

The Legal Status of Non-Human Intelligence: Personhood, Rights, and How New Law Should Be Made

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Key points

- No U.S. law addresses the legal status of non-human intelligence; the only federal definition (H.R. 8800 §1773(13)) identifies NHI for records purposes.
 - Natural-person rights have been limited to humans (*Breheny*; *Lavery*), but the reasoning ties rights to capacities an intelligent NHI would have, and the question remains open (Fahey, J., in *Tommy*).
 - Article III does not bar Congress from authorizing suits on behalf of nonhumans (*Cetacean Community*); the decisive barrier is statutory.
 - International law accepts legal persons of different kinds (*Reparation*, 1949 I.C.J. at 178).
 - A being held by the United States is reached by federal habeas ([Form F1-1](#)); one held by a contractor on its own account is reached by state habeas, which covers private restraint “under any pretense” ([Form F1-2](#)).
 - Recommended approach: legislate and negotiate first; meanwhile argue that protections for “persons” reach beings with the capacities those protections presuppose; build rights in stages.
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1. Summary

No U.S. statute, constitutional provision, or treaty addresses the legal status of non-human intelligence. The only federal definition of the term appears in the House-passed UAP Disclosure Act, which would define NHI as “any sentient intelligent non-human lifeform regardless of nature or ultimate origin that may be presumed responsible for unidentified anomalous phenomena or of which the Federal Government has become aware.” H.R. 8800 (EH) §1773(13) ([Issue A3](#)). That definition identifies NHI for records purposes; it confers no rights.

Under existing law, legal personhood is not limited to human beings (corporations, municipalities, ships in admiralty, and trusts are legal persons for specified purposes), but natural-person rights

have been limited to human beings. Courts have refused habeas corpus to nonhuman animals: *Matter of Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 565 (2022) (“the writ of habeas corpus is intended to protect the liberty right of human beings”); *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148 (3d Dep’t 2014). The reasoning of those cases, however, points toward recognition of intelligent NHI. *Lavery* tied rights to the capacity to bear legal duties: chimpanzees “cannot bear any legal duties, submit to societal responsibility or be held legally accountable for their actions.” 124 A.D.3d at 152. An intelligent being able to communicate, enter agreements, and answer for its conduct satisfies that criterion in a way animals do not.

The analysis recommends: (1) treat the question as one of first impression to be settled by legislation and treaty in preference to litigation; (2) in the meantime, argue that existing protections for “persons” (due process, torture statutes, laws of war) should be read to reach intelligent beings with the capacities those protections presuppose; and (3) build a framework in stages (protection from cruelty and arbitrary killing; due process for detention; communication and representation; then broader rights and duties by agreement).

2. Who is a “person” under U.S. law

2.1 Statutory definitions

- **Dictionary Act**, 1 U.S.C. §1: “person” includes “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals,” unless the context indicates otherwise.
- **1 U.S.C. §8**: “person,” “human being,” “child,” and “individual” include “every infant member of the species homo sapiens who is born alive.” The definition expands coverage of human infants; it does not purport to limit the term to humans in other statutes.
- **Statutes using “individual” or “human being”** (for example, many civil rights and criminal statutes) are more likely to be read as human-only.

2.2 Constitutional persons

- The Fifth and Fourteenth Amendments protect “persons,” which the Supreme Court has read to include aliens physically present in the United States, whether lawfully or not (*Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Wong Wing v. United States*, 163 U.S. 228 (1896)), and corporations for some purposes. *Boumediene v. Bush*, 553 U.S. 723 (2008), extended habeas to detainees at Guantánamo.
- No court has addressed whether an intelligent non-human being is a constitutional “person.” The text does not limit the term to humans. Historical understanding plainly did not contemplate NHI. A court would likely look to function: capacity for reason, communication, and moral agency.

