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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



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**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 *AMICI CURIAE* UK LEGAL EXPERTS' BRIEF**

I. INTRODUCTION

Amici, legal scholars from the United Kingdom (“UK”) (“Amici”), mistakenly invoke the history of English common law to argue that nonhuman animals are entitled to habeas corpus relief under Hawai‘i law. Specifically, Amici erroneously argue that HRS chapter 660 (“Chapter 660”) complements rather than supplants the common law, as they contend is the case under English law, and that this Court should follow UK courts and scholars by construing “person” under Chapter 660 to mean “legal personality” rather than its plain and ordinary meaning of “human being.”

Chapter 660 was first enacted in 1870 when Hawai‘i was still a kingdom. From its inception, Chapter 660 covered the entire subject of habeas corpus in Hawai‘i, superseding the common law writ of habeas corpus. In the 150 years since, Chapter 660 has evolved independently of UK jurisprudence and broadly grants “persons” whose liberty is unlawfully restrained the right to seek habeas relief. Under Hawai‘i law, this right extends to “persons,” meaning human beings. Neither English law nor English scholarship can alter the plain meaning of Chapter 660.

Like Petitioner and its other amici, Amici have not identified an authority establishing that nonhuman animals possess an independent right to bodily liberty that is protected by habeas corpus in Hawai‘i. Amici offer only a handful of dissenting opinions, scholarly theories equating subjective and undefined levels of autonomy and cognition with legal personhood, and judicial opinions expressing concern about the impact of captivity on elephants—none of which establishes that nonhuman animals have a right to bodily liberty that is protected by habeas

corpus. Petitioner and Amici further fail to substantiate a challenge to Mari's or Vaigai's treatment under existing animal welfare laws, despite relying on the alleged harm to the elephants' well-being to support their request that this Court recognize habeas corpus rights for them. Petitioner has, however, pursued legislative action to advance similar objectives. Notably, Petitioner successfully advocated for the Ojai City Council to pass an ordinance recognizing that elephants have a right to bodily liberty,¹ demonstrating that legislative action, rather than judicial expansion of habeas corpus, is an available and effective means of addressing Petitioner's concerns regarding the confinement of elephants.

II. ARGUMENT

A. Chapter 660 Provides a Complete Remedy and Supersedes the Common Law Writ of Habeas Corpus.

Amici's tutorial on the UK's common law writ of habeas corpus, its relationship to UK habeas statutes, and the meaning of "personhood" under English common law, fails to assist this Court because habeas corpus in Hawai'i is governed by Chapter 660, as interpreted pursuant to Hawai'i law. The UK's jurisprudence on habeas corpus is irrelevant.

Amici argue that, as in the UK, Hawai'i's habeas statutes complement rather than supplant common law governing habeas corpus, absent "express legislative intent" that is articulated in the statute. Hawai'i law recognizes that "[t]he legislature may, subject to the constitution, modify or abrogate common law rules by statute." *In re Water Use Permit Applications*, 94 Hawai'i 97, 130, 9 P.3d 409, 442 (2000). *See also Fujioka v. Kam*, 55 Haw. 7, 10, 514 P.2d 568, 570 (1973) (holding that "our state legislature may, by legislative act, change or entirely abrogate common law rules through its exercise of the legislative power under the

¹ *See* City of Ojai, Cal., Ordinance No. 940 (2023), Municipal Code of Ordinances § 5-4.1001, *et seq.* <https://ecode360.com/44869039#44869039> (last visited Oct. 13, 2026).

Hawaii State Constitution”); *Priceline.com, Inc. v. Dir. of Tax'n*, 144 Hawai‘i 72, 82, 436 P.3d 1155, 1165 (2019) (the “common law may generally be overridden by statute”). *See also* HRS § 1-1 (providing that English common law is the common law of Hawai‘i “except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage”); *Welsh v. Campbell*, 41 Haw. 106, 121 (1955) (common law applies “where there are no governing provisions of the written laws”); *Lansdell v. Cnty. of Kauai*, 110 Hawai‘i 189, 202, 130 P.3d 1054, 1067 (2006) (“[W]here the language of a statute is plain, and a literal construction is consistent with the legislative purpose, we are constrained to give effect to the plain meaning of the statute, even if it results in the derogation of a common law rule”) (quoting *Saranillio v. Silva*, 78 Hawai‘i 1, 13, 889 P.2d 685, 697 (1995)).

