

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.

SCWC-24-0000323

CAAP-24-0000323

(Petition for a Common Law Writ of Habeas
Corpus)

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**ON 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)

**PETITIONER/PETITIONER-APPELLANT NONHUMAN RIGHTS PROJECT, INC.'S
RESPONSE TO BRIEF OF *AMICUS CURIAE* ASSOCIATION OF ZOOS AND
AQUARIUMS IN SUPPORT OF RESPONDENTS/RESPONDENTS-APPELLEES**

CERTIFICATE OF SERVICE

Cheryl Nolan, Esq.
HI Bar No. 6412 | CA Bar No. 196272
Jake Davis, Esq.
AK Bar No. 2505026 | CO Bar No. 54032
611 Pennsylvania Ave SE #345
Washington, DC 20003
Tel.: (703) 955-1793
Tel.: (513) 833-5165
Email: CherylN@lassd.org
Email: jdavis@nonhumanrights.org
Attorneys for Petitioner/Petitioner-Appellant
on behalf of Mari and Vaigai, individuals



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INTRODUCTION

Amicus Curiae Association of Zoos and Aquariums (“AZA”) repeats the underlying error made by the Intermediate Court of Appeals (“ICA”): that Chapter 660 supersedes the common law writ of habeas corpus. It does not because it cannot. *Brown v. Goto*, 16 Haw. 263 (1904), *Eason v. State*, 157 Hawai‘i 252 (2025), and the Suspension Clause (Haw. Const. art. I, § 15), establish that the writ remains a common law remedy in Hawai‘i. Chapter 660 governs the procedures for invoking the Great Writ; it does not abolish the writ’s common law character or foreclose judicial development of its substantive scope. The ICA and AZA conflate statutory regulation with statutory displacement.

The AZA is a dues-supported membership and accreditation organization with an institutional interest in defending its members’ confinement practices. Its accredited facilities confine over 780,000 nonhuman animals.¹ Its conservation narrative about the ‘alalā neither resolves the Great Writ’s nature nor the legality of Mari and Vaigai’s confinement. Moreover, the justification for modern zoos remains disputed. Author and investigative researcher Andrew Westoll observes that zoo menageries are “biased toward species that zoo-goers want most to see, *not* those most threatened with extinction.” Andrew Westoll, *The modern zoo’s time is up*, THE GLOBE AND MAIL (Oct. 3, 2026), <https://tinyurl.com/5n7yneh5>. He identifies the enduring ethical problem as “consequences of breeding wild animals for a life they didn’t evolve, or choose, to live.” *Id.* These criticisms underscore why the AZA’s defense of zoos cannot justify refusing to examine the particular restraint imposed on Mari and Vaigai.

Each habeas corpus case, like each novel common law case, requires its own record and adjudication: “The common law is but the crystallized conclusions of the judges arrived at from applying the principles of natural right and justice to facts actually experienced in cases before them.” *Welsh v. Campbell*, 41 Haw. 106, 119-20 (1955) (quoting *Scott v. Kirtley*, 113 Fla. 637 (1934)). The Nonhuman Rights Project, Inc. (“NhRP”) does not ask this Court to adjudicate the legality of zoos generally or order the release of every autonomous nonhuman animal held by AZA members. It asks this Court to recognize that the Suspension Clause preserves the Great Writ’s common law character and issue an order to show cause requiring Appellees City and County of Honolulu et al. (“Appellees”) to justify Mari and Vaigai’s confinement. The AZA’s irrelevant ‘alalā

¹ See Ass’n of Zoos & Aquariums, *FAQs About Joining AZA*, <https://tinyurl.com/48jfypmy>; *Zoo and Aquarium Statistics*, <https://tinyurl.com/243rdhsh>.

hypothetical, erroneous statutory interpretation analysis, and erroneous understanding of habeas corpus relief do not resolve that request.

