STATE OF MICHIGAN
IN THE COURT OF APPEALS

NONHUMAN RIGHTS PROJECT, INC., on behalf of Prisoner A (aka Louie), Prisoner B, Prisoner C, Prisoner D, Prisoner E, Prisoner F, and Prisoner G ("DeYoung Prisoners"), Petitioner-Appellant.	
v	No. 369247 41st Circuit Court LC No. 23-17621-AH
DEYOUNG FAMILY ZOO, LLC and HAROLD L. DEYOUNG, Respondents-Appellees.	

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PETITIONER-APPELLANT'S BRIEF ON APPEAL

*****ORAL ARGUMENT REQUESTED*****

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STATEMENT OF JURISDICTION

Petitioner-Appellant, Nonhuman Rights Project, Inc. ("NhRP"), appeals from the Menominee County 41st Circuit Court's Order dismissing NhRP's Complaint for a Writ of Habeas Corpus ("Complaint") on behalf of seven chimpanzees imprisoned at the DeYoung Family Zoo ("DeYoung Prisoners"). A copy of that Order, entered on December 12, 2023, is included in Petitioner-Appellant's Appendix (Appx). Appx.1a-2a. In accordance with MCR 7.204(A)(1), NhRP timely filed its Claim of Appeal on January 2, 2024, within 21 days of the Order. This Court has jurisdiction pursuant to MCR 7.203(A)(1) as the Order is a "final order" within the meaning of MCR 7.202(6)(a)(i).[1]

This Court has subject matter jurisdiction under both Michigan common law and the Michigan habeas corpus procedural statute. *See* MCL 600.4304 ("The writ of habeas corpus to inquire into the cause of detention, or an order to show cause why the writ should not issue, may be issued by the following: . . . (2) The court of appeals, or a judge thereof."); *In The Matter of Elizabeth Denison, et al., No. 60.,* 1807 WL 1109, at *1 (Mich. Sept. 26, 1807) ("[w]hen a statutory method of investigating the right to freedom is not provided, the common-law writ of habeas corpus is appropriate.").

STATEMENT OF QUESTIONS INVOLVED

1. Does Michigan common law – as opposed to legislative enactments – govern the substantive entitlement of the right to bodily liberty protected by habeas corpus?

The Circuit Court answered "no." Rather than apply Michigan's forward-looking, flexible, adaptable common law, it applied a statutory interpretation of the word "person" found in the habeas corpus procedural provision (MCR 3.303) to determine whether the DeYoung Prisoners can avail themselves of the common law writ of habeas corpus.

NhRP answers "yes."

2. Was the Circuit Court required to issue a habeas corpus order to show cause for the DeYoung Prisoners?

[1] On February 16, 2024, this Court granted NhRP an extension of time to file its brief until April 23, 2023.

The Circuit Court answered "no."

NhRP answers "yes."

2a. Must a prisoner already be a "person" to have the common law writ of habeas corpus (or order to show cause) issued?

The Circuit Court answered "yes." The Circuit Court refused to issue an order to show cause on the grounds that the DeYoung Prisoners are not "persons," defying centuries of settled habeas corpus precedent pursuant to which the right to bodily liberty is assumed.

NhRP answers "no." Under Michigan common law, which includes the famous *Somerset v. Stewart*, 1 Lofft. 1 (K.B. 1772) ruling, a prisoner does not need to be a "person" to have the writ issued.

2b. Did the Complaint make a prima facie case for habeas corpus relief pursuant to MCL 600.4316 and MCR 3.303 (D)?

The Circuit Court answered "no."

NhRP answers "yes." The Complaint made a prima facie case for habeas corpus relief for unlawful imprisonment under Michigan common law.

3. In not issuing an order to show cause, did the Circuit Court violate its duty to examine whether the common law requires modification or expansion in light of changes in science, social norms, justice, liberty, and equality?

The Circuit Court answered "no." The Circuit Court ignored the common law completely in its one-sentence ruling.

NhRP answers "yes."

4. Do the DeYoung Prisoners possess the common law right to bodily liberty protected by habeas corpus?

The Circuit Court answered "no."

NhRP answers "yes."

4a. Did the Circuit Court violate its specific duty to protect autonomy – a supreme common law value that courts are duty bound to protect?

The Circuit Court answered "no."

NhRP answers "yes."

4b. Did the Circuit Court violate its specific common law duty to treat like cases alike, thus violating the core principle of equality?

The Circuit Court answered “no.”

NhRP answers “yes.”

SUMMARY OF THE ARGUMENT

The Circuit Court's decision defies centuries of common law precedent and runs afoul of habeas corpus jurisprudence and the most celebrated common law habeas corpus cases, which are part of Michigan common law.

First, the Circuit Court failed to understand that the present case turns on Michigan common law not whether the DeYoung Prisoners fit a statutory definition of "person." The court cited no statute or case indicating that the legislature intended to repeal judicial authority over the substantive scope of common law habeas corpus, and such action is foreclosed by the Michigan Constitution itself.

The court's misapprehension of the nature of the case resulted in a ruling that tethers common law rights to a bygone era. In a legislative interpretation case, the analysis looks backward, asking what the legislature intended at a set period of time. The common law analysis is exactly opposite. "'The inherent capacity of the common law for growth and change is its most significant feature.'" *Beech Grove Inv. Co. v. C.R. Comm'n*, 380 Mich. 405, 429 (1968) (citation omitted). Thus, when considering a novel case, "'[t]he fact that no case remotely resembling the one at issue is uncovered does not paralyze the common-law system, which is endowed with judicial inventiveness to meet new situations.'" *Id.* This is particularly so for habeas corpus. The Great Writ's "history is inextricably intertwined with *the growth* of fundamental rights of personal liberty." *Fay v. Noia*, 372 U.S. 391, 401 (1963), *overruled in part on other grounds*, 433 U.S. 72 (1977) (emphasis added).

Second, the Circuit Court failed to understand that one need not possess the right to bodily liberty (be a "person") to set forth a prima facie case for habeas corpus relief and allow for the issuance of the order to show cause[2] under Michigan's common law. Accordingly, the court's refusal to issue a habeas order on the grounds that the DeYoung Prisoners are not "persons" is wrong. Indeed, *Somerset* and its progeny in Michigan and American common law have long ensured that habeas corpus can be used by those who are not yet recognized as "persons" to challenge their detention. The Michigan Supreme Court has made clear that *Somerset* "will live,

[2] The standard for obtaining a habeas corpus "writ" and "order to show cause" are the same. *See* M.C.L. 600.4316. As NhRP does not seek to have the DeYoung Prisoners brought into court, NhRP seeks the issuance of an order to show cause. *See* M.C.L. 600.4325.

and justly so, as long as history does." *Love v. Phalen*, 128 Mich. 545, 548 (1901). "Courts are not organized to aid in repressing innocent liberty, but to give liberty." *Id*.

The common law further requires issuance of an order to show cause when an unjust imprisonment is presented, regardless of whether the prisoner is a "person." As the Complaint establishes the illegal imprisonment of the DeYoung Prisoners as a matter of Michigan common law and therefore satisfies that element of the prima facie analysis, the Circuit Court lacked discretion to dismiss the Complaint without issuance of an order to show cause.

Third, the Circuit Court's dismissal of the Complaint violated its duty to upkeep Michigan common law and specifically, to protect autonomy and equality. Extensive common law jurisprudence placed the court under an obligation not only to issue an order to show cause but also to ensure that the common law is not an anachronism. Such precedent precludes a court from summarily dismissing a case for its novelty and demands closer scrutiny when autonomy and equality are threatened.

Fourth, while the Circuit Court did not need to determine whether the DeYoung Prisoners possess the right to bodily liberty (and therefore are "persons") for purposes of issuing an order to show cause, the common law affirmatively prohibited the court from determining that they are *not* persons with the right to bodily liberty at this stage.

Accordingly, the decision should be reversed and remanded for a proper common law examination of the novel issues raised in the Complaint.

STATEMENT OF THE CASE

I. INTRODUCTION

This case seeks to vindicate the right to bodily liberty protected by the common law writ of habeas corpus of seven autonomous, extraordinarily cognitively complex, self-determining and self-aware individuals who are imprisoned in an unnatural environment at the DeYoung Family Zoo ("DFZ") in Wallace, Michigan by Respondents-Appellees DeYoung Family Zoo, LLC and Harold L. DeYoung. No court in America would countenance such a forced imprisonment of a human being. But because these particular prisoners happen to be chimpanzees, the Circuit Court felt no compunction allowing their continued imprisonment.

The Complaint is supported by six expert affidavits and declarations from world-renowned primatologists, including Dr. Jane Goodall,[3] proving that chimpanzees possess the traits that habeas corpus serves to protect. The robust scientific record demonstrates not only that chimpanzees fully experience the horrors of never-ending imprisonment, just as we would, but also that they can use *our* language to communicate their desire for freedom. In one heartbreaking case, a chimpanzee named Bruno asked a human, in American Sign Language, to set him free.

The science today proves that chimpanzees possess a wide range of traits once deemed uniquely human. Appx.179a-180a (McGrew). Chimpanzees are, after all, our closest living relatives. Appx.179a (McGrew); Appx.262a (Matsuzawa). The record demonstrates that the advanced social, cognitive and emotional capacities of chimpanzees are on par with humans. Appx.137a (Goodall); Appx.267a-268a (Matsuzawa); Appx.411a (Jensvold). Dr. Jane Goodall's research establishes that chimpanzees even have a sense of spirituality.[4] But chimpanzees are not lesser-evolved humans. This is borne out by the extensive expert record proving certain areas in which chimpanzees are *superior* to humans.

The expert evidence also demonstrates that the "rich and complex life of chimpanzees in the wild is not possible in captivity," Appx.189a (McGrew), and that DFZ is an unacceptable place for such cognitively complex beings. Appx.189a (McGrew); Appx.275a (Matsuzawa); Appx.441a

[3] Hailed globally for her environmental and humanitarian work, United Nations Messenger of Peace awardee Dr. Jane Goodall is considered the world's foremost expert on chimpanzees.

[4] Dr. Goodall provides a video of chimpanzees engaging in a rhythmic dance before a waterfall as a display of spirituality, https://bit.ly/47XC8DF.

(Jensvold). Chimpanzees in captive environments can suffer severe physical and psychological harm. Appx.402a (Jensvold); Appx.328aa (Boesch); Appx.189a (McGrew). Because chimpanzees are aware of their past and see a future ahead of them, they, like us, can suffer the pain of not being able to fulfill their goals including the pain of anticipating a never-ending trauma. Appx.419a (Jensvold).

The DeYoung Prisoners continue to be imprisoned despite having committed no wrong. The only justification for their imprisonment is the immutable fact that they are not human. As demonstrated in the Complaint and herein, this justification is arbitrary, irrational, and illegitimate.

The Circuit Court took five days to issue a one-sentence order of dismissal in response to the Complaint, which provided ample precedent in support of both the issuance of an order to show cause (regardless of one's personhood status) and expanding the common law to remedy the unjust imprisonment. The court not only disregarded the fundamental common law values of liberty, equality, and justice it was duty-bound to protect, but it also disregarded the uncontroverted evidence of chimpanzee autonomy that lies at the heart of habeas corpus. In the tradition of the Great Writ and the spirit of Michigan common law jurisprudence, the Circuit Court was under a common law duty to issue an order to show cause and allow the case to proceed on the merits.

II. PROCEEDINGS BELOW

NhRP filed its Complaint on December 7, 2023, seeking an order to show cause pursuant to MCL 600.4316 and MCR 3.303 (D). Appx.5a-131a. On December 12, 2023, the Circuit Court dismissed the Complaint: "It is ordered that this Proposed Order to Show Cause on Plaintiff's Complaint for Writ of Habeas Corpus is denied in that the alleged 'prisoner' chimpanzees are not persons as required by MCR 3.303 and Plaintiff is not entitled to the writ. (MCL600.4316)." Appx.1a.

III. STATEMENT OF FACTS

A. The DeYoung Prisoners

The seven chimpanzee prisoners are Prisoner A (aka Louie), Prisoner B, Prisoner C, Prisoner D, Prisoner E, Prisoner F, and Prisoner G. Appx.29a-31a.[5]

Louie is an approximately 13-year-old male chimpanzee who has been imprisoned at DFZ since 2010 when he was 6 weeks old. Videos and photos show Louie often on a fixed leash being made to interact with children and other zoo patrons in various ways. From 2010 until at least January 2018, Louie was housed without the companionship of other chimpanzees. Appx.30a.

