

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)

BRIEF OF *AMICI CURIAE* UK LEGAL EXPERTS
IN SUPPORT OF PETITIONER-APPELLEANT

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INTEREST OF *AMICI CURIAE*

Amici are UK-based legal academics, solicitors, and barristers who teach, research, advise, and litigate in the UK. *Amici* have expertise in the issues presented by this case and in their significance for the broader development of English common law adjudication relating to nonhuman animals.

Hawai‘i law expressly provides that “The common law of England... is declared to be the common law of the State of Hawaii.” HRS § 1-1 (2026). The writ of habeas corpus “enjoyed [in Hawai‘i] is the same in substance with the original [English] writ,” because “[a]nything less than this would make the provisions... in our Constitution and Statutes hollow and meaningless.” *Ex parte Apuna*, 6 Haw. 732, 735 (1869). As legal experts trained and working in the United Kingdom, *Amici* are well placed to assist the Court on the purpose and scope of the common-law writ of habeas corpus, its relationship to statutory habeas corpus provisions, the legal status of nonhuman animals, and the meaning of concepts such as “personhood” and “property” under the English common law.

Amici also have a professional interest in the principled development of the common law. Because UK courts regularly look to decisions from other common-law jurisdictions for guidance in novel, developing, and unsettled areas, *Amici* have an interest in ensuring that the Hawai‘i courts give full consideration to the merits of this case and to the broader common-law issues it raises.

SUMMARY OF ARGUMENT

The case concerns Mari and Vaigai, two female Asian elephants taken from their families and homes in India and brought thousands of miles to confinement in the Honolulu Zoo. In their native forests they would have lived among a tight-knit community of mothers, daughters, sisters, and aunts who cared for, comforted and protected them. Each day they would have travelled miles through diverse landscapes of shade and grassland with hours spent foraging, exploring, bathing, playing and resting. Instead, for decades, their world has been narrowed to the fixed boundaries and routines of the Honolulu Zoo, where the petition describes them as demonstrating stereotypic behaviour indicating psychological distress so profound that its experts say it has caused them permanent brain damage.

Petitioner argues that confinement at the Honolulu Zoo violates Mari and Vaigai’s right to liberty protected by the common law writ of habeas corpus and seek their release and transfer to an accredited elephant sanctuary. The Intermediate Court of Appeals (“ICA”) affirmed the trial

court's Motion to Dismiss, ruling that Mari and Vaigai are not "persons" who may avail themselves of habeas protection. *Nonhuman Rights Project, Inc. v. City & County of Honolulu*, 158 Hawai'i 15, *1 (Haw. Intermediate Ct. App. Jan. 28, 2026).

Amici respectfully urge this Court to reverse the judgment below, recognize that elephants may invoke the common-law writ of habeas corpus, and remand with instructions to issue an order to show cause.

Amici do so for the following reasons. First, the ICA erred in treating HRS ch. 660 as having displaced the common-law writ. The English authorities from which Hawai'i inherited habeas corpus establish that statutory habeas provisions supplemented, regulated, and occasionally restricted the writ, but did not extinguish the courts' independent common-law jurisdiction absent express legislative language. The scope of Hawai'i's common-law habeas jurisdiction should not be determined by reference to the meaning of "person" in HRS ch. 660.

Second, the ICA's objections to recognizing Mari and Vaigai as legal persons lack merit. In law, "person" is a term of art identifying the bearer of particular rights or duties rather than a biological category. The common law has long recognized nonhuman persons, including corporations, ships, sovereign states, and other juridical entities. Personhood is context-specific, not an all-or-nothing status, and the fact that animals are treated as property for some purposes does not preclude their recognition as persons for others.

Third, the history of habeas corpus demonstrates that the writ has repeatedly been used to scrutinize forms of confinement supported by prevailing legal doctrines, property relationships, custodial arrangements, or social conventions. Courts have employed the writ on behalf of enslaved persons, married women, children, Indigenous peoples, and noncitizens, not because those individuals already possessed fully recognized liberty rights elsewhere in law, but because habeas corpus served as a means of testing whether their confinement was justified.

Finally, Petitioner has made a *prima facie* showing that Mari and Vaigai's confinement is unjust. Courts throughout the common-law world have increasingly recognized that elephants possess exceptional cognitive, emotional, and social capacities, that captivity is fundamentally inconsistent with those capacities, and that sanctuary placement provides a more just alternative. At this stage, Petitioner need not prove the ultimate merits of their claim. They need only demonstrate a sufficient basis for judicial inquiry. The evidence submitted comfortably satisfies that threshold.

For these reasons, this Court should hold that elephants may invoke the common-law writ of habeas corpus and remand the case for further proceedings on a full evidentiary record.

ARGUMENT

I. ENGLISH HABEAS CORPUS STATUTES HAVE NOT SUPERSEDED THE COMMON-LAW WRIT

The ICA concluded that Hawai‘i’s common-law writ of habeas corpus has been superseded by HRS ch. 660. *Nonhuman Rights Project*, 158 Hawai‘i at *1. On that premise, it treated the availability of habeas relief as turning on the statutory meaning of “person” and the legislature’s presumed intent. By contrast, the history of English habeas corpus shows that judges and jurists have consistently understood habeas statutes as regulating, strengthening, or occasionally, expressly limiting a preexisting common-law jurisdiction, not as displacing it.

Habeas corpus “is a writ antecedent to statute . . . throwing its root deep into the genius of our common law.” *Secretary of State for Home Affairs v. O’Brien* [1923] A.C. 603, 609. It is “of immemorial antiquity,” *id.*, and has existed “from the earliest days of the common law.” 125 Parl. Deb., H.L. (5th ser.) col. 1483 (June 27, 1979) (statement of Lord Hailsham of Saint Marylebone, Lord Chancellor); see also *In re Besset*, 8 J.P. 743 (1844) (“The writ of habeas corpus issues at common law”).

