

**IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT**

No. 377 WDA 2026

NONHUMAN RIGHTS PROJECT, INC.,
on behalf of Angeline, Savanna, Tasha, Victoria, and Zuri, individuals,

Appellant,

v.

ZOOLOGICAL SOCIETY OF PITTSBURGH,
which owns and operates the Pittsburgh Zoo; and
DR. JEREMY GOODMAN,
the CEO and President of the Pittsburgh Zoo,

Appellees.

REPLY BRIEF OF THE APPELLANT

On Appeal from the Final Order of February 12, 2026,
Granting Motion to Dismiss the Petition for Writ of Habeas Corpus
in the Allegheny County Court of Common Pleas, Docket No. GD-25-010963

The Honorable Mary C. McGinley, Judge Presiding.

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INTRODUCTION

Pennsylvania common law develops in the interests of justice, and this case concerns a manifest injustice inflicted upon five scientifically proven autonomous, extraordinarily cognitively complex individuals who happen to be elephants. Appellees themselves acknowledge that *Tincher v. Omega Flex, Inc.* modified Pennsylvania common law “to serve the interests of justice.” 628 Pa. 296, 336 (2014) (citation omitted). (Appellee Br. 27.) And in the habeas context specifically, *Commonwealth ex rel. Stevens v. Myers* instructs that “present judgment must be based on today’s needs which the writ is capable of meeting in satisfying the present demands of justice,” 419 Pa. 1, 16 (1965), while *Commonwealth ex rel. Bryant v. Hendrick* instructs that “[t]he very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” 444 Pa. 83, 89 (1971) (citation omitted). Thus, whether Angeline, Savanna, Tasha, Victoria, and Zuri possess the common law right to bodily liberty protected by habeas corpus cannot be answered merely by asking whether elephants possessed that right in the past. Nor is the answer subject to a statutory analysis of the legal term “person.” Rather, the appropriate analysis in this novel case requires application of Pennsylvania common law to present conditions, which, when undertaken in the interests of justice, mandates recognition of their right.

The NhRP has demonstrated that no legitimate legal, scientific, or ethical basis exists for denying the elephants their fundamental right to liberty and release from confinement. To deny that right based on arbitrary criteria would be antithetical to the judiciary's obligation to serve justice and to surface and correct injustices like the one perpetuated by the court below.

ARGUMENT

I. Appellees Wrongly Treat a Statutory Procedure on How to Invoke Habeas Corpus Relief as Determinative of Who Has the Right to Bodily Liberty Protected by Habeas Corpus

Appellees' assertion that Chapter 65 not only provides the procedural framework for obtaining habeas corpus relief but also "limits the writ's substantive availability" is unsupported by Pennsylvania law. (Appellee Br. 14.) In other words, Appellees argue that Chapter 65 governs both the procedure for invoking the writ and the substantive scope of the common law liberty interest the Great Writ protects. But Chapter 65 is a procedural statute, it imposes no substantive limitation on whose liberty interest habeas corpus protects.

There is no dispute that 42 Pa.C.S. §§ 6502 and 6503 employ the word "person." Nor is there any dispute that the General Assembly may regulate the procedure by which habeas corpus relief is sought. But neither proposition answers the antecedent question presented here: *who* possesses the common law right to bodily liberty that habeas corpus exists to protect? Appellees assume the procedural

statute answers that substantive question and then rely on that erroneous assumption to resolve the case. Pennsylvania precedent requires the opposite conclusion.

As this Court explained: “The power to grant habeas corpus relief is innate in our trial courts, because it arises from the ancient common law, not statute.” *Commonwealth v. Burke*, 261 A.3d 548, 553 (Pa. Super. Ct. 2021). The Pennsylvania Supreme Court similarly held that a Chapter 65 precursor, “the Act of 1937,” “did not displace the common law writ of habeas corpus ad subjiciendum,” while recognizing that “[t]he common law writ is even more extensive in its scope” than the statutory writ. *Commonwealth ex rel. Levine v. Fair*, 394 Pa. 262, 278 (1958). Moreover, in *Myers*, the Supreme Court explained that Chapter 65’s immediate precursor, “the Act of May 25, 1951,” “deals only with venue and procedure,” and “in no way restricts judicial freedom to expand the common law confines of the writ.” 419 Pa. at 17 n.20. It added that the Great Writ “is left to the development of the common law.” *Id.* at 18.

These authorities establish the fundamental distinction Appellees’ argument critically overlooks. Statutory law governs the procedure through which the writ is invoked—the *when*, *where*, and *how*—while the common law determines the writ’s substantive scope, answering the antecedent question of *who* may possess the liberty interest the Great Writ protects. This distinction has persisted throughout Pennsylvania’s statutory treatment of habeas corpus, from the inaugural Habeas

Corpus Act of 1785, through its 1791, 1937, and 1951 iterations, to the latest iteration—Chapter 65—in 1976. Throughout that history, as *Burke*, *Fair*, and *Myers* confirm, the General Assembly has repeatedly regulated the procedure for obtaining the writ without displacing its common law character.