2.3 The animal personhood cases

- *Breheny* (N.Y. 2022) (5-2): habeas unavailable to an elephant because it is not a “person”; Judges Wilson and Rivera dissented, invoking the writ’s historic use for those the law treated as property.
- *Lavery* (N.Y. App. Div. 2014): denied habeas for a chimpanzee because rights are connected to duties under social-contract principles.
- *Tilikum ex rel. PETA v. Sea World Parks & Entertainment, Inc.*, 842 F. Supp. 2d 1259, 1262-63 (S.D. Cal. 2012): the Thirteenth Amendment “only applies to ‘humans,’” so orcas held at a marine park lacked standing to sue under it. The court reasoned from the meaning of “slavery” and “involuntary servitude” in 1865, which “refer only to persons,” and from the clause “except as a punishment for crime,” since only persons can be convicted. The opinion uses “humans” and “persons” interchangeably and so leaves open whether a non-human being capable of crime and of contract would fall within the amendment.
- *Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery*, 31 N.Y.3d 1054 (2018): the Court of Appeals denied leave to appeal in a chimpanzee habeas case, but Judge Fahey, concurring, wrote that the denial was not a ruling on the merits and that whether a nonhuman being may have a right to liberty protected by the writ is a profound question the court would eventually have to confront. His concurrence is the most useful statement for a petitioner.
- *Cetacean Community v. Bush*, 386 F.3d 1169 (9th Cir. 2004): suit in the name of the world’s whales, porpoises, and dolphins was dismissed because no statute authorized animals to sue. The Ninth Circuit held that “nothing in the text of Article III explicitly limits the ability to bring a claim in federal court to humans” and saw “no reason why Article III prevents Congress from authorizing a suit in the name of an animal,” *id.* at 1175-76, but found that Congress had not done so, *id.* at 1179. For NHI the case means that the constitutional barrier is low and the statutory one is decisive: Congress can open the courts by statute.
- These cases turn on species and on the absence of capacity for duties; they are distinguishable for beings with intelligence equal to or greater than humans.

2.3A Foreign decisions recognizing nonhuman rights holders

- **Argentina.** Courts treated the orangutan Sandra as a “non-human subject” with rights in 2014-2015 and ordered her conditions improved.
- **Colombia.** The Supreme Court of Justice granted habeas corpus to a bear (Chucho) in 2017; the Constitutional Court reversed in 2020, holding habeas unavailable to animals.
- **Ecuador.** The Constitutional Court held in 2022 (case 253-20-JH/22, the woolly monkey Estrellita) that wild animals are subjects of rights under the rights-of-nature provisions of the 2008 Constitution and that habeas corpus may be appropriate for them in some circumstances.

These decisions concern animals, and two of the three rest on constitutional texts the United States does not have. Their value is to show courts treating the category of rights holder as open.

2.3B International legal personality

International law has long accepted that legal persons need not be alike. Asked whether the United Nations could bring an international claim, the International Court of Justice said: “The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.” *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174, 178 (Apr. 11). An organized NHI polity able to enter and keep agreements could be recognized as an international legal person with the capacities its relations require, without being treated as a state ([Issue F5](#)).

2.4 Analogies from other “nonhuman” legal developments

- **Artificial intelligence:** courts have declined to treat AI systems as inventors or authors (*Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022); *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025) (Copyright Act requires human authorship), cert. denied, No. 25-449 (U.S. Mar. 2, 2026)). The reasoning rests on statutory text requiring human inventors and authors; the courts did not announce a general principle that only humans can hold rights.
- **Rights of nature:** some jurisdictions recognize rivers and ecosystems as legal persons (New Zealand’s Te Awa Tupua Act 2017; Ecuador’s Constitution art. 71). These show that legislatures can confer personhood by statute.

3. Bodies of law that would apply to NHI on the premise

Body of law	Protection	Application to NHI
Criminal homicide and assault	Protect “human beings” or “persons”	State homicide statutes generally define victims as human beings; killing an NHI would likely not be murder under current statutes, but could be charged under statutes protecting “persons” if courts read the term functionally. Legislative clarification is needed.
Torture statute, 18 U.S.C. §2340-2340A	Severe pain or suffering inflicted on “another person” in the offender’s custody, outside the U.S.	“Person” undefined; arguably reaches intelligent NHI
Animal welfare law	Animal Welfare Act (7 U.S.C. §2131 et seq.); state cruelty statutes	“Animal” definitions focus on vertebrates used in research or exhibition; would cover NHI only by strained reading; the

Body of law	Protection	Application to NHI
		floor of protection if nothing else applies
Due process	“Persons”	Strongest argument for procedural protection of detained NHI
Law of armed conflict	Protects “persons” (combatants, civilians, persons hors de combat)	Applies by analogy if conflict exists; see Issue F2 , F5
Human rights treaties	“Every human being” (ICCPR Art. 6) / “everyone”	Textually human-focused
Immigration law	“Aliens” (any person not a citizen or national)	8 U.S.C. §1101(a)(3) defines “alien” as “any person not a citizen or national of the United States”; status, admission, and removal frameworks would be strained but are textually available

4. How new law should be developed

4.1 Institutions

- **Congress** has authority under the Commerce Clause, the Necessary and Proper Clause, its war and foreign affairs powers, and Section 5 of the Fourteenth Amendment (if NHI are persons) to define status and rights.
- **Treaty-making** is the natural instrument for relations with an organized non-human civilization; the President negotiates and the Senate consents (Art. II, §2). Recognition of a non-human polity would be an executive act (*Zivotofsky v. Kerry*, 576 U.S. 1 (2015)) with large consequences ([Issue F5](#)).
- **Courts** will decide cases that arise before legislation, most likely habeas petitions on behalf of detained beings, tort or criminal cases involving harm to NHI, and disputes over communication.
- **International bodies** (UN COPUOS, the General Assembly) can develop norms; the IAA post-detection protocols are a starting point for the scientific community ([Issue F6](#)).