Prisoner B is an adult female chimpanzee who has been imprisoned at DFZ since at least 2017. She, along with Prisoners E, F, and G were previously held captive at a now-defunct chimpanzee breeding facility. In August 2017, while imprisoned at DFZ, Prisoner B gave birth to a female chimpanzee: Prisoner C. Approximately 6 years old, Prisoner C was removed from Prisoner B's care as an infant by Respondents-Appellees. Appx.30a-31a.

Prisoner D is an adult female chimpanzee, and Prisoners E-G are adult male chimpanzees. They have been imprisoned at DFZ since at least 2017. Appx. 31a.

B. Chimpanzees are our closest relatives and similarly evolved to be autonomous, extraordinarily cognitively complex beings.

As demonstrated in the six Expert Affidavits and Declarations accompanying the Complaint, chimpanzees, like humans, possess autonomy and self-determination, as well as numerous advanced cognitive abilities related to these including: episodic memory; referential and intentional communication; mental time-travel; numerosity; sequential learning; meditational learning; creativity; mental representation; mental state modeling; visual perspective-taking; object manipulation; anticipating the intentions of others; purposeful vocalizations; analogical reasoning; understanding the experiences of others; intentional action; planning; imagination; empathy; metacognition; working memory; decision-making; imitation; deferred imitation; emulation; innovation; material, social, and symbolic culture; cross-modal perception; tool-use; tool-making; understanding causation; and an awareness of and response to death, including grieving behaviors. Appx.132a-478a.

[5] Just prior to filing of the Complaint, NhRP received USDA records indicating that an adult chimpanzee named Tommy had died at DFZ in 2022. Tommy was the subject of NhRP's first historic habeas lawsuit in 2013, when he was imprisoned in a cement cage in Gloversville, New York. *See generally* Charles Siebert, *Should a Chimp Be Able to Sue Its Owner?* N.Y. TIMES (April 23, 2014), https://bit.ly/3QFIctd.

Autonomy is defined as self-determined behavior that is based on freedom of choice. As a psychological concept it implies that the individual is directing their behavior based on some non-observable, internal cognitive process, rather than simply responding reflexively. Appx.234a (Fugate); Appx.180a (McGrew); Appx.402a (Jensvold); Appx.327a-328a (Boesch); Appx.262a (Matsuzawa).

1. Genetic Similarities to Humans

As chimpanzees and humans share close to 99% of their DNA, our brains are remarkably similar and go through similar cognitive developmental stages. Appx.262a-263a (Matsuzawa). Both: (1) have larger brains than expected for their body size, which means chimpanzees and humans have evolved to possess above-average mental abilities compared to other species of the same body size; (2) share similar circuits in the brain that are involved in language and communication; (3) share several highly specific cell types that are thought to be involved in higher-order thinking; and (4) share several important functional characteristics related to the sense of self. *Id.*

Chimpanzee brains have the same neuroanatomical basis for such high-level capacities as self-awareness, forethought, decision-making, and working memory. Appx.263a (Matsuzawa) Human and chimpanzee brains possess spindle cells in the anterior cingulate cortex area of the brain indicating higher-order brain functions. Appx.264a (Matsuzawa).

A hallmark of sophisticated communication is brain asymmetry. Appx.263a (Matsuzawa). Chimpanzees possess very similar patterns of asymmetry to humans, including even a bias towards right-handedness. Appx.264a (Matsuzawa).

Chimpanzee performance on human intelligence tests is equivalent to that of human children. Appx.179a-180a (McGrew). Their blood is interchangeable with human blood, such that a chimpanzee's blood could save a human being. Appx.179a (McGrew).

2. Self-awareness

Chimpanzees possess a sense of self. Appx.266a (Matsuzawa). Chimpanzees and humans share the fundamental cognitive processes underlying the sense of being an independent agent. Appx.267a (Matsuzawa). The concept of self is an integral part of the ability to have and satisfy goals. Appx.266a (Matsuzawa).

Chimpanzees possess an autobiographical self, meaning they understand that they exist through time. Appx.328a-329a (Boesch). Chimpanzees can prepare for the future and remember highly specific elements of past events over long periods of time. *Id. Accord* Appx.419a (Jensvold).

3. Understanding others' minds and imitation

Chimpanzees understand the minds and experiences of others. Appx.267a (Matsuzawa). Imitation is an important indicator of self-awareness. Appx.184a (McGrew). Chimpanzees imitate others and know when they are being imitated. *Id*. Chimpanzees are even capable of "deferred imitation," copying actions that they have seen in the past. *Id.*

Intentional deception is a hallmark of the ability to take the perspective of and model mental states in others. Appx.329a (Boesch). Dr. Boesch described a chimpanzee in a zoo who stowed away stones to use as projectiles toward visitors at a future date. *Id.* Like a child sneaking a cookie from the kitchen, this clever chimpanzee stashed the stones in a "calm manner" so as not to be noticed. *Id.*

4. Planning for the future

Chimpanzees possess the sophisticated cognitive capacity for "mental time travel," Appx.405a (Jensvold), which is "thinking about something in the future." Appx.268a (Matsuzawa); *accord* Appx.329a (Boesch); Appx.416a-419a (Jensvold). Language-trained chimpanzees have been found to make more statements about what they intend to do in the future than human children. Appx.405a (Jensvold).

Like us, chimpanzees can re-experience past pains and pleasures as well as anticipate such emotions. Appx.419a (Jensvold). Thus, just as humans, they can experience pain over an event that has yet to occur. *Id*. Chimpanzees also can suffer the pain of not being able to fulfill their goals, including the pain of anticipating a never-ending situation. *Id*.

Chimpanzees possess an episodic system similar to humans. Appx.419a (Jensvold); Appx.329a-330a (Boesch). Foraging chimpanzees use sophisticated Euclidean mental spatial maps based on long-term episodic memories. Appx.331a (Boesch).

Self-control depends upon the episodic system. Appx.417a (Jensvold). Delayed gratification is only available to humans and nonhumans with a sufficiently sophisticated sense of

self and autobiographical memory. Appx. 418a (Jensvold). Chimpanzees possess self-control and can delay a strong current drive for a better future reward. *Id.*

5. Advanced Communication

Chimpanzees have evolved to use complex auditory and visual communicative expressions. Appx.234a-235a, 237a, 240a (Fugate); Appx.264a-266a (Matsuzawa). Recent studies of wild chimpanzees reveal their rich repertoire of voices and vocal communication. Appx.265a-266 (Matsuzawa).

Chimpanzees exchange emotional information through vocalizations, facial expressions, gestures, and bodily postures and alter their facial expressions based on context and audience. Appx.234a-235a, 237a (Fugate). Chimpanzees have approximately 20-30 different facial expressions. Appx.235a (Fugate). Humans and chimpanzees use many of the same facial expressions to express these shared emotional states. Appx.236a-237a (Fugate).

Chimpanzees understand that conversation involves turn-taking and mutual attention, and both wild and captive chimpanzees string multiple gestures to create gesture sequences. Appx.406a-407a (Jensvold). In signing chimpanzees, their patterns of conversation resemble human children. Appx.406a (Jensvold) Chimpanzees also use symbols to comment on other individuals and about past and future events. Appx.404a (Jensvold).

6. American Sign Language (ASL)

Chimpanzees can communicate with humans using ASL. Appx.402a-409a (Jensvold). Chimpanzees' use and understanding of ASL, along with their natural communicative gestures and vocalizations, parallels the development of language in human children, and points to deep similarities in the cognitive processes that underlie communication in chimpanzees and humans. Appx.403a (Jensvold).

Chimpanzees acquire vocabulary in patterns that resemble humans, with the difference being that *chimpanzees begin to sign earlier than children*. Appx.403a (Jensvold). Humans and chimpanzees exhibit a telltale sign of volitional use of language, that is, private signing or signing to themselves. Appx.408a-409a (Jensvold).

Signing chimpanzees demonstrate contingent communication with humans at the same level as human children. Appx.405a (Jensvold). When a request is misunderstood, refused, or not

acknowledged, chimpanzees repeat and revise their signing until they get a satisfactory response. Appx.406a (Jensvold)

Both human children and chimpanzees use declaratives to name objects, interact, and negotiate. Appx. 404a (Jensvold). Declaratives are important because they show the communicator is using language as a way to share experiences with another and not just to request items like food or a toy. *Id.*

Chimpanzees can spontaneously use ASL to communicate with each other, *without being first taught by humans*. Appx.407a-408a (Jensvold). Loulis, the first non-human to learn a human language from other non-humans (as a direct consequence of social learning), acquired his signs from other signing chimpanzees. *Id*.

7. Mathematics and Superior Working Memory

Numerosity judgment is the ability to understand numbers as a sequence of quantities, and this requires both a sophisticated working memory and conceptual understanding of a sequence. Appx.268a (Matsuzawa). Chimpanzees not only excel at understanding sequences of numbers but they understand that Arabic symbols ("2", "5", etc.) represent discrete quantities, outperforming humans in some of these tasks. *Id.* Chimpanzees can count or sum up arrays of real objects or Arabic numerals and display the concepts of ordinality and transitivity (the logic that if A > B and B > C, then A > C). *Id*. Chimpanzees even understand proportions (e.g., 1/2, 3/4, etc.). *Id.*

Chimpanzees have an extraordinary working memory for numerical recollection, *better* than that of adult humans. Appx.269a-270a (Matsuzawa). Working memory underlies several additional mental skills including attention and executive control (reasoning, planning, and execution). Appx.269a (Matsuzawa). Chimpanzees have performed *significantly better* on memory tests than human adults, who could not even complete most versions of tests' tasks. *Id.*

8. Intelligent tool-making and usage

A key indicator of intelligence is tool-making and use, which implies complex problem-solving skills and an understanding of means-end causation. Appx.180a (McGrew). Tool-making requires the same mental abilities that underlie human culture. Appx.182a (McGrew).

Chimpanzees demonstrate intelligent tool-making and usage in both the wild and in captivity. Appx.180a (McGrew); Appx.332a (Boesch); Appx.270a (Matsuzawa). Chimpanzees

make and use complex tools (multi-object tools), compound tools, composite tools, and tool sets—a hallmark of intentionality, mental representation, and opportunism. Appx.180a-182a (McGrew).

Chimpanzee groups employ a *tool kit*, a unique combination of tools. Appx.181a-182a (McGrew). A tool kit typically comprises up to 20 different tools that perform various functions in daily life, including extracting and processing food, and for personal comfort and hygiene. Appx.181a-182a (McGrew). Chimpanzee tool kits are passed down generationally. Appx.181a (McGrew). In at least one population, chimpanzee tool-making has been passed down through 225 generations. *Id*.

9. Emotional Complexity

Chimpanzees are emotionally complex, exhibit empathy and compassion, and recognize when someone else is trying to help them. Appx.420a (Jensvold); Appx.335a-336a (Boesch); Appx.234a-235a (Fugate); Appx.267a-268a (Matsuzawa).[6]

Chimpanzees embrace and kiss each other and spend hours grooming together. Appx.413a (Jensvold). Signing chimpanzees use human words to express their feelings. Appx.420a. (Jensvold). Compassionate care and empathy have been observed among wild chimpanzees towards injured individuals. Appx.267a-268a (Matsuzawa); Appx.335a-336a, 339a (Boesch).

Chimpanzees are highly attuned to the individual emotional expressions and states of others. Appx.239a (Fugate). Chimpanzees are able to discriminate different species-typical facial expressions of unfamiliar individuals when presented on a computer screen. Appx.238a (Fugate). Chimpanzees can match a voice recording of a familiar human to the picture of the human, and voice-recognize fellow chimpanzees. Appx.239a (Fugate).

10. Culture and Society

Chimpanzee culture includes rituals and traditions. Appx.183a-184a (McGrew). Culture is a hallmark of higher intelligence, based on several complex cognitive capacities: imitation, emulation, and innovation. Chimpanzees show all these abilities. Appx.182a-183a (McGrew); Appx.331a-332a (Boesch). There are striking similarities in the cognitive mechanisms underlying chimpanzee and human culture. Appx.331a-332a (Boesch); Appx.183a-184a (McGrew).

[6] A neurobiological basis for empathy may be the presence of mirror neurons, found in the prefrontal cortex of humans and chimpanzees. Appx.238a (Fugate).

