CAAP NO. 24-323

IN THE INTERMEDIATE COURT OF APPEAL

STATE OF HAWAIʻI

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

Petitioner-Appellant,

v.

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

Respondents-Appellees.

Civil Case No.: 1CCV-23-0001418 (GWBC)
(Circuit Court Appeal)

APPEAL FROM:

(1) FINAL JUDGMENT, dated March 25, 2024;

(2) ORDER GRANTING RESPONDENTS' MOTION TO DISMISS, dated March 25, 2024;

(3) ORDER REJECTING MOTION FOR ADMISSION TO APPEAR *PRO HAC VICE* FOR JAKE DAVIS, dated March 25, 2024.

FIRST CIRCUIT COURT

HONORABLE GARY W.B. CHANG

PETITIONER-APPELLANT'S REPLY BRIEF

CERTIFICATE OF SERVICE

Cheryl Nolan, Esq.
HI Bar No. 6412
611 Pennsylvania Ave SE #345
Washington, DC 20003
Tel.: (703) 955-1793
Email: CherylN@lassd.org
— and —
Jake Davis, Esq.
(*Of the State Bar of the State of Colorado*)*
CO Bar No. 54032
611 Pennsylvania Ave SE #345
Washington, DC 20003
Tel.: (513) 833-5165

Email: jdavis@nonhumanrights.org
*(*Pro Hac Vice* application pending review)
Attorneys for Petitioner-Appellant
Nonhuman Rights Project, Inc.
on behalf of Mari and Vaigai

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

At stake in this appeal is the fate of two innocent prisoners who are being unjustly deprived of their bodily liberty, and who have been languishing in a miserable, wholly unnatural existence day after day, year after year, all because they possess the *wrong* biology. Mari and Vaigai's imprisonment is manifestly unjust. Yet, because these autonomous, extraordinary beings are not *Homo sapiens*, the City contends it should be allowed to continue exploiting them for the rest of their lives. This position is as legally unsound as it is morally indefensible and this Court should not sanction it. To do so would perpetuate an unjust legal status quo.

Instead, this Court should affirm humanity's capacity for understanding, empathy, and compassion. The question presented on appeal is "whether the detention of an elephant can ever be so cruel, so antithetical to the essence of an elephant, that the writ of habeas corpus should be made available under the common law." *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 579 (2022) (Wilson, J., dissenting). The City argues the Great Writ is limited to humans under HRS § 660 and the common law, regardless of the evidence of immense suffering outlined in the Petition. As demonstrated below, the City's arguments are rooted in an archaic past, not based on reason or principle, and depend on an unrecognizable conception of habeas corpus foreign to our common law system. They are demeaning to humanity and must be rejected.

Excluding Mari and Vaigai from the Great Writ's protections is no longer tenable in light of science, evolving societal norms, and the fundamental common law principles of justice, liberty, and equality. This Court has a sacred duty to keep the common law abreast of changes wrought by time, not keep it frozen in the anachronistic past. It is time to recognize that "an autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life." *Id*. at 629 (Rivera, J., dissenting).

I. Contrary to the City, this case is governed by fundamental common law principles and values.

The City's entire approach to arguing this case is incorrect. Whether Mari and Vaigai have the common law right to bodily liberty protected by habeas corpus (i.e. whether they are "persons" for purposes of this right) is not a matter of statutory interpretation or definitions; rather, it is a matter for this Court to decide based on fundamental common law principles and values. In arguing that habeas relief is only available to humans, the City wrongly assumes the common law is an anachronism.

It is the fundamental role and duty of courts to evolve archaic common law. In Hawai‘i, the common law "does not remain in a somnolent and sedentry state." *In re Chun Quan Yee Hop's Est.*, 52 Haw. 40, 43 (1970). The "'genius of the common law, upon which our jurisprudence is based, is its capacity for orderly growth.'" *Id*. (citation omitted).