Habeas corpus did not derive its authority from legislation. As a prerogative writ, it was an instrument through which the Court of King’s Bench, acting in the Crown’s name, could require a custodian within the Crown’s dominions to justify a detention. The Habeas Corpus Act 1679 did not create that jurisdiction; it strengthened the procedural machinery of an existing remedy by preventing delay, evasion, transfer, and noncompliance. Habeas Corpus Act 1679, 31 Car. 2 c. 2, pmbl. & §§ 1, 4, 5, 8–9 (Eng.). The Habeas Corpus Act 1816 later enlarged the courts’ ability to investigate the factual basis of detention. Habeas Corpus Act 1816, 56 Geo. 3 c. 100, § 3 (Eng.). Neither Act created the right to challenge unlawful restraint. Dicey captured the distinction:

“The right to the writ of habeas corpus existed at common law long before the passing in 1679 of the celebrated Habeas Corpus Act. . . The Habeas Corpus Acts are essentially

procedure Acts, and simply aim at improving the legal mechanism by means of which the acknowledged right to personal freedom may be enforced.”

A.V. Dicey, *Lectures Introductory to the Study of the Law of the Constitution* 231, 236 (2d ed. 1886).

English law therefore draws a clear distinction between the common-law right to habeas corpus and its statutory regulation: “[t]he right to the writ of habeas corpus is a right which exists at common law independently of any statute, although the right has been confirmed and regulated by statute.” 88 *Halsbury’s Laws of England* ¶ 666 (2025). Indeed, “the writ in modern times is almost invariably issued by virtue of the common law jurisdiction and not under the Habeas Corpus Act 1679 or the Habeas Corpus Act 1816.” *Id.*

The distinction between common law and statutory habeas corpus jurisdiction has never been a mere formality. The common-law writ was also broader than the statutory regimes in at least two important respects: the forms of restraint it could examine and the territories to which it could run.

A. The common-law writ reached forms of detention beyond those covered by statute

The Habeas Corpus Act 1679 applied only to persons imprisoned for “criminall or supposed criminall Matters.” Habeas Corpus Act 1679, 31 Car. 2 c. 2, § 1 (Eng.). Section 7 expressly excluded persons imprisoned for debt or pursuant to other civil process. *Id.* § 7. These statutory limitations did not, however, constrict the courts’ preexisting common-law jurisdiction. Historical authorities consistently recognized this distinction. An influential nineteenth-century legal encyclopaedia explained that the Act’s narrow coverage existed “without in any way infringing on the common law jurisdiction of the Courts or judges” to examine a broader range of restraints. 6 *Encyclopaedia of the Laws of England* 132 (A. Wood Renton ed., 1898). Wilmot C.J. similarly observed that the framers of the 1679 Act “left the law as they found it in respect of private persons,” while the common-law writ continued to reach “all kinds of confinement and restraint, not for criminal, or supposed criminal matter.” *Opinion on the Writ of Habeas Corpus*, 97 Eng. Rep. 29, 33, 35 (H.L. 1758).

The King's Bench Divisional Court therefore continued to adapt the writ to forms of private restraint that fell outside the 1679 Act. From "the late seventeenth century onward," the court "combined the existing forms of the writ in creative ways to deal with issues raised by private restraints in such contexts as slavery, apprenticeship and domestic relations." Eric M. Freedman, *Making Habeas Work: A Legal History* 128 n.6 (2018).¹ The statute's narrower formulation did not define the outer boundary of habeas jurisdiction. The common law continued to supply the writ wherever the statute had not expressly displaced it.

B. The common-law writ had a broader territorial reach than the habeas statutes

The same distinction appears in the territorial operation of habeas corpus. The 1679 Act was confined to England, Wales, and certain privileged local jurisdictions and Crown dependencies. See Habeas Corpus Act 1679, 31 Car. 2 c. 2, § 10 (Eng.); see also Habeas Corpus Act 1816, 56 Geo. 3 c. 100, § 5 (Eng.). Those statutory boundaries did not mark the territorial limits of the common-law writ.

At common law, habeas corpus possessed an "extraordinary territorial ambit" extending throughout the Crown's dominions. Robert J. Sharpe & Judith Farbey, *The Law of Habeas Corpus* 206 (3d ed. 2011). That reach followed from the writ's prerogative character. Because the writ issued in the Crown's name, it could require a custodian exercising authority within the Crown's dominions to justify the detention of one of the Crown's subjects. Blackstone thus explained that "all prerogative writs," including habeas corpus, could issue to "every other of the dominions of the crown of England." 1 William Blackstone, *Commentaries on the Laws of England* 99 (Clarendon Press 1768). The King's Bench likewise held that such writs "may issue to every dominion of the Crown of England." *Rex v. Cowle*, 2 Burr. 834, 855, 97 Eng. Rep. 587, 599 (K.B. 1759).

The relationship between statute and common law was therefore complementary, not pre-emptive. Parliament sometimes extended statutory protections to areas already reached by the courts. The Habeas Corpus Act 1816, for example, expanded the statutory regime to encompass certain private

¹ On apprenticeships see Paul D. Halliday, *Habeas Corpus: From England to Empire* 167-168 (2010). On slavery and domestic cases, see section III(a) *infra*.

and noncriminal restraints, bringing the legislation closer to the broader common-law position. Habeas Corpus Act 1816, 56 Geo. 3 c. 100, § 1.