ARGUMENT

I. Chapter 660 Does Not Abolish the Common Law Writ of Habeas Corpus

A. *Brown and Eason Establish that Habeas Corpus is a Common Law Writ*

The AZA asks this Court to affirm the ICA by holding that Chapter 660 supersedes the Great Writ, relying on cursory readings of *Brown* and *Eason*. AZA Br. 3, 11-12. The Great Writ is either a common law remedy in Hawai‘i or it is not. *Brown* establishes that it is: “It may be conceded that this is a common law writ.” 16 Haw. at 265. The Court then confirmed that the remedy cannot be superseded by statute: “[u]ndoubtedly the right to the writ cannot be taken away by statute.” *Id.* Indeed, “the writ” refers to the common law writ just identified.² The AZA’s observation that *Brown* distinguished this prohibition from legislative authority to prescribe “by what courts, in what manner and under what conditions the writ may be exercised,” *id.*, supports the NhRP’s position. AZA Br. 11. The Legislature may regulate the procedures governing the Great Writ but may not abolish its common law character. *Brown* forecloses the erroneous premise shared by the ICA and the AZA that the common law writ can be superseded or abolished by statute.

Furthermore, the AZA’s assertion that “no Hawai‘i court has ever recognized a common-law habeas right for an animal,” is merely a hackneyed argument that lack of precedent forecloses relief. AZA Br. 12. Prior recognition of a right is not a prerequisite to judicial development of the common law; otherwise, novelty would invariably defeat a claim. As this Court has explained, “the absence of precedent is a feeble argument.” *Fergerstrom v. Hawaiian Ocean View Estates*, 50 Haw. 374, 376 (1968). Because habeas corpus remains a common law remedy under *Brown*, whether Mari and Vaigai possess the right to bodily liberty protected by the writ is a common law question that Chapter 660 does not resolve.

Last year, in *Eason*, this Court reaffirmed the distinction between the common law writ and the procedures governing its invocation. The NhRP agrees that “*Eason* thus treats Chapter 660 as the statute that governs habeas procedure,” and that “*Eason* did not address who may invoke the writ.” AZA Br. 12. The AZA nevertheless misses *Eason*’s import in overruling *Gordon v.*

² “[T]he phrase ‘habeas corpus’ used alone refers to the common-law writ of habeas corpus *Ad subjiciendum*, known as the ‘Great Writ.’” *Stone v. Powell*, 428 U.S. 465, 475 n.6 (1976).

Maesaka-Hirata, 143 Hawai‘i 335 (2018). In *Gordon*, the Court wrongly held that “[t]he writ has . . . been abolished in the post-conviction context” by Rule 40. 143 Hawai‘i at 360 n.36. *Gordon* thus stood for the erroneous proposition that procedural rules can abolish the common law writ. That is precisely what the ICA held below: that Chapter 660 supersedes the common law writ. In overruling *Gordon*, this Court made clear that procedures governing the writ’s invocation cannot abolish the common law remedy. *Eason*, 157 Hawai‘i at 269 (“we overrule *Gordon v. Maesaka-Hirata*, to the extent it stated the writ of habeas corpus had been *abolished* in the post-conviction context”; “Rule 40 has not ‘abolished’ habeas corpus actions post-judgment, instead the procedures in Rule 40 now apply”). *Eason* confirms that the common law writ remains available in Hawai‘i and cannot be abolished by procedural rules. The AZA does not address this distinction.

The AZA’s assertion that *Eason* “ties the writ’s substantive reach to rights that already existed,” misreads the decision. AZA Br. 12 *Eason* addressed whether Rule 40, a court-made rule, altered litigants’ substantive rights and whether its procedures could supersede Chapter 660’s procedures in the post-conviction context. 157 Hawai‘i at 269-70. This Court explained that Rule 40 could because it did not alter criminal defendants’ substantive rights since post-conviction habeas relief was available before its adoption. *Id.* at 270. That reasoning resolved which procedures governed; it did not restrict the judiciary’s authority to develop the common law writ. Whether habeas procedures are governed by a court-made rule or a legislative enactment, the common law writ survives. *Id.* at 269. Moreover, the AZA’s statement that “Mari and Vaigai have no comparable pre-existing right” is irrelevant. AZA Br. 12. The NhRP filed this case *because* the common law can recognize previously unrecognized rights. *See Fergerstrom*, 50 Haw. at 376; *Lum v. Fullaway*, 42 Haw. 500, 502 (1958) (“right to relief is not necessarily foreclosed by lack of precedent”); *Welsh*, 41 Haw. at 119 (“The court [is] not restricted by the actual decisions at common law . . . the common law is interpreted in the light of modern experience, reason and the furtherance of justice”).

