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Unleashing the Beast: Confronting Animal Trafficking as Organized Crime in the Americas

Erick Wilson*

Wildlife trafficking is a serious yet often overlooked issue across the Americas. This Note examines wildlife trafficking across the Americas, analyzing the legal frameworks and challenges facing countries like the United States, Guatemala, Argentina, Peru, Mexico, and Brazil. Three key obstacles emerge: the lack of recognition of trafficking as organized crime, limited resources for enforcement, and deficient penalties. Though the United States has laws like the Lacey Act to address importation of illegally traded wildlife, weak foreign laws constrain efficacy. Many Latin American nations do not categorize wildlife trafficking as organized crime, despite its intricate parallels with activities like drug trafficking. Resources for enforcement are inadequate, exemplified by the Petén region of Guatemala, which has just five prosecutors for 36,000 sq. km. Penalties are also often negligible and fail to deter wildlife crime rings. However,

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recent developments like Peru’s Law 31.622 formally recognizing wildlife trafficking as organized crime, provide hope. The pivotal solution is addressing trafficking as organized crime, encompassing enhanced penalties, resources, and global cooperation. With animal trafficking profits rivaling arms and drug trades, it is imperative for nations across the Americas to collectively tackle this issue through a harmonized, stringent legal framework before countless more species are lost.

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I. INTRODUCTION TO ILLEGAL WILDLIFE TRADE

Illegal wildlife trafficking occurs daily with little-to-no risk of punishment. It is a significant issue across the Americas, where it results in serious consequences for both biodiversity and local economies. In many countries, such as Argentina, animal trafficking is not considered organized crime, despite its sprawling network and its high economic stakes.¹ The historic perception of organized

¹ See generally A.B.A. RULE OF L. INITIATIVE, ILLEGAL WILDLIFE TRAFFICKING AND ITS RELATION TO TRANSNATIONAL ORGANIZED CRIME IN LATIN AMERICA AND THE CARIBBEAN 22, 32 (2020) [hereinafter AM. BAR ASS’N RULE OF L. INITIATIVE]; see also Wolfgang Lehmacher, *Wildlife Crime: A \$23 Billion Trade That’s Destroying Our Planet*, WORLD ECONOMIC FORUM (Sept. 28 2016),

crime in these countries has been limited to high-profile crimes like drug trafficking.² This oversight not only skews public perception but also influences a variety of factors and approaches taken by these nations.³ Several elements, including scarce resources, deficient penalties, and lack of prosecution drive the illegal trade of wild animals and their body parts.⁴

In the United States, wildlife trafficking primarily occurs when individuals illegally import exotic animals—such as reptiles, birds, and primates—to the country.⁵ These animals are often captured in the wild and sold as pets.⁶ The demand for exotic animals is driven by a variety of factors, including the species' perceived rarity and individuals' desire to own a unique creature.⁷ This trade inflicts serious consequences for the animals and the environment.⁸ Many of them are removed from their natural habitats, where they play important roles in maintaining the balance of ecosystems.⁹

<https://www.weforum.org/agenda/2016/09/fighting-illegal-wildlife-and-forest-trade/> (“[Wildlife trafficking] has a value of between \$7 billion and \$23 billion each year.”).

² Mara Zimmerman, *The Black Market for Wildlife: Combating Transnational Organized Crime in the Illegal Wildlife Trade*, 36 VAND. J. TRANSNAT'L L. 1657, 1684-85.

³ See generally AM. BAR ASS'N RULE OF L. INITIATIVE, *supra* note 1, at 22.

⁴ See *id.*

⁵ See generally U.S. IMMIGR. & CUSTOMS ENF'T, *Wildlife Trafficking: Why battling This Illicit Trade is Crucial*, <https://www.ice.gov/features/wildlife> (last visited Oct. 11, 2023).

⁶ See *Wildlife Trafficking*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/trade/programs-administration/natural-resources-protection/wildlife-trafficking> (Aug. 1, 2023); see also Jani Hall, *Exotic Pet Trade, Explained*, NAT GEO, (Feb. 20, 2019) <https://www.nationalgeographic.com/animals/article/exotic-pet-trade> (defining pet trade as the business of selling and transporting animals across the world).

⁷ For example, see Benjamin Marshall et al., *Thousands of Reptile Species Threatened by Under-Regulated Global Trade*, 11 NAT. COMM'NS at 5 (Sept. 29, 2020) (noting the “rarity and difficulty in procur[ing]” reptiles).

⁸ See generally *id.*

⁹ *Illegal and Unsustainable Wildlife Trade is Affecting All of Us – What Can We Do About It?* SCIENCE DAILY (Oct. 13, 2021), www.sciencedaily.com/releases/2021/10/211013104605.htm.

Additionally, the conditions in which they are kept in captivity are often cruel and inhumane.¹⁰

In Latin America, wildlife trafficking takes a different form—it focuses on the illegal trading of wild animals and their body parts for use in traditional medicine, food, and other commercial outputs.¹¹ One of the main factors contributing to the problem is the lack of strict penalties and prosecution of wildlife traffickers.¹² Penalties for wildlife trafficking are often not severe enough to deter the act, and enforcement is often weak,¹³ meaning traffickers can operate with little risk of being caught and punished.¹⁴ This dearth of suitable penalties and active prosecution creates a lack of awareness among the public regarding the problem.¹⁵

Despite these challenges, there are efforts underway to combat wildlife trafficking in the United States and Latin America. Efforts include proposed laws that establishes wildlife trafficking as organized crime, which may naturally increase enforcement and

¹⁰ See Charles Bergman, *Wildlife Trafficking*, SMITHSONIAN MAG. (Dec. 2009), <https://www.smithsonianmag.com/travel/wildlife-trafficking-149079896/>.

¹¹ See Vanda Felbab-Brown, *Something fishy: Wildlife trafficking from Mexico to China*, THE BROOKINGS INST. (Mar. 8, 2022), <https://www.brookings.edu/blog/order-from-chaos/2022/03/08/something-fishy-wildlife-trafficking-from-mexico-to-china/>.

¹² See generally AM. BAR ASS'N RULE OF L. INITIATIVE, *supra* note 1, at 9 n.17 (finding in Argentina “[t]he penalties do not have a deterrent effect . . .”).

¹³ See generally *id.* at 9 (According to the A.B.A. Rule of Law Initiative, in Argentina, “[f]ew administrative penalties are imposed for illegal trafficking. There are not many records of such penalties . . . and, so far, the amounts have been insignificant. [] In addition, the authorities have expressly acknowledged that administrative penalty procedures are slow and, in many cases, the actions become time-barred (thus rendering prior control and monitoring efforts useless).”

¹⁴ See generally *id.* at 27 (In Ecuador, “the penalty for crimes against wildlife (one to three years imprisonment) is not in keeping with the constitutional principles that protect nature, notwithstanding the fact that its preservation has been declared “in the public interest.”); see generally *id.* at 32 (In Guatemala, “the law against organized crime makes no mention of illegal wildlife trafficking among the crimes that may be attributed to an organized criminal group or a criminal organization. In practice this means that only the lowest link in the organizational chain is punished, while the international or national network remains untouched.”).

¹⁵ Christine Browne, et al., *Systems Approaches to Combating Wildlife Trafficking: Expanding Existing Frameworks to Facilitate Cross-Disciplinary Collaboration*, FRONTIERS (Nov. 18, 2021), <https://www.frontiersin.org/articles/10.3389/fcosc.2021.698666/full>.

penalties. However, independent from the establishment of wildlife trafficking as organized crime, there are efforts to increase prosecution and retribution, campaigns to improve education and increase awareness of the issue,¹⁶ efforts to support local communities and traditional livelihoods, and enhanced attention toward conservation.¹⁷ This Comment explores the scope of wildlife trafficking, its impact on the environment and society, current legal efforts to combat the problem, and challenges yet to be addressed in the Americas.

II. THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) is the main international agreement dedicated to combatting illegal wildlife trafficking. Signed by 184 parties, the agreement regulates international trade of wild plants and animals in an effort to ensure that poaching and trading of such wildlife does not threaten the species of our world.¹⁸ CITES plays a vital role in the conservation of wild animals and plants.¹⁹ Each signatory country has designated an agency to enforce CITES.²⁰ For example, the United States Congress, through the

¹⁶ AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 8 (“general perception . . . is that wildlife trafficking is not sufficiently prioritized in the public agenda and not sufficiently understood . . .”).

¹⁷ *See generally id.* at 32 (In Guatemala, “[b]oth public institutions and civil associations that work on [wildlife trafficking] frequently hold workshops and undertake awareness-raising campaigns. The Public Ministry and the Judiciary Branch have both engaged in the struggle against illegal wildlife trafficking, focusing on the creation of prosecutor’s offices and courts specializing on environmental issues in those parts of the national geography where most cases occur.”).

¹⁸ *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, NAT’L OCEANIC & ATMOSPHERIC ADMIN., <https://www.fisheries.noaa.gov/national/international-affairs/convention-international-trade-endangered-species-wild-fauna-and> (Feb. 28, 2023) [hereinafter NAT’L OCEANIC & ATMOSPHERIC ADMIN.].

¹⁹ *See Wildlife Trade*, EUR. COMM’N, https://ec.europa.eu/environment/cites/background_en.htm (last visited Oct. 13, 2023) [hereinafter EUR. COMM’N].

²⁰ *Id.*

Endangered Species Act (“ESA”), designated the Fish and Wildlife Service (“FWS”) to enforce CITES violations in the United States.²¹

CITES is binding on its member countries, called “parties.”²² As of October 2023, there are 184 parties to CITES, representing nearly every country in the world.²³ The United States and all South American countries discussed in this Comment are parties to CITES.²⁴ These parties are responsible for implementing CITES regulations within their own borders and also cooperating with other parties to enforce the regulations.²⁵ CITES is administered by the Secretariat, based in Geneva, Switzerland, who is responsible for the day-to-day administration of CITES.²⁶ The governing body of CITES is referred to as the Conference of the Parties (“CoP”) and includes the 184 member states. It meets every two-to-three years to review the implementation of CITES, make recommendations for future action, and adopt changes to the appendices (discussed below).²⁷ Additionally, CITES provides technical assistance and training to parties to help them implement the Convention effectively.²⁸ Through its system of permits, inspections, and penalties, CITES works to ensure that trade in wild animals and plants is legal and sustainable.²⁹ The Convention has also played an important role in raising awareness about the importance of protecting endangered species and their habitats, and has been widely recognized as a powerful tool in the fight against wildlife trafficking.³⁰

²¹ NAT’L OCEANIC & ATMOSPHERIC ADMIN., *supra* note 18.

²² *What is CITES?*, CITES, <https://cites.org/eng/disc/what.php#:~:text=States%20that%20have%20agreed%20to,the%20place%20of%20national%20laws> (last visited Oct. 15, 2023).