Appellees respond by arguing that *Fair* and *Myers* “predate both the modern Habeas Corpus Act of 1976 and the PCRA.” (Appellee Br. at 16.) But neither enactment altered the distinction those decisions recognized between statutory procedure and the common law scope of the writ. The PCRA governs collateral review of criminal convictions; this case concerns private detention. And Chapter 65 contains no language abolishing the common law writ or defining the liberty interest it protects. Appellees thus treat statutory silence as a substantive restriction on the common law writ, which is precisely what *Myers* rejected in holding that statutory regulation of venue and procedure “in no way restricts judicial freedom to expand the common law confines of the writ.” 419 Pa. at 17 n.20. Chapter 65 has continued to regulate habeas corpus procedure in Pennsylvania; it has not displaced the common law as a source of the liberty interest that the Great Writ protects.

Appellees’ reliance on 1 Pa.C.S. § 1504 fares no better. Section 1504 requires that when a statute provides a remedy, “the directions of the statute shall be strictly pursued.” But Appellees’ argument fails because habeas corpus in Pennsylvania is not a statutory remedy. Appellees nevertheless contend that the NhRP “may not

invoke the common law to avoid the terms of the statute that governs the remedy it seeks.” (Appellee Br. at 14.) The NhRP has invoked Chapter 65’s procedure, it does not seek to avoid it. The dispute is whether the common law liberty interest vindicated through that procedure extends to these elephants. Section 1504 does not help to resolve that dispute. The NhRP does not seek a procedure for obtaining habeas relief that is different from the procedure prescribed by Chapter 65. It seeks recognition of a common law liberty interest through the procedure Chapter 65 provides. There is no conflict between the two. Chapter 65 governs *how* the Great Writ is invoked; the common law determines *who* has the liberty interest protected by the Great Writ.

The authorities that Appellees invoke involving the PCRA reinforce this distinction rather than refute it. 42 Pa.C.S. § 6503(b) expressly provides that habeas corpus is unavailable to a person “restrained by virtue of sentence after conviction for a criminal offense” where a remedy is available “by post-conviction hearing proceedings.” The PCRA is even more explicit: it “encompasses all other common law and statutory remedies for the same purpose.” 42 Pa.C.S. § 9542. Indeed, *Commonwealth v. Peterkin*, 554 Pa. 547 (1998); *Commonwealth v. Taylor*, 674 Pa. 395 (2022); and *Commonwealth v. Stout*, 978 A.2d 984 (Pa. Super. 2009) enforce these express legislative directives. (Appellee Br. 14-16.)

The comparative point is crucial. When the General Assembly intends for a statutory remedy to displace common law habeas corpus relief, it says as much. The PCRA expressly encompasses “all other common law and statutory remedies for the same purpose.” 42 Pa.C.S. § 9542. Chapter 65 says nothing comparable. It does not purport to supersede the common law writ, define the universe of individuals capable of possessing the liberty interest protected by the writ, or restrict the judiciary’s authority to develop the writ’s substantive reach. More importantly, *Peterkin*, *Taylor*, and *Stout* address which procedural remedy is available when the PCRA provides an alternative means of relief. They do not decide who may possess the substantive liberty interest protected by habeas corpus under the common law or otherwise inform the writ’s scope in the private detention context.

Peterkin held that because the petitioner’s claims were “cognizable under the PCRA,” Chapter 65 proceedings were “not available as to these claims,” 554 Pa. at 553, while simultaneously recognizing that the common law writ “continues to exist” where “there is no remedy under the PCRA.” *Id.* at 552. *Taylor* similarly explained that “a writ of habeas corpus continues to exist as a separate remedy,” operating as “an independent basis for relief only in cases in which there is no remedy under the PCRA.” 674 Pa. at 411 (citation omitted; italics omitted). In *Stout*, this Court provided further guidance, explaining that the PCRA “subsumes the writ of *habeas corpus*” only “in circumstances where the PCRA provides a remedy for

the claim.” 978 A.2d at 986. Here, no alternative remedy is available to Angeline, Savanna, Tasha, Victoria, and Zuri through which they may test the legality of their confinement. *Peterkin*, *Taylor*, and *Stout* are therefore inapposite.

The same problem undermines Appellees’ reliance on *Commonwealth ex rel. Fortune v. Dragovich*, 792 A.2d 1257 (Pa. Super. 2002). (Appellee Br. 9, 38.) *Dragovich* observed that the “availability of *habeas corpus* in Pennsylvania is both prescribed and limited by statute.” 792 A.2d at 1259. But this Court made that observation in deciding whether there was another remedy available for an already-convicted prisoner. *Id.* at 1258. The Court explained that habeas generally may issue only when another remedy is unavailable, exhausted, or ineffectual, and then considered whether the prisoner’s particular claims were cognizable through the writ. *Id.* at 1259. *Dragovich* thus addressed whether habeas was an available remedy for the prisoner’s particular claim or whether another remedy was available, concluding the prisoner’s claim was more “appropriately addressed in a claim of deprivation of constitutional rights.” *Id.* It did not consider whether Chapter 65 displaced the common law writ where no other remedy was available, or *who* may possess the liberty interest that the Great Writ protects. Reading *Dragovich* otherwise would treat a decision about *when* habeas is an available remedy as one defining the substantive scope of the common law right at issue here. Nothing in

Dragovich supports that transformation, much less the conclusion that it somehow displaces *Fair* and *Myers*.