B. The Suspension Clause Preserves a Common Law Writ

The AZA is wrong in asserting that the Suspension Clause does not “countenance judicial expansion of the writ’s reach.” AZA Br. 13. It does. *Brown* and *Eason* recognize that the Suspension Clause preserves the common law writ. *See Brown*, 16 Haw. at 265 (identifying habeas corpus as “a common law writ” whose protection is “guaranteed by the Constitution”); *Eason*, 157 Hawai‘i at 266 (discussing and then ultimately accepting the State’s argument that “only the

legislature can suspend the right to habeas corpus for limited express reasons”). By preserving its common law nature, the Clause preserves the writ’s capacity for judicial development. *Ex parte Apuna*, 6 Haw. 732, 734 (1869) (“[t]he writ always intended, if not otherwise described, is the writ *ad subjiciendum et recipiendum*”). The Clause need not define the writ’s substantive scope to preserve it as a common law remedy and thus countenance judicial expansion of its reach. In other words, the Suspension Clause entrusts the judiciary with defining the writ’s scope by protecting it from legislative restriction. *See Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 634 (2022) (Rivera, J., dissenting) (“As even the majority concedes, ‘the courts—not the legislature—ultimately define the scope of the common law writ of habeas corpus.’”). Whether Mari and Vaigai possess the right that the writ protects remains a question for common law adjudication.

C. HRS § 1-19 is Irrelevant to this Common Law Case

The AZA’s reliance on HRS § 1-19’s definition of “person” fails for two reasons. AZA Br. 2, 8-10, 18. First, the ICA did not rely on that provision. *See generally* Dkt. 5, App. A. Second, this is a common law case. “Person” is undefined in Chapter 660. Entitlement to the writ turns on whether an individual possesses the right to bodily liberty, a question for the judiciary. If the Court recognizes that right for Mari and Vaigai, they are necessarily “persons” for purposes of habeas corpus relief and Chapter 660. *See* Dkt. 5, pp. 10-11 (Legal Personhood). As *Brown, Eason*, and the Suspension Clause establish, the Great Writ retains its common law character, and its protective scope remains subject to judicial development. The AZA cannot import an irrelevant definitional statute and thereby convert the Great Writ into a statutory remedy.

The AZA’s citations to HRS § 1-14 and *State v. LeVasseur*, 1 Haw. App. 19 (1980), similarly fail. AZA Br. 8, 10. Section 1-14’s reference to a term’s “known and usual signification” is consistent with understanding “person” in the habeas corpus context as an individual possessing the right the writ protects. *LeVasseur* concerned the statutory choice-of-evils defense to theft, not habeas corpus. 1 Haw. App. at 24. The ICA held that under the Hawai‘i Penal Code, which expressly defined “another” as “any other person,” *id.*, “a dolphin is not ‘another’ under” the Code. *Id.* at 25. The ICA was construing a statute, not determining the scope of a common law remedy.³

II. The AZA’s ‘Alalā Hypothetical Proves the AZA Misunderstands This Case

³ The AZA also asserts: “Follow a petition through the chapter, and a human prisoner appears at every step.” AZA Br. 9. Chapter 660 plainly contemplates human petitioners, but inclusion does not establish exclusivity. Its procedures do not answer whether Mari and Vaigai possess the right to bodily liberty, which is the novel common law question presented here.

The AZA would have this Court believe that recognizing the autonomous nature of a nonhuman animal automatically requires release, oddly asserting that “[b]y Petitioner’s lights, the aviaries that saved the ‘alalā from extinction should have to answer in court for the birds’ confinement.” AZA Br. 2, 6-7. The NhRP advances no such position. Habeas relief here requires two findings: (1) that the individual possesses the right to bodily liberty and (2) that the challenged confinement violates that right. Recognition of the first does not establish the second.

