Species-Wide Tool Use in the Hawaiian Crow</i> , 537 <i>Nature</i> 403 (2016)	4
Anne C. Sabol et al., <i>Testing the Maintenance of Natural Responses to Survival-Relevant Calls in the Conservation Breeding Population of a Critically Endangered Corvid</i> (<i>Corvus hawaiiensis</i>), 76 <i>Behav. Ecology & Sociobiology</i> , art. no. 21 (2022).....	4
Ann M. Tanimoto et al., <i>Vocal Repertoire and Signal Characteristics of ‘Alalā, the Hawaiian Crow</i> (<i>Corvus hawaiiensis</i>), 129 <i>Wilson J. Ornithology</i> 25 (2017).....	4
U.S. Fish & Wildlife Serv., ‘ <i>Alalā Project</i> , https://www.fws.gov/project/alala-project	5

STATEMENT OF INTEREST OF AMICUS CURIAE

The Association of Zoos and Aquariums accredits zoological institutions.¹ Each accreditation lasts five years and begins with a multi-day on-site inspection. It has accredited 241 institutions and 14 related facilities in 12 countries.

Beyond accreditation, the Association coordinates the care and breeding of animal populations across its member institutions and publishes the Standards for Elephant Management and Care, which Amici Hawai'i Veterinary Medical Association and American Veterinary Medical Association have already cited to this Court. Dkt. 42 at 14.² It also trains keepers and veterinarians to move animals safely.

The Honolulu Zoo is the only Hawai'i institution the Association accredits. The Association reaccredited the Zoo in spring 2026, and that accreditation runs through March 2030. The Association discloses the relationship so that the Court can weigh this brief with it in mind.

Two concerns bring the Association here. First, Petitioner's proposed test for habeas eligibility sweeps in a Hawai'i conservation program that Association members operate with the State. Second, the transfer Petitioner seeks would pass through federal permitting, an international treaty, and State quarantine rules, machinery the Association works within every year.

The Association takes no position on the evidence about Mari and Vaigai, offers none, and asks the Court to decide nothing about the care they receive. The facts it cites about the 'alalā program and the regulatory regimes are legislative facts from published statutes, regulations, accreditation standards, and public agency and scientific sources, offered to show what Petitioner's

¹ No party or party's counsel authored this brief in whole or in part, and no party, party's counsel, or other person contributed money to fund its preparation or submission.

² This brief cites each filing by its own internal page numbers, not by the page numbers of the electronic file.

proposed test would reach, not to supplement the record.

INTRODUCTION AND SUMMARY OF ARGUMENT

Arguing on behalf of two Asian elephants, Mari and Vaigai, Petitioner asks this Court to extend Hawai‘i’s habeas rights to nonhuman animals that it calls autonomous and extraordinarily cognitively complex. Such an animal could then summon its custodian into court to justify the animal’s confinement—through human representatives, against human custodians, under a statute the Legislature wrote to protect humans from wrongful confinement.

The Court should decline, for three independent reasons. *First*, the statute under which habeas petitions lie, Chapter 660, applies to people, not animals. Hawai‘i’s general definition of “person,” set forth in Hawai‘i Revised Statutes (“HRS”) § 1-19, comes from the Civil Code of 1859, more than a decade before the habeas act, and it does not encompass nonhumans. Chapter 660’s grant of authority covers “persons” who are “unlawfully restrained of their liberty,” and its procedures, which refer to “the person detained,” presuppose a human prisoner. *Second*, even for human prisoners, habeas relief under the chapter consists of release, bail, or remand—not transfer to a new custodian. *Third*, whether to extend habeas to animals is a policy choice for the Legislature, not the Judiciary.

Recent Hawai‘i history highlights what adopting Petitioner’s test could bring. The ‘ālalā, a native Hawaiian crow, appears to meet Petitioner’s autonomous-and-cognitively-complex standard; nothing about the test excludes it. Yet the species survives today only because of captive breeding: The ‘ālalā vanished from the wild in 2002, and for years afterward the only remaining birds lived in breeding-center aviaries. By Petitioner’s lights, the aviaries that saved the ‘ālalā from extinction should have to answer in court for the birds’ confinement—and one set of Petitioner’s amici contends that the harm of captivity outweighs the purposes zoos serve, such as conservation.

The Association's argument proceeds in four parts:

- Part I shows that Petitioner's test cannot distinguish the Honolulu Zoo from the 'ālalā aviaries, so it supplies no limit on its own reach.
- Part II shows that Chapter 660 cannot accommodate Petitioner's test: The statute reaches people, not animals; it authorizes release, bail, or remand, not transfer to a new custodian; and a habeas court lacks the parties, the standard, and the scientific expertise to choose a destination.
- Part III explains why the Legislature, not a court, should decide whether to extend habeas corpus to animals.
- Part IV answers Petitioner's amici on history and philosophy: Legal systems pair rights with duties; Hawai'i law provides replevin for wrongfully detained animals; and Petitioner's historical authorities do not support its position.

ARGUMENT

Petitioner's application for certiorari presents two questions: "(1) Does Chapter 660 of the Hawai'i Revised Statutes supersede the common law writ of habeas corpus, thereby eliminating habeas corpus as a common law writ?" and "(2) If habeas corpus exists as a common law writ, can Mari and Vaigai avail themselves of the writ's protections to seek release from their confinement at the Honolulu Zoo?" Pet'r Appl. for Writ of Cert. at 2 (Dkt. 5). The Court should answer "Yes" to the first and "No" to the second.

In this brief, Part I bears on the second question, and Parts II through IV bear on both.³

I. A rare Hawaiian bird offers a cautionary tale about Petitioner's test.

Petitioner's proposed test turns on two qualities, autonomy and cognitive complexity. Petitioner says an animal whose representative makes a prima facie showing of both earns an order

³ The Association raises no new issue. Respondents have already invoked the remedial reach of Chapter 660 (Dkt. 60 at 6 n.5, drawing on footnote 2 of the opinion below) and the Legislature's comparative competence (Dkt. 60 and Dkt. 74, citing *TMJ Haw., Inc. v. Nippon Tr. Bank*, 113 Hawai'i 373, 384 & n.6, 153 P.3d 444, 455 & n.6 (2007)).

to show cause under HRS § 660-7, requiring the animal’s custodian to then justify the confinement. Pet’r Appl. for Writ of Cert. at 4 (Dkt. 5); Pet. ¶¶ 95–97 (App. C). Petitioner also promises restraint. Habeas, it says, develops one petitioner, one record, and one case at a time. Pet’r Resp. to HVMA/AVMA Br. at 2 (Dkt. 44). The Association takes that promise at face value and considers what case-by-case adjudication under Petitioner’s test would reach.