The Gombe chimpanzees perform a "rain dance," a slow and deliberate pattern of bipedal locomotory display at the start of a rainstorm. Appx.183a (McGrew). Another striking social custom is the 'grooming hand-clasp,' in which two chimpanzees grip each other's hand, raise their arms overhead, and groom each other with the other hand. *Id.* Dr. Goodall discovered the 'waterfall display' in which male chimpanzees perform exaggerated, rhythmic movements before a spectacular waterfall. *Id.*

Chimpanzees form purposeful and well-coordinated societies. Appx.185a (McGrew); Appx.412a (Jensvold). Males have a social hierarchy characterized by Machiavellian-type politicking and maneuvering through the ranks by forming alliances based on kinship, friendship, charisma, and sometimes fear-mongering. Appx.412a (Jensvold). They form lifelong bonds, and bond together to defend the community against neighboring communities. *Id.*; Appx.185a (McGrew).

Chimpanzees exhibit lawful and rule-governed behavior, with many examples of regularity that reflect the maintenance of a social order: including adult males being protective of infants, dominant individuals breaking up fights, and adult kin avoiding incest. Appx.188a (McGrew).

11. Death Awareness and Grieving Rituals

Chimpanzees respond to death much like humans. Appx.332a-335a (Boesch); Appx.188a (McGrew); Appx.420a (Jensvold). They are mournful, respectful, and even ritualistic. Appx.332a-333a (Boesch); Appx.188a (McGrew).

Understanding death requires an ability to recognize the continuity of self and others through time and an understanding of death's irreversibility. Appx.332a-333a (Boesch). Chimpanzee communities demonstrate a complex group response to death including helping orphans and carrying the corpse to a safe place. Appx.333a-334a (Boesch). Others may perform what amounts to a funeral ceremony, or wake, which may last for hours. Appx.188a (McGrew).

12. Altruistic and Moral Behavior

Chimpanzees behave in ways that, if we saw the same thing in humans, we would interpret as a reflection of self-conscious, moral imperatives. Appx.185a (McGrew). Chimpanzees demonstrate morality by shunning individuals who violate social norms; intervening in third-party violence, which reflects community concern; responding negatively to inequitable situations; and when given a chance to play economic games (e.g. Ultimatum Game), spontaneously making fair

offers, even when not obliged to do so. *Id*. Dr. Jensvold attested that chimpanzees apologize using the ASL sign SORRY. Appx.408a (Jensvold).

Chimpanzees show high levels of altruism, such as when unrelated individuals adopt orphaned infants. Appx.139a (Goodall); Appx.186a (McGrew). Bonds between orphans and their foster parents may last a lifetime, even between unrelated males in adulthood. Appx.186a (McGrew). At Gombe, a 12-year-old male rescued and then adopted a 3- year-old male orphan. Appx.139a (Goodall). The signing chimpanzee Washoe adopted Loulis, and proved to be a very protective adoptive mother. Appx.415a (Jensvold).

Chimpanzees have made impressive efforts to rescue other chimpanzees and even humans. Appx.336a-337a (Boesch); Appx.139a-140a (Goodall). In one example, an adult male with an adopted infant on his back rushed for 600 meters to rescue a female from his group who was trapped. Appx.336a (Boesch). Dr. Goodall reports that a chimpanzee rescued his human caretaker from an attack by three adult females. Appx.140a (Goodall).

The alpha-male's role includes a range of time and energy-sapping activities for the benefit of others. Appx.187a-188a (McGrew).

13. Humor, Imagination, and Play

Chimpanzees have a sense of humor and are known to laugh under many of the same circumstances as humans, e.g., signing a "joke" or funny statement, during play, when tickled. Appx.411a (Jensvold). They also have imagination, which is a key component of mental representation, metacognition, and the ability to mentally create other realities. Appx.409a-410a (Jensvold). Chimpanzees play' parallels that of human children, such as when they engage in imaginary private signing. Appx.419a-411a (Jensvold). Chimpanzees even engage in deception. Appx.411a (Jensvold).

Chimpanzees enjoy drawing and painting, indicating autonomy. Appx.411a-412a (Jensvold). Their artwork shows balance and respect for boundaries, which are aspects of aesthetics in human artwork. Appx.411a (Jensvold). Signing chimpanzees even assign titles to their productions. *Id*.

14. Duties and Responsibilities

Chimpanzees bear duties and responsibilities to one another. Appx.185a-189a (McGrew); Appx.336a-339a (Boesch); Appx.414a-417a. (Jensvold); Appx.137a-139a (Goodall).

Based on his 40 years of observing wild chimpanzees, Dr. McGrew attested: "They knowingly assume obligations and honor them." Appx.189a (McGrew). This is evidenced in areas such as group defense, rescue, assistance to wounded individuals, rewards and punishment in the hunting context, as well as providing support for weak individuals. Appx.336a (Boesch). Experts have identified several specific examples of duties and responsibilities among and within chimpanzee communities:

- Chimpanzee mothers show a degree of duty of care to their offspring that rivals humans. Appx.185a-186a (McGrew); Appx.137a-138a (Goodall); Appx.415a (Jensvold).
- Most adult males of a community act in a paternal way to all infants in their community, rushing to their aid when necessary. Appx.138a (Goodall).
- Maternal siblings of both sexes supplement their mother, using similar caregiving behaviors. Appx.186a (McGrew). Juveniles and adolescents often act responsibly toward their infant siblings. Appx.139a (Goodall). An older sibling will almost always adopt an infant if the infant's mother dies. *Id.*
- Grandmothers often participate in the upbringing of their grandchildren. Appx.186a (McGrew).
- Duties of care extend beyond kinship as evidenced by the adoption of orphans by unrelated community members (including males). Appx.186a-187a (McGrew); Appx.139a (Goodall).
- The adult males of a community are responsible for patrolling their territory, chasing away or attacking individuals from neighboring communities – this serves to protect and sometimes increase resources for their own females and young, and requires close cooperation and gang attacks. Appx.140a (Goodall). *Accord* Appx.187a (McGrew); Appx.336a (Boesch).
- Chimpanzees perform "human" duties. Appx.414a-415a (Jensvold). Dr. Jensvold had chimpanzees help clean enclosures by returning their blankets from the night before. *Id.* When new caregivers appeared, the chimpanzees sometimes attempted to ditch their duties, but eventually, they bore their responsibility (without bribery). *Id*.

C. The complex needs of chimpanzees cannot be met at DFZ.

1. Chimpanzees have complex needs.

Chimpanzees have complex physical, psychological, and social needs that are difficult to meet in captivity. Appx.274a-275a (Matsuzawa); Appx.421a (Jensvold). These include:

Social Needs. Chimpanzees are highly social beings and have a fundamental need to socialize and not be isolated from one another. Appx.274a-275a (Matsuzawa); Appx.412a-413a (Jensvold). In the wild, they live in groups of 20 to 200 individuals. Appx.412a (Jensvold). Chimpanzees have complex social relationships that last a lifetime. *Id.* Male chimpanzees have particularly strong bonds with their mothers and often stay in their natal community for the duration of their lives (60 years). Appx.271a (Matsuzawa); Appx.412a (Jensvold).

Habitat Needs. Chimpanzees have a fundamental need to move freely. Appx.274a-275a (Matsuzawa). Chimpanzees spend 10-20% of their time traveling. Appx.428a (Jensvold). Chimpanzees are an arboreal species, meaning they live off the ground and are natural climbers. *Id.* In captivity, chimpanzees require:

- An appropriate outdoor environment. Appx.273a-274a (Matsuzawa).
- Enclosures that include climbable surfaces and pathways above ground. Appx.428a (Jensvold); Appx.273a-274a (Matsuzawa).[7]
- Multiple connecting habitats for their fission-fusion parties. Appx.273a(Matsuzawa).
- A physically enriched environment in which chimpanzees receive 10-20 different objects daily. Appx.425a (Jensvold).

Foraging Needs. Chimpanzees have a fundamental need to forage freely. Appx.274a-275a (Matsuzawa). Appx.426a-427a (Jensvold). In the wild, chimpanzees have the freedom to choose when to eat, what to eat, and where to eat. Appx.275a (Matsuzawa). They eat hundreds of different foods such as vegetation, fruits, nuts, insects, reptiles, and mammals. Appx.426a (Jensvold); Appx.273a-274a (Matsuzawa). In the wild, chimpanzees use hundreds of tools, many of which relate to food gathering. Appx.424a (Jensvold).

Chimpanzees are often denied the ability to forage freely in artificial environments such as zoos. Appx.274a-275a (Matsuzawa). Sanctuaries endeavor to provide a variety of foods with diverse ingredients, preparation style, and presentation. Appx.427a (Jensvold).

[7] Even the largest chimpanzee enclosures are a small fraction of the size of chimpanzee home ranges. Appx.428a (Jensvold).

2. Chimpanzees suffer in captivity.

In captivity, the failure to meet the essential needs of chimpanzees causes them to suffer physically and psychologically. Appx.275a (Matsuzawa); *accord* Appx.412a-413a, 421a, 423a-428a (Jensvold); Appx. 328a (Boesch); Appx. 189a (McGrew). The harms of captivity include:

- Premature death. Appx.272a (Matsuzawa).
- Heart disease and diabetes from poorly planned diets. Appx. 427a (Jensvold).
- Abnormal and injurious behavior from social deprivation: Social interaction and stimulation are essential for a chimpanzee's development, health, and well-being. Appx.412a-413a (Jensvold). When deprived of adequate social groups, chimpanzees exhibit abnormal and self-injurious behavior. Appx.421a-424a (Jensvold). The harm caused by inadequate social groupings also is reflected in physical changes in a chimpanzee's brain. Appx.423a (Jensvold).
- Unenriched environments can result in stereotypical and abnormal behaviors, increased aggression, and abnormal sexual behaviors. Appx.402a, 422a, , 423a, 426a, 429a (Jensvold).
- Chimpanzees are at risk for psychological injuries, physical illnesses, and even death, when caregivers lack appropriate training and knowledge. Appx.432a (Jensvold).

3. DFZ is an unacceptable place for chimpanzees.

"DFZ is a completely unacceptable place for chimpanzees." Appx.441a (Jensvold); Appx.275a (Matsuzawa) ("It does not appear that the DeYoung Family Zoo can provide chimpanzees with a normal life appropriate for their species.").[8]

"There does not appear to be any protected outdoor space at DFZ. This would mean that if the chimpanzees are allowed outside, they would be exposed to adverse conditions" and risk "frostbite or hypothermia." Appx.430a (Jensvold). "The average annual snowfall in Wallace, MI is 47 inches per year. The ground is frozen all winter. This would mean the outdoor enclosure

[8] The videos and photographs of DFZ reviewed by Dr. Jensvold and Dr. Matsuzawa can be viewed here: https://rb.gy/57pbv.

would be largely unusable for chimpanzees. Keeping the chimpanzees inside all winter would be physically and psychologically harmful." Appx.429a (Jensvold).

With no accreditation displayed on its website, DFZ is properly classified as a roadside zoo. Appx.441a (Jensvold). The zoo does not meet the AZA standards for chimpanzee care, let alone the rigorous standards of a sanctuary accredited by the Global Federation of Animal Sanctuaries ("GFAS"). *Id*. The USDA is the only organization providing oversight of the zoo, and its standards are minimal. *Id.* Unlike GFAS, the USDA does not have specific standards that address the complex needs and autonomy of captive chimpanzees. *Id*.

The USDA records reveal that Prisoner A (Louie) has essentially lived alone for more than half his life, if not his entire life. Appx.437a-438a (Jensvold). Tommy, who died at DFZ in 2022, had likely been living alone since his arrival in 2015. Appx.439a (Jensvold). The cognitive development of chimpanzees is much like human children. Appx.438a (Jensvold). Dr. Jensvold concluded: "What Louie has endured is highly detrimental to his psychological well-being, mental health, growth, and development." *Id*.

D. The DeYoung Prisoners can have their complex needs met and exercise their autonomy at a chimpanzee sanctuary accredited by the Global Federation of Animal Sanctuaries.

The experts recommend that the DeYoung Prisoners should be sent to a GFAS-accredited chimpanzee sanctuary so that they can exercise their autonomy and have their complex needs met. Appx.441a (Jensvold); Appx.275a-276a (Matsuzawa); Appx.189a (McGrew).[9]

Sanctuaries operate from an ethic of service to each animal as an individual with a certain personal history, and to meeting their needs as best as possible in captivity. Appx.435a (Jensvold). From that ethic comes certain practices, including the "resident first" philosophy and practice (not "visitor" catered), no breeding, and no impositions on well-being and autonomy (that is, no performances, demonstrations, or close contact with the public). *Id.* For example, "Fauna offers fission-fusion groupings so certain chimpanzees may visit with compatible neighboring chimpanzees who are outside their usual group—these groupings are wholly determined by the chimpanzees' desires. For instance, *Tatu uses sign language to tell caregivers who she would like to visit and for how long*." Appx.437a (Jensvold) (emphasis added).