Autonomy does not *ipso facto* require release. It supports recognition of the right to bodily liberty. Whether a particular confinement violates that right requires a separate inquiry. The Petition for a Common Law Writ of Habeas Corpus (“Petition”) addresses both. The Petition’s accompanying expert declarations establish elephants are autonomous and extraordinarily cognitively complex, and that the Honolulu Zoo prevents Mari and Vaigai from exercising normal, autonomous behavior, resulting in their physical, psychological, and neurological harm. *See, e.g.*, Dkt. 5, App. C, ¶¶ 82-88. Mari and Vaigai exhibit stereotypical behavior associated with neurological dysfunction. *Id.* at ¶ 85. Because autonomy is the foundation of the common law right to bodily liberty,⁴ these allegations establish a prima facie basis for requiring Appellees to justify Mari and Vaigai’s confinement, not an automatic entitlement to release.

The AZA’s hypothetical disregards that distinction. It takes scientific evidence concerning elephants and assumes the same conclusions apply to ‘alalā. AZA Br. 3-7. But elephants and ‘alalā are not the same, and the AZA identifies no comparable evidence that the conservation aviaries inflict the harms alleged here. Nor does a failed ‘alalā reintroduction, *id.* at 5-6, justify Mari and Vaigai’s continued confinement. Indeed, such failures are commonplace: “The vast majority of zoo-led reintroductions of endangered species across the 20th century failed to result in self-sustaining populations in the wild. It turns out that restocking a wild population is far too complicated, expensive and risky for zoos to reliably pull off.” Westoll, *supra*. Ultimately, AZA

⁴ The right to bodily liberty protects individual autonomy. Hawai‘i has long recognized that “[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others,” absent clear legal authority. *Campbell v. H. Hackfeld & Co.*, 20 Haw. 245, 250-51 (1910) (citation omitted). This Court has also repeatedly grounded common law protections against unwanted bodily interference in autonomy and self-determination. *See, e.g., State v. Abella*, 145 Hawai‘i 541, 553 (2019) (recognizing the right to refuse life-sustaining treatment as incident to “bodily autonomy, and self-determination”); *Carr v. Strobe*, 79 Hawai‘i 475, 484-85 (1995) (adopting an informed consent standard that better protects “self-determination”).

members are “failing at the very tasks that should be their bread and butter.” *Id.* But neither the fate of the ‘alalā nor the AZA’s broader conservation failures answer whether Mari and Vaigai’s confinement is unlawful and, if so, whether sanctuary placement is an appropriate remedy.

Even assuming ‘alalā possess the autonomy necessary for recognizing their right to bodily liberty, a court would still have to determine whether their confinement violates that right. Evidence that release would expose the bird to likely death would bear directly on the next inquiry—the appropriate relief. As Judge Wilson explained, the writ historically permitted courts to assess “whether the confinement was unjust based on fairness and a balancing of interests.” *Breheny*, 38 N.Y.3d at 598 (Wilson, J., dissenting). Recognizing a right requires consideration of the reasons offered for restraining it.

The same individualized inquiry would necessarily apply even within the same species. Judge Wilson observed that a decision favoring Happy’s sanctuary transfer would not mean that elephants living at the San Diego Zoo’s “1,800-acre safari park, in the company of other elephants and wildlife, would succeed on the merits of a habeas petition.” *Id.* at 623. Each habeas claim, like each novel common law claim, requires its own record concerning the individual, the challenged restraint, and appropriate relief. *See Welsh*, 41 Haw. at 119-20. Accordingly, the AZA’s ‘alalā hypothetical supplies no reason to deny Mari and Vaigai that adjudication.