On other occasions, Parliament sought to restrict the reach of the common-law writ. Significantly, when it did so, Parliament proceeded through express legislative restrictions rather than by implication. The Habeas Corpus Act 1862 prohibited English judges from issuing the writ “to any colony or foreign dominion of the Crown where Her Majesty has a lawfully established . . . courts of justice having authority to grant and issue the said writ.” Habeas Corpus Act 1862, 25 & 26 Vict. c. 20, § 1 (U.K.).

The 1862 Act was enacted in direct response to *Ex parte Anderson*, 3 El. & El. 487, 121 Eng. Rep. 525, 30 L.J.Q.B. 129 (Q.B. 1861), where the Queen’s Bench issued habeas corpus to the sheriff of Toronto, requiring him to produce John Anderson, an African American fugitive from slavery detained in Canada. In doing so, the court reaffirmed that the writ could issue “into all parts of the dominions of the Crown of England” wherever a person was unlawfully confined.

This sequence of events illustrates that Parliament did not assume that the territorial limits found in existing habeas statutes already curtailed the common-law writ. Instead, following *Anderson*, it enacted a new statute expressly withdrawing part of that jurisdiction. Parliament considered it necessary to expressly legislate to restrict the territorial reach of the writ. A narrower statutory scheme did not, by itself, curtail the common-law jurisdiction.

Even after the 1862 Act, courts continued to issue the common-law writ beyond the territorial reach of the 1679 and 1816 Acts where the express statutory restriction did not apply. See, e.g., *Rex v. Earl of Crewe, ex parte Sekgome* [1910] 2 K.B. 576 (C.A.) (British Protectorate of Bechuanaland); *Rex v. Secretary of State for Home Affairs, ex parte O’Brien* [1923] 2 K.B. 361 (C.A.) (Irish Free State); *Ex parte Mwenya* [1960] 1 Q.B. 241 (C.A.) (British Protectorate of Northern Rhodesia). These decisions confirm that the common-law writ remained operationally independent of the habeas statutes.

C. Statutory regulation does not extinguish common-law habeas jurisdiction absent an express restriction

This history establishes that statutes governing habeas corpus may strengthen the writ, prescribe procedures for its use, extend its protection, or expressly restrict its operation. But procedural legislation does not implicitly extinguish the courts' common-law authority to develop habeas corpus as "a flexible remedy adaptable to changing circumstances." *R. v. Secretary of State for the Home Department, ex parte Muboyayi* [1992] Q.B. 244, 269 (C.A.). That jurisdiction "can be taken away only by express legislative enactment." *Ex parte Anderson*, 3 El. & El. 487, 121 Eng. Rep. 525, 30 L.J.Q.B. 129 (Q.B. 1861). See also *Somerset v. Stewart* (1772) Lofft 1, 19 (noting that only "positive law" could prevent the courts issuing writs of habeas corpus on behalf of enslaved individuals).

HRS ch. 660 contains no express provision abolishing the common-law writ or prohibiting Hawai'i's courts from considering whether habeas corpus may extend to a nonhuman animal. Even if the word "person" in Chapter 660 were construed to exclude elephants, that statutory conclusion would not, without express restriction, determine the scope of the courts' independent common-law jurisdiction. It would establish only the reach of the statutory procedure.

The ICA's contrary approach mistakes statutory regulation for statutory displacement. Under the legal tradition from which Hawai'i inherited habeas corpus, a legislature may restrict the common-law writ, but it must do so expressly.² Courts should not infer the surrender of an ancient and adaptable judicial power merely from the enactment of a procedural habeas statute, still less from a contested interpretation of a single statutory term. HRS ch. 660 therefore should not be treated as foreclosing the antecedent question presented here: whether Hawai'i's common-law habeas jurisdiction permits a court to inquire into the legality of an elephant's confinement.

II. NONHUMAN ANIMALS CAN BE, AND IN SOME INSTANCES ALREADY ARE, LEGAL PERSONS

² Indeed, this Court appears to have adopted the same approach as the English judiciary. *See, e.g., Gold Coast Neighborhood Ass'n v. State*, 140 Hawai'i 437, 452 (2017) ("statutes which abrogate the common law must do so expressly, not impliedly"). The ICA does not identify any provision expressing legislative intent to abrogate the common law writ.

The ICA offers four further reasons for refusing to recognize Mari and Vaigai as “persons” entitled to the protection of habeas corpus: (1) the word “person” does not ordinarily include nonhuman animals; (2) at common law, the category of “persons” was confined to humans; (3) Hawai‘i law distinguishes between “persons” and “animals” in other contexts; and (4) animals are classified as property at common law. Each argument rests on a mistaken understanding of legal personhood. The first substitutes ordinary usage for legal meaning; the second is historically inaccurate; the third assumes that “person” must carry the same meaning throughout the law; and the fourth treats personhood and property as mutually exclusive categories when the common law has never consistently done so.

Amici do not contend that Mari and Vaigai are persons for every legal purpose. The question is whether they may be recognized as persons for the specific purpose of invoking the common-law writ of habeas corpus. None of the ICA’s four arguments forecloses that more limited conclusion.

A. “Person” Is a Legal Term of Art, not a Biological Classification

The ICA rejects the possibility that Mari and Vaigai could be “persons” for purposes of habeas corpus because, in its view, “[t]he word ‘person’ need not be defined; the plain meaning of the word does not include animals.” *Nonhuman Rights Project*, 158 Hawai‘i at *2. See also *id.* at *4 (Wadsworth, J., concurring) (“Mari and Vaigai are plainly not ‘persons’ within the ordinary definition and common meaning of the word”).