²³ EUR. COMM’N, *supra* note 19.

²⁴ *List of Parties to the Convention*, CITES, <https://cites.org/eng/disc/parties/index.php> (last visited Oct. 16, 2023).

²⁵ EUR. COMM’N, *supra* note 19.

²⁶ *See The CITES Secretariat*, CITES, <https://cites.org/eng/disc/sec/index.php> (last visited Oct. 1, 2023).

²⁷ *Conference of the Parties*, CITES, <https://cites.org/eng/disc/cop.php> (last visited Sept. 18, 2023).

²⁸ *National laws for implementing the Convention*, CITES, <https://cites.org/eng/legislation> (last visited October 20, 2023)

²⁹ *See, e.g., CITES Permit System*, CITES, https://cites.org/eng/prog/Permit_system (last visited Oct. 16, 2023).

³⁰ *Id.*

CITES classifies species according to their conservation status and organizes those species into one of three appendices.³¹ Appendix I includes species that face extinction and thus warrant the most protection.³² One such species is the African elephant: In 1989, CITES representatives voted to move African elephants to Appendix I, which completely banned the illegal sale of this animal as well as the commercial trade of its body parts, such as ivory tusks.³³ Species listed in Appendix I cannot be traded for commercial purposes, with few exceptions.³⁴ To trade Appendix I species for noncommercial reasons, an entity may need to procure an export and import permit issued by “CITES scientific authorities” in the entity’s respective country.³⁵ These authorities should be experts in determining whether the trade in question will harm the species.³⁶ However, this evidence-based determination of proper permit issuing is not always correctly implemented.³⁷

“Appendix II includes species that are not currently threatened with extinction, but may become” threatened if their trade is not controlled.³⁸ Unlike Appendix I, species in Appendix II only require an export permit for regulated trade and can be commercially traded internationally.³⁹ Appendix III consists of species that a Party has

³¹ *Id.*

³² *Id.*

³³ Jacob Templer, Note, *How International Law Can Save The African Elephant*, 11 UNIV. MIA. RACE & SOC. JUST. L. REV. 187, 196–97 (2021).

³⁴ RACHEL L. NUWER, *POACHED: INSIDE THE DARK WORLD OF WILDLIFE* 177 (2018).

³⁵ *Id.*

³⁶ *Id.*

³⁷ See *id.* (“For many species, experts lack even the most basic data, including population estimates, making it impossible to know what levels of trade are in fact sustainable. ‘It is funny in a sick kind of way that we, on the one hand, agree to regulate the trade in these vulnerable species, but then we accept that for the majority of them, we have no clue what sustainable levels of offtake are,’ said Vincent Nijman, a conservation ecologist at Oxford Brookes University. ‘A logical next step would be to agree, then, that if we have no idea what we can take, we should minimize international trade. But instead we continue with a business-as-usual scenario, trading until we can clearly see that we have gone too far.’”)

³⁸ NAT’L OCEANIC & ATMOSPHERIC ADMIN., *supra* note 18.

³⁹ NUWER, *supra* note 34, at 177.

already implemented trade regulations for and seeks collaboration from other countries to prevent overexploitation or illicit trade.⁴⁰

For conservation practices, CITES, on its face, is a useful treaty because it restricts the international trade of protected wildlife and aims to facilitate international cooperation.⁴¹ Enforcement of CITES has proved to be a challenge, especially in Latin America.⁴² CITES does not discuss nor give guidance on the regulation of species not included in its appendices, which causes other problems.⁴³ International trade of species not listed in CITES's appendices is "about ten times greater than the trade" of species that are listed in CITES's appendices.⁴⁴ Many people believe if a species is not within one of CITES's appendices, then the trafficking and trade of the species need not be regulated nor constrained.⁴⁵ This reality then leads to people acting in such a way that species end up in CITES's appendices after the trafficking has occurred and endangered its population.⁴⁶

CITES does not have jurisdiction and "does not attempt to regulate" wildlife trade occurring solely within a party's borders.⁴⁷ For example, the United States protects the Asiatic black bear under the Endangered Species Act, but those "protections do not extend to other CITES countries because" the species is not listed under CITES.⁴⁸ In other words, if a species is not listed under CITES, there is little international protection on its trade.⁴⁹ Of the millions of species on our planet, only 35,000 are safeguarded by CITES.⁵⁰ Species

⁴⁰ NAT'L OCEANIC & ATMOSPHERIC ADMIN., *supra* note 18.

⁴¹ *How CITES Works*, CITES, <https://cites.org/eng/disc/how.php> (last visited Oct. 16, 2023).

⁴² *See generally* AM. BAR ASS'N RULE OF L. INITIATIVE, *supra* note 1, at 8.

⁴³ *See* Freyja Waters & Phill Cassey, 'Astonishing': Global Demand for Exotic Pets is Driving a Massive Trade in Unprotected Wildlife, THE CONVERSATION (Oct. 6, 2022, 3:04 PM), <https://theconversation.com/astonishing-global-demand-for-exotic-pets-is-driving-a-massive-trade-in-unprotected-wildlife-188971>.

⁴⁴ NUWER, *supra* note 34, at 178.

⁴⁵ Karen Z. Consalo, *Fighting Back from the Brink: International Efforts to Prevent Illegal Trafficking in Endangered Species*, 43 ENVIRONS ENVTL. L. & POL'Y J. 67, 80 (2019).

⁴⁶ *See* NUWER, *supra* note 34, at 178.

⁴⁷ Consalo, *supra* note 45, at 80.

⁴⁸ *Id.*

⁴⁹ *See id.*

⁵⁰ *Id.*

not covered by CITES can be traded and utilized commercially with minimal oversight or guidance from the Treaty.⁵¹ Protections for these non-CITES species largely depend on individual countries' domestic legislation.⁵²

Another underlying problem is the enforcement of CITES permits.⁵³ Agencies in each country are responsible for issuing CITES permits.⁵⁴ All parties designate a management authority who is responsible for the CITES permitting program.⁵⁵ For example, the U.S. Fish and Wildlife Service is responsible for issuing CITES import and export permits in the United States.⁵⁶ However, due to corruption in Latin America, some of these agencies display laxity in their permit processes: they issue permits when they shouldn't, sell permits illegally, or allow permits to be stolen from the offices.⁵⁷ Additionally, experts in some Latin American countries lack the research and data, including population estimates, which make it impossible to make a correct determination as to whether there is a sustainable level of trade.⁵⁸

This Comment delves into the complexities of wildlife trafficking in the United States and Latin America, highlighting the overarching challenges both regions face due to inadequate legislative and enforcement mechanisms. Part III illuminates the current state of wildlife trafficking in the Americas, detailing prevalent issues and potential legal remedies. The three pivotal hurdles in curbing animal trafficking in these regions are: (1) the non-recognition of trafficking as organized crime; (2) limited resources; and (3) the pressing need for more stringent penalties and robust enforcement.

⁵¹ *See id.*

⁵² *See id.*

⁵³ *See* Rachel Nuwer, *How Well Does CITES Really Prevent Wildlife Trafficking and Illegal Trade?*, ENSIA (Oct. 4, 2018), <https://ensia.com/features/cites/#:~:text=People%20Problem&text=CITES'%20power%20lies%20in%20the,trade%20they%20undertake%20per%20year> [hereinafter ENSIA].

⁵⁴ *How CITES works*, CITES, <https://www.doc.govt.nz/cites-permits> (last visited Oct. 16, 2023).

⁵⁵ *See* Morgan V. Manley, Note, *The (Inter)national Strategy: An Ivory Trade Ban in the United States and China*, 38 FORDHAM INT'L L.J. 1511, 1526 n.68 (2015).

⁵⁶ *CITES (Endangered Plant Species)*, U.S.D.A. APHIS, <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/permits/plants-and-plant-products-permits/cites> (Sept. 24, 2020).

⁵⁷ ENSIA, *supra* note 53.

⁵⁸ *See* NUWER, *supra* note 34, at 177.

Beginning with an overview of CITES implementation and enforcement across the Americas, Part III presents a comparative analysis of several countries, including the United States, Guatemala, Argentina, Peru, Mexico, and Brazil. The aim is to unearth solutions that effectively address the core challenges associated with trafficking. Part IV encapsulates potential remedies, such as imposing stricter penalties, integrating strict liability standards into local legislations, and rallying increased support from the United Nations. Crucially, the pivotal solution to the multifaceted challenges of wildlife trafficking lies in treating it as organized crime. Adopting this perspective inherently encompasses the aforementioned remedies, amplifying the effectiveness of efforts against this issue.

III. TRAFFICKING IN THE AMERICAS

“Latin America is vulnerable to wildlife trafficking” due to its extensive biodiversity.⁵⁹ For example, Ecuador, roughly the size of Colorado, boasts 1,600 species of birds⁶⁰—the entire United States has only roughly 900 species.⁶¹ Latin America and the Caribbean account for the second largest wildlife trafficking market in the world, only behind Asia.⁶² The majority of the trafficking occurs through airports; for example, a third of Columbia’s “total seizures” occurred “at the airport in Leticia,” which borders Brazil and Peru, “highlighting the city as one of the trafficking gateways out of the Amazon.”⁶³ Exotic fish caught in the Amazon basin are also first sent to an airport like Leticia,⁶⁴ and are then sent to larger airports, like those in Lima, Peru, or Bogotá, Colombia.⁶⁵ From there, the exotic fish “are sent to their final destinations,” mainly North

⁵⁹ Bergman, *supra* note 10.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Aldem Bourscheit, *Weak Controls Fuel Surge in Wildlife Trafficking by Air Across Latin America*, MONGALAY (Aug. 18, 2021), <https://news.mongabay.com/2021/08/weak-controls-fuel-surge-in-wildlife-trafficking-by-air-across-latin-america/>.

⁶³ *See id.*

⁶⁴ *A Roaring Trade: Wildlife Trafficking in Colombia’s Amazon*, INSIGHT CRIME (Sept. 15, 2021), <https://insightcrime.org/investigations/roaring-trade-wildlife-trafficking-colombia-amazon/>.