The common law consists of "fundamental principles and reasons," rather than a "fixed and inflexible set of rules." *Welsh v. Campbell*, 41 Haw. 106, 118 (1955). Those principles are "'broad and comprehensive principles based on justice, reason, and common sense.'" *Id*. at 120. (citation omitted) (italics omitted). They are determined by "'the social needs of the community and have changed with changes in such needs,'" and are "'susceptible of adaptation to new conditions, interests, relations, and usages as the progress of society may require.'" *Id*. (citation omitted) (italics omitted). Judges develop the common law by "'applying the principles of natural right and justice to facts actually experienced in cases before them.'" *Id*. 119-120 (citation omitted). "'[W]here there are no governing principles of the written laws,'" courts are to "'endeavor to administer justice according to the promptings of reason and common sense, which are the cardinal principles of the common law.'" *Id*. at 120 (citation omitted) (italics omitted). Evolving the common law in accordance with modern times thus requires a *forward-looking* analysis—in contrast to divining legislative intent, which requires a *backward-facing* analysis.

A. Hawai‘i continues to recognize the common law writ of habeas corpus, which is beyond legislative curtailment.

The City contends Mari and Vaigai are ineligible to seek habeas relief because they are not "persons" within the plain language of HRS § 660-3. Answer Br. 4. According to the City, although "person" is undefined in Chapter 660, the substantive meaning of the term is defined by the catchall definition of "person" in HRS § 1-19, which supposedly limits "person" to humans. In other words, the legislature has restricted the Great Writ's substantive scope by definitionally precluding nonhuman animals from seeking habeas relief. However, the City's argument wrongly assumes the Great Writ's substantive scope can be curtailed by legislation. Whether the elephants may avail themselves of the Great Writ's protections is a substantive normative question to be decided under common law principles; it cannot be determined by a statutory analysis.

It is beyond dispute that Hawai‘i continues to recognize habeas corpus as a common law writ rather than a creature of statute. *See Brown v. Goto,* 16 Haw. 263, 265 (1904) ("It may be conceded that [habeas corpus] is a common law writ . . . ."). Significantly, the Hawai‘i Supreme Court has

long made clear that the Great Writ's substantive scope is beyond legislative curtailment: the "inherent power" to issue the writ "cannot be taken away by the legislature." *Id*. *See id*. ("[u]ndoubtedly the right to the writ could not be taken away by statute"). Such curtailment would be contrary to the Suspension Clause in the Constitution of the State of Hawai'i, which prohibits the writ's suspension except in cases of rebellion or invasion. *Id*. As explained in *In re Cambridge*, 1 Haw. 191, 193 (1855), the power to issue writs of habeas corpus "includes the power to do whatever justice may seem to require in the premises, after we have finished our inquiry," and "[i]f this is not so, then our power to issue writs of habeas corpus is but a solemn farce, and no protection whatever to the liberties of the subject." *Id.* These authorities conclusively refute the City's position that the legislature has definitionally precluded the Circuit Court from issuing an order to show cause ("OSC") for Mari and Vaigai.

Even the *Breheny* majority that the City relies on acknowledged, "the courts—not the legislature—ultimately define the scope of the common-law writ of habeas corpus." 38 N.Y.3d at 576. This is because the "'writ cannot be abrogated, or its efficiency curtailed, by legislative action.'" *Id*. at 570 (citation omitted). *See id*. 38 N.Y.3d. at 580 (Wilson, J., dissenting) (New York's habeas statute "does not (and cannot) curtail the substance or reach of the writ"); *id*. at 613 (habeas corpus is "a common-law writ" and "the legislature cannot alter its scope"). "It is for this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought," since the "common law is our bailiwick." *Id*. at 633 (Rivera, J., dissenting).

The City quotes the language in *Goto* which states that the legislature can prescribe "by what courts, in what manner and under what conditions, within reasonable limits, [the writ] may be exercised." Answer Br. 10 (quoting 16 Haw. at 265). But this language confirms that statutes governing the writ are merely *procedural* provisions—not that they restrict the writ's substantive scope. *See Breheny*, 38 N.Y.3d at 580 (Wilson, J., dissenting) (New York's similar habeas statute "specifies procedure only"); *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.").

B. Whether Mari and Vaigai are "persons" for purposes of habeas corpus is not a definitional question; it is a substantive normative question about whether they have the common law right to bodily liberty protected by habeas corpus.