III. The AZA Also Misunderstands the Relief Available Through Habeas Corpus

A. Habeas Corpus Relief Permits Transfer from One Custodian to Another

The AZA argues that “Petitioner seeks transfer to a new custodian, not release.” AZA Br. 13. But Hawai‘i law rejects the characterization that habeas release from one form of confinement to another must result in continued confinement by the same custodian. Although *Hutch v. State*, 107 Hawai‘i 411, 417 (2005) did not involve a change of custodian, the relevant takeaway is that habeas relief does not require total release from every form of confinement.⁵

⁵ The AZA claims the NhRP failed to challenge the ICA’s sanctuary-transfer footnote. AZA Br. 13, n.20. But the Application for Writ of Certiorari expressly asks whether Mari and Vaigai may invoke the writ “to seek release from their confinement at the Honolulu Zoo,” and seeks further proceedings on the Petition requesting sanctuary placement. Dkt 5, pp. 2, 8-12. The remedial question is thus squarely presented. *See* HRAP Rule 40.1(d)(1) (“The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein.”). Moreover, the ICA footnote offers no analysis of Hawai‘i law, including HRS § 660-27 and *In re Cambridge*, 1 Haw. 191 (1855) when suggesting that habeas relief cannot encompass sanctuary placement due to Colorado law.

The NhRP seeks Mari and Vaigai’s release from the Honolulu Zoo to sanctuary where they can exercise their autonomy to the greatest extent possible, relief consistent with Hawai‘i law. Dkt. 5, App. C, ¶¶ 199-206 (sanctuary). HRS § 660-27 directs courts to hear evidence and “dispose of the party as law and justice may require”; HRS § 660-29 requires discharge from an imprisonment or restraint for which no legal cause is shown. Neither provision requires total liberation or continued confinement by the same custodian. This Court recognized in *In re Cambridge*, 1 Haw. 191, 193 (1855), the power to undertake a habeas corpus inquiry “implies and includes the power to do whatever justice may seem to require . . . after we have finished our inquiry.” Historically, “habeas corpus could be used to transfer custody from one confinement, if determined to be unlawful, to another type of custody; habeas petitions were not required to seek or result in total liberation as the remedy. That aspect of habeas corpus is evident across issues impacting children, women, and enslaved people.” *Breheny*, 38 N.Y.3d at 598 (Wilson, J., dissenting) (listing cases).⁶ The use of a best-interest standard in child-custody cases does not make that standard a prerequisite to habeas relief involving release to a new custodian. *See* AZA Br. 14-15.

B. The Judiciary Decides Whether Habeas Corpus Relief is Appropriate

The AZA wrongly asserts that “[o]ther bodies, not a habeas court, decide where an elephant may go.” AZA Br. 15. HRS § 660-27 expressly authorizes courts to “hear evidence,” which in this case would necessarily include expert testimony concerning the harms of confinement, sanctuary suitability, and transfer feasibility. *See, e.g.*, Dkt. 5, App. C, ¶¶ 89-91 (rewilding or sanctuary suitability). Wildlife, quarantine, and transport approvals govern implementation of relief, not adjudication of the underlying liberty claim. All three elephant sanctuaries accredited by the Global Federation of Animal Sanctuaries must comply with applicable permitting requirements when receiving elephants. Nor does compliance with “approvals under several regimes” establish that Appellees’ confinement of Mari and Vaigai is lawful. AZA Br. 15. The AZA “takes no position on whether a sanctuary would suit Mari and Vaigai in particular.” AZA Br. 16. The AZA cannot

⁶ Judge Wilson also explained that the writ “encouraged the justices to do much more than declare a prisoner remanded, bailed or discharged.” *Breheny*, 38 N.Y.3d at 600 (Wilson, J., dissenting) (quoting PAUL D. HALLIDAY, *HABEAS CORPUS: FROM ENGLAND TO EMPIRE* 101 (2010)). The writ’s historical application easily refutes the AZA’s position that habeas corpus only “offers release, bail, or remand, not transfer to a new custodian.” AZA Br. 20. *See also* HALLIDAY at 132 (“The writ, and judgments on it, had been and always would be what individual justices made it.”).

question sanctuary viability, disclaim any position on its suitability, and then use that uncertainty to deny the NhRP the opportunity to present evidence resolving it.

