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NO. SCWC-24-0000323

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

NONHUMAN RIGHTS PROJECT, INC., on behalf of Mari and Vaigai, individuals,

Petitioner/Appellant,

vs.

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

Respondents/Appellees.

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

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

INTERMEDIATE COURT OF APPEALS
STATE OF HAWAI‘I

HONORABLE KEITH K. HIRAOKA
Presiding Judge

HONORABLE CLYDE J. WADSWORTH
Associate Judge

HONORABLE KIMBERLY T. GUIDRY
Associate Judge

RESPONDENTS/APPELLEES CITY AND COUNTY OF HONOLULU, DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR, DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR, JOHN BERRY'S RESPONSE TO JUSTICE EDWIN CAMERON'S *AMICUS CURIAE* BRIEF

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RESPONDENTS/APPELLEES CITY AND COUNTY OF HONOLULU, DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR, DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR, JOHN BERRY'S RESPONSE TO JUSTICE EDWIN CAMERON'S *AMICUS CURIAE* BRIEF

I. INTRODUCTION

No South African court has ever held that nonhuman animals are legal "persons" with concomitant rights to bodily liberty, much less that nonhuman animals are entitled to habeas protections. Dkt. 84 at 6–7.[1] Justice Edwin Cameron (ret.) of South Africa ("Amicus")'s Amicus Brief nevertheless argues that Hawai'i should do what no South African court has done, and recognize a right to bodily liberty in nonhuman animals that is protected under habeas common law. Not only is there no analogous South African jurisprudence on this issue, Amicus's request would directly conflict with established Hawai'i law.

Specifically, Amicus argues that "personhood" is a "malleable" concept that can and should extend to all nonhuman animals because South African scholars have theorized that humans owe "direct moral duties" to nonhuman animals, and because the South African constitution bestows "rights and values"—including the right to freedom and equality—to "everyone," including nonhuman animals. Amicus contends, without any explanation or justification whatsoever, that these same arguments apply with equal force to compel this Court to extend habeas protections to elephants.

His arguments are unpersuasive. First, the issue before this Court is whether habeas protections extend to elephants. None of Amicus's arguments for animal equality address how or why this Court can or should ignore HRS chapter 660, which grants habeas rights only to humans, in favor of recognizing a right to habeas relief for nonhuman animals that even South Africa has not recognized.

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

Second, even assuming that there remain substantive rights to habeas relief that are subject to development under Hawai‘i common law, Amicus's arguments offer no justification for this Court to extend common law habeas rights to nonhuman animals. The existence of moral duties and the State's obligation to act on those duties are issues that lie within the exclusive province of the legislature to determine. Moreover, unlike Amicus's interpretation of the South African constitution, the Hawai‘i constitution does not grant rights to nonhuman animals and no court has construed it to do so. Such a holding would undermine long-established Hawai‘i law treating nonhuman animals as property.

Finally, Amicus points to the *2023 National Norms and Standards for the Management of Elephants in South Africa* ("Norms and Standards")[2] as evidence that South African courts no longer view elephants as mere property. The Norms and Standards, which Amicus describes as "severely restrict[ing]" elephant captivity, resulted from legislative action, however, proving that the appropriate and effective means for prohibiting elephant captivity, which is the true goal of NhRP and its amici, is through legislation and not by contorting Hawai‘i's habeas laws.

II. ARGUMENT

A. HRS Chapter 660 Forecloses Amicus's Argument that Habeas Rights Should Extend to Nonhuman Animals.

The issue before this Court is whether elephants have the right to habeas protections. Amicus concedes that South African courts have not addressed this issue, but claims that because nonhuman animals possess rights, including the right to bodily liberty, this alone suffices to entitle them to habeas protection. Dkt. 84 at 15, 19.