That reasoning overlooks the settled distinction between the ordinary and legal meanings of “person.” In everyday speech, the term generally denotes a human being. In law, it identifies an entity recognized as capable of holding rights or bearing duties. John Austin described “persons, as subjects of law” by reference to “certain rights and duties” rather than their biological characteristics. John Austin, *Lectures on Jurisprudence* 345 (1875). John Chipman Gray made the distinction explicit: although “in common speech, ‘person’ is often used as meaning a human being,” its “technical legal meaning” is “a subject of legal rights and duties.” John Chipman Gray, *The Nature and Sources of the Law* 27 (2d ed. 1921). Salmond expressed the same proposition in similarly comprehensive terms, defining a person as “any being whom the law regards as capable of rights or duties . . . whether human being or not.” John Salmond, *Jurisprudence* 318 (10th ed. 1947).

Legal personality and humanity are therefore related but distinct concepts. Pollock observed that “not every human being is necessarily a person” and that “there are persons in law which are not individual human beings.” Sir Frederick Pollock, *A First Book in Jurisprudence* 113–14 (1923). See also Hans Kelsen, *General Theory of Law and State* 94 (2006) (“man and person are two entirely different concepts”). On this understanding, there is no conceptual barrier to animal personhood. Gray acknowledged that “animals may conceivably be legal persons,” Gray, *supra*, at 42, while a later edition of Salmond observed that “[i]t would of course be possible for a legal system to regard an animal as a person.” P.J. Fitzgerald, *Salmond on Jurisprudence* 299 n.(cc) (12th ed. 1966); see also Ngaire Naffine, *Law’s Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* 49 (2009) (“[T]here is no reason why animals cannot be persons in a formal sense”).

UK courts have adopted the same understanding. Legal personality has been described as “a construct of the law,” *Hamilton v. Fife Health Board* (1993) 13 B.M.L.R. 156, 164, whose existence and extent depend on recognition by the relevant legal system, *Law Debenture Trust Corp. plc v. Ukraine* [2023] UKSC 11, [25]. Because artificial persons are created by law, they “may be of as many kinds as the law pleases.” *Bumper Development Corp. Ltd. v. Commissioner of Police of the Metropolis* [1991] 1 W.L.R. 1362, 1371 (C.A.) (quoting P.J. Fitzgerald ed., *Salmond on Jurisprudence* 306–08 (12th ed. 1966)).

American courts have expressed the point in comparable terms. Whether legal personality should attach is “a policy determination” rather than “a question of biological or ‘natural’ correspondence.” *Byrn v. New York City Health & Hospitals Corp.*, 31 N.Y.2d 194, 201 (1972). Because the category serves to allocate legal rights and duties, “[p]erson’ is a term of art.” *Wartelle v. Women’s & Children’s Hospital*, 704 So. 2d 778, 780 (La. 1998). The inquiry accordingly concerns “the proper allocation of rights under the law,” rather than “semantics or biology.” *Nonhuman Rights Project, Inc. ex rel. Leo v. Stanley*, 49 Misc. 3d 746, 765 (N.Y. Sup. Ct. 2015).

Nor are animals wholly outside the law’s community of rights-holders. The Ninth Circuit has observed that “[a]nimals have many legal rights, protected under both federal and state laws.”

Cetacean Community v. Bush, 386 F.3d 1169, 1175 (9th Cir. 2004).³ These protections have led some scholars and courts to conclude that animals already possess a form of limited legal personality. See David Bilchitz, *Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals*, 25 S. Afr. J. Hum. Rts. 38, 55 (2009) (reasoning that animals’ existing legal rights place them among natural persons rather than things); Matthew Liebman, *Animal Plaintiffs*, 108 Minn. L. Rev. 1707, 1786 (2024) (“animals are already limited legal persons because they possess legal rights”). In the Scots case of *Hamilton*, the court similarly referred to “non-human animals being accorded rights and responsibilities normally appropriate only to human beings.” 13 B.M.L.R. at 164. See also *People v. Graves*, 163 A.D.3d 16, 21 (N.Y. App. Div. 2018) (“personhood can and sometimes does attach to nonhuman entities like corporations or animals”).

The ordinary meaning of “person” cannot, then, dispose of the issue before this Court. Whether elephants are usually called persons in everyday speech has little bearing on whether the common law may recognize Mari and Vaigai as the holders of a particular right. Legal personhood exists precisely to identify the entities to which the law attributes rights and duties, and neither its definition nor its established operation confines it categorically to human beings.

B. The Common Law Has Never Confined Legal Personhood to Human Beings

³ US State and Federal courts have long recognized that nonhuman animals possess legal rights. See e.g. *Grise v. State*, 37 Ark. 456, 458 (1881) (noting an Arkansas anti-cruelty statute existed “to protect some abstract rights in all that animate creation . . . from the largest and noblest to the smallest and most insignificant”); *State v. Karstendiek*, 22 So. 845 (La. 1897) (“The [cruelty] statute relating to animals is based on the theory... that animals have rights which, like those of human beings, are to be protected.”); *Tilikum v. Sea World Parks & Entm’t, Inc.*, 842 F. Supp. 2d 1259, 1264 (S.D. Cal. 2012) (“[a rejection of a 13th amendment challenge on behalf of an orca] is not to say that animals have no legal rights; as there are many state and federal statutes... that ‘punish those who violate statutory duties that protect animals.’”) (quoting *Cetacean Cmty.*, *supra* 386 F.3d at 1175); *People v. Harris*, 2016 COA 159, ¶ 49 (“many states had enacted laws that reflected society’s acceptance of the idea that animals had an inherent right to be free from unnecessary pain and suffering and that the legal system should recognize that right”); *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 586 (2022) (Wilson, J., dissenting) (“Humans can create... [and] have granted animals countless rights... For example... The Endangered Species Act (16 USC § 1531 et seq.) gives all animals falling within its purview the right not to be captured, harassed or harmed by humans, and imposes a correlative duty on humans.”).