[9] GFAS has a manual specific to standards of care for great apes. Appx.433a (Jensvold).

The culture of care in GFAS-accredited sanctuaries stands apart from that of other traditional wildlife facilities. Appx.435a (Jensvold). Whereas zoos may relocate chimpanzees to other zoos for breeding purposes, "[t]ransfer and breeding are forbidden in GFAS-accredited sanctuaries and there must be contraception plans." Appx.433a (Jensvold). Dr. Jensvold observed in videos of DFZ: "two females had sexual swellings indicating they were receptive. There also was a male in the enclosure. This would indicate to me the potential for breeding." Appx.432a-433a (Jensvold).

E. Relevant Orders and Opinions in NhRP's Prior Cases

- NhRP secured a habeas corpus order on behalf of two chimpanzees, Hercules and Leo. *Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 748 (N.Y. Sup. Ct. 2015).
- NhRP secured a habeas corpus order on behalf of the elephant Happy.[10]
- NhRP filed two habeas lawsuits on behalf of Tommy the chimpanzee, resulting in a historic opinion authored by Judge Eugene Fahey of the New York Court of Appeals (New York's highest court). *See generally Nonhuman Rights Project, Inc, on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054 (2018) (Fahey, J., concurring). Judge Fahey declared: "To treat a chimpanzee as if he or she had no right to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth . . . . Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect." *Id*. at 1058.
- In 2022, for the first time in history, the highest court of an English-speaking jurisdiction heard a habeas corpus case on behalf of an elephant. Two judges on the New York Court of Appeals—Judge Rowan Wilson (now Chief Judge) and Judge Jenny Rivera—agreed with the NhRP that habeas corpus was available for the NhRP's client Happy to challenge her unjust confinement at a zoo. *See Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 624 (2022) (Wilson, J., dissenting) ("Happy is entitled to a merits hearing on her habeas corpus petition"); *id*. at 634 (Rivera, J., dissenting) ("the Nonhuman Rights Project

[10] *See* Mallory Diefenbach, *Orleans County issues first habeas corpus on behalf of elephant*, The Daily News (Nov. 21, 2018), https://bit.ly/3AwkCWV.

has made the case for Happy's release and transfer to an elephant sanctuary, and the writ should therefore be granted").

ARGUMENT

Standard of review applicable to all issues

Each issue in this appeal solely concerns questions of law, and this Court reviews such questions de novo. *People v. Steele*, 283 Mich. App. 472, 478 (2009); *People v. Bensch*, 328 Mich. App. 1, n.4 (2019).

I. The Circuit Court erred in concluding that the substantive entitlement to habeas corpus is governed by statute and not Michigan common law.

A. The Circuit Court misapprehended the entire case: the question is not whether the DeYoung Prisoners fit a legislative definition of "person" but whether they have the common law right to bodily liberty protected by habeas corpus.

The Circuit Court's entire approach to deciding the Complaint was wrong. In Michigan, whether an individual has the right to bodily liberty protected by habeas corpus (i.e. a "person" for this right) is not a matter of statutory interpretation; rather, it is a matter for a court to decide based on the common law. Habeas corpus is a time-honored common law remedy that protects a basic yet fundamental right to be free from unjust imprisonment. Limiting who may avail themselves of the protections of the Great Writ based on a statutory analysis is tantamount to concluding that habeas corpus is no longer a common law remedy in Michigan.

Without explanation or any reference whatsoever to the common law, the Circuit Court concluded that the DeYoung Prisoners are not "persons" for habeas corpus purposes by analyzing the issue as if it were governed by statute. *See* Appx.1a (holding they are "not 'persons' *as required by* MCR 3.03") (emphasis added). Significantly, MCR 3.303 merely governs habeas corpus *procedure*, not substantive entitlement to the common law right to bodily liberty that habeas corpus protects.[11] As discussed below, the term "person" remains undefined because statutes cannot substantively curtail the court's authority to determine who may avail themselves of habeas corpus under the common law.[12]

[11] MCR 3.303 (C) simply requires a complaint for a writ of habeas corpus to state that "the person on whose behalf the writ is applied for (the prisoner) is restrained of his or her liberty."

[12] While "person" is undefined in the habeas corpus procedural statutes, M.C.L. 600.4322 broadly defines "prisoner" to mean "the person on whose behalf the writ is issued, *such as* an inmate of a penal or mental institution, the child whose custody is sought, and *other persons alleged to be restrained of their liberty*." (emphasis added).

B. Michigan continues to recognize habeas corpus under the common law.

The Circuit Court's conclusion that MCR 3.03 imposes a substantive, statutory "person" requirement is wrong as a matter of settled law and must be reversed to protect common law habeas corpus jurisprudence.

Sourced "in the common law," the right to bodily liberty protected by habeas corpus is "the basic right of freedom from unlawful detention." *Goetz v. Black*, 256 Mich. 564, 567 (1932).[13] "The earliest colonists brought [habeas corpus] to this country *as a part of the common law*, and it became, and ever since remained, the law of the land." *Id.* (emphasis added). *See In re Hicks*, 20 Mich. 129, 134 (1870), *overruled on other grounds*, 144 Mich 42 (1906) (noting that the "writ of *habeas corpus*" is a proceeding "allowed by the common law"); *In The Matter of Elizabeth Denison, et al., No. 60.,* 1807 WL 1109, at *1 (Mich. Sept. 26, 1807) ("When a statutory method of investigating the right to freedom is not provided, the common-law writ of habeas corpus is appropriate.").[14]

"As [habeas corpus] came from no statute, it is not confined in its scope to any prescribed limits, but is co-extensive with the cases to which its principles can be applied, and in which it can afford a remedy." *In re Jackson*, 15 Mich. 417, 439 (1867) (Cooley, J., concurring). Judge Cooley admonished: "I am aware of *nothing* which limits the power of the court upon this writ, but its capacity to give relief in the particular case in accordance with the settled rules which govern this mode of proceeding." *Id*. (emphasis added).

The noun "person" in the habeas procedural provisions, MCR 3.303 and M.C.L. §§ 600.4301 to 600.4379, is not intended to have any substantive meaning.[15] There is not so much as

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[13] Habeas corpus "is a writ of *inquiry*" to "determine the legality of [a] restraint." *Phillips v. Warden, State Prison of S. Michigan*, 153 Mich. App. 557, 564-65 (1986).

[14] The common law of England, not repugnant to Michigan's Constitution, remains in force unless changed or repealed. MI CONST Art. 3, § 7; *In re Sanderson*, 289 Mich. 165, 174 (1939).

[15] *See also Breheny*, 38 N.Y.3d at 582 (Wilson, J., dissenting) (explaining that the undefined term "person" in New York's similar habeas corpus procedural statute "was meant to have no substantive component," and "is irrelevant to whether the writ can extend beyond humans"); *id*. at 633 (Rivera, J., dissenting) ("While CPLR article 70 sets forth the *procedure* to seek habeas relief, it does not create the right to bodily liberty nor determine who may seek such relief. . . . [I]t is for

a hint that the legislature intended to strip Michigan courts of their firmly settled authority to determine the substantive scope of habeas corpus. Rather, there is every indication that the legislature fully intended to leave substantive habeas corpus to the common law. This is apparent not only from the fact that "person" is undefined in the habeas corpus procedural rules, *supra,* but also because of the role of habeas corpus in Michigan's jurisprudence.

Michigan's very own constitution recognizes "the writ of habeas corpus *as an existing remedy*" for judicial adjudication. *People v. Collins*, 36 Mich. App. 400, 410 (1971) (Levin, J., concurring), *aff'd*, 388 Mich. 680 (1972) (citation omitted; emphasis added). "'[A]lthough the statutes will be found to make specific provision for particular [habeas corpus] cases, it is believed that in no instance which has fallen under our observation *has there been any intention to restrict the remedy, and make it less broad and effectual than it was at the common law*.'" *Id.* (citation omitted; emphasis added). "It was never the case in England that the court of king's bench derived its jurisdiction to issue and enforce this writ from the statute. Statutes were not passed to give the right, but to compel the observance of rights which existed." *In re Jackson*, 15 Mich. at 436 (Cooley, J., concurring).

By failing to grasp the common law source of the right at issue, the Circuit Court applied a legislative interpretation analysis of "person," which retrospectively asks what the legislature intended when the law was enacted. The common law analysis is exactly opposite. "'The common law does not consist of definite rules which are absolute, fixed, and immutable like the statute law, but it is a flexible body of principles which are designed to meet, and are susceptible of adaptation to, among other things, new institutions, public policies, conditions, usages and practices, and changes in mores, trade, commerce, inventions, and increasing knowledge, as the progress of society may require.'" *Beech Grove*, 380 Mich. at 430 (citation omitted). "'[C]hanging conditions may give rise to new rights under the law, and, also, where the reason on which existing rules of the common law are founded ceases, the rules may cease to have application.'" *Id.* (citation omitted) "'The inherent capacity of the common law for growth and change is its most significant feature.'" *Id*. at 429 (citation omitted).

Analyzing this case through a legislative rather than a common law lens resulted in a backward and erroneous ruling that defies centuries of precedent (including *Somerset*). The Great

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this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought.").

Writ's "history is inextricably intertwined with *the growth* of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy *for whatever society deems to be intolerable restraints*." *Fay*, 372 U.S. at 401–02 (emphasis added). "The very history of habeas corpus is one of providing a mechanism for challenging the status quo."[16] *See also Peyton v. Rowe*, 391 U.S. 54, 66 (1968) (habeas corpus is "'not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty'") (citation omitted).

C. Habeas corpus is beyond legislative curtailment.

The Circuit Court cited no authority for the untenable position that the legislature can limit the common law authority of Michigan courts to determine the substantive scope of habeas corpus. This position is also foreclosed by Michigan's Constitution, which guarantees the Court's authority over the substance and expansion of the writ. Article 1, § 12 provides: "The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it." The Court in *Triplett v. Deputy Warden*, 142 Mich. App. 774, 779 (1985) held that the limitations on judicial review set forth in the Administrative Procedures Act do not "supplant the virtually *unlimited right* to file a complaint for a writ of habeas corpus." (emphasis added). "Pursuant to Article 1, § 12 of the Michigan Constitution, a writ of habeas corpus is of paramount authority and its power is supreme." *Id.* (citing *People v. McCager*, 367 Mich. 116 (1962)). If the "APA were interpreted so as to interfere with a prisoner's right to bring an action for a writ of habeas corpus, *it would be unconstitutional*." *Id.* (emphasis added).

Accordingly, the Circuit Court should not have asked "whether a chimpanzee fits the definition of a person . . . but instead whether he or she has the right to liberty protected by habeas corpus." *Tommy*, 31 N.Y.3d. at 1057 (Fahey, J., concurring). More specifically: "Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her?" *Id* at 1058. The answer turns on whether a chimpanzee has a liberty interest that

[16] Br. of *Amici Curiae* Habeas Corpus Experts 26 (Sept. 24, 2021), https://bit.ly/3q4RsLN (citing PAUL D. HALLIDAY, HABEAS CORPUS: FROM ENGLAND TO EMPIRE 133 (2010).

habeas corpus is designed to protect – an analysis governed by common law values, not dictionaries or archaic legislatures.

D. The Circuit Court's decision wrongly implies that only humans can have legal rights.

Implicit in the Circuit Court's holding that chimpanzees are not "persons" is the notion that chimpanzees cannot have rights because they are not human. This is legally wrong and grounded in the discredited notion of human exceptionalism.

The term "person" merely denotes a rightsholder. 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 (11th ed. 2019) (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)). "[L]egal personality can be given to just about anything. . . . It is an empty slot that can be filled by anything that can have rights or duties." Richard Tur, *The "Person" in Law*, *in* PERSONS AND PERSONALITY: A CONTEMPORARY INQUIRY, 121-22 (Arthur Peacocke & Grant Gillett eds. 1987). *See* IV ROSCOE POUND, JURISPRUDENCE 197 (1959) ("The significant fortune of legal personality is the capacity for rights."); *see also* 1 English Private Law § 3.24, 146 (Peter Birks ed., 2000); JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE LAW 27 (2d ed. 1963).[17]

Accordingly, if one possesses a legal right, then one is necessarily a "person" for purposes of that right. The latter qualification is important, since being a "person" for one purpose does not entail being a "person" for all other purposes (e.g., possessing the right to bodily liberty does not entail having the right to vote).[18]

"Person" "is a wider and vaguer term than humanity." JURISPRUDENCE 318. "Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, and idol." GEORGE WHITECROSS PATON, A TEXTBOOK OF JURISPRUDENCE 351 (3d ed. 1964); *Gray*, at 39 ("supernatural being"). *E.g.*, *Hills & Dales Gen. Hosp. v. Pantig*, 295 Mich.

