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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/Appellant,

vs.

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

Respondents/Appellees.

ON APPLICATION FOR WRIT OF
CERTIORARI TO THE INTERMEDIATE
COURT OF APPEALS

APPEAL FROM THE JUDGMENT ON
APPEAL FILED IN CAAP-24-0000323
[DKT. 67] ON FEBRUARY 26, 2026

INTERMEDIATE COURT OF APPEALS
STATE OF HAWAII

HONORABLE KEITH K. HIRAOKA
Presiding Judge

HONORABLE CLYDE J. WADSWORTH
Associate Judge

HONORABLE KIMBERLY T. GUIDRY
Associate Judge



**RESPONDENTS/APPELLEES CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR,
DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR, JOHN BERRY'S
RESPONSE TO BRIEF OF *AMICUS CURIAE* THE HONORABLE EUGENE M. FAHEY**

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I. INTRODUCTION

Amicus curiae, the Honorable Eugene M. Fahey (ret.) (“Amicus”), states: “The Court has a difficult decision to make. It would clearly be easier to maintain the status quo. The harder question to answer is: what is the right thing to do?” The fundamental problem with that question is that it presents incommensurable options.

Amicus suggests that the Court’s sympathy for very appealing animals justifies disregarding the controlling law, characterized as the “status quo.” This is incorrect. The actual, narrow issue before this Court is whether elephants have habeas corpus rights; it is not to protect elephants or other animals from cruel or inhumane treatment—there are already laws in place for that purpose, the adequacy of which Petitioner has declined to challenge. Nor is it the ethics or morality of confining nonhuman animals in zoos, which also is a matter for legislative bodies.

On the narrow issue before the Court, the “right thing to do” is, contrary to Amicus’s characterization, the easier question to answer: the Court must comply with the law on habeas corpus. Hawai‘i Revised Statutes (“HRS”) Chapter 660 (“Chapter 660”), which provides a complete remedy for the writ of habeas corpus, supersedes the common law writ of habeas corpus and applies only to human beings.

Petitioner has advanced its habeas corpus argument in various jurisdictions in the past few years hoping to find a sympathetic court, without success. Those decisions rest on the legal limits of habeas relief. The writ of habeas corpus is simply not the appropriate mechanism for prohibiting nonhuman animal confinement. The appropriate mechanism is to seek relief from legislative bodies, as taught by these courts and as demonstrated by City of Ojai Ordinance

No. 490, which recognizes the right to bodily liberty in elephants, and the Captivity of Helpless Elephants Reduction Act of 2025 (“CHER Act”), H.R. 3456, 119th Cong. § 3 (2025), which if enacted, would prohibit elephant captivity in zoos.

II. ARGUMENT

A. Chapter 660’s Provision of Habeas Relief for “Persons” Does Not Apply to Nonhuman Animals.

Chapter 660 authorizes Hawai‘i courts to issue writs of habeas corpus “in cases in which *persons* are unlawfully restrained of their liberty[.]” HRS § 660-3 (emphasis added). To prevail, Petitioner must therefore establish that “persons” applies to elephants.

Hawai‘i law directs that “where the terms of a statute are plain, unambiguous and explicit, we are not at liberty to look beyond that language for a different meaning. Instead, our sole duty is to give effect to the statute’s plain and obvious meaning.” *Ross v. Stouffer Hotel Co. (Hawai‘i) Ltd.*, 76 Hawai‘i 454, 461, 879 P.2d 1037, 1044 (1994); HRS § 1-14 (“The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to *their general or popular use or meaning*”) (emphasis added). The plain, obvious, general or popular meaning of “person” is “human being.” Even assuming that “person” is vague and subject to interpretation, “legislative intent is paramount, which likely dooms Mari and Vaigai’s case (unless [Petitioner] can show that the legislature meant for the statutory word ‘persons’ to include elephants—a tall task).” *Law Professors’ Amicus Curiae Brief*, Dkt. 58 at 7.¹

¹ All docket citations refer to the PDF page number of the docket.

1. “Person” Under the Social Contract Theory.

Rather than apply its plain, ordinary, and popular meaning, Amicus supplies a definition of “person” in addressing social contract theory, which he claims means “any being whom the law regards as capable of rights or duties . . . whether a human being or not.” Dkt. 102 at 11 n.2 (citation omitted). “Drawing on the work of philosophers in animal ethics,” Amicus analogizes nonhuman animals to human infants and opines that both are “moral patients,” i.e., persons who bear the right to redress wrongs even though incapable of bearing legal duties. Dkt. 102 at 11 (“[E]ven if a chimpanzee does not bear legal duties, the chimpanzee may yet have the right to seek legal relief. 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”).