⁶⁵ *Id.*

America, Europe, and Asia, “where they are sold in the global aquarium trade.”⁶⁶

Conversely, while international trafficking garners the most attention of wildlife trade in Latin America, about half of trafficking seizures in Brazil involve a final destination somewhere inside the country.⁶⁷ In Latin America, animals such as parrots, monkeys, and turtles, are commonly kept as pets.⁶⁸ Keeping wild animals is an old Latin American tradition, and about thirty percent of Brazilians said they have “kept wild animals as pets.”⁶⁹

Traffickers smuggle species by any means necessary, which includes stuffing animals in nylon stockings and toilet paper tubes.⁷⁰ Sellers of parakeets in a market in Ecuador told one potential buyer to feed the birds vodka and hide them in pockets so they would be silent during travel.⁷¹ Biologists have found that about thirty percent of parrot nests in fourteen different Latin American countries have been poached, meaning between 400,000 and 800,000 parrot chicks are stolen from their nests each year.⁷² “Of the 145 parrot species in the Americas, 46 are at risk of extinction,” which increases the rarity of the bird and the fuel to the fire continues as parrot species become more endangered.⁷³ In addition, an endangered bird’s rarity will increase its value, thus making trafficking of those species more lucrative and reasonably placing those birds at a greater risk.⁷⁴ For example, “a single Lear’s Macaw,” one of the most coveted blue macaws of all of Latin America, can sell for over \$10,000.⁷⁵

⁶⁶ *Id.*

⁶⁷ See SANDRA CHARITY & JULIANA MACHADO FERREIRA, WILDLIFE TRAFFICKING IN BRAZIL 10 (TRAFFIC 2020).

⁶⁸ Bergman, *supra* note 10.

⁶⁹ *Id.*; see also Carlos Drews, *The State of Wild Animals in the Minds and Households of a Neotropical Society: The Costa Rican Case Study*, 195 In D.J. SALEM & A.N. ROWAN, THE STATE OF THE ANIMALS II: 2003 (wild species are found in 24% of Costa Rican households, and 22% of Nicaraguan households.)

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ See generally *id.* (“the toll on parrots of all kinds remains huge,” and “many experts say wild parrots can no longer sustain such losses.”).

⁷⁴ See Bergman, *supra* note 10.

⁷⁵ *Id.*

The economic appeal of wildlife trafficking extends beyond smugglers and sellers.⁷⁶ For rare bird species, like blue macaws or turquoise-fronted parrots, traffickers sometimes negotiate with landowners on a price for access to a nest on their land and for each bird taken from their property.⁷⁷ “Those doing the poaching receive between” \$4.5 to \$11 per chick.⁷⁸ The birds that do “survive the trip to São Paulo” in Brazil can be sold for \$36 to \$82 each.⁷⁹

Jaguar trafficking is also a significant problem in Latin America.⁸⁰ In the 1960s, “more than 15,000 jaguar skins were brought out of the Brazilian Amazon” each year.⁸¹ Today, there are an “estimated 60,000 to 170,000” jaguars in the world.⁸² The illegal trade in jaguars is impacted by factors including “corruption and poverty.”⁸³ The demand for jaguar parts, particularly their fur, bones, and meat, is driven by the belief that they possess medicinal properties and are a high-quality cuisine.⁸⁴ The impact of jaguar trafficking on the species and the environment is significant; poaching jaguars not only reduces the population of this already threatened species but also disrupts the balance of ecosystems and can lead to the decline or undesirable increase of other species.⁸⁵ Jaguars are apex predators and play a critical role in maintaining the balance of their ecosystems by controlling the populations of their prey.⁸⁶ The loss

⁷⁶ Chris Dalby, *Economic Hardship During Pandemic Caused Wildlife Trafficking in Brazil to Soar*, INSIGHT CRIME (Sept. 9, 2020), <https://insight-crime.org/news/brief/pandemic-wildlife-trafficking-brazil/>.

⁷⁷ *See id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *See generally* Rachel Nuwer, *Where Jaguars are killed, new common factor emerges: Chinese investment*, N.Y. TIMES (June 11, 2020), <https://www.nytimes.com/2020/06/11/science/jaguars-poaching-china.html> [hereinafter *Where Jaguars are killed*].

⁸¹ William Weber & Alan Rabinowitz, *A Global Perspective on Large Carnivore Conservation*, 10 CONSERVATION BIOLOGY 1046, 1049 (1996).

⁸² *Where Jaguars are Killed*, *supra* note 80.

⁸³ *Id.*

⁸⁴ *See Top 20 Facts About Jaguars*, WORLD WILDLIFE FUND, <https://www.wwf.org.uk/learn/fascinating-facts/jaguars> (last visited Oct. 21, 2023).

⁸⁵ *See Jaguar: The Amazon's Amazing Swimming Cat*, WORLD WILDLIFE FUND, <https://www.wwf.org.uk/learn/wildlife/jaguars> (last visited Oct. 17, 2023).

⁸⁶ *The Jaguar: Conserving the Apex Predator of the Rainforest Ecosystem*, THINK WILDLIFE FOUNDATION (June 26, 2023), <https://thinkwildlifeoundation.com/the-jaguar-conserving-the-apex-predator-of-the-rainforest-ecosystem/>.

of jaguars can lead to an increase in their prey populations, which can negatively impact other species and habitats.⁸⁷ Further, the loss of jaguars can lead to the loss of ecotourism, which is an important source of income for some communities.⁸⁸

The transcontinental trafficking channel from Latin America to the United States is prominent even with CITES in place.⁸⁹ The United States is a major importer of wildlife and brings in roughly “225 million live animals and 883 million dead specimens annually for the pet trade, décor, fashion, food, research, hunting trophies and more.”⁹⁰ From 2004 to 2013, exotic meat from Latin America and the Caribbean was the highest seized wildlife item in the United States.⁹¹ “Over 30,000 kilos of meat” were seized during that period, “with queen conch . . . and sea turtle meat and eggs—both CITES listed—most frequently intercepted.”⁹² From 2007 and 2017, about one-third of “wildlife seizures in the United States were made in El Paso, Texas.”⁹³ This amounted to an average seizure of one exotic animal per day.⁹⁴ Some animal confiscations in the United States have involved finding salamanders in plastic bags, tiger cubs in duffel bags, and addax antelope in trailers.⁹⁵

According to the Director of Programs at Defenders of Wildlife in Mexico, “the reptile trade in the U.S. is booming, and the demand

⁸⁷ See generally *What do Jaguars eat?*, BIOEXPLORER, <https://www.bioexplorer.net/what-do-jaguars-eat.html/#:~:text=They%20consume%20organisms%20like%20fish,resulting%20in%20a%20healthy%20ecosyste> (last visited Jan. 2, 2023).

⁸⁸ See Fernando R. Tortato & Thiago J. Izzo, *Advances and Barriers to the Development of Jaguar-Tourism in the Brazilian Pantanal*, 15 PERSPS. IN ECOLOGY AND CONSERVATION 61, 62 (2017).

⁸⁹ See ADRIAN REUTER ET AL., *AVERTING A CRISIS: WILDLIFE TRAFFICKING IN LATIN AMERICA* 6 (2018).

⁹⁰ *Lawsuit Demands Crucial U.S. Wildlife Trade Data*, ANIMAL L. & POL’Y CLINIC (Nov. 17, 2021), <https://animal.law.harvard.edu/news-article/wildlife-trade-data/#:~:text=That%20data%20revealed%20that%20the,research%2C%20hunting> [hereinafter ANIMAL L. & POL’Y CLINIC].

⁹¹ REUTER, *supra* note 89.

⁹² *Id.*

⁹³ Kevin Sieff, *‘Tape their beaks’: Wildlife Trafficking Case Offers Glimpse into Clandestine Animal Trade from Mexico*, WASH. POST (Sept. 11, 2021, 7:00 AM), <https://www.washingtonpost.com/world/2021/09/11/us-mexico-wildlife-trafficking/>.

⁹⁴ *Id.*

⁹⁵ *Id.*

for rare endemic species has grown.”⁹⁶ “Many of these species have very small populations and many are classified as endangered or threatened, so this illegal trade may bring some of these species to the brink of extinction.”⁹⁷ More recently, from January to August 2020, traffic stops across Brazil resulted in law enforcement seizing 25,000 exotic animals that were being illegally transported.⁹⁸ This number represents a nearly 500% increase over illegal wildlife seizures in 2019.⁹⁹ In the United States, the Office of Law Enforcement wildlife inspectors examined nearly 200,000 shipments in 2015.¹⁰⁰ However, this number “just scratches the surface” of the amount of shipments that pass through and are not inspected.¹⁰¹ The U.S. Fish and Wildlife Service launched a detection dog program in 2014 to inspect for wildlife contraband at ports in Chicago, Los Angeles, and Miami.¹⁰² Similarly, the African Wildlife Foundation implemented a dog-sniffing program in major African ports and airports.¹⁰³ One success of the program occurred in Kenya, where teams of dogs made 37 finds from January to September 2016, even locating wildlife such as “live tortoises” that the dogs had not been trained to detect.¹⁰⁴

A. *The United States Framework*

One of the oldest United States wildlife protection statutes is the Lacey Act.¹⁰⁵ The Lacey Act has been widely recognized as a powerful tool in the fight against wildlife trafficking.¹⁰⁶ Enacted in 1900 and named after its primary sponsor, Congressman John Lacey, the

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Dalby, *supra* note 76.

⁹⁹ *Id.*

¹⁰⁰ See Micaela Samodelov, *The United States’ Little Known Role in Wildlife Crime*, AFRICAN WILDLIFE FOUND., <https://www.awf.org/blog/united-states-little-known-role-wildlife-crime> (last visited Oct. 17, 2023).

¹⁰¹ *See id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ ANIMAL L. & POL’Y CLINIC, *supra* note 90.

¹⁰⁵ *The Lacey Act*, NAT’L WHISTLEBLOWER CTR., <https://www.whistleblowers.org/what-is-the-lacey-act/> (last visited Oct. 18, 2023) [hereinafter NAT’L WHISTLEBLOWER CTR].

¹⁰⁶ *See id.*; *See also* 16 U.S.C. § 3372.

Act originally sought to address “overhunting of game birds.”¹⁰⁷ Today, the law’s scope has expanded and holds it unlawful “to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of” any U.S. or Indian tribal law.¹⁰⁸ This statute is now utilized to comply with U.S. obligations under CITES.¹⁰⁹

The Act has been used to successfully prosecute a number of cases and has played a critical role in protecting endangered and threatened species.¹¹⁰ For example, in *United States v. Santillan*, the defendant was convicted of “smuggling and importing . . . ten baby parrots packed in three paper bags stuffed under his car seats” during a trip from Tijuana, Mexico, to California.¹¹¹ The defendant appealed the conviction, arguing, among other things, that the *mens rea* element was not satisfied.¹¹² The Ninth Circuit Court of Appeals affirmed the defendant’s conviction, holding that convictions under the Lacey Act do not require *mens rea* of the exact statutory violation, and simply because the defendant did not know what the Lacey Act was, did not bar a conviction under the Act.¹¹³ This ruling was made, in part, because the defendant knew that smuggling the parrots was illegal in general, and this was sufficient to convict him under the Lacey Act.¹¹⁴ The Act “has been amended several times” to keep up with the changing nature of wildlife trafficking and to address new challenges that have emerged in the trade of plants and plant products, as well as illegal fishing.¹¹⁵

In 1981, the Lacey Act was amended to include the importation of illegally taken wildlife, which was seen as a major problem at the time.¹¹⁶ The amendment included provisions for the forfeiture of

¹⁰⁷ NAT’L WHISTLEBLOWER CTR, *supra* note 105.