[2] The 2023 Norms and Standards were withdrawn before taking effect, leaving the 2008 Norms and Standards in force. *See* Government Notice No. 3238, Government Gazette No. 48349 (Mar. 31, 2023) (S. Afr.); Government Notice No. 7545, Government Gazette No. 54764 (May 29, 2026) (S. Afr.). In relevant part, the 2008 Norms and Standards incorporate the identical provisions "severely restrict[ing]" elephant captivity as the 2023 Norms and Standards cited by Amicus. *See* Dkt. 84 at 18.

Amicus's arguments have no bearing on this Court because Hawai'i law does not recognize habeas rights in nonhuman animals. HRS chapter 660, in plain and unambiguous terms, limits habeas relief to "persons," and "persons," according to established laws on statutory construction, refers to human beings or the entities through which they act.[3] HRS §§ 660-3; 1-19; *see also* HRS § 1-14 ("The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning."); *Person*, Black's Law Dictionary (12th ed. 2024) ("[a] human being"); Dkt. 15 at 10–14; Dkt. 74 at 4.[4] Amicus fails to explain why this Court should adopt his legal arguments when the issue of habeas rights is determined by HRS chapter 660.

B. <u>Amicus Offers No Legal Basis for Extending the Common Law Right to Habeas Corpus to Nonhuman Animals.</u>

To the extent that Chapter 660 has not superseded common law habeas corpus entirely, Amicus offers no compelling reason for extending common law habeas protections to nonhuman animals.

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[3] For instance, corporations are "persons" with non-personal constitutional rights because "[a] corporation is simply a form of organization used by human beings to achieve desired ends. . . . When rights . . . are extended to corporations, the purpose is to protect the rights of these people." *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 706–07 (2014).

[4] Amicus presented a nearly identical brief in *Nonhuman Rts. Project, Inc. v. Cheyenne Mountain Zoological Soc'y*, 562 P.3d 63, 64 (Colo. 2025), *reh'g denied* (Colo. Feb. 10, 2025). *See Brief of Amicus Curiae Former Justice Edwin Cameron (SCOB)*, *Nonhuman Rts. Project, Inc., supra.* There, the Supreme Court of Colorado rejected Amicus's analysis and instead, held that "the right to habeas corpus is defined by statute." *Id.* at 68. Like Hawai'i, Colorado statutes limit habeas petitions to "persons" unlawfully detained, and do not include nonhuman animals in the definition of "person," especially in the context of habeas relief. *Id*. at 65 (citing Colorado Revised Statutes §§ 13-45-102, 2-4-401). Although the court also determined that the result would be the same under common law, it disagreed with the contention that there was any need to review the scope of common law habeas relief because "Colorado's habeas corpus statute explicitly limits the right to habeas corpus relief in Colorado to 'person[s].'" *Id.* at 68–69.

1. South African Law Is Not Persuasive.

As a preliminary matter, Amicus's arguments are entirely based on South African jurisprudence and academic thought. The common law of Hawai'i, however, is the "common law of England, as ascertained by English and American decisions," except as otherwise expressly provided by the Constitution, State or federal law, or Hawaiian judicial precedent or usage. HRS § 1-1. Amicus purportedly offers his perspective as a South African judge because "South African common law shares some appreciable legal history with the American system, namely an English common law heritage, including the doctrine of habeas corpus." Dkt. 84 at 7. Yet, Amicus concedes that South African law is based on Roman-Dutch law, African customary law, and South Africa's constitution, on top of English common law. *Id*. South African and English/American common law are clearly not the same, given the additional and unique influences on South African common law acknowledged by Amicus. Moreover, despite the significance of elephants to South Africa's biodiversity and indigenous cultures, as acknowledged by Amicus, South Africa does not recognize nonhuman animals as legal persons with the right to habeas corpus. *Id*.

2. Extending Habeas Protections to Nonhuman Animals Would Undermine Existing Hawai'i Law.

More importantly, the development of Hawai'i common law must be based on the application of "justice and sound reason and not inconsistent with settled authorities." *Welsh v. Campbell*, 41 Haw. 106, 121 (1955). Amicus's arguments for the recognition of nonhuman animal rights, including the right to bodily liberty, in Hawai'i common law are purely subjective and have no basis in Hawai'i law.

a. Hawai'i Law Treats Nonhuman Animals as Property.