The Pennsylvania Constitution confirms this distinction. Article I, § 14 provides that “the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.” Accordingly, the Great Writ stands “above the sphere of ordinary legislation.” *Commonwealth ex rel. Bressler v. Gane*, 3 Grant 447, 450 (Pa. 1863). Consistent with that constitutional protection, this Court has recognized that statutes governing habeas corpus procedure, like Chapter 65, “do not confer any power on the courts to grant *habeas corpus* relief that the legislature might annul.” *Burke*, 261 A.3d at 553. That does not mean every statutory rule governing habeas corpus is unconstitutional. It means precisely what Pennsylvania precedent has long recognized: the General Assembly may regulate the manner in which the Great Writ operates, but it remains a constitutionally protected common law remedy whose substantive scope is subject to judicial development, not reducible to the procedural statute governing its exercise.

Appellees therefore misunderstand the NhRP’s reliance on the Suspension Clause when they respond that “the constitutional guarantee does not extend to animals.” (Appellee Br. 17.) The NhRP does not contend that Article I, § 14 itself confers a constitutional right upon nonhuman animals to habeas corpus relief. The

point is that the Suspension Clause preserves the Great Writ's common law character and, with it, the judiciary's authority to develop its substantive scope. *See Myers*, 419 Pa. at 18 (the Great Writ "is left to the development of the common law"). Whether Angeline, Savanna, Tasha, Victoria, and Zuri may invoke the common law writ to seek relief from unlawful confinement is therefore a question for the courts, not one answered by the General Assembly's use of the word "person" in a statute governing habeas procedure.

II. There is No Statutory Definition of "Person" That Determines Who May Possess the Common Law Liberty Interest Habeas Corpus Protects

Appellees' statutory interpretation argument is not an answer to the common law question before this Court. Because Chapter 65 does not define "person," Appellees turn to the SCA and argue that its general definition of "person" excludes elephants because its enumerated examples consist of humans or entities through which humans act. (Appellees Br. at 10-13, 22). But the SCA expressly provides that its definitions apply "unless the context clearly indicates otherwise." 1 Pa.C.S. § 1991. Here, the relevant context is the common law writ of habeas corpus. As *Burke*, *Fair*, and *Myers* establish, the writ's substantive scope remains subject to judicial development. The SCA's general definition therefore cannot determine that scope.

Moreover, the NhRP does not assign "person" some "extraordinary meaning" or "ignore[] that all the examples of other 'persons' discussed in *Black's* are entities like corporations that are comprised of humans." (Appellee Br. 11, 13.) Rather, the

NhRP appropriately applies the seminal legal definition of “person.” A “person is any being whom the law regards as capable of rights or duties,” and “[a]ny being that is so capable is a person, whether a human being or not.” *Person*, BLACK’S LAW DICTIONARY (12th ed. 2024) (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)). 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). The definition relied on by the NhRP reflects the accepted proposition that legal personhood is a juridical status that follows from the law’s recognition of a legal right. That American law recognizes human-comprised entities such as corporations as “persons” does not establish that legal personhood requires being human or being comprised of humans; “person” is a legal category, not a biological classification.¹

Appellees’ reliance on legal duties as a prerequisite for legal rights is similarly incorrect. (Appellee Br. 21-22.) As discussed above, the seminal definition they ignore provides that a “person” is a being capable of having “rights or duties.” It

¹ “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.” *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 642 n.2 (2022) (Rivera, J., dissenting).

does not require a legal person to possess both. Even if, for the sake of argument, one accepts the contestable proposition that nonhuman animals cannot bear duties, the same is true of human infants and comatose adults; yet, “no one would suppose that it is improper to seek a writ of habeas corpus on behalf of one’s infant child or a parent suffering from dementia.” *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1057 (2018) (Fahey, J., concurring) (citations omitted). Accordingly, the right to bodily liberty protected by habeas corpus cannot depend on the capacity to assume reciprocal legal obligations or duties. Rather, the Great Writ simply “serves to protect against unjust captivity and to safeguard the right to bodily liberty, and . . . those protections are not the singular possessions of human beings.” *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 632 (2022) (Rivera, J., dissenting).

Ultimately, who may avail themselves of the Great Writ’s protections does not turn on whether the individual or entity is human, comprised of humans, or capable of bearing duties. It turns on whether Pennsylvania common law—properly applied to serve the interests of justice—recognizes these five elephants’ right to bodily liberty.² If it does, they are legal persons for purposes of that right. Chapter 65’s use

² Appellees erroneously contend that “it is outside the Court’s purview as an intermediate appellate court to expand the common law.” (Appellee Br. 26 n.5) (citation omitted). However, the authorities they cite do not support that sweeping proposition. *D’Errico v. DeFazio*, 763 A.2d 424, 433 (Pa. Super. 2000), holds that an intermediate appellate court may not recognize a new common law cause of action. *Alfred M. Lutheran Distributors, Inc. v. A.P. Weilersbacher, Inc.*, 650 A.2d 83, 90 n.8 (Pa. Super. 1994), declined to recognize a new statutory cause of action. This case asks the

of the word “person” identifies the holder of the right; it does not predetermine who may hold it.