The ICA’s assertion that “[a]t common law, the category of ‘persons’ was confined to humans” is also inconsistent with the authorities. *Nonhuman Rights Project*, 158 Hawai‘i at *2. In the UK, courts have long attributed legal personality to various nonhuman entities when the relevant legal relationship required a distinct bearer of rights, duties, powers, or liabilities.

The corporation provides the most familiar example. In *Salomon v. A. Salomon & Co. Ltd.*, the House of Lords established that a duly incorporated company possesses a legal existence separate from its shareholders and controllers. [1897] A.C. 22. English law also recognizes sovereign states as legal persons capable of holding rights and incurring obligations independently of the natural persons who govern or represent them. *Law Debenture Trust Corp. plc v. Ukraine* [2023] UKSC 11.

Admiralty law has historically personified ships, permitting proceedings *in rem* against the vessel itself and attributing liabilities independently of its owner. *Harmer v. Bell (The Bold Buccleugh)*, 7 Moo. P.C. 267, 13 Eng. Rep. 884 (P.C. 1851). Courts applying Hindu law have likewise recognized idols as juridical persons capable of owning property and participating in litigation. The Privy Council described a Hindu idol as possessing “a juridical status, with the power of suing and being sued.” *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*, L.R. 52 Ind. App. 245, 249 (1925); see also *Bumper Development*, [1991] 1 W.L.R. at 1371 (recognizing, under the applicable law, the legal personality of a Hindu temple).

These authorities show that the common law has not made humanity, or even biological existence, a prerequisite of legal personality. Courts have instead used personhood as a means of giving effect to the rights or duties recognized within a particular field of law.

Whether Mari and Vaigai may invoke habeas corpus accordingly depends on the character and purposes of the writ, not on a supposed common-law rule reserving all forms of legal personality to human beings.

C. The Meaning of “Person” Varies Across Legal Contexts

The ICA also relies on several Hawai‘i authorities that distinguish between “persons” and “animals”: a decision interpreting “any other person” within the choice-of-evils defense and two criminal statutes. *State v. LeVasseur*, 1 Haw. App. 19, 24–25, 613 P.2d 1328, 1332–33 (1980); HRS § 142-96 (2023); HRS § 707-700 (2014). Those authorities define “person” within particular

statutory and doctrinal settings. They neither purport to establish a general definition applicable throughout Hawai‘i law nor address the scope of common-law habeas corpus.

Legal personhood does not operate as a single status carrying an identical set of rights and capacities in every context. As Professor Kurki explains, “an entity can simultaneously be a legal person for some purposes and a legal nonperson for others.” Visa A.J. Kurki, *A Theory of Legal Personhood* 87 (2019). Similarly, Professor Ngaire Naffine observes that legal personality is relational and context-dependent: “for some legal purposes” an entity “may barely exist,” while “[f]or others, [it] may be in the full flush of personality.” Ngaire Naffine, *Law’s Meaning of Life* 49 (2009).

The United Kingdom Supreme Court has similarly cautioned against treating personality as the source of every possible legal capacity. Rather, “it is the capacity to perform legal acts which necessarily requires the acknowledgement of personality in the legal system concerned.” *Law Debenture*, [2023] UKSC 11, [25]. An entity capable of enforcing a particular right or owing a particular duty may accordingly be regarded as a person in that capacity without acquiring every right and duty available to an adult human being. John Armour, *Companies and Other Associations*, in *English Private Law* 120, 120–21 (Andrew Burrows ed. 2019).

This Court’s own jurisprudence on the personhood status of fetuses illustrates the point. In *State v. Aiwohi*, the Court held that a fetus was not a “person” within Hawai‘i’s homicide statutes. 123 P.3d 1210 (Haw. 2005). In *Castro v. Melchor*, by contrast, the Court held that a viable fetus could qualify as a “person” under the wrongful-death and survival statutes. 414 P.3d 53 (Haw. 2018). These divergent outcomes reflect differences in the governing provisions, their purposes, and their legislative histories. A conclusion about personhood under the homicide statutes did not determine the meaning of that term elsewhere in Hawai‘i law.

The same contextual approach appears in cases involving nonhuman animals. The ICA cites *LeVasseur* for the proposition that animals are not “persons” within Hawai‘i’s choice-of-evils defense.⁴ But even where courts have declined to recognize animals as persons for one purpose, they have sometimes recognized them as persons, or person-like legal beneficiaries, for others.

⁴ Even in closely analogous contexts courts have reached materially different conclusions. Recently, a California Court of Appeal indicated that “a defendant who commits a crime to prevent animal cruelty could be entitled to present a necessity defense in an appropriate case,”

For example, Oregon courts have concluded that the emergency-aid exception to the warrant requirement, traditionally applicable to “persons,” extends to nonhuman animals in need of immediate assistance. See *State v. Dicke*, 258 Or. App. 678 (2013); *State v. Fessenden*, 355 Or. 759 (2014); *State v. Hershey*, 286 Or. App. 824, 834 (2017). In summarizing the lower courts’ reasoning, the Oregon Supreme Court explained that those courts had concluded that “animals were included in the class of ‘persons’ that officers may aid without a warrant.” *Fessenden*, 355 Or. at 763. Although the Oregon Supreme Court affirmed on alternative grounds, it did not reject that understanding. *Id.* at 774-75.

A federal district court likewise treated Colombian hippopotamuses as “interested person[s]” under 28 U.S.C. § 1782(a), allowing evidence to be obtained in support of foreign proceedings brought on their behalf. *Community of Hippopotamuses Living in the Magdalena River v. E.O. Wilson Biodiversity Foundation*, No. 1:21-mc-00023 (S.D. Ohio Oct. 15, 2021). See also *County of Prince George’s v. Reeves*, 252 A.3d 921, 945 (Md. 2021) (Hotten, J., dissenting) (advocating “limited personhood” for companion animals where necessary to vindicate legal interests); *Nonhuman Rights Project, Inc. ex rel. Hercules v. Stanley*, 49 Misc. 3d 746, 749 (N.Y. Sup. Ct. 2015) (describing New York State’s “recognition of legal personhood for some nonhuman animals under the Estates, Powers and Trusts Law (EPTL), which expressly permits a “domestic or pet animal” to be designated as a beneficiary of a trust.”).