Amicus concedes that South African common law "classifies nonhuman animals as legal objects or things (*res* in Latin), or forms of property," which "neither have nor are…capable of

having rights and duties[.]" Dkt. 84 at 7. There is simply no South African precedent to persuade this Court to extend "personhood" to nonhuman animals.

Similarly, under Hawai‘i law, nonhuman animals have always been and continue to be treated as property with no cognizable rights. *Heppingstone v. Mammen*, 2 Haw. 707, 710–11 (Haw. King. 1863) ("According to the English common law doctrine, exclusive property in animals ferae naturae, may be acquired by their immediate manucaption, or by taking and killing them; and also by the wounding of them, by one not abandoning his pursuit, in such a way as to prevent their escape and bring them within his certain control, and by encompassing them with nets and toils, or otherwise intercepting them, so as to deprive them of their natural liberty and render escape impossible"); HRS § 142-44 (wild cattle, horses, mules, donkeys, sheep, goats, and swine are the property of the owners or lessees of the lands on which they are running wild); *see also Miller v. Collins*, 158 Hawai‘i 435, 438, 593 P.3d 374, 377 (2026) ("A dog is personal property"); Dkt. 84 at 7.

Laws provide order and predictability, and provide the framework within which society makes decisions and determines its actions. Hawai‘i's laws on nonhuman animals serve as the foundation for the relationship between humans and nonhuman animals, from working animals to animal husbandry to domestic pets. Extending habeas rights to nonhuman animals does not represent a sound or principled evolution of common law, but the radical reversal of established Hawai‘i law that will result in an upheaval of societal expectations.

b. <u>"Personhood" Only Extends to Humans.</u>

Whether under South African or Hawai‘i law, the definition of "personhood" is not so "malleable" as to extend to nonhuman animals. Amicus claims that "personhood" can include nonhuman animals because South Africa has already extended "personhood" to unborn humans (fetuses), entities (corporations and trusts), as well as persons who were formerly excluded under

South African law (women, enslaved humans, and those with certain disabilities). Dkt. 84 at 8–9. Amicus also attempts to analogize nonhuman animals to humans who hold rights but cannot undertake legal duties, i.e., "moral patients" with "passive legal capacity," such as children, the elderly, and the mentally unwell. *Id*. at 5.

These arguments miss the point because all of these examples of persons formerly excluded or incapable of undertaking legal duties are human beings or entities by which humans act. Under Hawai‘i law, only human beings have protectable liberty interests. *See* Haw. Const., art. I, § 5 ("No person shall be deprived of life, liberty or property without due process of law"). By the same token, "the great writ protects the right to liberty of humans <u>because they are humans</u> with certain fundamental liberty rights recognized by law." *Nonhuman Rts. Project, Inc. v. Breheny*, 197 N.E.3d 921, 927 (N.Y. 2022) (emphasis added). Thus, even under South African law, a "person" means a human.

c. <u>Amicus Relies on South African Jurisprudence that Has No Analogy Under Hawai‘i Law.</u>

Amicus's arguments for nonhuman animal personhood and rights are based on South African jurisprudence that imposes on humans a moral duty to nonhuman animals and gives equal rights to all species. These doctrines and laws have no analogy in Hawai‘i.