III. The Elephants’ Proven Autonomy Informs Whether Pennsylvania Common Law Should Recognize Their Right to Bodily Liberty

Appellees correctly observe that legal personhood presents a question of law. (Appellee Br. 1, 7.) They err, however, in treating the Petition’s factual allegations concerning the elephants’ autonomy and cognitive complexity as irrelevant to whether they possess the right to liberty and thus legal personhood for purposes of habeas relief. The NhRP does not contend that the scientific evidence itself confers legal personhood, or that possessing a particular degree of intelligence automatically produces a legal right. Rather, the NhRP argues that the evidence from the world’s foremost experts on elephant cognition and rehabilitation directly establishes that the elephants possess the very interest that the right to liberty protects: autonomy.³

Court to do neither. The NhRP does not seek creation of a new cause of action. It invokes an ancient common law writ and asks whether the existing common law right to bodily liberty that the writ protects extends to these five elephants. Moreover, this Court does not lack the authority to develop the common law because the question presented is novel. It has recognized, “[t]he common law does not consist of absolute, fixed, and inflexible rules,” and the “[n]ovelty of an asserted right and lack of common-law precedent are no reasons for denying its existence.” *K.H. ex rel. H.S. v. Kumar*, 122 A.3d 1080, 1096 n.7 (Pa. Super. Ct. 2015) (citation omitted). This Court has applied those principles by recognizing previously unrecognized common law rights. *See, e.g., Czimmer v. Janssen Pharm., Inc.*, 122 A.3d 1043, 1064 (Pa. Super. Ct. 2015) (recognizing a minor’s independent common law right to recover pre-majority medical expenses). Appellees thus mistake the prohibition against an intermediate appellate court creating a new cause of action for a prohibition against common law development itself. Their authorities establish the former, not the latter.

³ Appellees disingenuously dismiss the eight declarations supporting the Petition as the work of “supposed experts.” (Appellee Br. 7.) Yet eight of the nine declarants hold doctorates in relevant

Pennsylvania common law develops in light of the facts of the cases in which it is applied. The Supreme Court has emphasized that “[c]ourts have a duty to reappraise old doctrines in the light of the facts and values of contemporary life,” because “the continued vitality of the common law depends upon its ability to reflect contemporary values and ethics.” *Albert M. Greenfield & Co., Inc. v. Kolea*, 475 Pa. 351, 357 (1977) (citation omitted) (cleaned up). More recently, the Court reaffirmed that it “always retains the right and the duty to test the reason behind a common law rule in determining the applicability of such rule *to the facts before it*.” *Tincher*, 628 Pa. at 341 (internal quotations and citation omitted) (emphases added).

The same principle applies here. The Petition alleges, supported by extensive un rebutted expert evidence, that elephants are autonomous beings with a profound interest in directing the course of their own lives. Appellees confine these five elephants in environments that deprive them of the ability to meaningfully exercise that autonomy. Whether the asserted right extends to these elephants cannot sensibly

disciplines. Dr. Joyce Poole has studied elephants for more than fifty years and is a “world authority” on elephant behavior, cognition, and communication whose research includes pioneering discoveries concerning musth, infrasonic communication, and vocal learning. *See, e.g.*, National Geographic Soc’y, *Joyce H. Poole*, <https://tinyurl.com/2vaju596>. Dr. Bob Jacobs is a neuroscientist and comparative neuroanatomist whose research includes pioneering work on elephant neuroanatomy and the neurological effects of captivity. *See, e.g.*, Bob Jacobs et al., *Putative Neural Consequences of Captivity for Elephants and Cetaceans*, 33 REV. NEUROSCI. 439 (2022). The remaining declarants likewise possess decades of relevant expertise in elephant behavior, cognition, and rehabilitation. If Appellees genuinely dispute these experts’ qualifications, credibility, or conclusions, that dispute confirms the need for an evidentiary hearing. Those matters cannot be resolved by placing “supposed” before “experts” in an appellate brief; they must be tested against competent evidence from experts in the relevant fields.

be decided without considering the facts concerning who elephants are, their autonomous nature, and what confinement means to them.

Appellees respond with a circular argument. They declare the elephants' autonomy and cognitive complexity "irrelevant" because elephants are not legal persons; maintain that elephants are not legal persons because Pennsylvania law has not recognized their right to bodily liberty; and then rely on that lack of prior recognition to foreclose consideration of whether the common law should recognize the right now. (Appellee Br. 1, 6.) At every step, the argument assumes the very conclusion this Court is being asked to decide.

A properly understood common law inquiry asks whether the principles underlying an existing common law right apply to circumstances the law has not previously confronted. *Greenfield* and *Tincher* require that inquiry to be undertaken in light of the facts, not in disregard of them. A proper common law inquiry must consider the elephants' autonomy, not declare it irrelevant. Their autonomy is indispensable to determining whether the principles underlying the right to bodily liberty apply to them and what the present demands of justice require.