The legislature may “express” its intent for a law to supersede the common law in ways other than through statutory language. In *Gold Coast Neighborhood Association v. State*, 140 Hawai‘i 437, 452, 403 P.3d 214, 229 (2017), for instance, the Court held that the legislature expresses its intent when the enactment of a law “imperatively require[s]” that overlapping common law be superseded. *Gold Coast Neighborhood Ass’n*, 140 Hawai‘i at 452, 403 P.3d at 229 (citation omitted). *See, e.g., Minneapolis Fire & Marine Ins. v. Matson Nav. Co.*, 44 Haw. 59, 67-68, 352 P.2d 335, 340 (1960) (holding that HRS § 193-13 precludes an innkeeper’s common law liability for the loss of a guest’s items based on the “plain language of § 193-13 read as a whole and in its structure and component parts analyzed”); *Pogoso v. Sarae*, 138 Hawai‘i 518, 523, 382 P.3d 330, 335 (App. 2016) (holding that “[b]ecause HRS § 291C-26 evinces the legislature’s clear purpose to establish the standards applicable to Sarae’s conduct in

this case, HRS § 291C-26 trumps any common law conditional privilege that might otherwise apply”).

Relevant to the issue before this Court, legislative intent is expressed where a statute occupies the entire field. “[W]hen 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) (holding that a statute superseded the common law rules of descent “upon the principle that where a statute relating to a given subject covers the whole of such subject it excludes the common law upon that subject”); *State v. Fetelee*, 117 Hawai‘i 53, 79, 175 P.3d 709, 735 (2008) (holding that given the legislature’s intent that the Hawai‘i Rules of Evidence “cover the whole subject on the admissibility of evidence, the legislature has clearly spoken that the [Hawai‘i Rules of Evidence] supersedes the common law *res gestae* doctrine”); *Kienker v. Bauer*, 110 Hawai‘i 97, 109, 129 P.3d 1125, 1137 (2006) (noting that “when a statute is in derogation of the common law, the intention of the legislature will not be presumed to repeal the common law or a prior statute unless it clearly appears that the legislature intended to cover the whole subject”) (citation omitted).

Although Parliament may have drafted the statutory writ in the UK to supplement rather than supplant the common law, the Hawai‘i legislature expressed its intent that Chapter 660 supplant the common law by providing a comprehensive statutory remedy governing habeas corpus. Unlike the English habeas statutes described by Amici, which limited habeas relief geographically and to criminal matters and therefore did not provide complete habeas relief, habeas relief under Chapter 660 is available to all “persons” whose liberty has been “unlawfully restrained.” Chapter 660 provides a complete remedy and therefore supersedes the common law writ of habeas corpus.

B. A “Person,” as Used in Chapter 660, Means a Human Being.

Amici’s reliance on UK law also does not assist this Court in interpreting “person” as used in Chapter 660. Hawai‘i courts apply their own rules governing statutory construction, not the laws of the UK. Those rules are well established:

This [C]ourt’s statutory construction is guided by established rules: First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

Flores v. Rawlings Co., LLC, 117 Hawai‘i 153, 158, 177 P.3d 341, 346 (2008), (cleaned up).

The ICA therefore did not err when it “substitute[d] ordinary usage for [the] legal meaning” of “persons.” Dkt. 92 at 17.²

Amici’s extensive discussion of the historical meaning of “persons,” whether that term may encompass nonhuman animals in other contexts, and whether nonhuman animals may simultaneously possess status as both property and legal persons, does not undermine the ICA’s interpretation of Chapter 660. The plain and ordinary meaning of “person,” as the ICA correctly held, is a human being. *See also* HRS § 1-19 (defining “person” as an individual and groups of individuals); 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”); *Person*, Black’s Law Dictionary (12th ed. 2024) (“[a] human being”); Dkt. 15 at 10-14; Dkt. 74 at 4.

² All docket citations refer to the PDF page number of the docket.