Most relevantly, judges of the New York Court of Appeals have rejected the premise that the word “person” itself confines the writ to human beings. Judge Wilson explained that “‘person’ is used in a juridical sense to refer to any entity, real or fictional, as to which a statute or rule of the common law applies.” *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 582 (Wilson, J., dissenting). On that understanding, the statutory use of “person” could not resolve “whether the writ can extend beyond humans.” *Id.* Judge Rivera likewise relied on the trial court’s finding that the petitioner had demonstrated an elephant’s “complex cognitive abilities sufficient for common

notwithstanding that the necessity defense, like Hawai‘i’s choice-of-evils defense, traditionally turns upon the prevention of harm to another. *People v. Hsiung*, 120 Cal.App.5th 319, 334 (Cal. Ct. App., Apr. 30, 2026). Although the court ultimately rejected the defense on other grounds, it declined to adopt the categorical view that animal interests are incapable of supporting it. The evolution from *LeVasseur* to *Hsiung* further demonstrates that “the legal status of animals has changed and is changing still”. *State v. Fessenden*, 333 P.3d 278, 284 (Or. 2014).

law personhood and the common law right to bodily liberty.” *Id.* at 638 (Rivera, J., dissenting) (quoting *The NonHuman Rights Project v. Breheny*, No. 260441/2019, 2020 WL 1670735, at *3 (N.Y. Sup. Ct. Feb. 18, 2020)).

The Hawai‘i authorities cited by the ICA therefore resolve the meaning of “person” only within the provisions they interpret. Even if elephants fall outside Hawai‘i’s criminal statutes or choice-of-evils defense, that conclusion carries little weight in determining their capacity to invoke a distinct common-law remedy with its own history and purposes. The scope of habeas corpus must be considered within that setting, rather than inferred from legislative choices elsewhere.

D. Animals’ Property Status Does Not Preclude Their Recognition as Persons

The ICA finally contrasts the common law’s treatment of humans as persons with its classification of animals as property. *Nonhuman Rights Project*, 158 Hawai‘i at *2. That contrast assumes a strict binary between personhood and property that legal doctrine has never applied consistently. As Professor Margaret Davies explains, “the distinction between persons and property . . . is not a bright line, but is rather contextual and flexible.” Margaret Davies, *Property: Meanings, Histories, Theories* 80 (2007). Professor Naffine similarly observes that an entity may “count as a person in some legal contexts” while being “treated as something more akin to property in others.” Naffine, *supra*, at 49.

Familiar forms of legal person bear out that analysis. Corporations possess legal personality even though companies and their shares may be bought, sold, inherited, and pledged. Ships have historically borne a juridical identity in admiralty while remaining objects of ownership and commerce. Characterizing an entity as property within one legal relationship consequently supplies no general answer to whether it may hold rights or possess personality in another. As Naffine observes, “certain types of property (notably animals) are in some very limited respects protected in the manner of persons.” Naffine, *supra*, at 80.

Even traditional common-law property doctrine did not treat animals in precisely the same manner as inanimate objects. A property interest in a wild animal (“*ferae naturae*”) depended on the animal’s continued subjection to human control. Where the animal escaped, regained their “natural liberty,” and lacked an intention to return (“*animus revertendi*”), the asserted property right was extinguished. *The Case of the Swans* (1572) 7 Co. Rep. 17b, 77 Eng. Rep. 435; *Behrens v. Bertram Mills Circus Ltd.* [1957] 2 Q.B. 1; *Borwick Development Solutions Ltd. v. Clear Water Fisheries*

Ltd. [2020] EWCA Civ 578. An animal’s escape and recovery of natural liberty could thus terminate an existing owner’s property rights. In other words, the common law has always recognized the autonomy and agency of wild animals like Mari and Vaigai as imposing limits on the rights that humans may exercise over them.

Statutory animal-protection law has moved further from a purely proprietary conception. For over two centuries, the UK Parliament has enacted extensive measures “directed to the welfare, protection and preservation of animals.” *R. (Countryside Alliance) v. Attorney General* [2007] UKHL 52, [37]. The United Kingdom now expressly recognizes animals as sentient beings whose welfare must be considered. Animal Welfare (Sentience) Act 2022, c. 22 (UK); Animal Welfare Act 2006, c. 45 (UK). Such protections coexist with the classification of animals as property, but their concern is the animal’s own welfare rather than merely the owner’s economic interest.

Hawai‘i has followed the same general course. As Judge Wadsworth acknowledged, its legislature “has shown itself quite capable of providing for the safety and welfare of nonhuman animals.” *Nonhuman Rights Project*, 158 Hawai‘i at *4 (Wadsworth, J., concurring). Classifying Mari and Vaigai as property in some contexts therefore cannot determine whether they may possess the distinct and limited legal status needed to invoke habeas corpus.

Taken together, the ICA’s objections rest on an unduly rigid conception of legal personhood. Mari and Vaigai need not therefore be recognized as persons throughout the law before they may invoke habeas corpus. The narrower issue is whether they may possess the legal personality required to claim the particular interest protected by the writ: freedom from unlawful confinement.

III. THE COMMON-LAW WRIT OF HABEAS CORPUS SHOULD BE AVAILABLE TO MARI AND VAIGAI

The preceding sections have shown that no categorical doctrinal barrier prevents the common-law writ of habeas corpus from extending to Mari and Vaigai. The question is not whether the writ *can* reach them, but whether it *should*. *Amici* submit that it should.