A. Nothing in Petitioner’s test excludes the ‘alalā.

Petitioner’s test would cover “autonomous and extraordinarily cognitively complex” animals; Petitioner says confinement violates their right when it prevents “normal, autonomous behavior.” Pet’r Appl. for Writ of Cert. at 4 (Dkt. 5). Nothing in that description excludes the ‘alalā. Researchers report that the ‘alalā is a dexterous tool user. Of 104 captive birds tested, 78% spontaneously used tools to reach out-of-reach food, and many modified tools or made them from raw materials.⁴ The species is socially complex. Juveniles develop social hierarchies, and adults form pair bonds and defend territories.⁵ Playback experiments show that the birds respond differently to alarm calls, territorial-intrusion calls, and control calls, indicating that they recognize distinct signals and respond accordingly.⁶ Whether those traits amount to autonomy and

⁴ Christian Rutz et al., *Discovery of Species-Wide Tool Use in the Hawaiian Crow*, 537 Nature 403 (2016); Barbara C. Klump et al., *Preliminary Observations of Tool-Processing Behaviour in Hawaiian Crows* *Corvus hawaiiensis*, 11 Communicative & Integrative Biology, art. no. e1509637, at 1, 3 (2018) (many birds modified tools before or during use, and some manufactured tools from raw materials).

⁵ Haw. Dep’t of Land & Nat. Res., *‘Alalā*, <https://dlnr.hawaii.gov/wildlife/birds/alala/> (last visited Oct. 8, 2026) (social hierarchy develops at about one year of age; birds occur primarily in pairs or family units and form lifelong social bonds); Anne C. Sabol et al., *Testing the Maintenance of Natural Responses to Survival-Relevant Calls in the Conservation Breeding Population of a Critically Endangered Corvid* (*Corvus hawaiiensis*), 76 Behav. Ecology & Sociobiology, art. no. 21, at 8, 11 (2022) (males more likely than females to give aggressive territorial calls, mirroring their role in territory defense).

⁶ Ann M. Tanimoto et al., *Vocal Repertoire and Signal Characteristics of ‘Alalā, the Hawaiian Crow* (*Corvus hawaiiensis*), 129 Wilson J. Ornithology 25 (2017) (24 call types); Sabol et al.,

extraordinary complexity is not before the Court, but nothing Petitioner or its amici submit suggests otherwise.

B. The ‘alalā exists today only because it was maintained in confinement.

The ‘alalā vanished from the wild in 2002.⁷ Since then, the species has survived chiefly in two conservation breeding centers, the Keauhou Bird Conservation Center on Hawai‘i Island and the Maui Bird Conservation Center, which San Diego Zoo Wildlife Alliance, an Association-accredited institution, manages with the United States Fish and Wildlife Service and the Department of Land and Natural Resources.⁸ None of this rests on private preference. The Legislature authorized it, expressly empowering the Department to permit the taking and possession of listed species including the ‘alalā “for propagation . . . in captivity for preservation purposes.” HRS § 195D-5(f).

Confinement rebuilt the species. When the wild population fell below 20, the survivors went into breeding centers, and the captive population has since grown past 100.⁹ Releases to the forest fared worse. Of 27 captive-reared juveniles released between 1993 and 1998, 21 were lost.¹⁰

supra note 5, at 6, 8–11 (birds more likely to approach the speaker after alarm-call playback, and to answer territorial-intrusion calls with territorial calls).

⁷ U.S. Fish & Wildlife Serv., ‘*Alalā Project*, <https://www.fws.gov/project/alala-project> (last visited Oct. 8, 2026).

⁸ *Id.*; Haw. Dep’t of Land & Nat. Res., News Release NR20-156, *Adaptation Is Key to Overcoming Challenges Faced in ‘Alalā Recovery Program* (Oct. 5, 2020), <https://dlnr.hawaii.gov/blog/2020/10/05/nr20-156/>.

⁹ Eston Ellis, *Flying Free—Again*, S.D. Zoo Wildlife All. (Dec. 5, 2017), <https://sandiegozoowildlifealliance.org/story-hub/zoonooz/flying-free-again>; News Release NR20-156, *supra* note 8 (more than 100 birds in the breeding program).

¹⁰ Ellis, *supra* note 9 (27 juveniles released 1993–1998; 21 died or disappeared); Haw. Dep’t of Land & Nat. Res., ‘*Alalā Project: Release*, <https://dlnr.hawaii.gov/alalapproject/release/> (last visited Oct. 8, 2026) (1993–1998 releases considered unsuccessful; remaining birds recaptured after the 2016–2019 releases).

A second effort, begun in 2016, ended in 2020 when mortalities, mostly from predation by the ‘io, the Hawaiian hawk, led managers to bring the survivors back into the breeding program.¹¹

A pilot release of five juveniles began in November 2024 in the Kīpahulu Forest Reserve on Maui, where ‘io do not prowl, and it has shown encouraging early results.¹² In November 2025 the Department reported the five birds thriving after a full year and moved two more ‘alalā to the field aviary to join them. By late 2025, two of the five had paired and laid an egg.¹³

Those birds exist because the aviaries bred them, and staff still monitor and feed them.¹⁴ Without the aviaries—that is, without confinement—the ‘alalā would almost certainly be extinct.

C. Petitioner’s test, and the position its amici urge, would turn that confinement into a legal wrong.

Justice Edwin Cameron, a retired Justice of South Africa’s Constitutional Court, says that courts would consider, “on the facts presented and through the ordinary process of common-law adjudication,” whether an individual animal has an interest in bodily liberty sufficient to invoke the writ. Dkt. 84 at 13–14. But each case still needs a principle to decide it, and this Court need not imagine what principle Petitioner’s amici would apply. They have already previewed it, and it

¹¹ News Release NR20-156, *supra* note 8.

¹² *Historic First Release of ‘Alalā on Maui*, Maui Now (Dec. 4, 2024), <https://mauinow.com/2024/12/04/historic-first-release-of-%CA%BBalala-on-maui/>.

¹³ Haw. Dep’t of Land & Nat. Res., News Release NR25-137, *Two ‘Alalā Added to Wild Flock on Maui* (Nov. 26, 2025), <https://dlnr.hawaii.gov/blog/2025/11/26/nr25-137/> (program director quoted on the “first five birds thriving after a full year in the forest”; two more birds translocated to the field aviary); Erin Nolan, *Hawai‘i’s Critically Endangered Crow Is Soaring in Maui Forests*, Honolulu Civ. Beat (Jan. 9, 2026), <https://civilbeat.org/2026/01/hawaiis-critically-endangered-crow-is-soaring-in-maui-forests/> (two released birds paired and laid an egg in late 2025).