¹⁰⁸ 16 U.S.C. § 3372(a)(1).

¹⁰⁹ *Lacey Act*, THE WILDLIFE SOCIETY, https://wildlife.org/wp-content/uploads/2014/11/Policy-Brief_LaceyAct_FINAL.pdf (July 2023).

¹¹⁰ *See, e.g.*, 243 F.3d 1125, 1126-27 (9th Cir. 2001).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See id.* at 1127-31.

¹¹⁴ *Id.* at 1129-30.

¹¹⁵ *See* NAT’L WHISTLEBLOWER CTR, *supra* note 105.

¹¹⁶ *See* Rebecca F. Wisch, *Overview of the Lacey Act (16 U.S.C. SS 3371-3378)*, ANIMAL LEGAL & HIST. CTR., <https://www.animallaw.info/article/overview-lacey-act-16-usc-ss-3371-3378> (last visited Oct. 18, 2023).

illegally imported wildlife and the fines and penalties for violators.¹¹⁷ For example, the Lacey Act has played a significant role in the investigation of the illegal “trade of rhinoceros horn and elephant ivory that has resulted in 38 convictions, more than \$2 million in fines, and almost \$8 million in forfeitures and restitutions.”¹¹⁸ In 2008, the Lacey Act was again amended, this time to extend its protections on trade to a broad range of plants and plant products.¹¹⁹

In 2019, a new amendment aimed to combat illegal, unreported, and unregulated (IUU) fishing and seafood fraud required importers to submit information about the country of origin, species, and harvest of their products.¹²⁰ Also, this amendment gave the U.S. Customs and Border Protection and the National Oceanic and Atmospheric Administration the tools to prevent, deter, and prosecute IUU fishing and seafood fraud.¹²¹

The penalties associated with violations of the Lacey Act are laid out in 16 U.S.C. § 3373.¹²² To establish a felony offense under the Lacey Act, the government must prove that the defendant knew the wildlife in question was protected.¹²³ For a misdemeanor offense, the government only needs to prove that the defendant should have known the wildlife was protected.¹²⁴ The former can hold a maximum penalty of \$20,000 per offense and the latter \$10,000 per offense.¹²⁵

In summary, the Act has two key requirements that must be met.¹²⁶ First, the government must prove that the species in question

¹¹⁷ *See id.*

¹¹⁸ *See* NAT’L WHISTLEBLOWER CTR, *supra* note 105.

¹¹⁹ *See Keeping IUU Fish and Fish Products Out of U.S. Markets*, NAT’L OCEANIC & ATMOSPHERIC ADMIN., <https://www.fisheries.noaa.gov/international/international-affairs/keeping-iuu-fish-and-fish-products-out-us-markets#:~:text=The%20Lacey%20Act%20makes%20it,under%20U.S.%20or%20foreign%20laws> (last visited Oct. 23, 2023).

¹²⁰ *Id.*

¹²¹ *See id.*; *see also Illegal, Unreported, and Unregulated Fishing*, U.S. CUSTOMS AND BORDER PATROL <https://www.cbp.gov/trade/programs-administration/natural-resources-protection/IUU-fishing>, (Jan. 10, 2023).

¹²² 16 U.S.C. § 3373.

¹²³ *See* 16 U.S.C. § 3373(d)(1).

¹²⁴ *See* 16 U.S.C. § 3373(d)(2).

¹²⁵ *Id.* at § 3373(d)(1); *see also* § 3373(d)(2).

¹²⁶ *See* Robert S. Anderson, *The Lacey Act: America’s Premier Weapon in the Fight against Unlawful Wildlife Trafficking*, 16 PUB. LAND L. REV. 27, 58 (1995).

was “taken, possessed, transported, or sold in violation of” state, federal, or foreign law.¹²⁷ The government then must prove that the defendant knew or should have known that the species was taken, possessed, transported, or sold in violation of state, federal, or foreign law.¹²⁸

The Lacey Act is mostly enforced by the Fish and Wildlife Service, the primary federal agency tasked with protecting “fish, wildlife, and their habitats,” including the importation of illegal wildlife.¹²⁹ However, the Fish and Wildlife Service lacks resources to investigate and prosecute Lacey Act cases.¹³⁰ Although the United States spent approximately \$116 million in 2020 to combat wildlife trafficking, it was not enough to combat the fast growing industry.¹³¹ The agency is often stretched thin and may not have the capacity to pursue all potential violations.¹³² On average, FWS “can only inspect about twenty-five percent of all incoming [international] shipments.”¹³³ FWS only has 130 wildlife inspectors nationwide.¹³⁴ These individuals process legal wildlife trade, inspect illegal wildlife trafficking, and enforce international wildlife laws.¹³⁵ Only 18 out of the 328 recognized ports of entry in the United States are staffed, full-time, with wildlife inspectors.¹³⁶

Due to the richness of wildlife and exotic species in Latin America, the wildlife trafficking trade runs through Latin America and into the United States, meaning the main problem in the United States is illegal importation, not exportation, of wildlife.¹³⁷ The effectiveness of the United States in curbing animal trafficking is often

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Christine Fisher, Comment, *Conspiring to Violate the Lacey Act*, 32 ENV'T L. 475, 482 (2002).

¹³⁰ See generally 2021 END Wildlife Trafficking Strategic Review, U.S. DEP'T OF STATE (Nov. 4, 2021), <https://www.state.gov/2021-end-wildlife-trafficking-strategic-review/>.

¹³¹ *Id.*

¹³² Cf. Fisher, *supra* note 129, at 483.

¹³³ *Id.* at 482.

¹³⁴ See ALEJANDRA GOYENCHEA & ROSA A. INDENBAUM, COMBATING WILDLIFE TRAFFICKING FROM LATIN AMERICA TO THE UNITED STATES 1 (DEFS. OF WILDLIFE 2015).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See generally *id.*

hindered by the inadequate enforcement of laws in other countries.¹³⁸ When foreign nations have weak or poorly executed regulations, the Lacey Act struggles to effectively counter wildlife trafficking originating from those regions that have poor laws and regulations.¹³⁹ The Lacey Act can be difficult to enforce in cases involving international trade because it can be difficult to determine the origin of a species and prove that it was taken, possessed, transported, or sold in violation of foreign law.¹⁴⁰ Because the main problem with animal trafficking in the United States stems from animals being imported into the country, the best way to combat this problem is by finding mechanisms for Latin American countries to more effectively address this crisis within their borders.¹⁴¹

B. *Wildlife Trafficking as Organized Crime*

Organized crime involves planned, rational acts reflecting “the effort of groups of individuals . . . it does not include random, unplanned, individual criminal acts.”¹⁴² Latin American laws regarding organized crime and gang-related incidents have primarily been used to address issues such as drug trafficking, money laundering, and human trafficking.¹⁴³ However, there is a growing recognition that animal trafficking should also be considered a form of organized crime.¹⁴⁴ One of the main reasons for this is the similarity in

¹³⁸ See generally *The Lacey Act: Compliance Issues Related to Importing Plants and Plant Products*, CONGRESSIONAL RESEARCH SERVICE (Feb. 25, 2014).

¹³⁹ See generally *id.*

¹⁴⁰ *Combating wildlife trafficking from Latin America to the United States*, DEFENDERS OF WILDLIFE (chrome-extension://efaidnbmnmmnibpcajpcglclefindmkaj/https://defenders.org/sites/default/files/publications/combating-wildlife-trafficking-from-latin-america-to-the-united-states.pdf (last visited Jan. 21, 2023).

¹⁴¹ See generally *id.*

¹⁴² *Defining organized crime*, U.N. OFF. ON DRUGS & CRIME (Apr. 2018), <https://www.unodc.org/e4j/zh/organized-crime/module-1/key-issues/defining-organized-crime.html>.

¹⁴³ See Zimmerman, *supra* note 2, at 1682-85.

¹⁴⁴ See *id.* at 1688 (“Several proposals have been made for enforcement mechanisms on the international level, including amending the treaty to encompass financial penalties for violators and constructing an international wildlife criminal tribunal. Due to the current international climate, these methods would most likely not be successful. Instead, CITES member nations should concentrate on utilizing existing international mechanisms.”)

the methods and tactics used by those involved in animal trafficking and other forms of organized crime.¹⁴⁵ For example, animal traffickers often use the same routes and networks as drug traffickers, and they engage in similar activities such as money laundering and corruption.¹⁴⁶ Additionally, animal trafficking is often linked to other forms of organized crime involving wildlife, such as illegal logging and mining, which are also major issues in the region.¹⁴⁷

Animal trafficking is a profitable business controlled by transnational criminal organizations involved in other illegal activities.¹⁴⁸ As of 2016, illegal wildlife trafficking has an estimated economic value of 23 billion dollars.¹⁴⁹ Traffickers use violence, intimidation, and corruption to control the trade of wildlife, and often employ sophisticated methods to evade law enforcement.¹⁵⁰ This level of organization and the use of violence and intimidation are hallmarks of organized crime.¹⁵¹

Because animal trafficking is not “prioritized in the public agenda and not sufficiently understood,” governments in Latin America do not treat animal trafficking as organized crime.¹⁵²

“Between 2000 and 2018, more than eighty thousand live wild animals” were confiscated in Peru.¹⁵³ According to Peru’s Environmental Ministry, “an estimated 300 species are in danger [of]

¹⁴⁵ *Id.* at 1683.

¹⁴⁶ *See id.* at 1672.

¹⁴⁷ *See* Emily Kaldjian, *2 Birds, 1 Stone: Fighting Illegal Logging and Wildlife Poaching with Technology*, WORLD RES. INST. (June 27, 2017), <https://www.wri.org/insights/2-birds-1-stone-fighting-illegal-logging-and-wildlife-poaching-technology>.

¹⁴⁸ Zimmerman, *supra* note 2, at 1670.

¹⁴⁹ Lehmacher, *supra* note 1.

¹⁵⁰ Sabri Zain, *Corrupting trade: An overview of corruption issues in illicit wildlife trade*, WORLD WILDLIFE FUND (July 2020), <https://www.worldwildlife.org/pages/tncr-introductory-overview-corrupting-trade-an-overview-of-corruption-issues-in-illicit-wildlife-trade>.