Recognizing Mari and Vaigai’s ability to invoke habeas corpus would be consistent with the historic function of the Great Writ as a flexible safeguard of liberty and a mechanism for testing the justice of confinement. Throughout its history, habeas corpus has afforded judicial scrutiny to forms of detention sustained by prevailing legal doctrines and social conventions, particularly where those confined possessed limited rights or lacked clear remedies elsewhere in positive law.

This section proceeds in two parts. First, it demonstrates that the common-law writ has repeatedly been used to bring accepted forms of confinement within judicial scrutiny, including confinements involving individuals whose legal status and entitlement to liberty were contested. Second, it shows that Petitioner has presented sufficient evidence to establish a prima facie claim that the confinement of Mari and Vaigai is unjust and incompatible with their interest in bodily liberty. At a minimum, that showing warrants an order to show cause and resolution of the issues on a full evidentiary record.

A. Habeas Corpus Has Historically Been Used to Scrutinize Forms of Confinement Supported by Existing Legal Arrangements

The history of habeas corpus demonstrates that the writ has never been limited to those whose liberty interests were already fully recognized elsewhere in law. To the contrary, some of its most important applications arose in circumstances where prevailing legal doctrines and social norms appeared to justify the detention. As Judge Wilson of the New York Court of Appeals recently observed, habeas corpus was historically used on behalf of “chattel (enslaved persons) or persons with negligible rights and no independent legal existence (women and children)” and has served as a vehicle for challenging “conventional laws and norms that have become outmoded or recognized to be of dubious or contested ethical soundness.” *Breheny*, 38 N.Y.3d at 602 (Wilson, J., dissenting).

To be clear, *Amici* draw the Court’s attention to this history not to make a direct comparison between detained humans and detained nonhuman animals but “to demonstrate the flexibility of the historical uses of the writ, and, in so doing... do not undermine in any way the dignity of those individuals or diminish their struggles for equality and the right to live free.” *Id.* at 632 (Rivera, J., dissenting).

One of England’s most celebrated habeas corpus decisions is *Somerset v. Stewart*, where an enslaved African man sought habeas corpus after being confined aboard a ship bound for Jamaica. Lofft 1, 98 Eng. Rep. 499 (K.B. 1772). Before *Somerset*, English courts generally accepted social practices associated with chattel slavery and many regarded slavery as resting upon ordinary property principles. George van Cleve, “*Somerset’s Case*” and *Its Antecedents in Imperial Perspective*, 24 Law & Hist. Rev. 601, 624 (2006). Yet Lord Mansfield refused to allow those assumptions to determine the outcome. Describing slavery as “so odious” that it could not be

supported without positive law, he ordered Somerset discharged “[w]hatever inconveniences” might follow. *Somerset*, Lofft at 19.⁵

The same pattern appears in cases involving married women and children. Under the doctrine of coverture, married women lacked an independent legal identity vis-à-vis their husbands. Blackstone, *supra*, at 431 (defining the “doctrine of coverture” as entailing “the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband”). Yet the King's Bench used habeas corpus to review and, where appropriate, terminate their private confinement at the hands of abusive husbands. See *R. v. Turlington* (K.B. 1761) 97 Eng. Rep. 741 (freeing a wife sent to a private “mad house” by her husband); *R. v. Lee* (K.B. 1676) 83 Eng. Rep. 482 (reviewing husband’s treatment of wife); *Lister’s Case* (K.B. 1721) 88 Eng. Rep. 17, 17 (ordering release of wife whose husband “[took] her violently into his custody”).

Likewise, although fathers enjoyed near-absolute custodial rights over legitimate children,⁶ habeas corpus proceedings enabled courts to examine individual custody arrangements and, in some circumstances, depart from the ordinary “common law norm of paternal custody.” Halliday, *supra*, at 127. The writ therefore functioned as a mechanism through which courts could scrutinize exercises of authority that the broader legal framework otherwise appeared to endorse.

These authorities illustrate that habeas corpus has historically enabled courts to examine detentions that were supported by prevailing legal doctrines, property relationships, custodial arrangements, or social norms. The writ’s function has not been limited to enforcing liberties already settled elsewhere in law; it has also provided a means of testing whether existing justifications for confinement remain adequate when challenged in a particular case.

⁵ Other slavery habeas cases include *R. v. Stapylton* (K.B. 1771, unreported) (habeas used to retrieve an enslaved person before he set sail for Jamaica); *Knight v. Wedderburn* (Sess. 1775-1778) (Scot.) (releasing an enslaved African man on habeas); *Case of the Hottentot Venus*, 104 Eng. Rep. 344, 344-45 (K.B. 1810) (court examined whether Sarah Baartman—a “native of South Africa”—was confined against her will).

⁶ See, e.g., *R. v. De Manneville*, 5 East. 221 (1804) (holding that English law grants a father complete custody and control over marital children, allowing him to legally exclude the mother from access); *Re Agar-Ellis*, 24 Ch.D. 317, 329 (1883) (holding that the judiciary have “no right to interfere with the sacred right of a father over his own child”); John Eekelaar, *The Emergence of Children’s Rights*, 6 Oxf. J. of Leg. Stud. 161, 164 (1986).

This history bears directly on the present dispute. Mari and Vaigai occupy a legal position characterized by limited rights and by their continued treatment as property for some purposes. Their confinement occurs within a regulatory framework that permits zoos to possess elephants. Yet the mere existence of such a framework does not answer the question that habeas corpus has traditionally posed: whether the particular confinement before the court is justified.

