

Accordingly, the Plaintiffs would like to provide the Court with additional context to evaluate the balance of harms and equities.

This context relates to four elements: (1) Interests of the Plaintiffs and their members; (2) the climatic suitability of these states for establishment of the species at issue; (3) these states' regulatory regimes; and (4) the standards governing shipment by common carrier. After considering these issues, if the Court has any remaining concerns (and it should not), we identify a means to narrow the injunction in a way that protects all interests – Plaintiffs', the public's, and everyone's shared interest in the proper administration of our criminal laws.

I. THIS COURT SHOULD LIMIT THE INJUNCTION ONLY TO THE EXTENT NECESSARY TO PROTECT THE PUBLIC INTEREST

A. Some Access to Texas and Florida is Important to the Reptile Industry

As an initial matter, it must be stressed that Texas – a vast state of which only a miniscule fraction is even potentially suitable for reticulated pythons¹ and green anaconda – is an important market for these two species and home to many breeders. (*See* Decl. of Robert Clark (“Clark Decl.”) ¶ 9 (Exhibit A); *see also* Third Decl. of Phil Goss (“Goss Decl.”) ¶ 5 (Exhibit B).) Florida is a much smaller market for most dealers due to the state's strict regulations on reticulated pythons and green anacondas, among others. (Goss Decl. ¶ 8.) However, Miami, like Dallas, is one of the handful of “designated ports” through which exports of these snakes may be made. (*Id.*; *see also* Clark Decl. ¶¶ 6-7; Second Decl. of Kristopher Brown (“Brown Decl.”), ¶ 4 (Exhibit C).) Dallas is a key export hub as it is the closest port to many western states, and nearest to the one of the country's largest, if not the largest, exporter of reticulated pythons,

¹ Notably, when only verified and reliable areas constituting this species native range are used in the U.S. Geological Survey (“USGS”) model, Texas has no suitable climate for reticulated pythons. It is only when “contested” areas are included do small portions of coastal Texas along the Rio Grande appear to be potentially suitable. (*See* Goss Decl., ¶ 14 and attachment.)

located in Oklahoma City. (Clark Decl. ¶¶ 2,4, 6-8.) For its part, while Miami is not the closest designated port for breeders outside of Florida, it is used and preferred by many exporters due to the routes this port serves. (Brown Decl. ¶ 5.) Furthermore, access is vital to Mr. Brown's business as it is a warm-weather port and, more importantly, he has an established business relationship with a Florida exporter. (*Id.* ¶¶ 5,6.)

B. Evidence Shows the Likelihood of These Species Becoming Established in Texas and Florida During the Pendency of this Case is Remote

In balancing the equities, this Court found that “Defendants’ showing of potential environmental harm [to be] serious and credible.” (Mem. Op. at 45.) These harms would arise, however, only if reticulated pythons and green anacondas became established and spread in the wild.² As explained below, the risk that this will occur is exceedingly small.

1. Neither State Has Suitable Habitat for These Species, Save Potentially for Extreme Southern Florida

The climate matching tool, which considers only native and domestic areas with similar mean monthly temperatures and rainfall, is characterized by its developers as providing only a “necessary but not sufficient condition” for either of these species becoming established in the continental United States.³ Indeed, the Fish and Wildlife Service (“FWS”) noted that “Reticulated Pythons occur primarily in areas with a wet tropical climate. Although they also occur in areas that are seasonally dry, they do not occur in areas that are continuously dry or very

² The Court also credited potential harm from the spread of parasites and disease, such as through introduction of non-native species of ticks carried by imported wild constricting snakes. (*Id.* at 46.) This injury is not relevant to the issue now before the Court as the injunction allows only movement of domestic, captive-bred animals, free from foreign parasites and diseases.

³ Reed, R.N. and Rodda, G.H., *Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor*, United States Geological Service Open-File Report 2009–1202, Chapt. Seven (2009) (“USGS Risk Assessment”) at 19, *available in* Docket No. FWS–R9–FHC–2008–0015 at www.regulations.gov.

cold at any time.” 80 Fed. Reg. 12702, 12710 (March 10, 2015). These criteria are not met anywhere in the U.S. Relevant too, the USGS report found no “strong evidence for any introduced population of the Reticulated Python” or green anaconda anywhere in the world. USGS Risk Analysis at 84, 225.

Most herpetologists do not believe that even wild reticulated pythons and green anacondas imported from their native ranges can survive and become established in the continental United States, with the possible exception of the Everglades region. (Decl. of Dr. Elliott Jacobson (“Jacobson Decl.”) ¶¶ 7-8 (Exhibit D).) Dr. Jacobson notes that “these species are endemic to regions with very specific climates having extremely narrow temperature ranges and do not adapt quickly to wide fluctuations in temperature” and are “susceptible to health problems, such as severe respiratory infections, when exposed to suboptimal temperatures.” (*Id.* ¶¶ 10-11.) Exposure to freezing temperatures, even briefly, “may result in the death of these snakes,” particularly as these tropical animals do not have behaviors that would help them survive prolonged cold periods. (*Id.* ¶¶ 12-13.) In captivity, at least, reticulated python eggs must be maintained at a temperature of near 90° Fahrenheit for 90 days in order to successfully hatch. (Clark Decl. ¶ 12.) Such conditions do not occur anywhere in Texas or Florida.