¹⁴ News Release NR25-137, *supra* note 13 (automated feeders keep the flock anchored where staff can respond if a bird becomes sick or injured); Serene Gunnison, *Voices of the Forest*, Haw. Mag. (Sep. 8, 2026), <https://www.hawaiimagazine.com/maui-forest-bird-recovery-project/> (technicians visit almost daily to monitor the birds and service the feeders).

would not have protected the ‘alalā.

Four amici who describe themselves as neuroscientists and experts on elephant welfare tell the Court that “captivity compromises the physical, psychological, and neural well-being of elephants,” and that the “institutional purposes asserted by zoos do not eliminate the harms of captivity.” Dkt. 68 at 5–6. Even if zoos’ conservation purposes “are accepted for the sake of argument,” the amici add, they do not “supply the autonomy that a human-controlled environment removes.” *Id.* at 7–8. A court applying that reasoning treats the purposes zoos assert, conservation among them, as an insufficient answer.

Now apply that reasoning at Keauhou. The ‘alalā there show autonomy and cognitive complexity, and they live in confinement. The purpose of that confinement is conservation, the very purpose Petitioner’s amici call insufficient. A court applying Petitioner’s test faithfully would issue the order to show cause, and the program that saved a rare Hawaiian species would have to answer for keeping it alive. It is no answer that the Legislature authorized the program: An order to show cause makes the custodian justify the confinement anyway. And if conservation cannot justify confinement, nothing would remain to justify keeping the ‘alalā in the aviaries. The early releases, in which 21 of 27 birds were lost, show what the alternative can mean for this species. The Court should not adopt a rule that could bring about that result.

II. Petitioner’s claim conflicts with the statute it invokes.

Whatever its abstract appeal might be, Petitioner’s test conflicts with Chapter 660 in two ways. First, the statute reaches people, not animals; second, even for people, it authorizes nothing like the relief Petitioner seeks. Indeed, Petitioner’s pleading shows an inconsistency: It invokes

Chapter 660’s procedures, yet argues that the chapter does not control who may invoke the writ.¹⁵

Respondents have addressed the statute at length. *See, e.g.*, Resp’ts’ ICA Ans. Br. at 4–12 (ICA Dkt. 27); Dkt. 15 at 4–8; Dkt. 60 at 2–5. The Association refines and expands on Respondents’ themes, with only as much overlap as coherence requires.

A. Chapter 660 reaches people, not animals.

1. A definition the Legislature enacted 11 years before the habeas act gives “person” a human meaning.

Hawai‘i’s definition of “person” appears in HRS § 1-19. It traces back to section 17 of the Civil Code of 1859, 11 years before the Legislature enacted the habeas act. *See* 1870 Haw. Sess. Laws 39. The habeas act was written against that Code, so its vocabulary informs the act’s.¹⁶ Section 1-19 defines “person” to signify individuals, corporations, firms, associations, and other groups of people, down to “the public generally.” Every item on that list is a human being or a group of them.

Chapter 660 uses “person” the same way. Its grant of authority covers “cases in which persons are unlawfully restrained of their liberty,” HRS § 660-3; its provision on the writ refers to “the person detained,” § 660-6; and its form of writ commands the custodian to produce “the body of” the prisoner, “who is unjustly imprisoned and restrained of his liberty.” *Id.* Words carry their usual meaning, HRS § 1-14, and in ordinary usage a “person” is a human being. The Legislature defines the word the same way throughout the HRS. *See* Resp’ts’ ICA Ans. Br. at 5–8. And where the Legislature means animals, it says so: The Penal Code defines “animal” as “every living

¹⁵ The Petition invokes section 660-5 for its complaint, sections 660-6 and 660-7 for the writ or an order to show cause, section 660-17 for a shift in the burden to Respondents, and section 660-29 for discharge. Pet. ¶¶ 93–97, 201 (App. C).

¹⁶ *See Brown v. Goto*, 16 Haw. 263, 264 (Haw. Terr. 1904) (tracing habeas jurisdiction from sections 855, 880, and 883 of the Code into the act of 1870).

creature, except a human being.” HRS § 711-1100. Reading “person” in Chapter 660 to include an elephant would give the word a meaning that the Legislature withholds from it everywhere else.

Petitioner first argues that section 1-19, a general provision, cannot inform the word “person” in section 660-3, a specific one. Pet’r ICA Opening Br. at 22. But the canon applies only when two provisions speak to the same point, and section 660-3 does not define “persons.” Resp’ts’ ICA Ans. Br. at 8. Second, it argues that “individual” can mean any single organism, so that an elephant is an individual. Pet’r ICA Opening Br. at 22–23. But the Legislature nearly always defines “individual” as a “natural person,” and general words on a list reach only things like those enumerated. *See* Resp’ts’ ICA Ans. Br. at 7–8 (citing *Priceline.com, Inc. v. Dir. of Tax’n*, 144 Hawai‘i 72, 90, 436 P.3d 1155, 1173 (2019)).

A group of law professors appearing as Petitioner’s amici offers a different theory: that elephants are already “limited legal persons” because cruelty statutes give animals rights. Dkt. 58 at 7–8. But the Legislature protects animals as animals. The same Penal Code that bars cruelty defines an “animal” as “every living creature, except a human being,” HRS § 711-1100, and those statutes regulate how people treat animals; they do not give animals a right to invoke a court’s process. *See* Dkt. 60 at 6; Dkt. 74 at 2.

2. Chapter 660’s procedures presuppose a human prisoner, and the Legislature has drawn the same line elsewhere.

Follow a petition through the chapter, and a human prisoner appears at every step. A complaint begins the case, HRS § 660-5, and the court issues the writ or an order to show cause, §§ 660-6, -7. The custodian must make a prompt return, § 660-17, and bring “the body of the person,” § 660-20. After an examination without delay, § 660-24, the court discharges the prisoner if no legal cause for the restraint is shown, § 660-29; admits the prisoner to bail where bail is “a matter of right,” §§ 660-30, -31; or remands the prisoner “to the person or officer having lawful

authority to detain him,” § 660-32. Those provisions presuppose a human prisoner.

Hawai‘i has faced a claim to free captive animals based on their purported personhood before. In 1977, a discharged laboratory worker removed two bottlenose dolphins from the University of Hawai‘i’s Kewalo Basin laboratory and released them. *State v. LeVasseur*, 1 Haw. App. 19, 20–22, 613 P.2d 1328, 1330–31 (1980). Convicted of theft, he argued that the dolphins counted as “another” whom the Penal Code’s choice-of-evils defense allowed him to protect. The Intermediate Court of Appeals rejected the argument because “the legislature has provided a specific definition of ‘another’ that does not include dolphins.” *Id.* at 25, 613 P.2d at 1333. The Penal Code defined “another” as “any other person,” and it defined a person as a natural person and, when relevant, a corporation or an unincorporated association. *Id.* (citing HRS § 701-118). A dolphin is not a “person,” so it is not “another.” Section 1-19 draws the same link, listing “another” among the “words importing persons.” The professors dismiss *LeVasseur* as “simply interpreting the words ‘another’ and ‘person’ as used in statutes.” Dkt. 58 at 7 n.1. Exactly: Chapter 660 is a statute that uses the word “person,” and the Legislature has defined it.