The City mischaracterizes NhRP's position, claiming we argue "this Court should ignore the term 'person' in HRS § 660-3," and relatedly, that the Suspension Clause "prohibits the Legislature from limiting habeas relief to 'persons.'" Answer Br. 4, 11. Our position is not that the term "person" in Chapter 660 should be ignored, or that it is constitutionally problematic. Rather, our position is that the meaning of this undefined term is not controlled by the legislature; "person" is merely a placeholder for an individual who may avail themselves of the protections of habeas corpus. *See Breheny*, 38 N.Y.3d at 582 (Wilson, J., dissenting) (undefined term "person" in New York's similar habeas statute "was meant to have no substantive component" and "is irrelevant to whether the writ can extend beyond humans"); *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 150 (2014) (New York's habeas statute "does not purport to define the term 'person,' and for good reason. The 'Legislature did not intend to change the instances in which the writ was available," which has been determined by "the slow process of decisional accretion'") (citation omitted).

Because "person" is merely a placeholder, the very question of whether Mari and Vaigai are "persons"—and thus may avail themselves of the Great Writ's protections—is to be decided by common law principles, not formalistically by definitions. *See Breheny,* 38 N.Y.3d. at 588 (Wilson, J., dissenting) ("[T]o whom to grant what rights is a normative determination, one that changes (and has changed) over time."); *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1058 (2018) (Fahey, J., concurring) ("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? This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention.").

Upon recognition of Mari and Vaigai's common law right to bodily liberty, they are necessarily "persons" for purposes of habeas corpus. This is because the term "person" merely denotes the subject of legal rights, and "if animals have legal rights, then they are legal persons." Matthew Liebman, *Animal Plaintiffs*, 108 MINN. L. REV. 1707, 1756 (2024); *Person*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("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.") (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)). The fundamental common law principles of justice, liberty, and equality—when applied to the scientific evidence establishing that elephants

are autonomous—compel the recognition of Mari and Vaigai's common law right to bodily liberty, thereby making them "persons" for purposes of HRS § 660-3. Opening Br. 19-21.

C. The lack of on-point precedent for recognizing Mari and Vaigai's common law right to bodily liberty protected by habeas corpus is irrelevant.

The City argues that under "English common law," habeas corpus was only available to humans and thus must remain so today. Answer Br. 12. But "this argument—'this has never been done before'—is an argument against all progress, one that flies in the face of legal history." *Breheny*, 38 N.Y.3d at 584 (Wilson, J., dissenting); *see Lavery*, 124 A.D.3d at 150-51 ("The lack of precedent for treating animals as persons for habeas corpus purposes does not, however, end the inquiry, as the writ has over time gained increasing use given its 'great flexibility and vague scope'") (citation omitted).

In a common law case, "the absence of precedent is a feeble argument." *Fergerstrom v. Hawaiian Ocean View Ests.*, 50 Haw. 374, 376 (1968). Our common-law system "would have withered centuries ago had it lacked the ability to expand and adapt to the social, economic, and political changes inherent in a vibrant human society." *Id.* Accepting the City's position that archaic common law cannot change would constitute an error of "Brobdingnagian proportions":

> The defendant contends that since the ancient common law did not afford a remedy for invasion of privacy, and there is no case in Hawaii recognizing such a right, only the legislature can provide for such a cause of action. The magnitude of the error in the defendant's position approaches Brobdingnagian proportions. To accept it would constitute more than accepting a limited view of the essence of the common law. It would be no less than an absolute annihilation of the common law system.

Id. at 375. *See also Welsh*, 41 Haw. at 120 ("common law is not arrived at by simply following the English decisions"); *Lum v. Fullaway*, 42 Haw. 500, 510 (1958) ("If we follow defendant's argument, the legislature alone may keep up with the times and the courts are but automatons to match the colors provided by previous legislative acts and by established precedents.").

The question of whether Mari and Vaigai possess the common law right to bodily liberty is a novel one in Hawai'i, but contrary to the City, its novelty does not doom it to failure. "[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). Indeed, "novel common-law cases—of which habeas is a subset—have advanced the law in

countless areas." *Id*. There is no reason why the common law of habeas corpus in Hawai‘i cannot and should not advance here.