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[17] *See also* Bryant Smith, *Legal Personality*, 37 YALE L.J. 283, 283 (1928) ("To confer legal rights or to impose legal duties . . . is to confer legal personality.").

[18] *See also* 1 ENGLISH PRIVATE LAW § 3.24, 146 (Peter Birks ed. 2000) ("A human being or entity . . . capable of enforcing a particular right, or of owing a particular duty, can properly be described as a person *with that particular capacity*," though not necessarily "a person *with an unlimited set of capacities*.").

App. 14, 20 (2011) ("A corporation is its own 'person' under Michigan law"); *Dept. of Envt'l Quality v. Worth Tp.*, 491 Mich. 227, 238 (2012) ("person" includes "other legal entity"). *A fortiori*, there is nothing that prevents giving rights to *natural, living* beings who are not human.

E. The common law right to bodily liberty protected by habeas corpus is not limited to humans.

Nothing about the nature of the right to bodily liberty limits it to humans. Certain rights carry reciprocal duties on the rightsholder (i.e. the right to bear arms, employment rights, driving rights), making them appropriate for adults and corporations but inappropriate for infants and nonhuman animals. As an immunity right, the common law right to bodily liberty imposes no duty on the rightsholder. *See Union Pac R Co v. Botsford*, 141 U.S. 250, 251 (1891) ("'The right to one's person may be said to be a right of *complete immunity*; to be let alone.'") (citation omitted; emphasis added).[19]

The duty is simply on another to refrain from restraining the liberty of the rightsholder. "One way to think of a right is in terms of the correlative duty it imposes on another to act or refrain from acting for the benefit of the right-holder." *Bauserman v. Unempl. Ins. Agency*, 509 Mich. 673, 691 (2022) (citing Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions As Applied in Judicial Reasoning*, 23 *Yale L.J.* 16, 55 (1913)). This absence of any duty on the rightsholder is why it extends to infants and even permanently comatose patients (who exercise the right through a guardian).

Judges are increasingly rejecting the implicit holding of the Circuit Court, *viz*, that "the writ must be limited to humans, no matter how sophisticated, intelligent, self-aware or capable of suffering an elephant is and no matter how severe the conditions of its confinement are." *Breheny*, 38 N.Y.3d at 580 (Wilson, J., dissenting) (citation omitted). *Accord id.* at 629 (Rivera, J., dissenting); *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring).

Judge Fahey urged courts to deeply consider: "Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her?" *Tommy*, 31 N.Y.3d at 1058 (Fahey, J., concurring). Extending habeas corpus to chimpanzees does not mean they have

[19] *Accord People v. Corder*, 224 Mich. 274, 287 (1928) ("'As well said by Judge Cooley, 'The right to one's person may be said to be a right of complete immunity; to be let alone.'") (citation omitted).

other "human rights"; nor does it in any way diminish human rights—quite the opposite in fact. Citing their proven autonomy and intellect, Fahey urged courts to "consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect." *Id*. at 1058.

As discussed below, the common law requires issuance of an order to show cause when an unjust imprisonment is presented regardless of whether the prisoner is a "person."

II. The Circuit Court erred in not issuing an order to show cause for the DeYoung Prisoners.

A. The Complaint set forth a prima facie case pursuant to MCL 600.4316 and MCR 3.303 (D), giving the Circuit Court no discretion to dismiss the Complaint without issuing an order to show cause to determine the legality of the imprisonment under Michigan common law.

The Circuit Court erred in concluding that a habeas complaint can be filed only on behalf of an individual whose right to bodily liberty has already been recognized. Under well-settled common law precedent, discussed *infra*, habeas corpus is proper to inquire into the legality of an individual's imprisonment even if their right to bodily liberty is never recognized.

A habeas complaint can only be summarily dismissed "if the party applying therefor is not entitled to the writ." MCL 600.4316.[20] *See Issuance of the writ or order to show cause*, 4 Mich. Ct. Rules Prac., Text § 3303.5 (7th ed.) ("[T]he prisoner is entitled to more than a peremptory guess as to the validity of his or her detention; he or she is entitled to a judicial inquiry unless his or her own application *forecloses any question*.") (emphasis added). This standard is analogous to the standard for evaluating a motion to dismiss for failure to state a claim under MCR 2.116 (C)(8). In such a motion, "[a]ll well-pleaded facts are accepted as true and are construed in the light most favorable to the nonmoving party." *Madejski v. Kotmar Ltd*, 246 Mich. App. 441, 444 (2001).

The Complaint complies with all the requirements set forth in MCR 3.303 (C) (1)-(7). Appx.87a-88a. The Circuit Court did not find that the Complaint failed to satisfy these requirements; only that the DeYoung Prisoners are not "persons." Since the Complaint states a prima facie case for habeas corpus relief (explained *infra*) – that is, an unlawful imprisonment under the common law – the Circuit Court had no discretion to dismiss it at this early stage.

[20] M.C.L. 600.4310 enumerates four categories of "persons" who may not file an action for habeas corpus, which are inapplicable here and were not cited by the Circuit Court.

As the Michigan Supreme Court observed, "'[t]he fact that no case remotely resembling the one at issue is uncovered does not paralyze the common-law system, which is endowed with judicial inventiveness to meet new situations.'" *Beech Grove*, 380 Mich. at 429 (citation omitted).

B. The Circuit Court contravened centuries of common law habeas corpus precedent, including *Somerset v. Stewart*, which does not require the prisoner to be a "person" for issuance of an order to show cause.

The Circuit Court's decision runs afoul of the most celebrated common law habeas cases, which are part of Michigan common law, and the traditional use of habeas corpus itself. Habeas corpus has long been available to challenge unlawful imprisonments, even when the prisoner's right to bodily liberty (and thus legal personhood) was not recognized at the time. "[T]he writ was used to grant freedom to slaves, who were considered chattel with no legal rights," as well as to "grant freedom to wives and children, who . . . legally were under the dominion of husbands and fathers." *Breheny*, 38 N.Y.3d at 588-89 (Wilson, J., dissenting). Pursuant to centuries of common law authority, including the landmark case of *Somerset v. Stewart*,[21] the Circuit Court should have assumed, without deciding, that the DeYoung Prisoners could have the common law right to bodily liberty protected by habeas corpus and issued an order to show cause accordingly.

In *Somerset*, Lord Mansfield famously issued a writ of habeas corpus to require a slaveholder to justify imprisoning an enslaved Black man, James Somerset. 1 Lofft. at 19. Unlike the Circuit Court, Lord Mansfield did not dismiss the habeas petition on the basis that Somerset had no right to liberty. Instead, he presumed that Somerset could possess the common law right to bodily liberty (and thus legal personhood) and, after issuing the writ, proceeded to evaluate the imprisonment under the common law. *Somerset* is celebrated in Michigan as "that famous decision which will live, and justly so, as long as history does, as the particular glory of Lord Mansfield's judicial diadem." *Love*, 128 Mich. at 548.

Issuance of the writ was proper even when the enslaved individuals were ultimately denied their liberty. In the tradition of *Somerset*, courts in free states including Michigan and California issued writs of habeas corpus for enslaved individuals, despite ruling *against* their freedom at the merits stage based on comity laws. *E.g.*, *In The Matter of Elizabeth Denison, et al., No. 60.*, 1807 WL 1109 at *1; *In re Perkins*, 2 Cal. 424, 429 (1852).

[21] *Somerset* is part of Michigan common law. MI CONST Art. 3, § 7.

In *In re Kirk*, 1 Edm.Sel.Cas. 315, 332 (1846), the court recognized its duty to issue the writ for an enslaved Black child imprisoned on a docked ship from Georgia: "I was bound to allow the writ of habeas corpus, even if I had been fully convinced of the legality of the imprisonment, and . . . it becomes my duty to consider and decide it--a duty from which I am not at liberty to shrink." The court reasoned that this is "what is due to personal liberty." *Id.* at 335.

Properly following *Somerset*, courts in other jurisdictions have issued habeas orders for nonhuman animals despite the fact that they were not recognized as "persons" at the time.

In 2015, the New York Supreme Court, New York County issued a historic habeas corpus order for two imprisoned chimpanzees, recognizing that "'the court need not make an initial judicial determination that Hercules and Leo are persons in order to issue the writ and show cause order." *Stanley*, 49 Misc.3d 746 at 748. At oral argument, Justice Barbara Jaffe asked the Assistant Attorney General of New York: "Isn't it incumbent on the judiciary to at least consider whether a class of beings might be granted a right or something short of the right under the habeas corpus law?"[22]

In 2018, the New York Supreme Court, Orleans County issued a habeas corpus order for Happy.[23] Following a transfer of venue, another trial court (New York Supreme Court, Bronx County) agreed that "Happy is more than just a legal thing," and that she "may be entitled to liberty." *The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735 at *1, *10 (N.Y. Sup. Ct. 2020). On appeal, Judge Wilson found that "Happy has sufficiently stated a prima facie case entitling her to a hearing." 38 N.Y.3d at 617 (Wilson, J., dissenting). Similarly, Judge Rivera wrote:

> If an enslaved human being with no legal personhood, a Native American tribal leader whom the federal government argued could not be considered a person under law, a married woman who could be abused by her husband with impunity, a resident of Puerto Rico who is a United States citizen deprived of full rights because of Puerto Rico's colonial status, and an enemy combatant as defined by the federal government can all seek habeas corpus relief, so can an autonomous nonhuman animal.

[22] James C. McKinley Jr., *Arguing in Court Whether 2 Chimps Have the Right to 'Bodily Liberty'*, N.Y. TIMES (May 27, 2015), https://bit.ly/3umXQlO.

[23] *See* Mallory Diefenbach, *Orleans County issues first habeas corpus on behalf of elephant*, The Daily News (Nov. 21, 2018), https://bit.ly/3AwkCWV.

Id. at 631 (Rivera, J., dissenting) (citations omitted).

In short, the Circuit Court's refusal to issue an order to show cause contravenes *Somerset* and its progeny in American common law jurisprudence and must be overturned on this basis alone.

C. The novelty of the case was a reason for the Circuit Court to issue an order to show cause, not dismiss the Complaint.

The Circuit Court's ruling also cannot be harmonized with the historical and flexible role of habeas corpus and the common law itself. "The very history of habeas corpus is one of providing a mechanism for challenging the status quo and litigating the meaning of fundamental liberty and autonomy rights." Br. of *Amici Curiae* Habeas Corpus Experts 26 (Sept. 24, 2021), https://bit.ly/3q4RsLN (citing PAUL D. HALLIDAY, HABEAS CORPUS: FROM ENGLAND TO EMPIRE 133 (2010). *Somerset* "stands as an example of just how powerful the common law writ of habeas corpus could be, not only in protecting—but also expanding—liberty" AMANDA L. TYLER, HABEAS CORPUS: A VERY SHORT INTRODUCTION 27 (2021).

This case's novelty is precisely a reason the Circuit Court *should* have issued an order to show cause. "[A] novel habeas case freed an enslaved person; a novel habeas case removed a woman from the subjugation of her husband; a novel habeas case removed a child from her father's presumptive dominion and transferred her to the custody of another." *Breheny*, 38 N.Y.3d at 584 (Wilson, J., dissenting).

Issuance of a habeas order in this case accords with the greatest judicial opinions of the ages:

> The judges, Justice Paine among them, who issued writs of habeas corpus freeing enslaved persons, or liberating women and children from households run by abusive men, or ordering the return home of underage soldiers could have said, as the majority does here, "that's a job for the legislature." They could have said, "existing law offers some protections, and we dare not do more." They could have said, "we can't be the first." But they did not.

Id. at 617 (Wilson, J, dissenting).

The inherent flexibility of habeas corpus in Michigan's common law scheme mandates that a novel case such as this be allowed to proceed to the merits.

D. The DeYoung Prisoners' imprisonment is illegal under the common law.

The Complaint establishes that the DeYoung Prisoners' imprisonment is illegal under Michigan common law. Appx88a-95a. The word "illegal" and "no legal cause" in Michigan's habeas corpus procedural statute broadly encompasses *all* unlawful imprisonments, including those involving no statutory violation but a violation of the common law. Thus, the absence of any statutory violation would not mean the DeYoung Prisoners' imprisonment is lawful, since the common law supplies an independent basis for the unlawful detention.