Whatever the concerns regarding Mari's and Vaigai's circumstances, this Court "cannot change the language of the statute, supply a want, or enlarge upon it in order to make it suit a certain state of facts." *State v. Dudoit*, 90 Hawai'i 262, 271, 978 P.2d 700, 709 (1999) (citation omitted). The Court "do[es] not legislate or make laws" and "has no authority to depart from the plain meaning of the language used." *Id.* Its "sole duty is to give effect to the statute's plain and obvious meaning." *State v. Mueller*, 102 Hawai'i 391, 395, 76 P.3d 943, 947 (2003) (citations omitted). Only human beings possess the right to seek a writ of habeas corpus in Hawai'i.

Further, the UK laws cited by Amici fail to establish that nonhuman animals possess the legal status necessary to invoke habeas corpus protections. Parliamentary measures such as the Animal Welfare (Sentience) Act 2022 and the Animal Welfare Act 2006 are "directed to the welfare, protection and preservation of animals." These laws may indicate that Parliament (not English common law) recognizes nonhuman animals as something more than property, as Amici contend, but none establishes that nonhuman animals possess a right to bodily liberty enforceable through habeas corpus.

C. Even If a Common Law Writ is Available, It Does Not Extend to Nonhuman Animals.

Amici advance two reasons why Hawai'i's common law writ of habeas corpus should be available to Mari and Vaigai: (1) habeas protections have been extended to humans whose detention appeared to be justified by "prevailing legal doctrines and social norms"; and (2) Petitioner established a *prima facie* case that Mari's and Vaigai's confinement is unjust. Dkt. 92 at 25.

Courts granted enslaved persons, women, and children habeas corpus relief because they were human beings who were deprived of their right to bodily liberty. The courts did *not* hold that enslaved persons, women, and children had a right to habeas relief even though they were

deemed property. For example, the courts in *Somerset* and *Lemmon* granted enslaved persons habeas relief because the laws of those jurisdictions (England and the State of New York, respectively) did not recognize slavery. They were thus entitled to habeas relief because they were free human beings. *See Lemmon v. People*, 20 N.Y. 562 (1860) (finding that eight enslaved persons became free upon arrival to New York); *Somerset v. Stewart*, 98 Eng. Rep. 499 (1772) (finding that a person could not be deported from England because England did not recognize slavery within its jurisdiction). Courts likewise granted habeas relief to abused women and children because they were human beings, not despite the fact that they were considered property. *Nonhuman Rts. Project, Inc. v. Breheny*, 197 N.E.3d 921, 940 (N.Y. 2022) (“Similarly, the writ was used to grant freedom to wives and children, who, *though not chattel*, had few or no legal rights and legally were under the dominion of husbands and fathers”) (Wilson, J., dissenting) (emphasis added). Amici argue that the “logical progression of our common law runs from extending habeas to ‘abused women and children and enslaved persons’ . . . to granting an elephant the right to bring a habeas proceeding, an odious comparison with concerning implications.” *Id.* at 928.

Recognition by animal experts and courts that elephants possess complex cognitive, emotional, and social capacities, and that captivity may be fundamentally at odds with those capacities, does not establish a *prima facie* entitlement to habeas corpus relief. Petitioner has not established that Mari’s and Vaigai’s confinement is unlawful under Hawai‘i law. Hawai‘i law permits the exhibition of nonhuman animals, including Asian elephants, by zoos. *See* Haw. Admin. R. § 4-71-6.5, Part A (listing Asian elephants and other nonhuman animals that are subject to research and exhibition). Hawai‘i law also treats nonhuman animals as property. *See, e.g.,* HRS § 142-44 (wild cattle, horses, mules, donkeys, sheep, goats, and swine are the property

of the owners or lessees of the lands on which they are running wild); *Miller v. Collins*, 158 Hawai‘i 435, 438, 593 P.3d 374, 377 (2026) (“A dog is personal property”). Petitioner has not alleged that Mari’s and Vaigai’s confinement has violated any applicable animal welfare laws, even though Petitioner claims that their confinement harms their welfare. Petitioner’s and Amici’s concerns regarding Mari’s and Vaigai’s welfare do not establish an entitlement to habeas corpus relief. To the extent that they seek to change the legal framework governing animal confinement and exhibition, their arguments are appropriately directed to the legislature.

III. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court reject Amici’s arguments and affirm the ICA’s decision.

DATED: Honolulu, Hawai‘i, October 13, 2026.

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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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