Here, likewise, Petitioner asks this Court to give “person” in Chapter 660 a meaning the Legislature has withheld from the same word elsewhere.

3. No common-law writ for animals ever existed, and the Legislature chose not to include animals in Chapter 660.

The first question presented in this appeal asks whether Chapter 660 supersedes the common-law writ of habeas corpus. It does, and in any event no common-law writ ever reached animals. A complete statutory remedy replaces the common-law one: “the statutory remedy 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 (Haw. Kingdom 1883); see Resp’ts’ ICA Ans. Br. at 9; Dkt. 60 at 3 (collecting authorities). Chapter 660 is such a remedy. The ICA held

that it “prescribes the sole means available for obtaining a writ of habeas corpus from a Hawai‘i state court.” Summary Disposition Order (“SDO”) at 4. Unlike statutes in which the Legislature kept a parallel common-law remedy, Chapter 660 says nothing of the kind. *Compare* HRS § 378-69 (rights created by the statute do not “preempt the common law rights and remedies”).¹⁷

The professors answer that a statute displaces the common law only when the Legislature says so expressly. Dkt. 58 at 2–3. But HRS § 1-1 makes the common law of England the common law of Hawai‘i “except as otherwise expressly provided by . . . the laws of the State,” and section 660-3 expressly limits the writ to “cases in which persons are unlawfully restrained of their liberty.” They also concede that “[i]f habeas is only statutory, legislative intent is paramount, which likely dooms Mari and Vaigai’s case.” Dkt. 58 at 2. And Petitioner “does not dispute that the legislature may displace common law doctrines in certain circumstances.” Pet’r Appl. for Writ of Cert. at 5 n.4 (Dkt. 5).

Petitioner’s reply adds that affirmance would require overruling *Brown v. Goto* and *Eason v. State*, which it reads to put the writ’s substantive scope beyond the Legislature’s reach. Pet’r Reply to Resp. to Appl. for Writ of Cert. at 2–3 (Dkt. 19). Neither case says that.

Brown held that “the right to the writ could not be taken away by statute,” and it distinguished that from prescribing “by what courts, in what manner and under what conditions” the writ may be exercised. *Id.* at 2 (quoting *Brown*, 16 Haw. at 265); *see* Resp’ts’ ICA Ans. Br. at

¹⁷ Petitioner relies on a footnote in *Priceline* observing that there may be exceptions to the Legislature’s power to override the common-law doctrine of res judicata when a statute would violate the separation of powers by “unconstitutionally interfer[ing] with the judiciary’s authority to manage the judicial process.” *Priceline*, 144 Hawai‘i at 82 n.24, 436 P.3d at 1165 n.24 (quoting *Berkson v. LePome*, 126 Nev. 492, 495, 245 P.3d 560, 562 (2010) (alteration in original)); *see* Pet’r Reply at 2 n.4. That concerns a court’s control over its own proceedings. Chapter 660’s definition of who may seek the writ tells no court how to manage its docket; it identifies who may invoke a statutory remedy.

10. Affirmance would take no right away from anyone: A statute can take away only what existed, and no Hawai‘i court has ever recognized a common-law habeas right for an animal.

Petitioner says that *Eason* “rejected the very premise that statutes may supersede the Great Writ.” Pet’r Reply at 3. *Eason* was different. A prisoner challenged his 2004 plea in a fifth post-conviction petition under Hawai‘i Rules of Penal Procedure (“HRPP”) 40, which has governed such challenges since 1977. *Eason v. State*, 157 Hawai‘i 252, 256–57, 576 P.3d 765, 769–70 (2025).¹⁸

The Court held that Rule 40 is valid. Where Rule 40’s procedures conflict with a statute on a procedural matter, “this court’s rules prevail” under article VI, section 7 of the Hawai‘i Constitution. *Eason*, 157 Hawai‘i at 269, 576 P.3d at 782. Rule 40 therefore had not “abolished” habeas corpus after judgment; its procedures simply apply in place of Chapter 660’s. *Id.*¹⁹ And the Court upheld the rule because it “did not affect *Eason*’s substantive rights”: “Even before Rule 40 was adopted in 1977, criminal defendants were allowed to seek post-conviction habeas corpus relief from judgments in criminal cases based on alleged constitutional violations.” *Id.* at 270, 576 P.3d at 783. *Eason* thus treats Chapter 660 as the statute that governs habeas procedure, and it ties the writ’s substantive reach to rights that already existed. Mari and Vaigai have no comparable pre-existing right, and *Eason* did not address who may invoke the writ.

Petitioner also argues that the Suspension Clause, article I, section 15 of the Hawai‘i Constitution, puts the writ beyond the Legislature’s power to supersede. Pet’r Reply at 3. The

¹⁸ Rule 40 now governs the proceedings that were once brought as habeas petitions. *See Eason*, 157 Hawai‘i at 266, 269–70, 576 P.3d at 779, 782–83; *Oili v. Chang*, 57 Haw. 411, 412–13 & n.1, 557 P.2d 787, 788 & n.1 (1976).

¹⁹ The Court overruled *Gordon v. Maesaka-Hirata*, 143 Hawai‘i 335, 360 n.36, 431 P.3d 708, 733 n.36 (2018), only to the extent that *Gordon* had said the writ was abolished. *Eason*, 157 Hawai‘i at 269, 576 P.3d at 782.

clause protects the writ against suspension; it does not define who may invoke the writ or countenance judicial expansion of the writ's reach. Judge Wadsworth of the Intermediate Court of Appeals made the same point, citing *Eason*: Section 15 “does not purport to define the writ more broadly than the legislature has or to otherwise override the provisions of HRS chapter 660.” SDO at 1 n.1 (Wadsworth, J., joined by Guidry, J., concurring) (citing *Eason*, 157 Hawai‘i at 269, 576 P.3d at 782). And whatever protection the writ enjoys extends to the writ as it existed, which did not reach animals. Resp’ts’ ICA Ans. Br. at 12 n.7.

B. Petitioner seeks relief outside what the Legislature enacted.

Chapter 660 lets a court free a prisoner, admit a prisoner to bail, or send a prisoner back to the person with lawful authority to detain. §§ 660-29 to -32. Petitioner wants something else—transfer to a different facility. Habeas relief does not encompass that remedy, and the habeas statute supplies no framework, rubric, or guidance for choosing from among alternative destinations.