Likewise, compliance with animal welfare laws is irrelevant to whether the detention is unlawful under Michigan common law (just as human welfare laws are irrelevant to whether an individual is wrongfully imprisoned). "Confinement at the Zoo is harmful, not because it violates any particular regulation or statute . . . but because an autonomous creature . . . suffers harm by the mere fact that her bodily liberty has been severely—and unjustifiably—curtailed." *Id*. at 642. (Rivera, J., dissenting).[24]

The common law presumption of liberty (*in favorem libertatis*) lies at the heart of the right to bodily liberty. "No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person . . . *unless by clear and unquestionable authority of law*." *Botsford*, 141 U.S. at 251 (emphasis added).

It "'is only necessary for the plaintiff . . . to show that he *has been imprisoned or restrained of his liberty*. *The presumption then arises that he was unlawfully imprisoned*, and it is for the person who has committed the trespass to show that it was legally justified.'" *Donovan v. Guy*, 347 Mich. 457, 464 (1956) (analogous case for false imprisonment) (emphasis added). This presumption of liberty is subsumed in the habeas corpus procedural statute. MCL 600.4352 (1) provides: "*If no legal cause* is shown for the restraint, or for the continuation thereof, the court or judge shall discharge the person restrained from the restraint under which he is held." (emphasis added).

The writ of habeas corpus is "the 'easy, prompt and efficient remedy afforded *for all unlawful imprisonment.*'" *In re Jackson*, 15 Mich. at 440 (Cooley J., concurring) (citation omitted). The question is not whether the "detention violates some statute: historically, the Great Writ of habeas corpus was used to challenge detentions that violated no statutory right and were otherwise legal but, in a given case, unjust." *Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting).

[24] Although tangential to the lawfulness of the imprisonment, DFZ does not meet the AZA standards for chimpanzee care. Appx.441a (Jensvold).

In *Somerset*, Lord Mansfield announced that slavery is "so odious, that nothing can be suffered to support it" under the common law. 1 Lofft at 19. Judge Cooley echoed Mansfield when he declared: "Slavery is the negation of natural right." *People ex rel. Hedgman v. Bd. of Registration of Detroit, First Ward*, 26 Mich. 51, 54 (1872).

"[T]he courts of England and the United States used the Great Writ to grant relief to women and children in the face of statutory and common law rendering their mistreatment by men lawful." *Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting). For many women, "'[t]he writ [of habeas corpus] acted as a lifeline for freedom' . . ., used to overcome their husbands' common-law right to restrain them." *Id*. (citation omitted). The Great Writ's history "demonstrates that courts have used and should use it to enhance liberty when a captivity is unjust, even when the captor has statutory or common law rights authorizing such captivities in general." *Id*. at 580.

Like humans, chimpanzees suffer from such severe and unjustifiable curtailment of their bodily liberty. As noted, one chimpanzee, Bruno, literally asked for his freedom.[25] Appx.405a (Jensvold). As the experts establish, chimpanzees are autonomous, extraordinarily cognitively complex beings with complex physical, psychological, and social needs that cannot be met in captivity and most certainly are not being met at DFZ. Appx.328a (Boesch); Appx.402a, 437a-441a (Jensvold); Appx.273a-276a (Matsuzawa); Appx.189a (McGrew).

For example, chimpanzees need access to fresh air and sunshine all year, but the DeYoung Prisoners do not have that option during the winter because of the apparent absence of protected outdoor space. Appx.429a-430a (Jensvold). Since chimpanzees can easily develop frostbite or hypothermia from exposure to extreme cold and snow, the DeYoung Prisoners must remain inside for many months every year, which is extremely harmful to their physical and psychological well-being. Appx.429a-430a, 441a (Jensvold). Furthermore, DFZ lacks appropriate climbing structures and above-ground pathways that enable chimpanzee groups to socialize and move freely. Appx.273a-274a (Matsuzawa) (emphasizing the need for multiple connecting habitats).

Since the Circuit Court was required to assume, without deciding, that the DeYoung Prisoners have the common law right to bodily liberty protected by habeas corpus (*supra*), the demonstrated deprivation of their bodily liberty constitutes a violation of their common law right.

[25] BODAMER, M. (2020). KEY OUT: A CHIMPANZEE'S PETITION FOR FREEDOM. *in* D. Rosenman (Ed.). *The Chimpanzee Chronicles* (pp. 217-34).

Accordingly, the Complaint presents a presumption of unlawful imprisonment. *Donovan*, 347 Mich. at 464.

As the Complaint sets forth a prima facie case for habeas corpus relief, the Circuit Court was compelled to issue an order to show cause. The refusal to do so was error.

E. The relief sought is proper.

That the DeYoung Prisoners cannot be released onto the streets of Michigan is no barrier to habeas corpus relief. At a proper chimpanzee sanctuary, the DeYoung Prisoners will be provided with the specialized care necessary to satisfy their complex social, emotional, and physical needs for the duration of their lives, and allow them to exercise their autonomy to the greatest degree possible. This relief is analogous to habeas corpus relief on behalf of a minor or incapacitated adult who cannot be released without a guardian. *E.g., Goodchild v. Foster*, 51 Mich. 599 (1883) (children released to mother); *Ex parte Brooks*, 331 Mich. 628, 630 (1951) (minor "is ordered to be released" from training home); *Ex parte Roberts*, 310 Mich. 560, 561-63 (1945) (son released from mental hospital to mother); *Walls v. Dir. of Institutional Servs*., 84 Mich. App. 355, 360 (1978) (mentally incapacitated minor released).

III. The Circuit Court violated both its duty to examine whether changed circumstances warrant expansion of the common law and its duty to protect the supreme common law values of autonomy and equality.

A. By dismissing the Complaint on its face, the Circuit Court violated its duty to ensure that the common law is not an anachronism.

Michigan courts must "examine common-law doctrines in view of changes in society's mores, institutions, and problems, and to alter those doctrines where necessary." *Adkins v. Thomas Solvent Co*., 440 Mich. 293, 317 (1992). Indeed, they have "'*the duty* to reexamine a question where justice demands it.'" *Womack v. Buchhorn*, 384 Mich. 718, 724 (1971) (citation omitted; emphasis added). This is because the "'common law does not consist of definite rules which are absolute, fixed, and immutable like the statute law, but it is a flexible body of principles which are designed to meet . . . new institutions, public policies, conditions, usages and practices, and changes in mores, trade, commerce, inventions, and increasing knowledge, as the progress of society may require.'" *Beech Grove*, 380 Mich. at 430 (citation omitted). "[C]hanging conditions may give rise to new rights under the law, and, also, where the reason on which existing rules of the common law are founded ceases, the rules may cease to have application." *Id.*

The Circuit Court's dismissal of the Complaint wrongly anchors common law rights to a bygone era. Because the common law is not an anachronism, the court could not justify denying the DeYoung Prisoners the right to bodily liberty merely because they could not exercise it in the past. Rather, the court had an affirmative duty to analyze the past in light of a changed era. "If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied." *Obergefell v. Hodges*, 576 U.S. 644, 671 (2015). "At one time aliens could not enjoy the same rights and privileges in property as citizens of Michigan. The disabilities of coverture also existed." *Beech Grove*, 380 Mich. at 431.

A court's duty to examine the common law is even more profound when, as here, the issue at stake is the right to bodily liberty protected by habeas corpus. *See Attorney Gen v. Daboll*, 90 Mich. 272, 275-76 (1892) ("The writ of *habeas corpus* is the most celebrated writ known to the law, and has been justly styled 'the great writ of liberty.'").

Accordingly, the Circuit Court had a duty to at least examine whether the Great Writ's protections must be extended in accordance with current science, justice, changing societal norms and public policy. The court's violation of this duty alone warrants reversal. *See Berger v. Weber*, 411 Mich. 1, 12 (1981) ("Lack of precedent cannot absolve a common-law court from responsibility for adjudicating each claim that comes before it on its own merits. . . . '[O]ur oath is to do justice, not to perpetuate error.' Here we must consider the child's claim in light of conditions pertinent to modern society[.]") (citation omitted).

Two separate lines of common law jurisprudence also independently prohibited the court from summarily dismissing the Complaint: (1) bodily liberty jurisprudence, which requires courts to protect autonomy as a supreme value; and (2) equality jurisprudence, which prohibits unjust discrimination, discussed *infra*.

B. By dismissing the Complaint on its face, the Circuit Court violated its paramount duty to protect autonomy, the supreme common law value at the heart of the right to bodily liberty.

The Circuit Court committed a grievous error by not examining a case that alleges the violation of the right to bodily liberty of individuals scientifically proven to be cognitively complex and autonomous.

Michigan courts have a specific duty to protect the interest at the heart of the right to bodily liberty: autonomy. "*No right* is held more sacred, or is *more carefully guarded by the common law*, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *People v. Nixon*, 42 Mich. App. 332, 340 n.17 (1972) (quoting *Botsford*, 141 U.S. at 251) (emphasis added). "The right to one's person may be said to be a right of complete immunity; to be let alone." *Botsford*, 141 U.S. at 251 (quoting Cooley, Torts, 29).

This right to be let alone protects autonomy, which lies at the heart of habeas corpus. *See Stanley*, 49 Misc.3d at 753 ("The great writ of habeas corpus lies at the heart of our liberty, and is deeply rooted in our cherished ideas of individual autonomy and free choice.") (internal citations and quotations omitted). The court's duty to protect autonomy necessarily implies a duty to allow a case based on autonomy proceed to the merits.

Autonomy is such a supreme common law value that it can even trump the State's interest in life itself. In Michigan, the protection given to one's autonomy under the common law is of such supreme importance that an individual, whether competent or incompetent, may choose to reject lifesaving medical treatment and die. *See In re Rosebush*, 195 Mich. App. 675, 680 (1992) (under the common law "there is a right to withhold or withdraw life-sustaining medical treatment"). *See also In re Martin*, 450 Mich. 204, 215 n.8 (1995) ("the object remains to honor individual dignity by promoting self-determination and choice"). Significantly, "[t]he right to refuse lifesaving medical treatment is not lost because of the incompetence or the youth of the patient," *In re Rosebush*, 195 Mich. App. at 681-82, because the right can be "discharged by a surrogate decisionmaker." *In re Martin*, 450 Mich. at 219 ("conclud[ing] that a person's right to refuse life-sustaining medical treatment survives incompetency").

The common law right to bodily liberty protected by habeas corpus protects the right of autonomous individuals to exercise their autonomy free from illegal imprisonment.

The scientific evidence presented to the Circuit Court is beyond dispute: Chimpanzees are autonomous, extraordinarily cognitively complex and self-determining beings. They are empathetic and compassionate, perform cultural rituals, grieve death, have a sense of humor, ask for their freedom in sign language, apologize when they are wrong, and play imagination games. Appx.137a-140a (Goodall); Appx.402a-421a (Jensvold); Appx. 182a-184a (McGrew). They draw and paint, assume duties and responsibilities, and plan for future actions. Appx.411a- 414a-417a

(Jensvold). This autonomy demands protection. Accordingly, for the Circuit Court to summarily dismiss the Complaint is to hold that autonomy does not actually matter: species membership does. Such a position is irreconcilable with a court's duty to protect autonomy at virtually all cost.

C. By dismissing the Complaint on its face, the Circuit Court violated its paramount duty to examine the common law to ensure its evenhanded, non-arbitrary application.

The Circuit Court's refusal to issue an order to show cause also violated "one of the most basic principles of the common law"—that "like cases will be treated alike." *Benavidez v. Sierra Blanca Motors*, 122 N.M. 209, 214 (1996). *See Ferguson v. Gies*, 82 Mich. 358, 365 (1890) ("The common law. . . [provides] a remedy against any unjust discrimination" in public places); *see also Sullivan v. Minneapolis & R. R. Ry. Co.*, 121 Minn. 488, 492 (1913) ("'the general principle of equality is a principle of the common law'") (citation omitted); *Simrall v. City of Covington*, 14 S.W. 369, 370 (Ky. 1890) ("Perhaps the most distinguishing feature of the common law is its regard for the protection and equality of individual right."); *James v. Commonwealth*, 12 Serg. & Rawle 220, 230 (Pa. 1825) ("the common law . . . stamps freedom and equality upon all who are subject to it"). Indeed, "[o]ur whole system of law is predicated on the general fundamental principle of equality of application of the law." *Truax v. Corrigan*, 257 U.S. 312, 332 (1921).