IV. The AZA's Remaining Arguments Rest on Even More Misunderstandings

A. This Case is a Matter for the Judiciary, Not the Legislature

The AZA argues that the “Legislature, not a court, should decide whether to extend habeas to animals.” AZA Br. 16. But that argument rests on the mistaken premise, refuted in § I, that habeas corpus is a statutory remedy rather than a common law remedy. Because the common law writ persists under *Brown, Eason*, and the Suspension Clause, the Court retains the responsibility for determining its scope. *See also Breheny*, 38 N.Y.3d at 633 (Rivera, J., dissenting) (“it is for this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought”). The Legislature’s regulation of conservation, transport, and animal care is irrelevant to a court’s responsibility to decide the contours of the writ. This Court has also recognized that it does “not think the legislature has become so potent, and the judiciary so atrophied, that we must defer to the former in every situation.” *Lum v. Fullaway*, 42 Haw. 500, 510 (1958).

Ultimately, the AZA concedes that Hawai‘i’s legal traditions inform “how a court develops the common law,” but argues they do not determine “who may invoke a statutory writ.” AZA Br. 17. Once the correct common law framework for habeas corpus adjudication is restored, that distinction is self-defeating. The Law Professors’ *Amicus Curiae* Brief explains how Hawai‘i’s traditions inform the liberty inquiry presented here. Dkt. 58, pp. 3-6. The AZA cannot avoid that inquiry by repeatedly describing a common law remedy as statutory.⁷

B. The Right to Bodily Liberty Does Not Depend on the Capacity to Bear Duties

The AZA argues the asserted liberty right turns on reciprocal duties. AZA Br. 18. Yet the definition it quotes recognizes that legal persons have the capacity for “rights *or* duties” and “[a]ny being that is so capable is a person, whether a human being or not.” *Person*, BLACK’S LAW

⁷ Nor can the AZA avoid that inquiry by insisting that “[t]his case calls for [a] policy judgment.” AZA Br. 17. Fundamental rights exist to protect individuals from those who believe violating their rights serves broader societal interests. STEVEN M. WISE, *RATTLING THE CAGE* 116 (Da Capo Press, 2000) (“Connecting fundamental rights to policy betrays the right, betrays the supplicant, and finally undermines the rights of the betrayer.”). Moreover, Hawai‘i’s common law necessarily evolves with changing public policy. *Territory v. Alford*, 39 Haw. 460, 466 (1952) (“the public policy of one generation may not under changed conditions be the public policy of another”).

DICTIONARY (12th ed. 2024) (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)) (emphases added).⁸ The Law Professors, Dkt. 58, pp. 9-11, and a Judge of the New York Court of Appeals, the Honorable Eugene M. Fahey (ret.), Dkt. 102, pp. 7-8, both explain in their amicus briefs why social contract theory does not justify excluding Mari and Vaigai from possessing the right to bodily liberty. That right does not depend on an individual's ability to contract or undertake reciprocal obligations: "After all, a human infant does not have legal duties, but it is well established in the law that one may seek a writ of habeas corpus on behalf of one's infant child." *Id.* (citation omitted).

The AZA's discussion of corporations also misses the point. The NhRP does not contend that corporations possess the right to bodily liberty. Rather, their legal personhood demonstrates that "person" is a juridical category, not a biological one—and certainly not synonymous with "human." The question here is whether Mari and Vaigai, as autonomous, extraordinarily cognitively complex individuals, possess the right to bodily liberty protected by the Great Writ. That corporations cannot experience physical confinement says nothing about whether Mari and Vaigai's autonomy warrants that protection.⁹

C. Replevin Protects a Property Owner, Not a Nonhuman Animal's Liberty Interest

The AZA's replevin argument is as peculiar as it is irrelevant. AZA Br. 18-19. Replevin and habeas corpus remedy distinct wrongs and protect different legal interests. Replevin permits an owner to recover possession of property; it does not permit an individual to challenge an unlawful restraint on their own bodily liberty. The NhRP claims no ownership of Mari and Vaigai,

⁸ Black's Editor-in-Chief, Bryan A. Garner, explains that the dictionary's "illustrative quotations" from leading scholars such as Salmond are "more than merely illustrative: they are substantive," with each selected to provide the "seminal remark—the locus classicus—for an understanding of the term." *Preface to the Twelfth Edition*, BLACK'S LAW DICTIONARY (12th ed. 2024).