The views of Dr. Jacobson and FWS are not necessarily in conflict. The government’s risk analysis is designed to assess potentially vulnerable areas. Dr. Jacobson’s and Mr. Clark’s observations relate to snakes’ specific physiological attributes, and are based on vast experience working with and breeding these animals. Whether these animals could survive and successfully reproduce in these states is not known, but USGS confirms that neither of these species have become established anywhere outside their native range. Further, while FWS lacks information to determine if a “survival differential” exists between captive bred morphs and wild snakes,

breeders' experiences with respiratory diseases⁴ and death⁵ represents persuasive evidence that the captive bred animals that would be in trade are most likely incapable of surviving for any length of time or reproducing in the wild.

2. Each State Has Sufficient Regulatory Controls

Given that it is the only state with established breeding populations of Burmese pythons and the only sub-tropical environment in the continental United States, it is not surprising that Florida has rigorous regulations covering these two snake species at issue. Florida's laws and regulations (Exhibit E) contain the following elements (among many others): (1) Neither species can be brought into the state without a permit, which may only be obtained by researchers or "commercial import or export businesses, public aquaria, public zoological parks, or public exhibitors providing educational exhibits," FAC § 68-5.001(3)(a); (2) they must be transported in two "closely woven, double-seam sewn, cloth sack[s]" placed in secure container, *id.* § (3)(e)(4); and (3) they must be held in locked cages of substantial build, *id.* § (3)(e)(1)(a).

Texas' regulations (Exhibit F), require all private and commercial owners of reticulated pythons and green anaconda to annually obtain the appropriate permit from the state. TAC §§ 55.652, 55.653. Commercial breeding operations are subject to inspection and recordkeeping requirements. *Id.* §§ 55.655, 55.656. Texas makes it a crime to "intentionally, knowingly, recklessly, or with criminal negligence release or allow the release from captivity" of these species. *Id.* § 55.657. These measures – tracking ownership and sales, species' locations, and oversight – are appropriate for Texas, a state which is largely too hot in summers, too cold in

⁴ (*See, e.g.*, Dkt. No. 28-5 (Riston Decl.) ¶ 6 (reticulated pythons frequently suffer from respiratory infections due to temperature, humidity, and barometric pressure); *see also* Dkt. No. 45-2 (Dr. Stahl Decl.) ¶ 8 (noting owners' "narrower margins of error" for maintaining proper temperature and humidity for "tropical species").)

⁵ (*See* Dkt. No. 28-7 (Garibaldi Decl.) ¶ 14 (reticulated pythons died after four days when exposed to temperatures at or near 50° degrees Fahrenheit).)

winters, and, mostly, too arid for any of these non-native constricting snakes to survive.⁶

C. Transportation by Common Carrier Presents No Risk

The major common carriers that account for some 95 percent of domestic transportation of non-native constricting snakes are Federal Express, Delta, Southwest, UPS, and American. (Decl. of Marshall Meyers (“Meyers Decl.”) ¶ 10 (Exhibit G).) For both air and ground transport, these common carriers adhere to the International Air Transport Association’s (“IATA”) *Live Animals Regulations*, a standard adopted by the European Union, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and FWS, among others. (*Id.* ¶¶ 6,7.) These regulations require that snakes be placed within a securely-tied bag or, if less than two feet, a sturdy plastic container, which then must be placed in a sturdy, escape-proof shipping container. (*Id.* ¶ 8.) Many domestic carriers – ground and air alike – impose more stringent requirements, but all adhere to the minimum standards.

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To summarize, the harm involved is the incremental increase in the potential for captive-bred reticulated pythons and green anaconda transported to Florida or Texas to escape and become established in the small areas showing a climate match. The likelihood of this occurring over the next few months is very minute, due to unsuitable ecosystems, the fragility of captive bred animals, and the regulations in place. Dallas and Miami are both critical export hubs. Shipment by common carrier poses no reasonable risk of escape. Only a small fraction of Texas,

⁶ The Court inquired about application of the Title 16 Lacey Act provisions, specifically, 16 U.S.C. § 3372(a), to transportation of the two species into these states. As neither state prohibits “importation” from another state, transportation alone would not give rise to a violation. If, however, a person were to transport, in interstate commerce, one of these snakes into Florida without the required permit or in a container not meeting required standards, any subsequent export, transport, or sale would be punishable under section 3372.

in and around Brownsville, is even remotely suitable. There is no compelling reason to deny access to Dallas or Miami or to put common carriers at risk for overflights, stop-overs, or incidental transportation through any jurisdiction excluded from the injunction. Finally, it would work an unreasonable hardship to prevent lawful, licensed breeders in these states from either selling to other locations or from participating in trade shows in other states, provided their animals are safely transported to and from these shows.

The above-mentioned factors provide a sound, empirical basis for the Court to impose a nationwide preliminary injunction allowing interstate transport through all continental states. If the Court nonetheless desires to provide an additional layer of precautionary protection, Plaintiffs respectfully suggest the following:

- If deemed to be in the public's interest, a prohibition limited to commercial shipments with a final destination in Florida and the small portion of Texas in and around Brownsville where potentially suitable habitat may exist;
- Allowance of shipments from these states to the other states which Defendants agree no suitable habitat exists and for breeders resident in these states to return with their snakes, such as after participating in an out-of-state trade show;
- A lifting of any restriction on incidental transportation by common carrier through and over these states for export and interstate transport; and
- Continued access to the designated ports of Miami and Dallas for exports.

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Respectfully submitted,

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