Clearly, a definition of “person” that turns on a theory debated by philosophers in animal ethics, is neither its “plain and obvious meaning,” nor its “general or popular use or meaning.”² If Amicus wishes to pursue the meaning of “persons” in the rabbit hole of social contract theory, it should be noted that “[f]ocusing legal personhood on humans and their proxies is not arbitrary, but rather a recognition that requiring legal accountability to each other as the norm in a community of humans is at the core of our human society and its legal system.” Letter-Brief of Amicus Curiae Richard L. Cupp Jr., *Nonhuman Rights Project, Inc. v. Lavery*, No. 3648, 2017 WL 10775680, at *8 (N.Y.A.D. Jan. 3, 2017) (“Cupp Brief”). Humans are the only species for whom “the norm is capacity for moral agency sufficiently strong to function within our society’s legal system of rights and responsibilities.” *Id.* at 15.

² Neither the City nor the Intermediate Court of Appeals (“ICA”) raised the social contract theory as a basis for denying habeas relief to nonhuman animals, but it is addressed for the purpose of responding to Amicus’s claims.

2. “Persons” as Beings with Autonomy and Cognition.

Amicus’s “moral patient” definition of legal personhood necessarily means that all nonhuman animals are persons, as they are all bearers of statutory rights through animal cruelty and welfare laws. *See, e.g.,* Animal Welfare Act, 7 U.S.C. § 2131, *et seq.*; HRS §§ 711-1108.5, 711-1109. Yet, Amicus paradoxically contends that only species with a certain undefined level of cognition and autonomy merit legal personhood. *See* Dkt. 102 at 12.

Tying legal personhood to autonomy and cognition is apparently based on the rationale that nonhuman animals should have the same rights as human beings to the extent that they share the same characteristics. The problem with this proposal is that neither Petitioner nor Amicus have ever defined exactly what kind of autonomy or cognition merits personhood. Autonomy and cognition run on continuums; they are not black and white. In fact, “most animals utilized for human benefit have some level of autonomy interests sufficient to allow them to be legal persons who may have lawsuits filed on their behalf on that basis.” Cupp Brief at 23. “Unless an animal has some sense of self, it cannot hunt, and it cannot either defend himself or flee when subject to attack. Unless it has a desire to live, it will surely die. And unless it has some awareness of means and connections, it will fail in all it does.” *Id.* (citation omitted). Animal experts have recognized high levels of intelligence in crows and parrots, and domesticated species such as pigs and dogs. Which species are entitled to habeas rights? All the Court has been told is that elephants, who possess high levels of cognition and autonomy, are entitled to habeas relief.

Amicus also arbitrarily links personhood to the unique suffering elephants experience in confinement, given their size and “innate intelligence and autonomy.” Dkt. 102 at 15. *See also* Dkt. 68 at 7-10. All animals have varying degrees of sentience regardless of their intelligence or autonomy, however, and like caged parrots who pluck out their own feathers, many arguably

experience harmful effects of confinement just as much as elephants and chimpanzees. Amicus does not explain which other sentient animals would qualify for bodily liberty under his proposed standard.

Most importantly, neither Petitioner nor Amicus have cited any judicial authority for the legal predicate that personhood depends on cognition and autonomy, as opposed to, for instance, shared DNA or physical characteristics. Reliance on cognition and autonomy demeans humanness, and would exclude from “persons” infants, the intellectually disabled, and those who are seriously infirm from legal personhood and strip them of their inherent rights and dignity as human beings. *See Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Soc’y*, 562 P.3d 63, 70 (Colo. 2025).

The Court is “not at liberty to interpret a statutory provision to further a policy that is not articulated in either the language of the statute or the relevant legislative history, even if we believe that such an interpretation would produce a more beneficent result, for the Court's function in the application and interpretation of such laws must be carefully limited to avoid encroaching on the power of the legislature to determine policies and make laws to carry them out.” *Peer News LLC v. City & Cnty. of Honolulu*, 143 Hawai‘i 472, 489, 431 P.3d 1245, 1262 (2018) (citations omitted). *See also Honbo v. Hawaiian Ins. & Guar. Co.*, 86 Hawai‘i 373, 376, 949 P.2d 213, 216 (Ct. App. 1997) (“If there is any inequality or any situation that was overlooked in the law, it is up to the legislature to make the correction”). Even if the Court believes that “persons” should include elephants on moral, ethical, or philosophical grounds, it should not do so where the law plainly states otherwise.