1. Petitioner seeks transfer to a new custodian, not release.

The second question asks whether Mari and Vaigai may use the writ “to seek release from their confinement at the Honolulu Zoo.” Pet’r Appl. for Writ of Cert. at 2 (Dkt. 5). But that is not what Petitioner seeks. The Petition asks the Court to order Mari and Vaigai “released to an elephant sanctuary accredited by the Global Federation of Animal Sanctuaries.” Pet. ¶ 6 (App. C).

The court below observed that Petitioner “did not seek the elephants’ release into the wild; it sought their transfer to another form of confinement,” which it called “another reason habeas corpus relief was not appropriate.” SDO at 2 n.2 (citing *Nonhuman Rts. Project, Inc. v. Cheyenne Mountain Zoological Soc’y*, 562 P.3d 63, 70 (Colo. 2025)).²⁰ Petitioner’s own amici concede that

²⁰ Petitioner’s application does not challenge footnote 2, and Respondents have relied on it. Dkt. 60 at 6 n.5. This Court may consider any issue arising on certiorari, but it ordinarily leaves unchallenged rulings of the Intermediate Court of Appeals undisturbed absent plain error. *State v. Bolosan*, 78 Hawai‘i 86, 89, 890 P.2d 673, 676 (1995); *State v. Elliott*, 77 Hawai‘i 309, 310

sanctuaries “remain a form of managed care.” Dkt. 68 at 8.

Section 660-28(1) does not change the analysis. Until judgment is given, it lets the court “remand the party or accept bail for the party’s appearance from day to day or may place the party under special care and custody, as circumstances may require.” That is an interim power, and it continues after judgment only while enforcement is stayed. HRS § 660-28(2). It describes how a court may hold a party while the case is decided, not what the court may order when it decides. The chapter’s dispositions are discharge, bail, or remand “to the person or officer having lawful authority to detain him.” §§ 660-29 to -32. Nothing in them authorizes a transfer to a third party.

Petitioner and its amici try narrowing the request to an order to show cause, but that changes nothing. Petitioner says that an order to show cause “does not resolve the merits and guarantee Mari and Vaigai’s release,” Pet’r Appl. for Writ of Cert. at 12 n.10 (Dkt. 5). But an order to show cause issues in aid of a remedy, and a court does not summon a custodian to defend a confinement it cannot lawfully end on the terms sought. And section 660-7 sits inside Chapter 660, so the request returns to the inconsistency noted at the outset of this Part: Petitioner invokes the chapter’s procedures while insisting that the chapter does not control the writ.

2. Habeas reallocates custody only when a court has all claimants before it and a standard to apply.

Petitioner responds that habeas reaches relief short of release, including custody transfers. It cites *Hutch v. State*, 107 Hawai‘i 411, 417, 114 P.3d 917, 923 (2005), for restoring a prisoner to the general prison population, and Judge Wilson’s dissent in *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 589, 197 N.E.3d 921, 940 (2022) (Wilson, J., dissenting), for transferring custody of children. Dkt. 44 at 3 n.4.

n.1, 884 P.2d 372, 373 n.1 (1994); HRS § 602-59. Footnote 2 therefore stands as an unchallenged ground of the judgment.

Hutch points the other way—on the page Petitioner cites. Quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), this Court said that the essence of habeas corpus is “an attack by a person in custody upon the legality of that custody,” and it added emphasis to the point that “the traditional function of the writ is to secure release from illegal custody.” *Hutch*, 107 Hawai‘i at 417, 114 P.3d at 923 (emphasis omitted). *Hutch* asked only to leave a special holding unit and rejoin the general prison population, with the same warden under the same body of law. No court weighed an alternate destination or authorized a change of keeper, and *Hutch* granted no relief at all: It remanded for a hearing on a petition under HRPP 40.

Hawai‘i’s child-custody cases confirm the point. For example, in *In re Application of Burns*, a father sought to enforce an Oregon custody decree against the children’s mother, and this Court affirmed the dismissal of his petition and the award of custody to the mother because the children’s best interests did not require enforcement. 49 Haw. 20, 38–40, 407 P.2d 885, 895–96 (1965). Three features of *Burns* stand out. *First*, the competing claimants stood before the court. *Second*, the law supplied a substantive standard—the child’s best interests. And, *third*, the court was equipped to apply that standard. This case offers none of the three: No receiving institution appears before this Court, Hawai‘i law supplies no standard for placing an elephant, and a habeas court has no means of evaluating proposed destinations.

3. Other bodies, not a habeas court, decide where an elephant may go.

Moving an elephant out of Honolulu would require approvals under several regimes, and a habeas court administers none of them. Federal law sets transport standards and requires permits; the Endangered Species Act protects Asian elephants; the Convention on International Trade in Endangered Species lists the species on Appendix I, which carries the treaty’s strictest controls;

and the State’s quarantine and import rules govern animals moving to or from the islands.²¹

Professional placement follows a sequence of judgments. A veterinarian examines the animal, specialists evaluate the destination, transport planners sequence the move, and keepers monitor the animal afterward. A habeas proceeding has no place for any of that. The writ asks whether a custodian may hold a prisoner, and it yields a single order for a single subject at a single moment. It cannot condition a transfer on a veterinary finding, sequence a trans-Pacific move, weigh one destination against another, or supervise an animal’s welfare once the order issues.

The Association does not oppose sanctuary placement generally and takes no position on whether a sanctuary would suit Mari and Vaigai in particular. It contends only that the professionals and agencies with the expertise needed to evaluate options should make the decision.

III. The Legislature, not a court, should decide whether to extend habeas to animals.

This Court leaves issues of this kind to the Legislature. In *State v. Aiwohi*, the Court acknowledged that there “may be significant policy implications and social ramifications surrounding the present issue,” but said that “it is well established that the legislature is best suited to assess such considerations.” 109 Hawai‘i 115, 129, 123 P.3d 1210, 1224 (2005); *see also TMJ Haw.*, 113 Hawai‘i at 384 & n.6, 153 P.3d at 455 & n.6 (leaving to the legislature, as “better positioned to balance the policy considerations and potential consequences,” a question of assigning tort claims). A concurrence signed by three of the five judges who accepted this case, Order Accepting Appl. for Writ of Cert. (Dkt. 24) (June 10, 2026), adds a statement of institutional competence, in a passage Petitioner’s amici cite for other purposes: “One more thing. This court strives for institutional competence.” *Hilo Bay Marina, LLC v. State*, 156 Hawai‘i 478, 511, 575

²¹ 7 U.S.C. §§ 2131 *et seq.*; 9 C.F.R. pt. 3 (transport standards and permits); 16 U.S.C. §§ 1531 *et seq.* (Endangered Species Act); HRS chs. 141, 142, 150A; HAR ch. 4-29; HAR § 4-71-6.5 (State quarantine and import rules).