IV. That Elephants Have Not Historically Possessed the Common Law Right to Bodily Liberty Does Not Foreclose Such Recognition Today

Appellees repeatedly emphasize that Pennsylvania common law has historically treated nonhuman animals as property and has never recognized

elephants as legal persons. (Appellee Br. 17-20.) The NhRP does not dispute the historical statement. It disputes Appellees' conclusion that history ends the inquiry.

The Pennsylvania Supreme Court has rejected precisely that conception of habeas corpus. In *Myers*, the Court held that “mere historical considerations, now outdistanced by modern conditions,” should not “be allowed to control the scope of a writ which in this state is clearly adaptable to the exigencies of the times when the writ is used in a new class of cases.” 419 Pa. at 16. “Although steeped in tradition, the writ is not insensitive to change.” *Id.* Rather, “[o]ur present judgment must be based on today’s needs which the writ is capable of meeting in satisfying the present demands of justice.” *Id.* The Supreme Court has also emphasized that “[t]he very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Hendrick*, 444 Pa. at 89 (citation omitted). Indeed, Pennsylvania common law more generally reflects the same principle: “‘The genius of the common law has been its responsiveness to changing times. . . . Drawing upon the past, the law must serve—and traditionally has served—the needs of the present.’” *Commonwealth v. McCusker*, 448 Pa. 382, 385 (1972) (citation omitted).

These cases foreclose Appellees' reliance on lack of historical precedent. Pennsylvania common law is not confined to rights recognized in the past; it asks whether existing principles, applied to present circumstances, require development

of the law to serve the present demands of justice. The NhRP does not contend eighteenth-century Pennsylvania common law recognized elephants as holders of a right to bodily liberty. This is a novel case. But novelty is not a reason to refuse the common law inquiry; it is the reason such inquiry is necessary. Otherwise, novelty itself would defeat the claim, and the common law could never develop at all. *See Commonwealth v. Keller*, 35 Pa. D. & C.2d 615, 623 (Quar. Sess. 1964) (“The essential characteristic of the common law . . . is its flexibility. Under the common law, we are not powerless to cope with novel situations not comprehended or contemplated by the legislators.”).

Appellees’ response to the NhRP’s historical habeas authorities reveals another flaw in their argument. For example, they contend that *Respublica v. Betsey*, 1 Dall. 469 (1789), “did not confer personhood status on individuals who did not previously have it, nor did it allow a petition to be filed on behalf of an individual lacking that status.” (Appellee Br. 34.) But Appellees are wrong. When the case was filed on behalf of the enslaved Betsey, she was legally regarded as property, yet the court entertained her claim for liberty. *See Betsey*, 1 Dall. at 474-75. In granting her freedom, the Court implicitly recognized Betsey’s right to liberty and necessarily her legal personhood for purposes of habeas corpus. Legal personhood follows from the possession of a legal right; it is not a separate status that must be independently established before the asserted right can even be considered.

More fundamentally, Appellees' characterization overlooks what makes *Betsey* relevant here. *Betsey* came before the Supreme Court while the law treated enslaved human beings as property, yet habeas supplied the judicial mechanism through which *Betsey*'s claim to liberty could be adjudicated. As now-Chief Judge Wilson explained in *Breheny*, "the writ was vigorously used to challenge the detention of slaves when, under law, they were deemed chattel, and to challenge the detention of women and children who at that time, though not chattel property, had no legal existence." 38 N.Y.3d 555, 579 (2022) (Wilson, J., dissenting).

The point is not, as Appellees suggest, to equate elephants with "enslaved persons or women." (Appellee Br. 33.) It is that habeas has historically provided a flexible means of challenging confinement even when the detainee lacked, under existing law, the very legal status or liberty the writ was invoked to secure. *See Breheny*, 38 N.Y.3d at 632 (Rivera, J., dissenting) ("For purposes of my legal analysis, I refer to humans who were denied full rights under the law to demonstrate the flexibility of the historical uses of the writ, and, in so doing, I do not undermine in any way the dignity of those individuals or diminish their struggles for equality and the right to live free.").

Appellees would invert that history by making legal personhood a prerequisite to invoking the very writ through which a previously unrecognized right to liberty was established. Their reasoning is, again, circular: the elephants cannot invoke

habeas because they are not already legal persons, and the Court cannot consider whether they possess the right that would make them legal persons because they cannot invoke habeas. That reasoning would transform the Great Writ from a means of challenging the legal boundaries of confinement into a remedy available only to those whose liberty the law already recognizes. *Id.* at 617-18 (Wilson, J., dissenting) (“habeas is not so limited and instead has always been used to challenge confinement at the boundaries of evolving social norms, even by petitioners with the legal status of chattel (enslaved persons) or no legal identity or capacity to sue on their own (wives and children)”).

Angeline, Savanna, Tasha, Victoria, and Zuri’s present classification as property does not prevent them from invoking the Great Writ. As Chief Judge Wilson recognized, habeas has historically tested claims to liberty notwithstanding the detainee’s existing status as property. *Id.* *Betsey* itself demonstrates the point. The relevant inquiry is therefore not their present property status, but whether the principles underlying Pennsylvania’s common law right to bodily liberty warrant recognition of that right in these five elephants today. Under *Myers*, that inquiry cannot be avoided merely because it presents “a new class of cases.” 419 Pa. at 16. History establishes that the right has not previously been recognized in elephants, but history alone cannot, without making common law development impossible, answer whether Pennsylvania common law recognizes that right today.