4.2 A staged framework

1. **Immediate protections** (statute or executive order): prohibit killing, torture, and cruel treatment of NHI by U.S. personnel and contractors; require humane treatment and medical care for any NHI in custody; require reporting of any NHI in custody to Congress and an independent monitor.
2. **Procedural rights**: a hearing before an independent tribunal for any detained NHI, with an appointed representative (guardian-ad-litem model) and interpretation; access to communication where possible.
3. **Communication and representation**: authorize designated representatives to communicate with NHI on legal matters; protect private communication ([Issue F3](#)).
4. **Reciprocal rights and duties**: by treaty or agreement with any NHI polity, establish mutual protections, jurisdiction over offenses, and dispute resolution.
5. **Remains and biological evidence**: dignified treatment rules modeled on human remains law (NAGPRA analogies) and research ethics (Common Rule analogies for living beings).

4.3 Arguments available in litigation now

- **Functional personhood**: the capacities that underlie legal personhood (reason, communication, moral agency, ability to bear duties) are present; *Lavery*'s duties-based test supports recognition.
- **Habeas corpus**: the writ's history (including its use for enslaved persons treated as property, as the *Breheny* dissent emphasized) supports access for an intelligent detained being.
- **Statutory "person"**: where a statute protects "persons" without limiting the term to human beings, courts should read it to cover intelligent beings within its purposes.
- **Next friend standing**: litigation on behalf of an NHI would proceed by next friend; courts require a significant relationship and that the real party in interest be unable to litigate (*Whitmore v. Arkansas*, 495 U.S. 149 (1990)). Animal-rights cases have struggled with next-friend standing (*Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018)).

4.4 Proving capacity

A court asked to treat an NHI as a person will want evidence, not argument. The evidence that matters is evidence of the capacities the law ties to personhood: communication (records of exchanges, translation methods, and who can testify to them), reasoning and planning, the ability to understand and keep commitments, and the ability to answer for conduct. Expert testimony will be needed and will face Rule 702. The burden will fall on the petitioner, and the facts will mostly be in the government's hands, which is why [Form FI-1](#) asks the court first to order the government to state the basis of custody.

4.5 The first case

The likeliest first case is a next-friend habeas petition in the District of Columbia on behalf of a being held by the United States or a contractor ([Form F1-1](#)). The government's response is predictable: no proper next friend (*Whitmore*), the being is not a "person" or "prisoner" (*Breheny*), the privilege bars the case ([Issue A1](#)), and the *Totten* bar applies. The petitioner's best answers are a next friend with a real relationship to the being, a record of the being's capacities drawn from lawful sources, official acknowledgments, and a request limited at first to an order to show cause and humane conditions.

A being held by a contractor that claims to hold it on its own account calls for a different route. State habeas statutes reach restraint by private persons "under any pretense." Cal. Penal Code §1473(a); Nev. Rev. Stat. §34.360. California's statute also lets "some person in his behalf" apply and lets the petition describe custodians whose names are unknown. Cal. Penal Code §1474. A state court may not release a person held under federal authority (*Tarble's Case*, 80 U.S. (13 Wall.) 397 (1872)), so the petition asks the custodian to say in its return whether it claims that authority. If it does, or if it removes the case as a person "acting under" a federal officer (28 U.S.C. §1442(a)(1); *Watson v. Philip Morris Cos.*, 551 U.S. 142 (2007)), it concedes the federal custody that §2241 requires, and [Form F1-1](#) applies. If it disclaims federal authority, the state court decides the case ([Form F1-2](#)). Where the custodian compels the being to work or submit to testing, the Thirteenth Amendment, which forbids involuntary servitude without reference to personhood and reaches private conduct (*United States v. Kozminski*, 487 U.S. 931 (1988)), supplies a further ground. In either court the likely remedy is an end to the unlawful restraint and release on conditions to a place of safety, because courts are reluctant to order release into a particular place. *Kiyemba v. Obama*, 605 F.3d 1046 (D.C. Cir. 2010); *Munaf v. Geren*, 553 U.S. 674 (2008).

5. Practice checklist

1. Plead the being's capacities with specific facts and their sources.
2. Choose a next friend with a documented relationship to the being.
3. Seek an order to show cause and a protective order together (Forms F1-1, A1-1).
4. Ask for humane-treatment and preservation orders at the outset.
5. Press Congress for a statute authorizing suit on behalf of NHI, which *Cetacean* says Article III allows.

6. Further reading

- Ernst Fasan, *Relations with Alien Intelligences: The Scientific Basis of Metalaw* (1970).
- Andrew G. Haley, *Space Law and Government* (1963) (proposing "metalaw" for relations with other intelligences).