P.3d 568, 601 (2025) (Eddins, J., joined by McKenna & Devens, JJ., concurring). This case calls for that kind of policy judgment, and the Legislature can do what a habeas court cannot: hear every affected keeper and weigh every interest at stake.

Hawai‘i’s values lead to the same place. Petitioner’s amici invoke them, and this Court has recently described the role they play: In interpreting Hawai‘i’s Constitution, it said that alongside the traditional tools of constitutional interpretation it is “also uniquely inspired by the Aloha Spirit, Hawai‘i values, and a profound respect for human and nature’s dignity.” *State v. Tolentino*, 158 Hawai‘i 321, 339, 592 P.3d 209, 227 (2026) (citing *Hilo Bay Marina*, 156 Hawai‘i at 511, 575 P.3d at 601). Those values reach Hawai‘i law through the Legislature, which codified the Aloha Spirit itself, HRS § 5-7.5(a), and turned respect for nature’s dignity into working programs, among them the Department of Land and Natural Resources’ authority to permit the propagation of listed species in captivity, HRS § 195D-5(f). It has legislated across the wider field as well.²² The ‘alalā program shows the result: The species survives because of the care provided while in confinement.

The law professors invoke Kānāwai Māmalahoe, the Law of the Splintered Paddle, Haw. Const. art. IX, § 10, as a principle that should inform the common law. Dkt. 58 at 5–6. The Association agrees that such principles inform how a court develops the common law. But they do not decide who may invoke a statutory writ, and they do not equip a habeas court to place an elephant. *See also* Dkt. 60 at 6 n.5.

IV. Historical and philosophical considerations favor affirmance.

Petitioner’s amici rely on history and philosophy. Both favor affirmance.²³

²² HRS §§ 711-1100, -1108.5, -1109; chs. 183D, 142; HAR § 4-71-6.5.

²³ The court below did not rely on any philosophical theory, and Respondents have answered the amici’s arguments. The Association does not ask this Court to adopt or to repudiate any philosopher’s account of political obligation, and nothing below turns on one.

A. Legal systems pair rights with duties.

Courts have observed that legal personhood is often connected with the capacity to bear legal duties and social responsibilities, not just to benefit from legal rights. *Breheny*, 38 N.Y.3d at 572, 197 N.E.3d at 928 (citing *Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons, Inc.*, 192 Conn. App. 36, 46, 216 A.3d 839, 845 (2019)).

Petitioner cites a definition treating as a person “any being whom the law regards as capable of rights or duties,” “whether a human being or not.” Pet’r ICA Opening Br. at 23 (quoting *Person*, *Black’s Law Dictionary* (12th ed. 2024)). That shows only that the law decides who counts, and in Hawai‘i the Legislature has decided. Section 1-19 counts corporations and associations as persons, but each is, in the Supreme Court’s words, “a form of organization used by human beings to achieve desired ends.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706–07 (2014). Corporate personality serves the humans behind the corporation, not a nonhuman being.

Nonhuman legal personality has never opened the writ in Hawai‘i or anywhere else in the nation. Courts have recognized that corporations, which cannot be held in custody, have no liberty interest subject to habeas corpus. *Breheny*, 38 N.Y.3d at 573, 197 N.E.3d at 929 (citing *United States v. Mett*, 65 F.3d 1531, 1533 (9th Cir. 1995)). The writ has always asked something more than legal personhood: Can this subject be held in custody, and can a court let the subject go? Whether animals can be equated with humans for that purpose is a question for the Legislature.

B. Hawai‘i law already supplies a remedy for a wrongfully detained animal, and that remedy is not habeas corpus.

Hawai‘i law gives the owner of a wrongfully detained animal the right of replevin. The Legislature codified the remedy at HRS § 654-1(a), and replevin “seeks return of specific personal property.” *Kahawaiolaa v. Hawaiian Sun Invs., Inc.*, 146 Hawai‘i 424, 434, 463 P.3d 1081, 1091 (2020). The plaintiff must show entitlement to “immediate and exclusive possession of the

property claimed.” *Chong v. Young*, 39 Haw. 527, 529 (Haw. Terr. 1952). This Court applied those rules to an animal in July, treating a claim for the return of a dog as “in substance, an action in replevin.” *Miller v. Collins*, 158 Hawai‘i 435, 438, 593 P.3d 374, 377 (2026). Petitioner may respond that replevin belongs to owners and so treats animals as property. That is the Legislature’s treatment, and Petitioner’s objection to it is an argument for legislative change.

C. Petitioner’s historical authorities do not help it.

Petitioner and its amici lean on two English cases. The first is Lord Mansfield’s *Somerset* judgment, which Petitioner invokes. Pet’r Appl. for Writ of Cert. at 9 (Dkt. 5). The second is *Hottentot Venus*. Both involved human beings; neither suggests that the writ reaches anyone else.

Somerset v. Stewart concerned a human being held as a slave. The Association abhors slavery in every possible way—no human being should ever have been enslaved, and every human being should always have had access to habeas. But those propositions were not before the Court in *Somerset*. Instead, the question was whether “the cause on the return” was sufficient—not who may invoke the writ—and Lord Mansfield answered by insisting that a custodian’s claimed dominion be supported by positive law: “[s]o high an act of dominion must be recognized by the law of the country where it is used.” 98 Eng. Rep. 499, 510 (K.B. 1772). Finding none, he discharged Somerset. *Id.* Petitioner reads *Somerset* as proof that the common law adapts. Pet’r Reply at 4. It does, and Hawai‘i courts adapt the State’s common law. But as Part III shows, they leave policy changes of this magnitude to the Legislature.

That the law once classed some humans as chattel, yet the writ still ran to them, shows that the writ protects human liberty whatever the law called the person. The Association rejects any attempt to suggest moral, legal, or philosophical equivalence between the human slaves of another era and today’s zoo animals. It is, as *Breheny* pointedly notes, “an odious comparison with

concerning implications.” 38 N.Y.3d at 571, 197 N.E.3d at 928. Nothing in *Somerset* suggests that the writ reaches animals, and whatever remains open on that question belongs to the Legislature.

Next is *Ex parte Hottentot Venus*, 104 Eng. Rep. 344 (K.B. 1810), which Justice Cameron cites for the writ’s reach into private custody. Dkt. 84 at 14 n.51. A woman, Saartje Baartman, was exhibited in London for money by persons with apparent custody of her, and affidavits suggested she was held against her consent. King’s Bench granted a rule to show cause and had officers of the Court examine her in her keepers’ absence. *Hottentot Venus*, 104 Eng. Rep. at 344–45. The examination showed that she had come to England by her own consent, under a contract for a share of the exhibition’s profits, and the Court discharged the rule. *Id.* at 345. The case involved a human being; nothing in the report suggests that nonhuman animals share her status. The Court resolved the matter by asking her what she wanted—an inquiry that presumes a human whose will the law recognizes—and described its role as that of “guardian of the personal liberty of the subject.” *Id.* As a human being, Baartman was within the writ’s scope; the fact that she consented to the challenged relationship meant the writ would not issue.