B. Chapter 660 Supersedes the Common Law Writ of Habeas Corpus.

To circumvent Chapter 660, Amicus argues that the common law writ of habeas corpus still remains and should evolve to protect the bodily liberty of Mari and Vaigai. According to Amicus, “[a]bsent a statutory prohibition, determining the requirements and evolving application of the writ falls squarely within the judiciary’s authority.” Dkt. 102 at 14.

Hawai‘i law, to the contrary, provides that “when the remedy provided by statute is complete, the common law remedy is superseded by the statute[.]” *Herring v. Gulick*, 5 Haw. 57, 58 (Haw. Kingdom 1883). *See also Hawaiian Tr. Co. v. Galbraith*, 22 Haw. 78, 84 (1914); *Welsh v. Campbell*, 41 Haw. 106, 121 (1955) (“Where there are no governing provisions of the written law, the courts in all matters coming before them endeavor to administer justice “according to the promptings of reason and common sense”). Chapter 660 provides complete relief because it grants habeas relief to all “persons” who are “unlawfully restrained.” HRS § 660-3.

C. There Is No Basis to Extend Common Law Habeas Rights to Elephants.

Even assuming that a common law writ of habeas corpus remains available, the Court’s duty is to ensure the “orderly growth” of the common law based on the changing social needs of the community, and “based on justice, reason, and common sense.” *Lum v. Fullaway*, 42 Haw. 500, 502 (1958); *Welsh v. Campbell*, 41 Haw. 106, 120 (1955). Amicus argues that determining the scope and application of the common law writ falls within the judiciary’s authority. Dkt. 102 at 14-15. However, Petitioner’s subjective, ill-defined, and overly broad standard for personhood, and consequently habeas rights, is neither commonsensical, nor fair, nor reasonable.

First, there has been no “cogent legal analysis identifying any recognizable source of a proclaimed liberty right or so-called fundamental right to be free that they seek to bestow upon

autonomous nonhuman animals.” *Matter of Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 571 (2022). Petitioner and Amici have offered only debated academic and philosophical theories about who should be counted as “persons” with attendant rights under the law, which are based on the moral and ethical obligations of humans. *See* Dkt. 102 at 12 (“[H]umanity... ‘should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect’”) (citation omitted). Courts, however, do not decide questions in an ivory tower; their opinions have real life consequences.

Our society is built on the long-established legal premise that nonhuman animals are property. *See Heppingstone v. Mammen*, 2 Haw. 707, 710–11 (Haw. King. 1863). “No exception exists for ‘intelligent’ animals, which in any event has no natural stopping point—‘[e]ven a dog distinguishes between being stumbled over and being kicked.’” *Nonhuman Rights Project, Inc. v. DeYoung Family Zoo, LLC*, No. 369247, 2025 WL 2957821, at *10 (Mich. Ct. App. Oct. 17, 2025) (citation omitted). Granting legal personhood and attendant rights to Mari and Vaigai “would not be an incremental step in the slow process of decisional accretion regarding the scope and flexibility of the writ of habeas but a sweeping pronouncement of nonhuman animal personhood lacking in legal foundation that would displace the carefully devised state and federal statutory frameworks governing animal welfare.” *Breheny*, 38 N.Y.3d at 575 (cleaned up). As the *Breheny* court explained, recognizing habeas rights for elephants would have:

an enormous destabilizing impact on modern society. It is not this Court’s role to make such a determination. . . . “not only would this case require us to recognize elephants as “persons” for purposes of habeas corpus, this recognition essentially would require us to upend this state’s legal system to allow highly intelligent, if not all, nonhuman animals the right to bring suit in a court of law”. . . . Granting legal personhood to a nonhuman animal in such a manner would have significant implications for the interactions of humans and animals in all facets of life, including risking the disruption of property rights, the agricultural industry (among others), and medical research efforts. Indeed, followed to its logical conclusion, such a determination would call into question the very premises

underlying pet ownership, the use of service animals, and the enlistment of animals in other forms of work.