II. The City fails to refute the Petition's prima facie case that Mari and Vaigai's imprisonment is unlawful.

The Circuit Court was required to issue an OSC pursuant to HRS § 660-7 because the Petition established a prima facie case that Mari and Vaigai's common law right to bodily liberty protected by habeas corpus is being violated, thereby rendering their imprisonment at the Honolulu Zoo unlawful. The court's refusal to do so is violently at odds with the Great Writ's history, including the landmark habeas corpus decision *Somerset v. Stewart*, 1 Lofft. 1 (K.B. 1772), which is part of the state's common law (discussed *infra*), as well as its duty as a common law court.

In accordance with *Somerset*, the Circuit Court did not need to initially recognize Mari and Vaigai's right to bodily liberty in order to issue an OSC. It needed only to assume (without deciding) that Mari and Vaigai could have the right to bodily liberty. The court should have made this assumption because recognition of the elephants' right to bodily liberty is supported by compelling considerations—including science, evolving societal norms, and the fundamental common law principles of justice, liberty, and equality. Pet. at ¶¶ 130-191. Assuming Mari and Vaigai have the right to bodily liberty, the facts as alleged in the Petition demonstrate that their right has been violated, thereby establishing a prima facie case of unlawful imprisonment.

Science has proven that Mari and Vaigai are autonomous and extraordinarily cognitively complex beings who are imprisoned in a pernicious, artificial environment, where they are deprived of meaningful choices, including the freedom to choose where to go, what to do, and with whom to be. Unjustifiably curtailed of their bodily liberty and thus unable to flourish, they are suffering immensely in a wholly unnatural environment. *See* Opening Br. 6-9; *Breheny*, 38 N.Y.3d at 620 (Wilson, J., dissenting) ("Happy [the elephant] has established a prima facie case that her confinement at the Bronx Zoo stunts her needs in ways that cause suffering so great as to be deemed unjust."); *id*. at 642 (Rivera, J., dissenting) ("an autonomous creature such as Happy suffers harm by the mere fact that her bodily liberty has been severely—and unjustifiably—curtailed").

Notably, the City does not dispute that Mari and Vaigai are being unjustly imprisoned, or that *if* they possess the right to bodily liberty, then their right has been violated. Instead, the City contends that the elephants—simply because they are not *Homo sapiens*—do not have the right to

bodily liberty and thus cannot be protected by the Great Writ. But this argument cannot refute the Petition's prima facie case, as it is contrary to the purpose and history of habeas corpus and ignores that Mari and Vaigai's right to bodily liberty is supported by compelling considerations.

A. Throughout history, the Great Writ has been flexibly used to challenge the unjust confinement of individuals with few or no rights, thus supporting its use to challenge Mari and Vaigai's unjust confinement.

The City's assertion that habeas corpus is unavailable to Mari and Vaigai—simply because of their species membership—is antithetical to the Great Writ's history, which should "compel our acknowledgment of the availability of the writ to a nonhuman animal to challenge an alleged unjust confinement." *Breheny*, 38 N.Y.3d at 629. (Rivera, J., dissenting).

Habeas corpus is a time-honored common law remedy that protects an individual's fundamental right to be free from unjust imprisonment. *See* Opening Br. 14. Throughout its history, courts have flexibly used the writ "to address myriad situations in which liberty was restrained." *Id.* at 613 (Wilson, J., dissenting). "Most fundamentally, the writ was used to grant freedom to slaves, who were considered chattel with no legal rights or existence," as well as to "grant freedom to wives and children, who, though not chattel, had few or no legal rights and legally were under the dominion of husbands and fathers." *Id*. at 589. Habeas corpus is thus "an innovative writ—one used to advocate for relief that was slightly or significantly ahead of the statutory and common law of the time." *Id*.

The famous case of *Somerset v. Stewart* shows how "the Great Writ was flexibly used by the courts as a tool for innovation and social change." *Id.* at 592 (Wilson, J., dissenting). *Somerset* is part of this state's common law; as *Somerset* has never been overruled or abrogated, its principles must be followed. *See Smith v. Smith*, 56 Haw. 295, 303 (1975) ("We follow the common law in this jurisdiction.") (citing HRS § 1-1).