V. Recognizing the Right to Bodily Liberty in These Five Elephants, And Allowing Them to Pursue Habeas Corpus Relief, Would Be an Incremental Development of Pennsylvania Common Law

Appellees and Amici falsely portray this case as requiring a sweeping declaration of legal rights for all nonhuman animals. Appellees predict an “enormous destabilizing impact on modern society,” (Appellee Br. 26) (citation omitted), while Amici claim that permitting this action to proceed would “completely redefine the human-animal legal relationship . . . for all animals in the Commonwealth.” (Amici Br. 2-3). But neither prediction follows from the question before this Court, which concerns five elephants, one asserted right, and one remedy through which to vindicate it.⁴

Indeed, Appellees invoke *Tincher*, 628 Pa. at 406, for the proposition that common law should “develop incrementally,” but omit what the Supreme Court said that means. (Appellee Br. 27.) Common law “develops incrementally within the confines of the circumstances of cases as they come before the Court.” *Tincher*, 628 Pa. at 337 (citation omitted). That is because common law adjudication is “grounded in records of individual cases” and therefore “structured to cast a narrow focus on matters framed by litigants before the Court in highly directed

⁴ Appellees’ reliance on *Seebold v. Prison Health Services, Inc.*, 618 Pa. 632 (2012) is misplaced. (Appellee Br. 25). *Seebold* concerned “whether to impose affirmative common-law duties as a predicate to civil liability,” 618 Pa. at 650, and its “default position” expressly governs the imposition of such duties. *Id.* at 653. This case concerns no new affirmative duty as predicate to civil liability, but whether an existing common law right to bodily liberty extends to these elephants through the Great Writ.

fashion.’” *Id.* at 339 (citation omitted). The NhRP asks for precisely that kind of incremental development here: application of the principles underlying an existing common law right to the particular facts concerning Angeline, Savanna, Tasha, Victoria, and Zuri.

Moreover, Amici AVMA’s parade of horrors has been a recurring theme in their briefs and it was most recently expressly rejected in *DeBlase v. Hill*, 87 Misc.3d 1139 (N.Y. Sup. Ct. 2025). There, the court considered competing amicus briefs by the NhRP and AVMA, rejected as “overstated” the AVMA’s “parade of horrors arguments,” and incrementally developed the common law on the facts before it, ultimately holding that a companion dog could qualify as “immediate family” for purposes of a zone-of-danger claim. *Id.* at 1166-69. That case-specific development exemplifies the incremental common law approach described in *Tincher*.

That the right sought here may appear “a radical expansion of the law” to industries that have for centuries depended on the captivity and exploitation of elephants is neither surprising nor relevant to this case, which seeks an incremental expansion of the common law. (Appellee Br. 25.) And habeas narrows the inquiry further by its “necessarily case-by-case approach.” *Breheny*, 38 N.Y.3d at 593 (Wilson, J., dissenting). *See also Stander v. Kelley*, 433 Pa. 406, 425 (1969) (Roberts, J., concurring) (“it is abundantly clear that the ‘Great Writ’ retains its historical character as the ultimate and essential safeguard of *individual* rights and that the

courts of the Commonwealth of Pennsylvania must and will continue to make its protections available”) (emphases added). Recognition of these elephants’ asserted right would therefore decide neither the right of every elephant nor those of dogs, livestock, or any other animal. *Breheny*, 38 N.Y.3d at 621 (Wilson, J., dissenting) (“Whatever rights and interests [an elephant] may have do not tell us anything about the rights my dog has. . . . [G]ranting a single elephant—not the whole animal kingdom—the right to a full hearing on a writ of habeas corpus is about as incremental as one can get.”). In other words, whether some different asserted right should be recognized, or how such a right would apply to veterinary care, “the purchasing of livestock,” or companion animals, (Amici Br. 18-22), would require its own facts, legal arguments, and common law analysis, if ever raised.

More fundamentally, unsupported fears about the future cannot justify denying justice in the case at hand. Pennsylvania courts do not preserve an otherwise unjust common law status merely because changing it may have consequences. *See Flagiello v. Pennsylvania Hosp.*, 417 Pa. 486, 508 (1965) (“what follows in the wake of a judgment cannot be determinative of the issue as to whether law and justice dictate *that* judgment”).