To fulfill the common law's longstanding promise of equality, "'[c]hanging times demand reexamination of seemingly unchangeable legal dogma.'" *N. Ottawa Community Hosp. v. Kieft*, 457 Mich. 394, 402 (1998) (citation omitted); *id*. at 408 (holding that "the contemporary reality of women owning property, working outside the home, and otherwise contributing to their own economic support calls for the abrogation of this sex-discriminatory doctrine from early common law"). "'Decision founded upon the assumption of a bygone inequality are unrelated to present-day realities, and ought not to be permitted to prescribe a rule of life.'" *Montgomery v. Stephan*, 359 Mich. 33, 41 (1960). Thus in *Montgomery*, the Court updated the common law to hold that a wife may maintain an action for loss of consortium, rejecting inequitable precedents "from the dusty books." *Id*. at 38.

Michigan has been a pioneer in using the common law to prohibit arbitrary and unjust discrimination, independent from constitutional equality. *See generally Ferguson*, 82 Mich. at 365 (race discrimination prohibited under the common law); *Anderson v. Chicago, M. & S. P. R. Co*., 208 Mich. 424, 429 (1919) (statute prohibiting discrimination by common carrier is "declaratory

of the common law"); *Bradford v. Citizens' Tel. Co.*, 161 Mich. 385, 389 (1910) (telephone company guilty of discrimination under statute that was merely "declaratory of the common law"); *Beech Grove*, 380 Mich. at 436 (recognizing "a civil right to private housing both at common law and under the 1963 Michigan Constitution"). Since 1890, "in Michigan, whenever a particular equal protection right is recognized, whether by constitution, statute, *or common law*, then fused to that right is the right to pursue judicial relief." *Heurtebise v. Reliable Bus Computers*, 452 Mich. 405, 422-23 (1996) (emphasis added). Indeed, in *Ferguson*, the Court "rejected the 'separate but equal' theory six years before the United States Supreme Court adopted it in the infamous" case of *Plessy v. Ferguson*, 163 U.S. 537 (1896). *Id*. at 422.

The expert evidence unequivocally demonstrates that chimpanzees are relevantly similar to humans for purposes of the right to be free from unjust imprisonment. Yet the Circuit Court has allowed for their continued imprisonment for no reason other than their species membership. Such arbitrary discrimination is at odds with the court's duty to ensure evenhanded, non-arbitrary application of common law rights.

IV. The Circuit Court erred in determining that chimpanzees cannot possess the right to bodily liberty.

A. The Circuit Court's determination that chimpanzees lack the right to bodily liberty was a violation of its duty to evolve the common law in light of changed circumstances.

The Circuit Court's substantive determination that the DeYoung Prisoners are not "persons" (and therefore cannot possess the right to bodily liberty) was wrong as a matter of law. The court flouted its "authority, indeed its duty, to change the common law when change is required." *People v. Stevenson*, 416 Mich. 383, 390 (1982) (citing cases). For the Complaint amply demonstrated that "'changing conditions may give rise to new rights under the law.'" *Beech Grove,* 380 Mich. at 430 (citation omitted). Had the court properly evaluated the issue under Michigan common law, it would have been obliged to find that the right to bodily liberty must extend to the DeYoung Prisoners.

The Circuit Court's conclusion regarding chimpanzee personhood is "nothing more than a tautological evasion." *Breheny*, 38 N.Y.3d at 633 (Rivera, J., dissenting). "Whether autonomous, nonhuman animals have rights that ought to be 'recognized by law' is *precisely* the question [the court is] called upon to answer." *Id*. As the Michigan Supreme Court articulated in a case in which

it changed the common law in light of equality for women: "The point is that the underlying concept of the early common law, the inferiority of the wife, has been repudiated, and the question for decision is not whether such a right existed then but whether it exists today. The difference between looking backward and looking forward." *Montgomery*, 359 Mich. at 45.

Michigan courts are *duty-bound* to look forward and update the common law when cause for change is warranted in light of: (1) **new science**; *e.g., People v. Guthrie*, 97 Mich. App. 226, 230-32 (1980) (medical advancements); *Womack*, 384 Mich. at 724 (court must update the common law to conform to "present day science [and] philosophy"); *Detroit City Ry. v. Mills*, 85 Mich. 634, 650 (1891) (common law updated in light of scientific advancements in transportation); (2) **protecting autonomy**; *e.g., Botsford*; (3) **preventing unjust discrimination**; *e.g., Ferguson*; *Montgomery*, 359 Mich. at 41; (4) **preventing injustice**; *e.g., Placek v. Sterling Heights*, 405 Mich. 638, 652 (1979) ("There is little dispute among legal commentators that the doctrine of contributory negligence has caused substantial injustice since it was first invoked in England in 1809."); and (5) **changing societal norms and public policy**; *e.g.*, *Beech Grove*, 380 Mich. at 429; *Montgomery*, 359 Mich. at 49 (harmonizing common law of consortium "with the conditions of modern society" pertaining to women). These considerations individually and collectively present a powerful case for expanding the protections of habeas corpus to the DeYoung Prisoners, *infra*.

B. The Circuit Court ignored changes in scientific understandings crucial to the right to bodily liberty.

Excluding chimpanzees from the right to bodily liberty is no longer tenable under today's scientific microscope. Michigan common law must be updated in "light of the present state of science." *Womack*, 384 Mich. at 725. In *Stevenson*, for example, the Court abrogated the common law "year and a day rule," which dated back to 1278, on the basis that the rule "outlived its usefulness." 416 Mich. at 391. The Court noted that the rationale for the rule was probably "tied to the inability of 13th Century medicine to prove the cause of death beyond a reasonable doubt after a prolonged period of time." *Id.* "[W]here the reason on which existing rules of the common law are founded ceases, the rules may cease to have application.'" *Beech Grove*, 380 Mich. at 430.

Sea changes in scientific understandings about chimpanzee autonomy in the past decades require expansion of the common law right to bodily liberty protected by habeas corpus to the DeYoung Prisoners. "[T]he contrast between what we now know and the paucity of information

in earlier times must inform our analysis." *Breheny*, 38 N.Y.3d at 607 (Wilson, J., dissenting). "Whether an elephant could have petitioned for habeas corpus in the eighteenth century is a different question from whether an elephant can do so today because we know much more about elephant cognition, social organization, behaviors and needs than we did in past centuries[.]" *Id*. at 603. The same is true here.

"Prior to the twentieth century, human understanding of animal intelligence was minimal," with humans regarding "themselves as 'unique in their sociality, individuality, and intelligence.'" *Id.* at 606 (citation omitted). But "researchers began to discredit the notion of human exceptionalism" as scientific knowledge progressed in the twentieth century. *Id*.

Science regarding chimpanzee autonomy, intelligence, emotional capacities, and their vast complex capabilities simply was not widely known or discovered until the past several decades. As the expert evidence demonstrates, the "scientific work on chimpanzees over the past decades shows they are an especially sophisticated species, sharing a surprising number of psychological attributes with human beings," and our scientific knowledge about them "is vast and has been increasing at an exponential rate." Appx.328a (Boesch). And "what we know now is still only a small fraction of what chimpanzees are capable of." *Id*. Such changes in scientific understanding require extending the protections of habeas corpus to the DeYoung Prisoners.

C. Because the right to bodily liberty protects the exercise of autonomy, and because the DeYoung Prisoners are scientifically proven to be autonomous, the common law right to bodily liberty either applies to them or autonomy is not truly a supreme value in Michigan.

Under common law bodily liberty jurisprudence (discussed *supra*), Michigan courts must guard autonomy as a supreme common law value. The right to bodily liberty protects autonomy, and there is no doubt that the DeYoung Prisoners are autonomous, extraordinarily cognitively complex beings. Accordingly, the Court Circuit was required to either protect the autonomy of the DeYoung Prisoners by recognizing their right to bodily liberty or reject the importance of autonomy, thus violating the Court's most sacred duty to protect this supreme Michigan value.

D. The Circuit Court failed to update the common law in light of equality.

At its core, equality requires equal treatment of individuals who are similar for the purpose of the law at issue. Stated differently, unjustified discrimination among like individuals (alike relevant to the right at stake) is prohibited by the common law as well as the state and federal

constitutions. *Crego v. Coleman*, 463 Mich. 248, 258 (2000) ("The essence of the Equal Protection Clauses is that the government not treat persons differently on account of certain, largely innate, characteristics that do not justify disparate treatment."); *Ferguson*, 82 Mich. at 365 (common law provides a remedy against "unjust discrimination"); *Landon Holdings, Inc. v. Grattan Twp.,* 257 Mich. App. 154, 176 (2003) ("The essence of an equal protection claim is discrimination based on characteristics not justifying different treatment.").[26]

An equality analysis generally has two components: (1) a determination of whether an individual seeking a right is relevantly similar to those who have that right, and (2) a determination of whether there is a legitimate justification for treating relevantly similar individuals differently. *E.g., Landon Holdings,* 257 Mich. App. at 176. Application of this analysis requires extension of the common law right to bodily liberty to the DeYoung Prisoners.

1. The DeYoung Prisoners and humans are relevantly similar for purposes of habeas corpus.

The scientific record demonstrates that chimpanzees are similar to humans for the purpose of the right to be free from unjust imprisonment. After all, chimpanzees are humankind's closest living relative and *vice versa*. Appx.179a (McGrew). Their blood is interchangeable with ours. *Id.* The autonomy they possess is not limited to making basic decisions. They are advanced beings with capacities that surpass human capacities in some respects.

Chimpanzees have been proven to have superior working memory to that of adult humans. Appx.269a-270a (Matsuzawa). Chimpanzees excel at understanding sequences of numbers and understand fractions. Appx.268a (Matsuzawa). Chimpanzees who use ASL acquire vocabulary in patterns that resemble humans, with the difference being that chimpanzees begin to sign earlier than children. Appx.403a-404a (Jensvold). Chimpanzees also spontaneously use ASL to communicate with each other, *without being first taught by humans*. Appx.407a-408a (Jensvold). When foraging, chimpanzees use sophisticated Euclidean mental spatial maps based on long-term episodic memories. Appx.331a (Boesch).

Chimpanzees behave in ways that, if we saw the same thing in humans, we would interpret as a reflection of self-conscious, moral imperatives. Appx.185a (McGrew). Consistent with their high levels of altruism, unrelated individuals regularly adopt orphaned infants. Appx.139a-140a

[26] As this is a common law case, a constitutional equal protection analysis is not governing but merely informative.

(Goodall); Appx.186a (McGrew); Appx.415a (Jensvold). Chimpanzees respond to death like humans. Appx.333a-335a (Boesch); Appx.188a (McGrew). They have funeral ceremonies that last for hours. Appx.188a (McGrew).

Chimpanzees laugh under many of the same circumstances we laugh. Appx.411a (Jensvold). They use many of the same facial expressions we use to express emotional states. Appx.236a-237a (Fugate). They help with chores, embrace and kiss, and paint (even assign titles to their artwork!). Appx.411a, 413a (Jensvold). Chimpanzees apologize using the ASL sign SORRY. Appx.408a (Jensvold). They plan for the future and engage in intentional deceptive behavior. Appx.329a (Boesch) (zoo chimpanzee collected stones to throw at visitors at a future date in "calm manner" so as not to be noticed).

Additionally, chimpanzees have a strong ability to delay gratification, which is only available to humans and nonhumans with a sufficiently sophisticated sense of self and autobiographical memory. Appx.417a-418a (Jensvold). They have cultural traditions and rituals (like the "rain dance"). Appx.183a-184a (McGrew); Appx.331a-332a (Boesch).

Suggesting that chimpanzees may have the right to liberty protected by habeas corpus, Judge Fahey cited many of these abilities and emphasized the fact that they are "autonomous, intelligent creatures." *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring).

Most importantly, chimpanzees, like us can re-experience past pains and pleasures as well as anticipate such emotions. Appx.419a (Jensvold). Thus, just as humans, they can experience pain over an event that has yet to occur. *Id*. Chimpanzees also suffer the pain of not being able to fulfill their goals, including the pain of anticipating a never-ending situation. *Id*.

2. There is no legitimate reason for treating the DeYoung Prisoners differently from humans for purposes of habeas corpus.