Breheny, 38 N.Y.3d at 573-74 (cleaned up). The proposed standard supplies no clear basis for excluding other animals. Under the cognition and autonomy standard, may a person successfully seek habeas relief for the bodily liberty of a homeless individual's dog, and ask that the dog be transferred to them where it will have a better home? May a person seek habeas rights for the bodily liberty of a pig because the farmer keeps it in a small pen and will kill and eat it? Holding that autonomous nonhuman animals are entitled to bodily liberty is analogous to pulling out a critical piece in a Jenga puzzle; the result would be the collapse of long-established relationships between humans and animals.

Second, Petitioner's apparent argument is that nonhuman animals should have the same rights as human beings to the extent that they possess human traits, specifically cognition and autonomy. While this may seem sensible on the surface, "going down the path of connecting individual cognitive abilities to personhood would encourage courts and society to think increasingly about individual cognitive ability when we think about personhood." Cupp Brief at 21 ("Once we have said that infants and very old people with advanced Alzheimer's and the comatose have no rights unless we choose to grant them, we must decide about people who are three-quarters of the way to such a condition. . . . the possibilities are genocidal and horrific and reminiscent of slavery and of the holocaust") (quoting Laurence H. Tribe).

Third, a holding that nonhuman animals with sufficient autonomy and cognition can have a right to bodily liberty begs the question: what other rights might nonhuman animals have? That nonhuman animals may have rights to due process, privacy, and free speech is not mere

hyperbole and is already being discussed in academia.³ A ruling on habeas corpus would impact how the Court decides these consequential issues.

Finally, “[t]he fact that [Petitioner] 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.” *Cheyenne Mountain Zoological Soc’y*, 562 P.3d at 70. *See also Breheny*, 38 N.Y.3d at 571-72 (request for transfer between lawful confinements “demonstrates the incompatibility of habeas relief in the nonhuman context”). Habeas corpus contemplates discharge and liberty (*see* HRS § 660-29), not a transfer to a purportedly more humane, larger confinement; yet this is what Petitioners have asked for in its cases seeking habeas corpus rights for nonhuman animals.⁴

As advised by the Colorado Supreme Court, “efforts to expand existing legal rights for nonhuman animals . . . are best advanced through the legislative, not judicial, branch.”

Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Soc’y, 562 P.3d at 70.

There, in the final precept, is the gist of the difference between “le phenomene Magnaud,” and justice according to law. The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and

³ *See, e.g.,* Vikram David Amar, *What an Extension of Free Speech Rights to Animals Might Mean, Doctrinally Speaking*, 95 Denv. L. Rev. 857 (2018); John Bolliger, *On the Rights of Sentient Beings: The Case for Expanding Due Process of Law to Non-Human Animals*, 50 Mitchell Hamline L. Rev. 200 (2024); Christopher Wlach, *Privacy in the Wild: Why Animals’ Informational Privacy Matters*, 29 Animal L. 103 (2023).

⁴ *See Breheny*, 38 N.Y.3d 555, 197 N.E.3d 921, 923 (2022); *Nonhuman Rts. Project, Inc. ex rel. Tommy v. Lavery*, 152 A.D.3d 73, 79 (N.Y.A.D. 2017); *Nonhuman Rts. Project, Inc., ex rel. Kiko v. Presti*, 124 A.D.3d 1334, 1334–35, 999 N.Y.S.2d 652, 653 (2015); *DeYoung Fam. Zoo, LLC*, 37 N.W.3d at 111); *Cheyenne Mountain Zoological Soc’y*, 562 P.3d at 65; *Nonhuman Rts. Project, Inc., on Behalf of Beulah, Minnie and Karen v. R.W. Commerford & Sons, Inc.*, 2018 WL 8370421, at *3.

subordinated to “the primordial necessity of order in the social life.” Wide enough in all conscience is the field of discretion that remains.

Koptik v. Chappell, 321 F.2d 388, 392 (D.C. Cir. 1963) (quoting Cardozo, J., *The Nature of the Judicial Process*).

III. CONCLUSION

The City respectfully requests that the Court affirm the ICA’s judgment.

DATED: Honolulu, Hawai‘i, October 20, 2026.

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Presiding Judge

HONORABLE CLYDE J. WADSWORTH
Associate Judge

HONORABLE KIMBERLY T. GUIDRY
Associate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon the following parties via electronic filing in the Judiciary Electronic Filing and Service System (JEFS), or via U.S. Mail, postage prepaid, as indicated on the date below:

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