¹⁵¹ *See generally id.*

¹⁵² *Id.*

¹⁵³ *Peru marks new milestone in the fight against illegal wildlife trafficking*, OCEANA (Apr. 27, 2022), <https://peru.oceana.org/comunicados/peru-marks-new-milestone-in-the-fight-against-illegal-wildlife-trafficking/>.

trafficking.”¹⁵⁴ Moreover, Peruvian authorities confiscate “4,000 to 5,000 live animals being trafficked every year.”¹⁵⁵ A bill to include illegal wildlife trafficking in the scope of law against organized crime was finally approved by the Congress of Peru in November of 2022, officially codified as Law 31.622.¹⁵⁶

Law 31.622 has significant implications for criminal prosecutors.¹⁵⁷ This legislation provides them with additional tools for prosecuting offenses; it integrates Article 308 D—which prescribes a penalty of three to five years in prison for wildlife trafficking—into the law’s verbiage.¹⁵⁸ In the preceding code, there was no mention of Article 308 D related to illegal wildlife trafficking.¹⁵⁹ Prosecutors can now more effortlessly pursue and impose heftier penalties on those who finance wildlife trafficking offenses.¹⁶⁰ In Peru, the Enabling Regulation for Wildlife Management “designates the National Forest and Wildlife Service” (“NFWS”) “and regional governments” as the authorities charged with sanctioning those who commit wildlife trafficking.¹⁶¹

In Argentina, wildlife trafficking is not treated “as a form of organized crime.”¹⁶² Only those offenders who are most exposed and part of the first link in the chain are prosecuted, which continues the “criminalization of poverty.”¹⁶³ The criminalization of poverty alludes to the punishment of the most vulnerable individuals, instead

¹⁵⁴ Marina Franco, *Peru ramps up fight against illegal animal trafficking*, AXIOS (March 17, 2022), <https://www.axios.com/2022/03/17/peru-fight-against-illegal-animal-trafficking>.

¹⁵⁵ *Id.*

¹⁵⁶ Julieta Pelcatre, *Peru makes Headway in the Fight Against Wildlife Trafficking*, DIÁLOGO AMÉRICAS, (Jan. 24, 2023), [https://dialogo-americas.com/articulos/peru-makes-headway-in-the-fight-against-wildlife-trafficking/#:~:text=Peru%20became%20the%20first%20country,international%20organization%20for%20ocean%20conservation; see also Maxwell Radwin, *Fighting wildlife trafficking in Peru: Q&A with prosecutor Alberto Caraza*, MONGABAY \(Dec. 26, 2022\), <https://news.mongabay.com/2022/12/fighting-wildlife-trafficking-in-peru-qa-with-prosecutor-alberto-caraza/>.](https://dialogo-americas.com/articulos/peru-makes-headway-in-the-fight-against-wildlife-trafficking/#:~:text=Peru%20became%20the%20first%20country,international%20organization%20for%20ocean%20conservation;see%20also%20Maxwell%20Radwin,%20Fighting%20wildlife%20trafficking%20in%20Peru%3A%20Q%26A%20with%20prosecutor%20Alberto%20Caraza,MONGABAY(Dec.26,2022),https://news.mongabay.com/2022/12/fighting-wildlife-trafficking-in-peru-qa-with-prosecutor-alberto-caraza/)

¹⁵⁷ Radwin, *supra* note 156.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 42.

¹⁶² *Id.* at 7.

¹⁶³ *Id.* at 8.

of targeting those further along in the trafficking and trading chain, such as the heads of wildlife trafficking rings.¹⁶⁴ Argentinian Law 24,767 of 1997 “provides the foundation for the system of international legal cooperation on criminal matters.”¹⁶⁵ Yet, animal trafficking is not recognized as one of these criminal issues, implying that CITES, despite being an international legal collaboration initiative, is not being effectively used for criminal enforcement prosecutions.¹⁶⁶ If Argentina were to modify its legislation to categorize wildlife trafficking as organized crime (as Peru did), law enforcement could then target and prosecute the heads of these trafficking networks, which would significantly advance the criminalization efforts against the illegal trade of CITES-listed species.¹⁶⁷

Mexico reformed its Federal Law Against Organized Crime on April 7, 2017, to include wildlife trafficking.¹⁶⁸ The law contains investigative techniques and enforcement strategies.¹⁶⁹ For instance, “In cases involving organized crime, precautionary detention” can be used while law enforcement conducts its investigative procedures.¹⁷⁰ Mexico’s statute allows the government “to hold a suspect for a maximum of forty days” to help “ensure the success of the investigation.”¹⁷¹ In this context of wildlife trafficking, this provision enables prosecutors to thoroughly investigate and gather evidence, potentially unveiling and leading to subsequent prosecution of the entire criminal network, beyond just the initial operatives.

Several cases have been documented linking animal trafficking in Latin America to organized criminal groups.¹⁷² For example, in Mexico, cartels are known to engage in the illegal trade of exotic

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 7.

¹⁶⁶ AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 7; *see generally* CITES, *supra* note 24.

¹⁶⁷ *See id.* at 8.

¹⁶⁸ *Id.* at 36.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 37.

¹⁷¹ *Id.*

¹⁷² *See generally* Matt Levin, *Drug Cartels Earning Revenue by Trafficking Wild Animals*, CHRON (Sept. 24, 2015), <https://www.chron.com/news/nation-world/mexico-latin-america/article/Drug-cartels-brining-in-revenue-from-trafficking-6527621.php>.

animals.¹⁷³ Similarly, in Brazil, a famous criminal organization, the First Capital Command (*Primeiro Comando da Capital*, or PCC), has been linked to the illegal trade of wild animals, with proceeds from the trade reportedly used to fund their criminal activities.¹⁷⁴ The PCC is a criminal organization based in São Paulo, Brazil, that was formed in the late 1990s.¹⁷⁵ The group is known for its involvement in a wide range of criminal activities, including drug trafficking, extortion, money laundering, and weapons trafficking.¹⁷⁶ The PCC has reportedly carved a significant niche in Brazil's illegal wildlife trade, particularly in the Amazon region, trafficking animals such as parrots, monkeys, and reptiles.¹⁷⁷ The group uses its robust networks and resources to move animals across international borders and sell them to international buyers.¹⁷⁸ These instances highlight how criminal syndicates actively participate in illegal wildlife trafficking, which further underscores the need to treat animal trafficking as organized crime.

Although there are plenty of similarities between drug and animal trafficking, there are key differences. Unlike drugs, wildlife is “not endlessly producible and once extinct, can't be reproduced.”¹⁷⁹ With wildlife trafficking, time is unbelievably important.¹⁸⁰

In summary, animal trafficking in Latin America should be classified as an organized crime because it shares many characteristics

¹⁷³ *See id.*

¹⁷⁴ *See* Ryan Berg, *Tussle for the Amazon: New Frontiers in Brazil's Organized Crime Landscape*, JACK D. GORDON INSTITUTE FOR PUBLIC POLICY 4-6 (Nov. 16, 2022), <https://gordoninstitute.fiu.edu/publications/research-publications/tussle-for-amazon.pdf>.

¹⁷⁵ *See First Capital Command - PCC*, INSIGHT CRIME (Mar. 9, 2020), <https://insightcrime.org/brazil-organized-crime-news/first-capital-command-pcc-profile/>.

¹⁷⁶ *See id.*

¹⁷⁷ *See generally* Sarah Brown, *Organized crime drives violence and deforestation in the Amazon, study shows*, MONGABAY, (Aug. 1, 2022) <https://news.mongabay.com/2022/08/organized-crime-drives-violence-and-deforestation-in-the-amazon-study-shows/>.

¹⁷⁸ *See generally First Capital Command-PCC*, *supra* note 175; *see also* Zimmerman, *supra* note 2, at 1671-75.

¹⁷⁹ *Criminal Elements: Illegal Wildlife Trafficking, Organized Crime, and National Security*, WILSON CENTER, <https://www.wilsoncenter.org/event/criminal-elements-illegal-wildlife-trafficking-organized-crime-and-national-security> (last visited Oct. 21, 2023).

¹⁸⁰ *Id.*

with other forms of organized crime—such as drug trafficking, money laundering, and human trafficking.¹⁸¹ Moreover, animal trafficking is often linked to other forms of organized crime—such as illegal logging and mining—and is controlled by transnational criminal organizations who use violence, intimidation and corruption to control the trade.¹⁸² Given the intricate links between animal trafficking and other forms of organized crime, as well as the successful legislative approaches in Peru and Mexico, it is imperative for all Latin American countries to recognize and classify wildlife trafficking as organized crime, paving the way for more effective legal interventions.

C. *Scarcity of Resources*

In some Latin American countries like Guatemala, scarcity of resources limits prosecution of wildlife trafficking crimes.¹⁸³ The Petén region in the northern part of Guatemala is known for its tropical rainforests, ancient Mayan ruins, and diverse wildlife.¹⁸⁴ Illegal wildlife trade is a significant problem in the Petén region, due to the its remote location, lack of law enforcement, and poverty.¹⁸⁵ The region is home to many endangered species, including the harpy eagle, scarlet macaw, and tapir, which makes it a target by traffickers in the illegal wildlife trade.¹⁸⁶ This includes “unsustainable hunting” and capturing animals “for the illegal pet trade.”¹⁸⁷ The illegal trade of animals in the Petén region not only harms the animals, but also disrupts the delicate ecosystem and can contribute to the decline of certain species.¹⁸⁸

¹⁸¹ See generally Zimmerman, *supra* note 2 at 1676.

¹⁸² See Zain, *supra* note 150.

¹⁸³ See AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 32.

¹⁸⁴ See *Petén Basin: Maya Forest (Mexico, Guatemala, Belize)*, LATIN AM. & CARIBBEAN GEOGRAPHIC (June 10, 2019), <https://lacgeo.com/peten-basin-maya-forest>.

¹⁸⁵ See generally AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 32.

¹⁸⁶ *ARCAS Wildlife Rescue Center in Peten*, ARCAS, <https://arcasguatemala.org/where-we-are/arcas-peten/> (last visited Oct. 21, 2023).

¹⁸⁷ *Id.*

¹⁸⁸ See Steven Winter, Gillian Eastwood, & Manuel Barrios-Izas, *Drugs and Biodiversity Loss: Narcotraffic-linked Landscape Change in Guatemala*, INTECHOPEN (Oct. 13, 2022), <https://www.intechopen.com/chapters/83894>.