There is no legitimate justification for depriving the DeYoung Prisoners of their right to bodily liberty. Given the scientifically proven autonomy of chimpanzees, the only justification for denying the DeYoung Prisoners this right is because of their species membership (i.e., they are not human), an irrelevant characteristic with respect to habeas corpus which protects autonomy. Distinctions between relevantly similar individuals based upon irrelevant characteristics are arbitrary and unjust and thus violate the core principle of equality. *Ferguson*, 82 Mich. at 360-65; *see also Romer v. Evans*, 517 U.S. 620, 633 (1996) (the law illegally "identif[ed] persons by a single trait [sexual orientation] and then deni[ed] them protection across the board").

Judge Fahey criticized a lower court's "conclusion that a chimpanzee cannot be considered a 'person' and is not entitled to habeas relief" as being "based on nothing more than the premise that a chimpanzee is not a member of the human species." *Tommy*, 31 N.Y.3d at 1057 (Fahey, J. concurring). "[I]t is arbitrary to utilize species membership alone as a condition of personhood, and it fails to satisfy the basic requirement of justice that we treat like cases alike. It picks out a single characteristic as one that confers rights without providing any reason for thinking it has any relevance to rights." KRISTIN ANDREWS ET AL., CHIMPANZEE RIGHTS: THE PHILOSOPHERS' BRIEF 34 (2019)

In light of our enhanced understanding of chimpanzee autonomy and their extraordinarily cognitively complex nature, the view that only humans can have rights because we are so uniquely special, or "human exceptionalism," has been discredited. *Breheny*, 38 N.Y.3d at 606 (Wilson J., dissenting) ("Driving many of the changing social norms about wild animals is our vastly enhanced understanding of their cognitive abilities, needs and suffering when in captivity. . . . As scientific research progressed in the twentieth century, researchers began to discredit the notion of human exceptionalism.").

Since the common law forbids unjust discrimination among relevantly similar individuals, and since there is no legitimate justification for treating the DeYoung Prisoners differently for purposes of habeas corpus, the Circuit Court was wrong to deny them the recognition of their right to bodily liberty.

E. The Circuit Court failed to evolve the common law in light of justice.

The common law must evolve to accord with the fundamental principle of justice. *E.g.*, *Womack*, 384 Mich. at 725 ("'justice requires that the principle be recognized that a child has a legal right to begin life with a sound mind and body'") (citation omitted); *Placek*, 405 Mich. at 650 (discarding the doctrine of contributory negligence "in the interest of justice").

The experts concluded that the DeYoung Prisoners' imprisonment denies them the ability to exercise their autonomy by depriving them of basic needs like access to sunlight in the winter months and sufficient space for socializing, foraging, and playing. *supra*. Such "captivity is inherently unjust." *Breheny*, 38 N.Y.3d at 642 (Rivera, J., dissenting) (finding that Happy's "captivity is inherently unjust," for "she is held an environment that is unnatural to her and that does not allow her to live her life as she was meant to: as a self-determinative, autonomous elephant in the wild").

F. The Circuit Court failed to update the common law in light of evolved societal norms and modern public policy.

Rigid assumptions of early "common law courts have yielded to the influence of social progress." *Ward v. Fellers*, 3 Mich. 281, 287 (1854). "'If judges have woefully misinterpreted the *mores* of their day, or if the *mores* of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors.'" *Van Dorpel v. Haven-Busch Co*., 350 Mich. 135, 150 (1957) (citation omitted). The common law must also grow to "reflect the public policy of a given era." *Beech Grove*, 380 Mich. at 429. *See also Moning v. Alfono*, 400 Mich. 425, 453 (1977) ("Statutes and other legislative judgments may themselves be a source of common law."). The Circuit Court's decision summarily disregards the overwhelming evidence presented in the Complaint regarding society's changed attitudes and mores as well as relevant public policy.

First, societal norms towards exploiting and keeping autonomous nonhuman animals like chimpanzees in captivity have evolved. "As we continue to learn more about the interrelated nature of all life, the day may come when humans perceive less separation between themselves and other living beings than the law now reflects. However, we do not need a mirror to the past or a telescope to the future to recognize that the legal status of animals has changed and is changing still." *State v. Fessenden*, 355 Or. 759, 769–70 (2014).

Since NhRP began filing habeas corpus petitions on behalf of chimpanzees in 2013, judges of all levels have taken seriously and supported our arguments to extend the protections of habeas corpus to members of other species. *E.g., Breheny*, 38 N.Y.3d at 617 (Wilson, J., dissenting) ("Happy's habeas petition should not have been summarily dismissed."); *id*. at 628 (Rivera, J., dissenting) (""Happy should not be denied the opportunity to pursue and obtain appropriate relief by writ of habeas corpus."); *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring) ("The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching;" "The evolving nature of life makes clear that chimpanzees and humans exist on a continuum of living beings. . . . They are autonomous, intelligent creatures."); *Stanley*, 49 Misc.3d at 772-73 ("Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed.").

In 2015, the National Institutes of Health (NIH) announced that it would no longer support biomedical research on chimpanzees, following its previous decision in 2013 to "significantly

reduce the use of chimpanzees in agency-supported biomedical research."[27] These decisions were based on the NIH's recognition that chimpanzees possess the capacity for choice and self-determination.[28]

Happy's case also exemplifies the overwhelming support across diverse disciplines—academic, judicial, religious, and scientific communities—for extending the right to bodily liberty to at least some nonhuman animals. Eighteen amicus briefs signed by 146 distinguished scholars, lawyers, judges, and religious and moral leaders, were filed in support of Happy's freedom.[29] Writing in *The Atlantic*, Harvard historian Jill Lepore called Happy's case "the most important animal-rights case of the 21st century."[30]

Second, how society views nonhuman animals is reflected in the public policy expressed in legislation. For example, in Michigan, an enforceable trust may be created for a "designated domestic pet or animal." MCL 700.7408. That Michigan law allows nonhuman animals to be the beneficiary of property—a right once denied to women at common law who were chattel of their husbands[31]—is a strong reflection of public policy regarding their changed legal status.[32] Additionally, in September 2023, the Ojai City Council, in Ojai, California, passed a historic ordinance recognizing the right to bodily liberty for elephants.[33]

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[27] *NIH Will No Longer Support Biomedical Research on Chimpanzees* (November 17, 2015), available at: https://bit.ly/46kUopd.

[28] *See Announcement of Agency Decision: Recommendations on the Use of Chimpanzees in NIH-Supported Research* (June 26, 2013) available at: https://bit.ly/46uDODC.

[29] *Amicus Support for the fight to #FreeHappy*, NONHUMAN RIGHTS BLOG (Apr. 25, 2022), https://bit.ly/3Mm5Z0U.

[30] Jill Lepore, *The Elephant Who Could be a Person*, ATLANTIC (Nov. 16, 2021), https://bit.ly/41lGlOg.

[31] *See N. Ottawa Community Hosp.*, 457 Mich. at 408.

[32] A "beneficiary" is "[a] person to whom another is in a fiduciary relation, . . . esp., a person for whose benefit property is held in trust." *Beneficiary*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[33] Brad Matthews, *Southern California city grants elephants the right to freedom, first in the nation*, THE WASH. TIMES (Sept. 28, 2023), https://bit.ly/3RGDk9x.

Accordingly, the Circuit Court was under a duty to expand Michigan's common law and recognize the DeYoung Prisoners' right to bodily liberty as supported by "history, logic, justice, and our humanity." *Breheny*, 38 N.Y.3d. at 628 (Rivera, J., dissenting).

V. This Court's independent duty to upkeep the common law precludes it from affirming the Circuit Court's anachronistic decision.

A. This Court has an independent duty to upkeep the common law and protect autonomy and equality under Michigan common law – a duty which compels the Court to reverse.

This Court's "oath is to do justice, not to perpetuate error." *Montgomery*, 359 Mich. at 38, and affirming would amount to a "refusal to confront a manifest injustice." *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring). This Court has the same common law duties to protect autonomy and equality and to upkeep the common law with modern times. Those values equally constrain this Court from holding that the DeYoung Prisoners lack the right to bodily liberty merely because they are not human. At this stage, this Court need not determine whether the DeYoung Prisoners have the common law right to bodily liberty protected by habeas corpus. But the common law forbids this Court from rubberstamping the Circuit Court's unjust and irrational ruling.

B. The duty to recognize the DeYoung Prisoners' right to bodily liberty must not be deflected onto the legislature.

Just as this Court is not at liberty to flout the injustice at issue by affirming, it also cannot deflect the matter to the legislature. *See Placek*, 405 Mich. at 657 ("when dealing with judge-made law, this Court in the past has not disregarded its corrective responsibility in the proper case"); *Moning*, 400 Mich. at 436 ("The law of negligence was created by common law judges and, therefore, it is unavoidably the Court's responsibility to continue to develop or limit the development of that body of law absent legislative directive.").

The Court has long rejected the "'timeworn, threadbare argument'" that changing archaic common law should be left to the legislature. *Weeks v. Slavick Builders, Inc*, 24 Mich. App. 621, 627 (1970) (citation omitted). *See, e.g., Womack*, 384 Mich. at 725 (expanding the common law by allowing negligence actions for negligently inflicted prenatal injury); *Montgomery*, 359 Mich. at 38 (expanding the common law by allowing wives to maintain an action for loss of consortium); *Daley v. LaCroix*, 384 Mich. 4, 12-13 (1970) (expanding the common law by allowing claims for emotional distress caused by negligent conduct in the absence of any physical impact).

There is absolutely no "reason to await, perhaps indefinitely, action by the Legislature when this Court has the competence and authority to determine the existence of a common-law duty." *Roberts v. Salmi*, 308 Mich. App. 605, 631 (2014).

Recognizing the DeYoung Prisoners' right to bodily liberty would be a logical, incremental extension of a common law right to members of a species remarkably similar to our own, consistent with the common law tradition itself. "The common-law tradition is to develop the law case by case with reference to the particular facts of the case." *In re Certified Question*, 432 Mich. 438, 462 (1989) (Levin, J., separate opinion).[34] The beauty of the common law, unlike legislation, is its characteristic incrementalism. *Berger v. Weber*, 82 Mich.App. 199, 201 (1981) ("Whether a person serves as a parent will have to be adjudicated on a case by case basis. The rights of a new class of tort plaintiffs should be forthrightly judged on their own merits, rather than engaging in gloomy speculation as to where it will all end"). Thus, a ruling in favor of the DeYoung Prisoners would be historic but inherently limited.

CONCLUSION

The DeYoung Prisoners are complex autonomous beings who suffer from imprisonment as humans do and should therefore be treated no differently for purposes of habeas corpus. The Circuit Court's decision is contrary to centuries of habeas corpus precedent, including the most distinguished cases brought in novel situations.

Chimpanzees recall their past and anticipate their future, and when their future is imprisonment, they, like us, suffer the pain of believing it will never end. While the "nature of injustice is that we may not always see it in our own times," *Obergefell*, 576 U.S. at 664, it is this Court's solemn obligation to see injustice here and correct it.

RELIEF REQUESTED

WHEREFORE, NhRP respectfully requests that the Court reverse the Circuit Court's order and provide the following relief:

[34] *See also Henke v. Allstate Ins. Co.*, 234 Mich.App. 218, 220 (1999), *rev'd on other grounds*, 461 Mich. 964 (2000) ("'The fireman's rule … is a creature of common law and has been defined and refined case by case'").

1) Direct the Circuit Court to: (a) issue an order to show cause pursuant to MCL 600.4316 and MCR 3.303 (D), requiring Respondents to justify their imprisonment of the DeYoung Prisoners; and (b) upon finding the imprisonment unlawful, immediately order the release of the DeYoung Prisoners to a chimpanzee sanctuary accredited by the Global Federation of Animal Sanctuaries;
2) Clarify that Michigan continues to recognize the common law writ of habeas corpus and that its substantive scope is a matter for Michigan courts to decide;
3) Award whatever other relief the Court deems just and equitable under the circumstances of the case.

Dated: April 23, 2024

Respectfully submitted,

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

NONHUMAN RIGHTS PROJECT, INC., on behalf of Prisoner A (aka Louie), Prisoner B, Prisoner C, Prisoner D, Prisoner E, Prisoner F, and Prisoner G ("DeYoung Prisoners"), Petitioner-Appellant.	
v	Court of Appeals Case No. 369247
	41st Circuit Court LC No. 23-17621-AH
DEYOUNG FAMILY ZOO, LLC and HAROLD L. DEYOUNG, Respondents-Appellees.	

PROOF OF SERVICE

I certify that a copy of the (1) Petitioner-Appellant's Brief on Appeal, and (2) Petitioner-Appellant's Appendix of Exhibits to Brief on Appeal, along with this proof of service, were served by FedEx mail to:

DeYoung Family Zoo, LLC and Harold L. DeYoung
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