First, citing South African scholars, Amicus contends that humans "have direct moral duties to animals," and "duties of compassion and humanity" that "operate to 'accord [nonhuman animals] particular forms of treatment.'" Dkt. 84 at 12. He also contends that nonhuman animals are similar to "moral patients," to whom "moral agents" (i.e., "rational human beings with sophisticated mental and intellectual capabilities") take on "moral responsibilities." *Id*. at 8 n.11, 12. These arguments can find no purchase in Hawai‘i. A moral obligation "is an obligation which, though lacking any foundation cognizable in law, springs from a sense of justice and equity, that an honorable person would entertain, but not from a mere sense of doing benevolence or charity." *Koike v. Bd.*

of Water Supply, City & Cnty. of Honolulu, 44 Haw. 100, 105–06, 352 P.2d 835, 839 (1960). "Whether a moral obligation exists in a particular situation is primarily a question of policy and ethics rather than one of law, and the legislature accordingly is vested with a broad discretion in determining what shall constitute a valid moral obligation, subject to judicial control only when its actions are a clear and palpable abuse of this discretion." *Id.* at 106, 352 P.2d at 840 (noting also that "[t]he legislature is the keeper of the state's conscience. It and it alone determines where lies the state's moral duty."). Whether the law should recognize nonhuman animal rights as a matter of moral duty is not for the courts to decide.

Second, Amicus claims that South African common law must develop in alignment with the South African constitution, and that the South African constitution affords "everyone"—including nonhuman animals— "values and rights," including equality and freedom. Dkt. 84 at 14–16. According to Amicus, "[e]quality includes non-discrimination," and in this regard, he advocates for the proscription of "speciesism," i.e., discrimination that is based on the "irrational and morally unwarrantable differentiation between humans and other sentient beings[.]" *Id*. at 16. These are Amicus's arguments and aspirations for South Africa, but not the law itself. *See, e.g., id.* at 12 ("it is on a path to being embraced as part of South African law"); at 14 ("These, in expansive interpretation, would encompass nonhuman animals and extend protections to them"). By its plain terms, Hawai‘i's constitution does not apply to nonhuman animals. *See* Haw. Const., art. I, § 5. Moreover, it has never been construed to extend rights to nonhuman animals, logically, because nonhuman animals are considered property under Hawai‘i law.

C. <u>South Africa Recognizes Elephants' Sentient Nature By Statute, Not Common Law.</u>

Although Amicus argues for the development of South African common law to extend personhood to nonhuman animals, Amicus points to the Norms and Standards as an indication that South African law no longer views elephants as property but as sentient creatures with interests

worthy of legal protection. Dkt. 84 at 18. The Norms and Standards, as Amicus describes them, "ensure that elephants are managed in a way that 'recognises their sentient nature, highly organized social structure and ability to communicate,'" and "severely restrict[s]" the captivity of elephants except in limited circumstances. *Id.* at 17. According to Amicus, the Norms and Standards demonstrate "that legal systems can respond incrementally to what is known about elephants without resolving every question concerning the legal status of nonhuman animals." Dkt. 84 at 19.

The Norms and Standards that are currently in effect implement South Africa's National Environmental Management Biodiversity Act 10 of 2004, and are not derived from common law. *Id*. at 17. South Africa's enactment of the Norms and Standards thus proves that legislative action can effectively restrict elephant captivity, the underlying goal of NhRP and its amici, without having to needlessly and unlawfully contort Hawai'i habeas law to encompass certain nonhuman animals. *See, e.g.,* City of Ojai, Cal., Ordinance No. 940 (2023), Municipal Code of Ordinances § 5-4.1001, *et seq*.[5]

Animal welfare is simply outside the ambit of habeas relief, and issues of moral obligation and public policy should be presented to the appropriate legislative authority.[6]

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[5] https://ecode360.com/44869039#44869039 (last visited Sept. 23, 2026).

[6] Amicus's final argument is that "habeas corpus may extend to all unlawful private custody or detention and is not limited only to state custody" and that "if elephants are entitled to the singular right to bodily liberty, it makes no difference whether they are unlawfully detained in state or private custody, both of which would violate the right." Dkt. 84 at 14. Whether habeas corpus extends to private custody is not at issue in this matter, and is therefore not addressed in this brief.

III. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court disregard this Amicus Brief and affirm the ICA's decision.

DATED: Honolulu, Hawai'i, October 5, 2026.

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

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