Furthermore, a fear of additional litigation is no basis for withholding judicial relief. *Mayle v. Pa. Dep’t of Highways*, 479 Pa. 384, 395-96 (1978) (“It is the business of the law to remedy wrongs that deserve it, even at the expense of a “flood

of litigation”; and it is a pitiful confession of incompetence on the part of any court of justice to deny relief upon the ground that it will give the courts too much work to do”) (citation omitted); *Sinn v. Burd*, 486 Pa. 146, 163 (1979) (“Who is to say which class of aggrieved plaintiffs should be denied access to our courts because of speculation that the workload will be a burden? Certainly this Court is unwilling to allow such considerations to influence [it].”). Appellees and Amici cannot substitute speculation about hypothetical consequences for adjudication of the injustice before this Court. Such hypotheticals are red herrings that divert attention from the question presented here: whether the continued confinement of these five autonomous beings violates their common law right to bodily liberty.⁵

Real-world experience dispels the hypothetical consequences claimed by Appellees and Amici. Argentine courts have recognized the legal rights of numerous nonhuman animals, including by granting habeas corpus relief to an imprisoned

⁵ Amici also claim there is “*no means or manners to ensure the animals’ interests are truly being expressed or advanced.*” (Amici Br. 17) (quoting *Naruto v. Slater*, 888 F.3d 418, 432 (9th Cir. 2018)) (Smith, J., concurring in part). But *Naruto* concerned whether a macaque who took photographs of himself had an interest in owning their copyrights and receiving royalties—a far cry from the fundamental interest in bodily liberty asserted here. *Id.* at 432. This record also says otherwise. Eight expert declarations from nine leading elephant scientists establish that elephants are autonomous beings with complex physical, psychological, and social needs; that confinement in impoverished environments prevents meaningful exercise of that autonomy and causes serious harm; and that these elephants would benefit from placement in a rewilding center or sanctuary. (Pet. ¶¶ 15-90; R. 011a-047a). Amici’s contrary suggestion that Angeline, Savanna, Tasha, Victoria, and Zuri’s interests cannot be identified or advanced thus disregards the scientific evidence in this case and provides yet another reason for an evidentiary hearing: determining the elephants’ interests based on the evidence, rather than declaring their interests are unknowable.

chimpanzee named Cecilia who was declared “a nonhuman legal person.”⁶ (Pet. ¶ 210; R. 098a). Comparable relief has also been afforded to other species, including canaries, dachshunds, goldfish, and a cougar.⁷ Yet none of these decisions has disrupted Argentine society or fundamentally altered the nation’s broader legal treatment of nonhuman animals. Argentina continues to permit the use of animals for food, clothing, labor, entertainment, and other traditional purposes. Instead, these decisions afforded narrowly tailored relief to individual animals whose circumstances warranted judicial intervention. Argentina thus demonstrates that judicially recognizing limited legal rights for individual nonhuman animals does not inevitably produce the destabilizing legal and societal consequences Appellees and Amici incorrectly, and regularly, predict.⁸

⁶ Appellees correctly note that the translation of Cecilia’s Case previously cited by the NhRP was uncertified. (Appellee Br. 23). The NhRP appreciates Appellees bringing the issue to its attention and has replaced that version with a certified translation. *See Presented by A.F.A.D.A. About the Chimpanzee “Cecilia” – Nonhuman Individual*, File No. P.72.254/15 (Third Court of Guarantees, Mendoza, Argentina, Nov. 3, 2016) [English translation], <https://bit.ly/3mkkSmy>.

⁷ *See, e.g.,* Jake Davis, *Mountain in New Zealand, Canaries in Argentina Recognized as Rights-Holders*, Nonhuman Rights Project (Apr. 29, 2025), <https://tinyurl.com/39ym4en2>; Jake Davis, *Argentine Court Recognizes Dogs as Rightsholders*, Nonhuman Rights Project (Sept. 16, 2022), <https://tinyurl.com/bdfpyakx>; Jake Davis, *From Canaries to Cougars to Goldfish: Argentina Continues Expanding Legal Rights for Nonhuman Animals*, Nonhuman Rights Project (Sept. 8, 2026), <https://tinyurl.com/5js433rp>; Lauren Choplin, *Argentine Court Recognizes Cougar as Rightsholder*, Nonhuman Rights Project (Sept. 1, 2022), <https://tinyurl.com/bdhupckd>.

⁸ Appellees argue that because “Argentina is a civil law, not a common law jurisdiction,” its courts’ reasoning “is of no value in developing Pennsylvania’s common law.” (Appellee Br. 23). But the NhRP cites cases from Argentina not to define Pennsylvania common law, but as real-world evidence refuting the unfounded speculation that judicial recognition of rights in nonhuman animals necessarily produces societal upheaval. Moreover, Argentina’s civil-law tradition makes

Pakistan provides an even better comparative point in *Islamabad Wildlife Mgmt. Bd.* (Pet. ¶ 200; R. 094a). There, a high court in Pakistan—a jurisdiction whose legal system is rooted in the English common law tradition—ordered the elephant Kaavan relocated from the Marghazar Zoo because he had endured “unimaginable pain and suffering for the past three decades.” *Id.* at 12-13, 62. The court sua sponte ordered the remaining animals at the zoo relocated as well. Justice Athar Minallah later explained that the decision recognized the nonhuman animals as “legal persons” and resulted in the relocation of all 878 remaining captive individuals to species-appropriate sanctuaries.⁹ But even recognizing 879 nonhuman animals as legal persons did not “upend” or “destabilize[]” the Pakistani legal system, (Appellee Br. 25-26) (citation omitted), let alone “redefine the human-animal legal relationship” in that country. (Amici Br. 2.)