⁹ Since autonomy underlies the right to bodily liberty, *supra* note 4, Mari and Vaigai possess the quality that habeas corpus protects. *See, e.g., Breheny*, 38 N.Y.3d at 631 n.2 (Rivera, J., dissenting):

Corporations are not natural persons, and so the law acknowledges the obvious: you cannot lock up a corporation for violations of law. But that does not mean that corporate legal status is irrelevant or not a valid point of comparison here. Just as the law can recognize a form of legal personhood for a noncorporeal entity, so too can the law—the common law, in this case—be interpreted to recognize the legal right to challenge by writ of habeas corpus the alleged unjust captivity of a corporeal nonhuman animal.

nor does it seek their return as “personal property.” It seeks recognition and enforcement of their right to bodily liberty. The availability of replevin to a property owner has no bearing whatsoever on Mari and Vaigai’s right to seek habeas corpus relief, the dispute at the heart of this lawsuit.

D. The NhRP’s Historical Authorities Support Its Position

The AZA’s gratuitous declaration that it “abhors slavery in every possible way” is self-serving. AZA Br. 19. Moreover, contrary to the AZA’s account of *Somerset v. Stewart*, 1 Lofft. 1 (K.B. 1772), James Somerset’s status as an enslaved person did not foreclose his access to the writ; rather, his enslaved status and the legality of his confinement were necessarily before the court. As Judge Wilson explained, “James Sommersett was an enslaved Black man on whose behalf three abolitionists submitted a habeas corpus petition,” which “alleged that Mr. Sommersett was confined on a ship bound for Jamaica and sought his freedom.” *Breheny*, 38 N.Y.3d at 592 (Wilson, J., dissenting). Authorization for his confinement rested on his enslaver having “purchased him in Virginia,” *id.*, yet his treatment as chattel property did not prevent the court from reviewing that confinement. The relevant takeaway is that existing legal status does not itself foreclose a habeas inquiry. Nor should Mari and Vaigai’s treatment as chattel property prevent the same inquiry.

The denial of ultimate relief in *Ex parte Hottentot Venus*, 104 Eng. Rep. 344 (K.B. 1810), does not undermine that principle. The court issued a rule to show cause, examined the alleged restraint, and discharged the rule after finding consent to exhibition. *Id.* at 344-45. Access to the judicial inquiry and entitlement to release were separate questions. As habeas corpus scholar Paul D. Halliday explains, *Somerset* and *Venus* “suggest powerfully that neither free nor slave status . . . precluded using habeas corpus.” HALLIDAY, *supra*, at 207. “Subject status, or the lack of it,” demonstrated “the absence of concern about the legal nature of the detainee using habeas corpus.” *Id.* at 208. These cases do not decide whether Mari and Vaigai have the common law right to bodily liberty; they show that an individual’s existing legal status does not foreclose an appropriate evidentiary inquiry.

CONCLUSION

The NhRP urges this Court to answer “No” to the first question presented and “Yes” to the second, reverse, and remand with directions to issue an order to show cause and conduct an appropriate evidentiary hearing. The Court could also recognize Mari and Vaigai’s right to bodily liberty as a matter of law and remand with directions to issue an order to show cause and determine whether their confinement at the Honolulu Zoo violates that right.

DATED: San Diego, California, October 19, 2026.

/s/ Cheryl Nolan

Cheryl Nolan, Esq.

Jake Davis, Esq.

Attorneys for Petitioner/Petition-Appellant
on behalf of Mari and Vaigai, individuals

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the RESPONSE TO BRIEF OF *AMICUS CURIAE* ASSOCIATION OF ZOOS AND AQUARIUMS was served upon all parties, through their respective counsel of record, via electronic filing (JEFS) on October 19, 2026.

DATED: San Diego, California, October 19, 2026.

/s/ Cheryl Nolan

Cheryl Nolan, Esq.

Jake Davis, Esq.

Attorneys for Petitioner/Petition-Appellant
on behalf of Mari and Vaigai, individuals