In *Somerset*, Lord Mansfield issued a writ of habeas corpus requiring a slaveholder to justify his imprisonment of an enslaved Black man named James Somerset. Notably, Lord Mansfield did not dismiss Somerset's habeas petition even though his right to bodily liberty was unrecognized under the law. Instead, he presumed that Somerset could possess the common law right to bodily liberty (i.e., be a legal "person"). After issuing the writ, Lord Mansfield evaluated the legality of Somerset's imprisonment, concluded it was illegal, and declared slavery "so odious, that nothing can be suffered to support it" under the common law. 1 Lofft at 19. *Somerset* thus "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).

Beyond the human species, habeas corpus has been employed to challenge the unjust confinement of nonhuman animals. In Argentina, the writ was used to free an imprisoned chimpanzee named Cecilia, in a case that firmly rejected the argument that the writ could only be employed for humans. *See* Opening Br. 28-29 (discussing *Cecilia's Case*). In New York, while habeas corpus relief has not been granted to a nonhuman animal, habeas corpus orders to show cause were issued for two chimpanzees and an elephant, resulting in decisions that were sympathetic to their claims of liberty. *See Matter of Nonhuman Rights Project, Inc. v. Stanley,* 49 Misc.3d 746, 772–73 (N.Y. Sup. Ct. 2015) ("Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed."); *The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735 *10 (N.Y. Sup. Ct. 2020) ("This Court is extremely sympathetic to Happy's plight and the NhRP's mission on her behalf. . . . She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty.").

In arguing that habeas corpus is exclusive to humans, the City turns a blind eye to the Great Writ's celebrated history, which "demonstrates that courts have used and should use it to enhance liberty when a captivity is unjust." *Breheny,* 38 N.Y.3d at 580 (Wilson, J., dissenting). Just as the writ was used in centuries past "by enlightened judges to nudge advances in the law," *id*. at 589, the writ can be so used today. "[T]he law can recognize an autonomous animal's right to judicial consideration of their claim to be released from an unjust captivity." *Id*. at 631 (Rivera, J., dissenting). There is no reason to limit the Great Writ's protections to humans. Indeed, if individuals whose humanity was never fully recognized by law could seek habeas corpus relief, "so [too] can an autonomous nonhuman animal." *Id*.

B. Compelling considerations support the recognition of Mari and Vaigai's common law right to bodily liberty protected by habeas corpus.

For this Court to accept the City's position that habeas corpus is limited to humans, it must dismiss as irrelevant science, evolving societal norms, and the fundamental common law principles of justice, liberty, and equality.

At its core, "this case is about whether society's norms have evolved such that elephants . . . should be able to file habeas petitions to challenge unjust confinements." *Breheny,* 38 N.Y.3d at 588 (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, and our laws and norms have changed in response to our improved knowledge of animals." *Id*. at 603. "[T]he contrast between what we now know and the paucity of information in earlier times must inform our analysis." *Id*. at 607.

Today's science establishes that Mari and Vaigai are autonomous beings with complex biological, psychological, and social needs who endure immense suffering because the Honolulu Zoo cannot meet their needs. The fundamental common law principles of justice, liberty, and equality all command the protection of the elephants' autonomy, and thus their right to bodily liberty. Justice demands remedying Mari and Vaigai's unjust imprisonment, which deprives them of the ability to exercise their autonomy. (Pet. ¶¶ 137-147). Liberty demands safeguarding Mari and Vaigai's autonomy as a supreme and cherished common law value. (Pet. ¶¶ 156-165). Equality demands treating Mari and Vaigai similarly to humans for purposes of habeas corpus because they are autonomous, and not discriminating against them because they have the wrong biology. (Pet. ¶¶ 166-191).

Should this Court deny recognition of Mari and Vaigai's right to bodily liberty despite their proven autonomy, it would be holding that science, evolving societal norms, and the fundamental common law principles that command the protection of their autonomy do not matter. This is an untenable position.

C. This Court should disregard the *Breheny* majority's irrational holding that the common law right to bodily liberty protected by habeas corpus is limited to humans.