Argentina and Pakistan do not determine Pennsylvania law. They demonstrate something narrower: courts can recognize nonhuman animals as rightsholders and thus legal persons without simultaneously resolving every conceivable question about other nonhuman animals. This Court should decide the case before it in the same manner; on this record, as to these elephants, and based on the single common

that experience more notable, given the comparatively greater role of judicial development in Pennsylvania’s common law system.

⁹ Salma Waheedi, *Guardians for the Voiceless: Justice Minallah Reflects on Judging the Rights of Animals and Nature in Pakistan*, Program on Law & Soc’y in the Muslim World, HARV. L. SCH. (Mar. 17, 2026), <https://tinyurl.com/5ymr85xm>.

law right asserted on their behalf. That is precisely how Pennsylvania common law develops, “‘incrementally, within the confines and circumstances of cases as they come before the Court.’” *Tincher*, 628 Pa. at 337 (citation omitted). *See also Salsberg v. Mann*, 310 A.3d 104, 119-20 (Pa. 2024) (“The common law relies in individual cases upon clear iterations of the facts and skillful advocacy, and evolves in principle by analogy, distinction, and reasoned explication. This is the essence of justice at common law.”) (citation omitted).

VI. The NhRP Has Standing to Seek Habeas Relief on the Elephants’ Behalf

Whitmore v. Arkansas, 495 U.S. 149 (1990), does not govern this case.¹⁰ Yet Appellees triple down, arguing the NhRP has no “significant relationship” with the elephants and thus no standing. (Appellee Br. 30-36.) But *Whitmore* merely observed that it had been “suggested” that a next friend “must have some significant relationship with the real party in interest.” *Id.* at 164. Indeed, *Whitmore* was not a habeas case at all. The Court expressly acknowledged that “Whitmore, of course, does not seek a writ of habeas corpus,” but instead sought “to intervene in a state-court proceeding to appeal Simmons’ conviction and death sentence.” *Id.* Appellees

¹⁰ *See* Opp’n Br. 18-20 (R. 496a-498a) (explaining that *Whitmore*’s “significant relationship” dicta has not been adopted as a standing requirement in habeas corpus cases outside the PCRA context); Appellant Br. 21 n.13 (explaining that Appellees sidestepped that analysis in their lower-court reply in support of dismissal and instead doubled down on *Whitmore* through citations to a federal habeas corpus practice guide and a non-habeas federal copyright case involving a monkey who took a selfie).

thus ask this Court to make federal dicta from a non-habeas case a categorical limitation across all forms of Pennsylvania habeas corpus.

Moreover, Appellees attempt to transform *Commonwealth v. Haag*, 570 Pa. 289 (2002), into something it is not. That case does not establish that *Whitmore* governs here. (Appellee Br. 34-35.) *Haag* applied *Whitmore* in the distinct context of a next friend seeking PCRA relief on behalf of a convicted prisoner. 570 Pa. at 301. Appellees identify no Pennsylvania decision extending *Whitmore*'s significant-relationship dicta beyond post-conviction proceedings to a petition challenging private detention under Chapter 65.

Appellees also contend that the NhRP “cannot demand the benefit of an expanded writ while disclaiming the standing limits that Pennsylvania already applies to third parties.” (Appellee Br. 36.) But neither *Whitmore* nor *Haag* establishes a purported limit for a petition challenging private detention under Chapter 65. And the zoo’s status as the elephants’ “lawful owner and caretaker” is immaterial. (Appellee Br. 36.) The zoo is the custodian—the party imposing the challenged confinement. Nothing in Pennsylvania habeas law gives a custodian authority to claim its custodianship as grounds for preventing a proper representative from testing the legality of the subject confinement.

VII. The Petition Establishes a Prima Facie Case Warranting Further Habeas Proceedings

Finally, Appellees contend that no evidence could establish a prima facie case because elephants presently lack a recognized right to bodily liberty. (Appellees Br. 36-38). That simply repackages their merits argument. A prima facie case exists where the Petition alleges “facts which, if true, would entitle the relator to an award of a writ of habeas corpus and a hearing thereon.” *Balsamo v. Mazurkiewicz*, 417 Pa. Super. 36, 40 (1992) (citing cases). The Petition does that, establishing with extensive expert support that these five elephants are autonomous beings whose confinement prevents the exercise of their autonomy and thereby violates their right to bodily liberty, rendering their confinement unlawful. Appellees cannot defeat further habeas proceedings by the circular reasoning that Pennsylvania common law cannot recognize the very right the Petition seeks to establish.

CONCLUSION

This Court should reverse the order dismissing the Petition, recognize the elephants’ right to bodily liberty, and remand with instructions to issue an order to show cause under 42 Pa.C.S. § 6502 and require Appellees to make a return under 42 Pa.C.S. § 6504 justifying the elephants’ confinement.

CERTIFICATE OF COMPLIANCE

Pursuant to Pa.R.A.P. 2135(a)(1), (d), Appellant certifies that this reply brief does not exceed 7,000 words because it is 6,995 words in length, and that pursuant to Pa.R.A.P. 127 this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,
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