B. Petitioner Has Established a Prima Facie Case That Mari and Vaigai's Confinement Is Unjust

Petitioner has met the burden of establishing a prima facie case that Mari and Vaigai's confinement is an unjustifiable interference with their interest in bodily liberty. They have submitted detailed evidence from seven of the world's most renowned experts on elephant cognition and behavior, all of whom unanimously conclude that elephants possess sophisticated cognitive, emotional, and social capacities and that Mari and Vaigai's confinement at the Honolulu Zoo significantly compromises their welfare and liberty interests.

This evidence echoes the determinations of courts from across the common-law world, which reveal growing judicial recognition that elephants possess complex cognitive, emotional, and social capacities, and that captivity is fundamentally at odds with those capacities.

In the United States, courts have acknowledged the profound costs of elephant captivity. In *Leider v. Lewis*, a California trial court found that “[c]aptivity is a terrible existence for any intelligent, self-aware species, which the undisputed evidence shows elephants are.” *Leider v. Lewis*, No. BC375234, slip op. at 30 (Cal. Super. Ct. July 23, 2012). The California Court of Appeal affirmed the trial court's factual findings, observing that “we have no doubt the elephants would do better if they were not captive” and recognizing that elephant sanctuaries “might well provide a better form of captivity.” *Leider v. Lewis*, 197 Cal. Rptr. 3d 266, 287 (Cal. Ct. App. 2016), rev'd on other grounds, 394 P.3d 1055 (Cal. 2017).

New York litigation concerning Happy the elephant produced similar observations. After a three-day evidentiary hearing, a New York trial court found that Happy possessed “advanced analytic abilities akin to human beings,” was “an intelligent, autonomous being who should be treated with respect and dignity,” and “may be entitled to liberty.” *The NonHuman Rights Project v. Breheny*, 2020 WL 1670735 at *10. The court further described as “extremely persuasive” the Petitioner's

arguments for transferring Happy from her solitary enclosure at the Bronx Zoo to an elephant sanctuary. *Id.*

On appeal, two judges of New York's highest court concluded that the evidence established at least a prima facie claim of unjust confinement.⁷ Judge Wilson wrote that “the evidence tendered by Happy demonstrates that Happy has very substantial cognitive, emotional and social needs and abilities, and that those qualities coupled with the circumstances of her particular confinement establish a prima facie case that her present confinement is unjust.” *Breheny*, 38 N.Y.3d at 626 (Wilson, J., dissenting). Judge Rivera similarly concluded that captivity was “anathema” to Happy because of her autonomy and cognitive capacities. *Id.* at 642 (Rivera, J., dissenting).

Courts elsewhere in the common-law world have voiced comparable concerns. In Canada, Chief Justice Fraser observed that the Edmonton Zoo elephant Lucy had experienced serious and continuing health problems and suffering, while cautioning that “it would be naive to assume that problems do not arise from the mere fact of keeping elephants in captivity.” *Reece v. Edmonton (City)*, 2011 ABCA 238, ¶ 103 n.69 (Fraser C.J.A., dissenting). In Pakistan, Chief Justice Minallah ordered the relocation of an elephant named Kaavan from a zoo to a sanctuary, emphasizing that elephants are nomadic animals whose social and behavioural needs cannot be satisfied in captivity. *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad*, W.P. No. 1155/2019 (Islamabad High Ct. May 21, 2020). The court concluded that “[t]he needs of this innocent creation cannot be met in the captive environment of a zoo.” *Id.* ¶ 13.

More recently, the Kerala High Court in India went so far as to describe the life of captive elephants as an “Eternal Treblinka” while directing stronger enforcement of welfare protections and criticizing their commercial exploitation. *In re Captive Elephants*, W.P.(C) No. 31520 of 2024, ¶ 1 (Ker. H.C. Nov. 13, 2024).⁸ Similar concerns are currently being litigated in South Africa, where proceedings seek the transfer of Johannesburg Zoo’s remaining elephants to a sanctuary on the

⁷ The majority in *Breheny* did not dispute the NhRP’s claim that Happy “is an autonomous and extraordinarily cognitively complex being,” 38 N.Y.3d at 569, but arbitrarily, in *Amici*’s view, found that the writ of habeas corpus had no application to her because it is “intended to protect the liberty right of human beings.” *Id.* at 565.

⁸ *Amici* do not agree with this extreme comparison, but merely highlight the widespread, and often deeply felt, concern expressed about elephant captivity throughout the common-law world.

ground that captivity is causing distress and undermining their wellbeing. AFP, *Court to Decide Fate of Johannesburg Zoo's Last Elephants*, ENCA (Aug. 1, 2026),

<https://www.enca.com/lifestyle/court-decide-fate-johannesburg-zoos-last-elephants>.

These authorities show that, across multiple jurisdictions, courts have recognized that elephants possess exceptional cognitive, emotional, and social capacities; that captivity substantially impairs their wellbeing; and that sanctuary placement may offer a more just arrangement. A growing body of judicial opinion therefore regards elephant confinement as an issue warranting serious legal scrutiny rather than summary dismissal.

The evidence submitted by the Petitioner, viewed alongside the substantial judicial concern expressed in the authorities discussed above, easily satisfies the threshold for further inquiry into the legality of Mari and Vaigai's confinement. The appropriate course is therefore to direct issuance of an order to show cause and remand the matter to the trial court so that the competing evidence regarding the legality and justice of the confinement may be considered on a full evidentiary record.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge that the Court issue an order to show cause requiring Respondents to appear and show cause for their imprisonment or restraint of Mari and Vaigai.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the BRIEF OF *AMICI CURIAE* UK ANIMAL LAW EXPERTS IN SUPPORT OF PETITIONER-APPELLEANT was served upon all parties, through their respective counsel of record, via electronic filing on October 6, 2026.

DATED: Honolulu, Hawai‘i, this 6th day of October 2026

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