The City relies on the *Breheny* majority in support of its position that the common law right to bodily liberty is limited to humans (Answer Br. 14-15), but does not attempt to explain why this Court should accept that decision over the well-reasoned, extensively thorough, and historic dissents by now-Chief Judge Rowan Wilson and Judge Jenny Rivera, as well as Judge Eugene Fahey's pathbreaking concurrence in *Tommy*.

The City quotes the *Breheny* majority's non-sequitur that "the Great Writ protects the right to liberty of humans *because* they are humans with certain fundamental liberty rights recognized by law, " *Breheny*, 38 N.Y.3d at 571, but this is "nothing more than a tautological evasion." *Id*. at 633 (Rivera, J., dissenting). To argue species membership is all that matters—simply by asserting it does—is "question begging in its purest form." *Id.* at 633 (Rivera, J., dissenting). "[I]n elevating

our species, we should not lower the status of other highly intelligent species." *Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring).

The *Breheny* majority's holding hinges on and perpetuates an erroneous and absurd conception of legal personhood, which originated from an outlier intermediate decision in 2014.[1] *Breheny* claimed legal personhood—and consequently the right to bodily liberty—is limited to those who can bear duties; and since nonhuman animals cannot bear duties, they cannot possess the right to bodily liberty. *See Breheny*, 38 N.Y.3d at 572. However, the notion that possessing rights is contingent upon bearing duties is patently wrong. Numerous individuals who cannot bear duties nonetheless have rights and are protected by the Great Writ. *See generally id*. at 58-87 (Wilson, J., dissenting); *id*. at 628-30 (Rivera, J., dissenting). As Judge Fahey observed: "Even if . . . nonhuman animals cannot bear duties, the same is true of human infants or comatose human adults, yet no one would suppose that it is improper to seek a writ of habeas corpus on behalf of one's infant child or a parent suffering from dementia." *Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring) (citations omitted).

CONCLUSION

The Petition makes a prima facie case that Mari and Vaigai's imprisonment is illegal because it violates their common law right to bodily liberty. Therefore, this Court should reverse the Circuit Court's Order and remand the case with instructions to issue an OSC. This Court should also reinstate Mr. Jake Davis' *pro hac vice* status for the duration of the case.[2]

DATED: San Diego, California, Sept. 23, 2024

/s/Cheryl Nolan
Cheryl Nolan, Esq.

---

[1] *See Lavery*, 124 A.D.3d at 152, in which the court held that chimpanzees cannot be "persons" for purposes of habeas corpus because of their inability to bear "any legal responsibilities and societal duties." *Lavery*'s understanding of legal personhood is based in part on a misquotation contained in the seventh edition of Black's Law Dictionary, which had *misquoted* a legal treatise as stating, "'a person is any being whom the law regards as capable of rights *and* duties.'" *Id*. at 151 (citation omitted). In reality, the treatise stated "rights *or* duties," not "rights *and* duties." Black's corrected the error in its eleventh edition.

[2] The City does not dispute that the Circuit Court erred in retroactively denying Mr. Davis' *pro hac vice* motion. After receiving the Transcript of Proceedings this past weekend, NhRP was able to confirm that the proposed order for Mr. Davis' *pro hac vice* admission enumerated the exact conditions set forth by the Circuit Court at the Jan. 16, 2024 hearing. *See* JIMS, Dkt. No. 33, pp. 8-9.

HI Bar No. 6412
Attorney for Petitioner-Appellant NhRP
on behalf of Mari and Vaigai

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon the following by the Judiciary Information Management System on Sept. 23, 2024:

Dana M.O. Viola (Bar No. 6095)
Corporation Counsel

Daniel M. Gluck (Bar No. 7959)
daniel.gluck@honolulu.gov
Jacqueline M. De Leeuw Huang (Bar No. 11644)
j.deleeuwhuang@honolulu.gov
Patricia A.V. Sendao (Bar No. 11708)
patricia.sendao@honolulu.gov
Deputies Corporation Counsel

City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawai‘i 96813

Phone Nos.:
(808) 768-5233
(808) 768-5248
(808) 768-5121

Facsimile:
(808) 768-5105

DATED: San Diego, California, Sept. 23, 2024

/s/Cheryl Nolan
Attorney for Petitioner-Appellant NhRP
on behalf of Mari and Vaigai