CONCLUSION

This Court should affirm the judgment of the Intermediate Court of Appeals.

Chapter 660 reaches people, not animals, and it offers release, bail, or remand, not transfer to a new custodian. Keauhou shows what Petitioner’s test would reach: an endangered Hawaiian bird that survives only through human care. The Legislature, State biologists, and federal partners chose to keep those birds confined, and the species endures because of that choice.

A habeas court cannot make a choice like that one. It asks whether a custodian may lawfully hold a prisoner, and it answers yes or no. Weighing the interests and the policy behind a confinement belongs to the Legislature, and this Court should leave that work where it lies.

DATED: Denver, Colorado, October 9, 2026.

Respectfully submitted,

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MICHAEL A.F. JOHNSON, *pro hac vice*
application forthcoming

SPENCER FABER, *pro hac vice* application
forthcoming

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APPENDIX A

Summary Disposition Order and Concurring Opinion
Intermediate Court of Appeals, No. CAAP-24-0000323 (Jan. 28, 2026)

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NO. CAAP-24-0000323

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CCV-23-0001418)

SUMMARY DISPOSITION ORDER

(By: Hiraoka, Presiding Judge, with Wadsworth and Guidry, JJ.
concurring separately)

Nonhuman Rights Project, Inc. (**NRP**) petitioned the Circuit Court of the First Circuit for a writ of habeas corpus on behalf of two elephants living at the Honolulu Zoo. The Circuit Court granted the respondents' motion to dismiss.¹ NRP appeals from the *Judgment* for the **City** and County of Honolulu.

Writs of habeas corpus under Hawaii Revised Statutes (**HRS**) Chapter 660 are available only to "persons" unlawfully restrained of their liberty. We hold: (1) elephants are not "persons"; (2) HRS Chapter 660 supersedes the common law writ of habeas corpus; and, at any rate, (3) the common law writ of

¹ The Honorable Gary W.B. Chang presided.

habeas corpus also applied only to persons. We affirm the Judgment. NRP's December 5, 2025 motion for retention of oral argument is denied. We dismiss NRP's December 23, 2024 motion to admit Jake **Davis** *pro hac vice* as moot.

NRP filed a **Petition** for a writ of habeas corpus against the City's Department of Enterprise Services, Dita **Holifield**, and Linda **Santos**. The Department of Enterprise Services operates the Honolulu Zoo. Holifield is the Department's director. Santos is the Zoo's director. The Petition sought an evidentiary hearing to show cause why the Zoo's two elephants should not be released "to an elephant sanctuary accredited by the Global Federation of Animal Sanctuaries."²

The City moved to dismiss. It argued the Petition failed to state a claim because (1) writs of habeas corpus under HRS Chapter 660 are only available to persons, and elephants are not persons; and (2) habeas corpus under the common law was available only to humans. An order granting the motion, and the Judgment,³ were entered on March 25, 2024. This appeal followed.

NRP contends the Circuit Court erred by: (1) not issuing an order to show cause despite the Petition establishing a *prima facie* case; and (2) "retroactively denying" *pro hac vice* admission to Davis.

(1) We review the grant of a motion to dismiss *de novo*. Yamane v. Pohlson, 111 Hawai'i 74, 81, 137 P.3d 980, 987 (2006). We assume the facts alleged in the petition are true and view them in the light most favorable to the petitioner to see if they warrant relief under any legal theory. See id.

² NRP did not seek the elephants' release into the wild; it sought their transfer to another form of confinement. That is another reason habeas corpus relief was not appropriate. See Nonhuman Rts. 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.").

³ The Judgment was entered for the City. NRP's claims against Holifield and Santos were dismissed without prejudice.

Regarding writs of habeas corpus, HRS § 660-3 (2016) 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.

(Bold italics added.)

Statutory interpretation is a question of law reviewed de novo. Eason v. State, 157 Hawai'i 252, 263, 576 P.3d 765, 776 (2025). The fundamental starting point is the statute's language. Id.

NRP argues "[t]he scope of the undefined term 'person' in [HRS] Chapter 660 is not a matter of statutory interpretation." The word "person" need not be defined; the plain meaning of the word does not include animals.⁴ 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").

NRP incorrectly argues that the word "person" in HRS § 660-3 "is merely a placeholder with no substantive meaning."

⁴ NRP has unsuccessfully litigated this issue before. See, e.g., Nonhuman Rts. Project, Inc. v. DeYoung Fam. Zoo, LLC, ___ N.W.3d ___, 2025 WL 2957821 (Mich. App. 2025); Nonhuman Rts. Project, Inc. v. Cheyenne Mountain Zoological Soc'y, 562 P.3d 63 (Colo. 2025); Nonhuman Rts. Project, Inc. v. Breheny, 197 N.E.3d 921 (N.Y. 2022); Nonhuman Rts. Project, Inc. v. R.W. Commerford & Sons, Inc., 231 A.3d 1171 (Conn. App. 2020).

It is a cardinal rule of statutory construction that courts are bound, if rational and practicable, to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all the words of the statute.

Camara v. Agsalud, 67 Haw. 212, 215-16, 685 P.2d 794, 797 (1984).

NRP also argues that HRS Chapter 660 is "merely procedural" and does not supplant the common law writ of habeas corpus. That is also not correct. The "common law may generally be overridden by statute." Priceline.com, Inc. v. Dir. of Tax'n, 144 Hawai'i 72, 82, 436 P.3d 1155, 1165 (2019); see also HRS § 1-1 (2009) (declaring common law of England to be the common law of Hawaii "except as otherwise expressly provided by . . . the laws of the State").

A complete statutory remedy supersedes the common law remedy. "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[.]" Herring v. Gulick, 5 Haw. 57, 58 (Haw. Kingdom 1883).

The remedy provided by HRS Chapter 660 is complete because the common law writ of habeas corpus also applied only to persons. In re Apuna, 6 Haw. 732, 734 (Haw. Kingdom 1869) (noting that writ of habeas corpus was in substance the same as the English common law "designed to release *persons* from illegal confinement" (emphasis added)). At common law, the category of "persons" was confined to humans, and the law separately addressed animals as objects of property. Nonhuman Rts. Project, Inc. v. DeYoung Fam. Zoo, LLC, ___ N.W.3d ___, ___, 2025 WL 2957821, at *8 (Mich. App. 2025).