The Petén Region expands across 36,000 square kilometers but only five prosecutors are assigned to the entire region.¹⁸⁹ In addition, “Guatemala’s Protected Areas Act lays out mandatory sentencing for crimes against . . . trafficking of flora and fauna.”¹⁹⁰ “Penalties range from five to ten years prison time” and up to \$2,600 per offense.¹⁹¹ It is concerning that Guatemala’s law against organized crime does not include illegal wildlife trafficking as one of the offenses that can be linked to an organized criminal group or organization.¹⁹² Moreover, given Guatemala’s limited public resources, these organized crime networks wield significant power and wealth, resulting in increased corruption and a widening gap between enforcement efforts and neglect.¹⁹³ “From 2005 to 2008, there were only 18 convictions for illegal wildlife trafficking” in the entire Petén region.¹⁹⁴ There are no “updated statistics on cases of illegal wildlife trafficking,” and the latest report by the National Center for Judicial Analysis and Documentation stated “221 cases related to this crime were prosecuted” from 2006 to 2008, which is concerning low.¹⁹⁵

Between 2018 and 2020, 1,802 complaints on environmental grounds were filed.¹⁹⁶ Although the statistics do not specify how many of the complaints dealt with animal trafficking, 1,252 of the environmental complaints were dismissed both in court and at the prosecutorial level, further showing the lack of resources for enforcement of trafficking violations.¹⁹⁷

¹⁸⁹ AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 32.

¹⁹⁰ Eileen Guo, *The Fight to Protect the World’s Most Trafficked Wild Commodity*, NAT’L GEOGRAPHIC (Aug. 16, 2019), <https://www.nationalgeographic.com/animals/article/guatemala-fight-against-rosewood-trafficking>.

¹⁹¹ *Id.*

¹⁹² *See id.*

¹⁹³ *See generally* Johnna Flahive, *Plundering Eden: Wildlife Trafficking in Latin America*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/explore/savingearth/plundering-eden-wildlife-trafficking-in-latin-america> (last visited Oct. 21, 2023) (“In some Latin American countries there are deeply rooted transnational organized criminal networks, with more power and capital than some governments, controlling significant sectors of the area’s commerce.”).

¹⁹⁴ AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 32.

¹⁹⁵ *Id.* at 31.

¹⁹⁶ *See id.* at 32; (noting that Guatemala did not carry statistics on the prosecution of environmental crimes prior to 2018).

¹⁹⁷ *Id.* at 31.

Resource constraints remain a significant challenge for Guatemala. By categorizing animal trafficking as organized crime, Guatemala could potentially access more resources.¹⁹⁸ Yet, the limited pool of prosecutors has been primarily preoccupied with addressing other types of organized crime.¹⁹⁹ Although there has been a commendable uptick in enforcement since 2018, owing to increased resources, there's a pressing need to further augment the number of prosecutors dedicated specifically to wildlife trafficking, beyond just broader environmental concerns.²⁰⁰

Animal trafficking organizations involved in this illegal activity often use a variety of methods to transport wildlife to other countries in Latin America with weak enforcement of wildlife trafficking laws.²⁰¹ Traffickers frequently transport animals across terrestrial borders, leveraging a coordinated system of people and entities to aid the smuggling.²⁰² This can include using private vehicles, buses, or even walking across the border with the animals hidden in bags or other containers.²⁰³ Smugglers also use boats or other vessels to transport wildlife across waterways, such as along coastlines or across rivers into territories where enforcement is known to be weak or nonexistent.²⁰⁴ Traffickers even use commercial flights to move wildlife to other countries.²⁰⁵ Some trafficking tactics include disguising the animals as legitimate luggage by packaging them in bottles, wheel wells, plastic bags, and hidden in luggage.²⁰⁶ The United Nations Office on Drugs and Crime (“UNODC”) has recorded instances of collusion and monetary exchanges to customs officers

¹⁹⁸ *See generally id.*

¹⁹⁹ *See generally id.*

²⁰⁰ *Id.*

²⁰¹ SHARON GUYNUP, THE LATIN AMERICA-TO-ASIA WILDLIFE TRADE 6 (WILSON CENTER 2022), https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/The%20Latin%20America-to%20Asia%20Wildlife%20Trade_0.pdf.

²⁰² *See generally id.* at 5.

²⁰³ *See id.* at 5.

²⁰⁴ *See generally id.* at 9. (“Enforcement is difficult along vast remote coastlines. Mexico is now using drones to watch for hueveros, egg collectors digging up nests on beaches.”)

²⁰⁵ *See id.* at 6.

²⁰⁶ *See id.*

and police for the use of false documentation, such as fake permits or certificates, to move wildlife across borders.²⁰⁷

Another challenge countries face in regulating wildlife trade of species under CITES and enforcing protective laws for these species is the limited understanding of the illegality of the trafficking.²⁰⁸ The deficiency of resources and enforcement mechanisms in the Americas contributes to this issue, leading many individuals to remain unaware of their actions' illegality.²⁰⁹ The concept is akin to getting a speeding ticket: if drivers frequently speed on a certain road, and police officers patrol the road for three straight weeks, giving out speeding tickets to multiple drivers, people will become increasingly aware that if they speed on that road, they are likely to receive a ticket. Here, raising awareness through enforcement will naturally educate violators.

In Peru, the main cause behind illegal wildlife trafficking “is the demand for pets.”²¹⁰ In a nationwide survey, 14% of people “interviewed have or have had a wild animal as a pet,” and about 14% “would consider buying one.”²¹¹ As discussed, many of these individuals are not aware of the illegality of the animals being traded and kept as pets.²¹² For example, in the United States, people either (1) do not know what animal species they are looking at or buying, or (2) do not know that the trade of that animal is illegal.²¹³ This is further aggravated when sellers purposely confuse buyers with information on the alleged species they are buying, while selling the illegal cousin.²¹⁴ For example, the eastern box turtle may look like a

²⁰⁷ GUYNUP, *supra* note 201, at 5.

²⁰⁸ *See generally* AM. BAR ASS'N RULE OF L. INITIATIVE, *supra* note 1, at 9.

²⁰⁹ *See generally id.* at 22-23.

²¹⁰ *Id.* at 41.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *See generally* Alina Tugend, *Not a Pet*, ASS'N OF ZOOS & AQUARIUMS (Oct. 5, 2022), <https://www.aza.org/connect-stories/stories/not-a-pet-aza-ifaw-combat-illegal-exotic-pet-trade?locale=en>.

²¹⁴ *See generally id.* (“There has been a significant trade in freshwater turtles, and as one species is depleted, traders will move to another.” The same issue arises with birds, she said. In addition, a species may be protected differently if it is bred in captivity or not, and sellers aren’t always truthful about where their supplies originate from.”)(internal quotations omitted).

regular turtle to pet hobbyists, but its trade “could be illegal.”²¹⁵ The sophisticated methods employed by animal traffickers, combined with the documented collusion within enforcement agencies, and the lack of knowledge, highlights the dire need for increased resources in the Americas. The solutions the scarcity of resources and lack of knowledge behind animal trafficking are found in the issues and potential answers to the problems below.

a. International Support and Investment

The United States Agency for International Development (USAID) is an independent agency of the United States government that is primarily responsible for administering civilian foreign aid and development assistance.²¹⁶ USAID has been actively involved in efforts to combat wildlife trafficking.²¹⁷ The organization has implemented a number of programs and initiatives aimed at combating trafficking that focus on three main areas: “strengthen[ing] laws and enforcement, reduc[ing] demand for wildlife products,” and “protect[ing] wildlife at the source.”²¹⁸

A primary tactic employed by USAID is to support law enforcement agencies in countries where wildlife trafficking is prevalent.²¹⁹ This includes providing training, equipment, and technical assistance to rangers and other officials responsible for protecting wildlife.²²⁰ USAID also works with local communities to increase their capacity to monitor and report illegal activities.²²¹ Another USAID goal is to reduce the demand for illegal wildlife products.²²² This is

²¹⁵ See generally *id.* (There were “nearly 100 eastern box turtles taken from the wild that were confiscated last year by U.S. Fish and Wildlife while in rout to Asia.”)

²¹⁶ See *USAID History*, USAID, <https://www.usaid.gov/about-us/usaid-history> (last visited Oct. 21, 2023).

²¹⁷ See *Combating Wildlife Trafficking*, USAID, <https://www.usaid.gov/biodiversity/wildlife-trafficking> (last visited Jan. 27, 2023).

²¹⁸ See *id.*

²¹⁹ See ENV’T. INCENTIVES, LLC, FOUND. OF SUCCESS & ICF INT’L, USAID, MEASURING EFFORTS TO COMBAT WILDLIFE CRIME: A TOOLKIT FOR IMPROVING ACTION AND ACCOUNTABILITY 17 (March 2017) [hereinafter MEASURING EFFORTS].

²²⁰ *Id.* at 21.

²²¹ See generally *id.* at 27.

²²² See *id.* at 38–39.

achieved through awareness-raising campaigns and education programs aimed at changing consumer behavior.²²³ USAID also works with governments, NGOs, and the private sector to promote sustainable alternatives to products derived from illegally obtained wildlife.²²⁴

Overall, USAID's efforts to combat wildlife trafficking are multifaceted and take a holistic approach.²²⁵ USAID has joined forces with partners on the ground to address wildlife trafficking and illegal wildlife trade, by working with governments to strengthen law enforcement, reduce demand for illegally obtained wildlife products, and support sustainable livelihoods for communities that rely on wildlife.²²⁶

In addition to the work of USAID is that of the Global Environment Facility (GEF), a "family of funds" established in 1991 to finance projects that address global environmental issues.²²⁷ "The GEF serves as a 'financial mechanism'" for five international conventions, including the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, and the UN Convention to Combat Desertification.²²⁸ Made up of 185 member countries, this fund supports "government agencies, civil society organizations, private sector companies, research institutions, and other partners to implement projects and programs related to environmental conservation, protection, and renewal."²²⁹

²²³ See, e.g., *USAID Raises Public Awareness of Wildlife Protection at Food Festival for Tourists*, USAID (Aug. 11, 2023), https://www.usaid.gov/vietnam/news/aug-11-2023-usaid-raises-public-awareness-wildlife-protection-food-festival-tourists?field_content_category_target_id_1%5B1158%5D=1158&field_content_category_target_id_1%5B1157%5D=1157&field_content_category_target_id_1%5B1159%5D=1159&field_location_initiative_target_id%5B1077%5D=1077&sort_by=field_display_date_value&sort_order=DESC&block_config_key=tdEvaQ3vvUdligB5SF7wWM3bREEWkIMp-nMRodLhtgg&page=2%2C7.

²²⁴ MEASURING EFFORTS, *supra* note 219.

²²⁵ See *id.* at 37-39, 47.

²²⁶ See *id.*

²²⁷ *Who We Are*, GLOB. ENV'T FACILITY, <https://www.thegef.org/who-we-are> (last visited Oct. 21, 2023).

²²⁸ *Conventions*, GLOB. ENV'T FACILITY, <https://www.thegef.org/partners/conventions> (last visited Oct. 21, 2023).

²²⁹ *Who We Are*, *supra* note 227.

The GEF provides grants for projects related to biodiversity, climate change, international waters, land degradation, the ozone layer, and persistent organic pollutants.²³⁰ The GEF also works closely with other international organizations and initiatives to address environmental issues and promote sustainable development.²³¹ In 2019, the GEF pledged \$37 million to “combat illegal wildlife trafficking . . . over the next four years,” representing a nearly 29% increase from the organization’s prior pledge.²³² The GEF provides financial support to nineteen countries in Africa and Asia.²³³ None of the \$37 million dollars funds the fight against wildlife trafficking in Latin America.²³⁴ The GEF’s website states that phase II, which has not yet begun, will help tackle wildlife trafficking in Belize, Ecuador, and Panama.²³⁵ For an organization with such prominence, addressing sixty worldwide environmental challenges, it is disappointing that the GEF has yet to engage in the battle against trafficking in Latin America.²³⁶

In 2021 the British Government pledged £7.2 million from its Illegal Wildlife Trade Challenge Fund (“IWT”) to help tackle wildlife trafficking in Asia, Africa, and South America.²³⁷ As of July 2020, this fund had provided “more than £399,000 to strengthen[] law enforcement” with the goal of “reduc[ing] the poaching of

²³⁰ See *Topics*, GLOB. ENV’T FACILITY, <https://www.thegef.org/what-we-do/topics> (last visited Oct. 21, 2023).

²³¹ See *Who We Are*, *supra* note 227.

²³² *GEF Increases Funding to Tackle Wildlife Trafficking and Trade*, INT’L INST. FOR SUSTAINABLE DEV. (Oct. 11, 2018), <https://sdg.iisd.org/news/gef-increases-funding-to-tackle-wildlife-trafficking-and-trade/> [hereinafter ISSD].

²³³ *Id.*

²³⁴ See *id.*

²³⁵ *Illegal Wildlife Trade*, GLOB. ENV’T FACILITY, <https://www.thegef.org/what-we-do/topics/illegal-wildlife-trade> (last visited Oct. 21, 2023). (“Phase II of the program was launched in 2019, aimed at continuing to fight IWT in source, transit, and demand countries, and using wildlife as the cornerstone for sustainable development. Phase II will operate in 13 countries; six in Africa (Angola, Chad, Democratic Republic of Congo, Madagascar, Namibia, and South Africa), four in Asia (Bhutan, Cambodia, India, and Indonesia) and three in Latin America and the Caribbean (Belize, Ecuador, and Panama.”).

²³⁶ See generally *id.*; see generally *Topics*, *supra* note 230.

²³⁷ *UK Commits Additional £7.2 Million to Tackling Illegal Wildlife Trade*, GOV.UK (Oct. 1, 2021), <https://www.gov.uk/government/news/uk-commits-additional-72-million-to-tackling-illegal-wildlife-trade>.

valuable hardwood species and fauna” in “protected areas in Guatemala,” including the Petén region.²³⁸ Among other initiatives, the efforts were aimed at increasing patrolling in border areas, increasing awareness about the IWT fund, propelling an effective legal framework, and consolidating a bilateral network to support long-term collaboration.²³⁹ It is encouraging to observe a country like the United Kingdom directing funds towards the Petén region. Initiatives like the IWT are a testament to the increased sense of urgency surrounding wildlife trafficking in Latin America and the need for more attention and resources in the region.

D. *Stricter Penalties and Prosecution*

The recognition of animal trafficking as organized crime not only underscores its seriousness but also paves the path for enhanced penalties, providing a stronger deterrent against trafficking. For example, Bolivia’s maximum penalty for the organized crime of drug trafficking is twenty-five years in prison, a strong but necessary punishment.²⁴⁰ To effectively combat this illegal trade, stricter penalties are necessary to deter potential traffickers and to hold those who are caught accountable for their actions.²⁴¹ One example of how stricter penalties can combat wildlife trafficking in Latin America includes imposing heftier fines and longer prison sentences for individuals found guilty of trafficking protected species.²⁴² For example, in Brazil, the penalty for illegal wildlife trade is currently a maximum of one year in prison.²⁴³ This disparity in sentencing—where wildlife trafficking garners only a fraction of the penalty compared to drug

²³⁸ Nick Whittingham, *Funding Boost to Crack Down on the Illegal Wildlife Trade in Guatemala and Mexico*, GOV.UK (July 29, 2020), <https://www.gov.uk/government/news/funding-boost-to-crack-down-on-the-illegal-wildlife-trade-in-guatemala-and-mexico>.

²³⁹ *Id.*

²⁴⁰ Rodrigo Uprimny Yepes, Diana Esther Guzmán & Jorge Parra Norato, *Addicted to Punishment: The Disproportionality of Drug Laws in Latin America* 5 n.1 (Dejusticia, Working Paper No. 1, 2013) <https://www.opensocietyfoundations.org/publications/addicted-punishment-disproportionality-drug-laws-latin-america> (noting that penalties for drug trafficking in at least seven Latin American countries have increased 521 percent since 1950).

²⁴¹ *See generally id.*

²⁴² *See generally id.*

²⁴³ CHARITY, *supra* note 67, at 101.

trafficking in countries like Bolivia—is a clear indication that wildlife trafficking penalties need urgent reevaluation and escalation. Stricter penalties would serve as a significant deterrent to those considering engaging in this illegal activity.

Another example of how stricter penalties can help fight wildlife trafficking in Latin America is through the forfeiture of assets.²⁴⁴ Currently, traffickers are often able to keep their ill-gotten gains, which enables them to continue their illegal activities.²⁴⁵ However, if stricter penalties were put in place, traffickers could have their assets seized and forfeited, which would not only serve as a deterrent but also help fund enforcement agencies in anti-trafficking efforts.²⁴⁶

In addition to these specific examples, stricter penalties would also “send the message that governments view wildlife trafficking as a serious problem that needs to be addressed.”²⁴⁷ By holding traffickers accountable for their actions, the natural deterrent would occur.²⁴⁸

Many countries in both Latin America and around the world tend to punish those prosecuted for wildlife trafficking with small fines.²⁴⁹ Some fines are even smaller than the price of the animal or species that was trafficked or sold.²⁵⁰ The more discrepancies in penalties that are present across countries creates barriers to international cooperation. In Argentina, there are few administrative penalties imposed for illegal wildlife trafficking.²⁵¹ Authorities in Argentina have stated that administrative penalty procedures are so slow that the actions, in many cases, “become time-barred,” making the efforts of imposing these penalties useless.²⁵² In Bolivia,

²⁴⁴ Greta Fenner, Keith Oliver & Amalia Neenan, *Asset Recovery and Wildlife Trafficking*, BASEL INST. ON GOVERNANCE (June 2020), https://baselgovernance.org/sites/default/files/2020-06/Perspectives3_AssetRecoveryandIWT.pdf.

²⁴⁵ *See generally id.*

²⁴⁶ *See id.*

²⁴⁷ Zimmerman, *supra* note 2, at 1677–78.

²⁴⁸ *See generally id.*

²⁴⁹ *Criminalization of Wildlife Trafficking*, U.N. OFF. ON DRUGS AND CRIME (Sept. 2019), <https://www.unodc.org/e4j/en/wildlife-crime/module-3/key-issues/criminalization-of-wildlife-trafficking.html>.

²⁵⁰ *Id.*

²⁵¹ AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 9.

²⁵² *Id.*

Environmental Law No. 1333 provides penalties for up to two years imprisonment, plus a fine “equivalent to the value” of the species for anyone that promotes the capture or trafficking of wildlife.²⁵³ Plainly, this penalty is extremely light, and does not provide enough of a threat for deterrence.²⁵⁴

In Ecuador, the Environmental Code (“CODA”) imposes administrative sanctions between \$2,000 and \$80,000 per offense, depending on the severity of the crime.²⁵⁵ CODA classifies trafficking violations as “minor, serious, and very serious,” with criminal convictions of up to three years prison term.²⁵⁶ Conversely, in Guatemala, serious wildlife trafficking crimes can be punishable for up to ten years in prison.²⁵⁷ The Lacey Act imposes fines of up to “\$500,000 per organization and up to five years imprisonment for each violation,” but in practice, the higher end of this penalty are rarely imposed.²⁵⁸ A federal judge in the United States “sentenced an individual to 46 months in prison” with a \$10,000 fine.²⁵⁹ The individual smuggled “animals worth more than \$250,000.”²⁶⁰ In comparison, if this individual had been smuggling roughly \$250,000-worth of cocaine, they would face 121 to 151 months in prison and “potential fines of more than \$175,000.”²⁶¹

Colombia’s sentencing guidelines for animal trafficking imposes prison sentences of up to five years.²⁶² However, the maximum prison sentence is rarely imposed and almost always thrown out by prosecutors.²⁶³ In a country riddled with conflict and corruption, illegally trading animals is not seen as worthy crime.²⁶⁴ In

²⁵³ *Id.* at 17; *see also* Ley No. 1333 del Medio Ambiente (1992).

²⁵⁴ *Id.* at 16.

²⁵⁵ Código Organico Del Ambiente, Art. 317 (2017).

²⁵⁶ *See id.*

²⁵⁷ AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 30; *see also* Article 81 bis. of Decree 4-89, Congress of the Republic, “Protected Areas Law.”

²⁵⁸ Zimmerman, *supra* note 2, at 1676.

²⁵⁹ *Id.* at 1676.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Luke Taylor, *Poached, caged, shipped in socks: On patrol with the police battling Colombia’s illegal wildlife trade*, THE GUARDIAN (Sept. 27, 2023), <https://www.theguardian.com/global-development/2023/sep/27/poached-caged-shipped-in-socks-on-patrol-with-the-police-battling-colombias-wildlife-trade>.

²⁶³ *Id.*

²⁶⁴ *Id.*

Brazil, judges do not consider wildlife trafficking to be a serious crime and thus generally will not imprison violators.²⁶⁵ The lack of penalties and sentencing shows traffickers that there are little-to-no consequences for their actions, and they will continue to find the lucrative business of wildlife trafficking as a low risk, high profit business.²⁶⁶

The lack of penalties and prosecution of wildlife crimes is due, in part, to the notion that wildlife trafficking is victimless.²⁶⁷ It is not. Wildlife trafficking not only severely harms individual animals, but also leaves a myriad of other victims in its path.²⁶⁸ For example, individuals are often victims of crime rings dealing in illegal wildlife trade, and society as a whole play a victim, because “the trade undermines governmental stability and causes environmental degradation.”²⁶⁹ The discrepancies in laws across the Americas is evident, and a first step in fighting wildlife trafficking is establishing consistent legal framework across the countries.

To effectively combat this problem, it is imperative that laws governing wildlife trafficking include strict liability clauses on perpetrators.²⁷⁰ Currently, many Latin American countries do not have strict liability standards for prosecuting wildlife trafficking.²⁷¹ Strict liability clauses hold individuals and organizations accountable for their actions, regardless of intent.²⁷² Traffickers may not be aware that their actions are illegal, or may not intend to harm wildlife, but their actions still have serious consequences.²⁷³ Strict liability clauses help ensure that traffickers cannot evade prosecution by

²⁶⁵ Zimmerman, *supra* note 2, at 1678.

²⁶⁶ *See generally id.* (“The lack of strict, enforceable national criminal sanctions against wildlife criminals defeats the goal of elimination of international organized crime in the illegal wildlife trade because it sends the message that states will not punish those involved in this illegal trade.”)

²⁶⁷ *Id.* at 1676.

²⁶⁸ *See id.*

²⁶⁹ *Id.*

²⁷⁰ Jessica B. Izzo, Note, *PC Pets for a Price: Combating Online and Traditional Wildlife Crime Through International Harmonization and Authoritative Policies*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 965, 989 (2010), <https://scholarship.law.wm.edu/wmelpr/vol34/iss3/6>.

²⁷¹ *See id.* at 989-90.

²⁷² *See id.* at 990-91.

²⁷³ *Cf.* at 990-91.

claiming ignorance or lack of intent.²⁷⁴ For example, driving twenty miles above the speed limit remains unlawful, even if you missed the speed limit sign a mile back. In the same vein, wildlife trafficking should be pursued and penalized, irrespective of whether the person was aware or unaware that the animal they were trading, or selling was restricted.

Strict liability clauses also provide a strong deterrent effect.²⁷⁵ If traffickers know that they will be held strictly liable for their actions, these traffickers may be less likely to engage in wildlife trafficking.²⁷⁶ Strict liability would help reduce the seller's demand for illegally-obtained wildlife products, which in turn can help protect vulnerable species and their habitats.²⁷⁷ Furthermore, clauses of strict liability can ensure that those benefiting from wildlife trafficking are made responsible for the damage they inflict.²⁷⁸ This might encompass not just the traffickers, but also intermediaries like purchasers, vendors, and transporters.²⁷⁹

Strict liability clauses also help to simplify the prosecution process, as they eliminate the need to prove intent or negligence, which can be difficult to show.²⁸⁰ Strict liability allows law enforcement officials to focus their efforts on investigating and prosecuting traffickers, rather than spending time and resources trying to prove intent or negligence.²⁸¹ However, there is some resistance to establishing a strict liability provision in wildlife trafficking laws.²⁸² Some countries fear that strict liability could over-criminalize first time violators or minimal offenses, which would in turn cause another set of issues.²⁸³ One solution to this concern is to implement strict liability for the more serious offenses, such as wildlife trafficking offenses pertaining to any species on CITES Appendix I, or implementing strict liability in instances involving repeat offenders.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ See Zimmerman, *supra* note 2, at 1678–79.

²⁷⁷ See generally *id.*

²⁷⁸ See generally Izzo, *supra* note 270, at 990.

²⁷⁹ *Id.*

²⁸⁰ See Zimmerman, *supra* note 2, at 1679.

²⁸¹ *Id.*

²⁸² See Izzo, *supra* note 270, at 990.

²⁸³ *Id.*

Given the glaring inconsistencies in wildlife trafficking penalties across the Americas, a harmonized legal framework is essential. The introduction of strict liability clauses, prioritizing stricter regulations, and ensuring that both primary offenders and intermediaries face the weight of their actions, are enormous steps in the fight against wildlife trafficking.²⁸⁴

a. Another Solution: The United Nations Convention against Transnational Organized Crime

Another approach would be to utilize the United Nations Convention against Transnational Organized Crime (“UNTOC”). UNTOC is an international instrument that provides a legal framework for cooperation among countries in the fight against transnational organized crime.²⁸⁵ This instrument could serve as an effective mechanism for combating illegal wildlife trade, which is often controlled by transnational organized criminal groups.²⁸⁶ One way that UNTOC could help combat illegal wildlife trade is through the establishment of a legal framework for international cooperation.²⁸⁷ UNTOC only addresses transnational crimes that are “serious.”²⁸⁸ Currently, UNTOC does not consider wildlife as a “serious” transnational crime.²⁸⁹ Most CITES member states “do not have sanctions that provide . . . at least four years for wildlife crime” and “serious fines.”²⁹⁰ A recent UNTOC case analysis found that over 100 transnational organized crime cases around the world used UNTOC’s framework, but none were wildlife trafficking cases.²⁹¹

²⁸⁴ See generally *id.*

²⁸⁵ See *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, U.N. OFF. ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (last visited Oct. 21, 2023).

²⁸⁶ See Zimmerman, *supra* note 2, at 1684.

²⁸⁷ See *id.*

²⁸⁸ See *id.* (“In order to fall within the scope of the Convention, crimes must be designated as ‘serious,’ as defined in the Convention.”).

²⁸⁹ See *id.* at 1684–85.

²⁹⁰ *Id.* at 1684.

²⁹¹ Samantha de Vries, *Wildlife Trafficking: Is a Fourth Protocol to UNTOC The Answer?*, THE INT’L CTR. FOR CRIM. L. REFORM AND CRIM. JUST. POL’Y (July 19, 2022) <https://icclr.org/2022/07/19/wildlife-trafficking-is-a-fourth-protocol-to-untoc-the-answer/>.

UNTOC should expand and classify wildlife trafficking as an organized crime because it meets their criteria.²⁹² UNTOC defines an organized criminal group as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention.”²⁹³ Moreover, UNTOC defines a structured group as “a group that is not randomly formed for the immediate commission of an offence [sic] and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.”²⁹⁴ Wildlife traffickers are clearly linked to criminal organizations that fit this UNTOC criteria and even use the same routes and networks as drug traffickers.²⁹⁵

The UNTOC instrument provides for the sharing of information and intelligence among countries, as well as the extradition of suspects and the seizure of assets associated with transnational organized crime.²⁹⁶ If UNTOC and CITES members would acknowledge the seriousness of wildlife trafficking, this would enable countries to more effectively track and prosecute criminal networks involved in the illegal wildlife trade.²⁹⁷

Another way that UNTOC could help combat the illegal wildlife trade is through the use of measures such as asset forfeiture and money laundering laws.²⁹⁸ These measures would make it more difficult for criminal groups to profit from the illegal trade in wildlife, which would in turn make the trade less attractive.²⁹⁹ UNTOC also provides for the creation of specialized agencies and units to investigate and prosecute transnational organized crime.³⁰⁰ This could

²⁹² G.A. Res. 55/25, annex I, art. II, ¶ a, United Nations Convention against Transnational Organized Crime (Nov. 15, 2000) [hereinafter G.A. Res. 55/25].

²⁹³ *Id.* at annex I.

²⁹⁴ *Id.*

²⁹⁵ *See generally* Zimmerman, *supra* note 2, at 1672 (“Because organized criminal rings can use the same resources for smuggling wildlife as they do for smuggling narcotics, the illegal wildlife trade is particularly attractive to them.”).

²⁹⁶ *See Id.*

²⁹⁷ *See id.* at 1684-65.

²⁹⁸ *See* G.A. Res. 55/25, *supra* note 292, at annex I.

²⁹⁹ *See generally id.*

³⁰⁰ *Id.*

include units specifically focused on investigating and prosecuting crimes related to the illegal wildlife trade.³⁰¹

UNTOC also provides for the use of special investigative techniques, such as controlled deliveries, undercover operations and listening devices, to gather evidence and disrupt criminal activities.³⁰² Additionally, through the use of joint investigations, UNTOC could be used to strengthen international law enforcement cooperation and coordination.³⁰³ In summary, UNTOC “could serve as an effective international mechanism for combating transnational organized crime in the illegal wildlife trade.”³⁰⁴ It provides a legal framework for cooperation among countries, establishes measures to disrupt criminal activities, and creates specialized agencies and units to investigate and prosecute transnational organized crime, including the illegal wildlife trade.³⁰⁵

IV. CONCLUSION

The illegal wildlife trade in the Americas contributes to the decline of biodiversity, as well as the extinction of many species.³⁰⁶ The consequences of wildlife trafficking in Latin America extend beyond the region’s borders. The illegal trade of wildlife is a global problem, and many of the animals that are illegally harvested and traded in Latin America are ultimately destined for markets in other parts of the world, including the United States. This global trade fuels the illegal wildlife trade and perpetuates the cycle of exploitation and extinction.

³⁰¹ *See id.*

³⁰² *See* U.N. OFF. ON DRUGS AND CRIME, *Implementation of the United Nations Convention Against Transnational Organized Crime: Needs Assessment Tools*, at 53-54, (Aug. 2016), https://www.unodc.org/documents/organized-crime/tools_and_publications/16-02938_eBook.pdf.

³⁰³ *See* G.A. Res. 55/25, *supra* note 292, at annex I.

³⁰⁴ *See* Zimmerman, *supra* note 2, at 1684.

³⁰⁵ *See id.*

³⁰⁶ University of Helsinki, *Illegal And Unsustainable Wildlife Trade is Affecting All of Us – What Can We Do About It?*, SCIENCE DAILY (Oct. 13, 2021), <https://www.sciencedaily.com/releases/2021/10/211013104605.htm#:~:text=Species%20loss%20may%20cause%20a,crops%2C%20and%20other%20ecosystem%20services.>

Wildlife trafficking in Latin America is a serious problem that requires a comprehensive and coordinated response from all stakeholders. This includes governments, conservation groups, international organizations, and the private sector. To effectively combat wildlife trafficking, countries in the region must increase resources for conservation and enforcement, strengthen relevant laws, and increase cooperation and coordination among all stakeholders.³⁰⁷ Additionally, to address the root causes of wildlife trafficking, it is necessary to reduce the demand for illegal wildlife products by raising awareness of its illegality and promoting sustainable alternatives.³⁰⁸

Nevertheless, there is a glimmer of hope in making significant progress against wildlife trafficking. Brazilian Animal Scientist Juliana Machado Ferreira said, “I have never heard as much about wildlife trafficking in the mainstream media as I do now. Consumers are little by little becoming aware that they should be looking for some kind of certification of origin for the products they buy.”³⁰⁹ For Ferreira, governments are moving slowly, but “finally understanding their responsibility in addressing environmental issues” like animal trafficking.³¹⁰ Only by working together can society effectively protect the region’s wildlife and biodiversity for future generations.

³⁰⁷ See generally See AM. BAR ASS’N RULE OF L. INITIATIVE, *supra* note 1, at 48–49.

³⁰⁸ See *id.* at 49.

³⁰⁹ Ryan Schleeter, *Ask an Amazon Expert: What it Will Take to Stop Wildlife Trafficking*, NAT’L GEOGRAPHIC (Oct. 19, 2023), <https://education.nationalgeographic.org/resource/ask-amazon-expert-what-it-will-take-stop-wildlife-trafficking>.

³¹⁰ *Id.*