HRS Chapter 660 thus prescribes the sole means available for obtaining a writ of habeas corpus from a Hawai'i state court. A habeas writ is not available to animals restrained of their liberty. The Circuit Court did not err by dismissing NRP's Petition.

(2) NRP contends, "The Circuit Court violated *pro hac vice* counsel's procedural due process rights and abused its discretion when it retroactively denied the [*pro hac vice*] Motion." NRP misstates the record.

NRP first applied for Davis's admission *pro hac vice* on November 2, 2023. The application was denied without prejudice because it "failed to comply with Rules 7 and 7.2 of the Rules of the Circuit Courts of the State of Hawaii."

NRP reapplied for Davis's admission *pro hac vice* on November 10, 2023. The application was heard on January 16, 2024. The Circuit Court orally granted the application subject to six conditions specified during the hearing. NRP's Hawai'i-licensed counsel Cheryl **Nolan** was asked to prepare an order.

Nolan's proposed order omitted parts or all of the second, third, fourth, and sixth conditions. The proposed order was "rejected by the court without prejudice" because it "failed to state all of the conditions that the court stated in announcing its ruling during the hearing." NRP does not argue that any of the Circuit Court's conditions were contrary to law.

Nolan never resubmitted a conforming form of order. The Circuit Court did not retroactively deny Davis's application. NRP's point of error lacks merit.

(3) NRP moved to admit Davis *pro hac vice* three times in this appeal. The first motion was filed on July 22, 2024. It was denied because the supporting declarations did not comply with Rule 1.9 of the Rules of the Supreme Court of the State of Hawai'i (**RSCH**) (eff. July 1, 2024). Another motion was filed on December 5, 2024. It was denied for failure to comply with RSCH Rule 1.9.

Briefing for this appeal was completed on September 23, 2024. NRP again moved to admit Davis *pro hac vice* on December 23, 2024. We entered an order of no oral argument on November 28, 2025. See Hawai'i Rules of Appellate Procedure Rule 34(a). NRP's December 5, 2025 motion for retention of oral

argument is denied. NRP's pending motion for Davis to appear *pro hac vice* is dismissed as moot.

The March 25, 2024 *Judgment* for the City and County of Honolulu Department of Enterprise Services and against NRP is affirmed.

DATED: Honolulu, Hawai'i, January 28, 2026.

On the briefs:

Cheryl Nolan,
for Petitioner-Appellant.

/s/ Keith K. Hiraoka
Presiding Judge

Daniel M. Gluck,
Jacqueline M. De Leeuw Huang,
Patricia A.V. Sendao,
Deputies Corporation Counsel,
City and County of Honolulu,
for Respondents-Appellees.

CONCURRING OPINION BY WADSWORTH, J., IN WHICH GUIDRY, J., JOINS

I join the court's opinion in Parts (2) and (3). I respectfully concur in Part (1) and write separately to more fully explain my position.

Mari and Vaigai are two Asian elephants in residence at the Honolulu Zoo. Petitioner-Appellant Nonhuman Rights Project (**NRP**) filed a petition for a writ of habeas corpus on the elephants' behalf, seeking to end their captivity in the zoo and move them to a less confining environment - a "rewilding" facility in Asia or "a suitable elephant sanctuary in the United States or Brazil." The Circuit Court granted a motion to dismiss the petition brought by the City and County of Honolulu and related defendants. NRP appealed to this court.

In the petition, NRP alleges and provides supporting declarations opining, in summary, that "[e]lephants are autonomous and extraordinarily cognitively complex beings" and "[z]oo captivity physically and psychologically harms elephants." For purposes of this appeal, we do not dispute the evolving understanding that elephants are intelligent creatures deserving proper care and treatment.

But Mari and Vaigai are plainly not "persons" within the ordinary definition and common meaning of the word. In Hawai'i, the writ of habeas corpus is made available only to "persons." Specifically, Hawaii Revised Statutes (**HRS**) § 660-3 (2016) authorizes the supreme court and the circuit courts to issue writs of habeas corpus "in cases in which persons are unlawfully restrained of their liberty[.]"^{1/} (Emphasis added.)

^{1/} We further note that Article I, section 15 of the Hawai'i Constitution, states:

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.

Section 15 does not purport to define the writ more broadly than the legislature has or to otherwise override the provisions of HRS chapter 660, the original version of which was adopted in 1870. See Eason v. State, 157 Hawai'i 252, 269, 576 P.3d 765, 782 (2025).

NRP argues that HRS chapter 660 "merely governs habeas corpus procedure, not substantive entitlement to the common law right to bodily liberty that habeas corpus protects." This argument presents a false dichotomy, obscuring a central feature of the habeas corpus remedy; it is - and was at common law - a procedural vehicle intended to secure the liberty rights of persons who are unlawfully imprisoned or restrained. See HRS § 660-3; In re Apuna, 6 Haw. 732, 734 (Haw. Kingdom 1869). HRS chapter 660 prescribes, among other things, the courts that may issue that procedural vehicle, and the manner and conditions under which it may be exercised. As much as we may sympathize with the plight of Mari and Vaigai, we are not at liberty to ignore the legislature's clear directive in this regard. See Brown v. Goto, 16 Haw. 263, 265 (Haw. Terr. 1904).

That is not to say that elephants like Mari and Vaigai have no available remedy in our constitutional system - NRP can petition the legislature for the change in the law it seeks.^{2/} The Hawai'i legislature has shown itself quite capable of providing for the safety and welfare of nonhuman animals, while navigating their complicated relationship with humans. For example, Hawai'i statutes prohibit and penalize various forms of cruelty to animals, including depriving a "pet animal" of "necessary sustenance" or confining the animal in a kennel or cage in a cruel or inhumane manner. HRS § 711-1109 (2014 & Supp. 2021) (penalizing the offense of cruelty to animals in the second degree); see HRS § 711-1108.5 (2014) (penalizing cruelty to animals in the first degree); HRS § 711-1100 (2014 & Supp. 2015) (defining "animal" as "every living creature, except a human being" and "necessary sustenance" as care sufficient to preserve the health and well-being of a pet animal, including adequate food, water, shelter, and veterinary care). These and other laws affecting the treatment of nonhuman animals not only recognize the legal distinction between human beings and other animals, but also demonstrate the willingness of the legislature to enact

^{2/} NRP characterizes such a suggestion as an "abdication of judicial duty" We cannot abdicate a duty that the rule of law has not imposed upon us.

statutory protections for nonhuman animals in specific circumstances. As the relationship between human beings and other animals continues to evolve, NRP is free to direct its effort to hasten that evolution and to develop and strengthen laws that safeguard animals like Mari and Vaigai to the legislature. The writ of habeas corpus, however, is not an available remedy in these circumstances under current Hawai'i law.

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge