

Exhibit F:
Declaration of Rodney Scott

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

<p>STATE OF TEXAS,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>JOSEPH R. BIDEN, JR., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 4:21-cv-00579-P</p>
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DECLARATION OF RODNEY S. SCOTT

I, Rodney S. Scott, pursuant to 28 U.S.C. § 1746, based upon my personal knowledge, and documents and information made known or available to me as of the time of signature hereby declare as follows:

1. I served as the Chief, U.S. Border Patrol (USBP), of U.S. Customs and Border Protection (CBP) from February 2, 2020, to August 14, 2021. My tenure as Chief, USBP spanned both the Presidential Administration of Joe Biden as well as Donald Trump. As Chief, I served as the senior most official in CBP responsible for implementing Title 42 Authority between the ports of entry. I honorably retired on August 14, 2021, after serving more than 29 years as a U.S. Border Patrol agent. Prior to serving as the Chief of USBP, I was the Chief of the San Diego Sector. That Sector (a term for the geographic demarcation of a particular area of responsibility within USBP) includes approximately 60 linear miles of border shared with Mexico and 931 miles of coastal border, with approximately 2,200 Border Patrol Agents. I have also served in various other leadership positions in USBP, including Chief Patrol Agent of the El Centro

Sector; Deputy Chief Patrol Agent at San Diego Sector; Patrol Agent in Charge at the Brown Field Station in San Diego Sector; Assistant Chief in CBP's Office of Anti-Terrorism in Washington, D.C.; and Director/Division Chief for the Incident Management and Operations Coordination Division at CBP Headquarters.

2. In my position as the Chief of USBP, I was the highest ranking official within USBP, responsible for executing the missions of the Department of Homeland Security (DHS), CBP, and USBP. The USBP is the primary federal law enforcement organization responsible for preventing the entry of terrorists and their weapons and for preventing the illicit trafficking of people and contraband between ports of entry. USBP has a workforce of over 21,000 personnel who support or directly patrol the border of the United States in-between the legal Ports of Entry. As Chief, I was also responsible for the daily operations of USBP, including the development and implementation of all nationwide policy decisions.
3. I am familiar with the Centers for Disease Control and Prevention (CDC) Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists (Mar. 20, 2020) (CDC Order or Title 42) and subsequent extensions and amendments, as well as CBP's role in assisting with implementing this Order.
4. U.S. Border Patrol equipment and facilities are limited and do not allow for social distancing or isolation of individuals as recommended by CDC. The

significant volume of migrants encountered by USBP, which is currently averaging over 6,000 per day, make COVID testing impractical.

5. I am familiar with the U.S. District Court for the District of Columbia's November 18, 2020, order (District Court Order) in *P.J.E.S. v. Wolf, et al.*, No. 1:20-cv-02245 (D.D.C. August 14, 2020), that, among other things, certified a class of unaccompanied alien children who are or will be in U.S. government custody and would be expelled consistent with the CDC Order, generally discussed above. I also understand that the District Court Order enjoined CBP from "expelling the Class Members from the United States under the CDC Order Process, whether pursuant to an Order issued by the Director of the Centers for Disease Control and Prevention under the authority granted by the Interim Final Rule, 85 Fed. Reg. 16559-01, or the Final Rule, 85 Fed. Reg. 56,424-01." I further understand that the U.S. District Court for the District of Columbia denied the government's request for a stay pending appeal.
6. On November 18, 2020, under my guidance, USBP headquarters issued guidance on the District Court's preliminary injunction to all USBP Field Chiefs and Field Deputies for immediate implementation in their Area of Responsibility. Specifically, the guidance provided that operational procedures must be amended to immediately prohibit the expulsion of class members under Title 42. Additionally, the guidance further confirmed that all unaccompanied alien children (UAC) must be processed consistent with applicable law and policy.

7. On or about January 29, 2021, the U.S Court of Appeals for the D.C. Circuit granted the federal government's motion to stay the preliminary injunction pending appeal in *P.J.E.S. v. Pekoske, et al.*, No. 1:20-cv02245. Therefore, DHS was allowed to immediately resume expelling unaccompanied alien children under Title 42 and return to pre-November 18th, 2020, Title 42 processing.
8. USBP acted immediately and instructed personnel to resume Title 42 processing and expulsions consistent with the granted stay. Consistent with well-established delegated authority within the USBP Headquarters organizational structure, leadership within the USBP Law Enforcement Operations Directorate (a Directorate directly subordinate to the Chief, U.S. Border Patrol) provided guidance to field chiefs and field deputies to immediately resume implementation of Title 42 for UAC. Simultaneously, I was informed of this action and concurred.
9. On or about January 30, 2021, at approximately 6:03 PM I received written instructions via electronic email from the Acting Commissioner of U.S. Customs and Border Protection, saying that DHS had decided not to act on the approved stay and that USBP was prohibited from resuming Title 42 processing or expulsions of unaccompanied alien children until approved by DHS. I was not directly or indirectly included in any pre-decision deliberations prior to this DHS guidance, nor was I provided any information to support that this decision was formulated based on new medical evidence. Furthermore, in

my opinion this decision was in direct contrast to the governments' evidence-based arguments provided during the appeal of this initial injunction.

10. On or about January 31, 2021, I sent an email to Acting Commissioner Miller saying:

[T]his email serves as my objection to any decision to voluntarily carve out a class of individuals from the CDC order. It is my understanding that the sole intent of the CDC order is to protect America by preventing the further introduction of COVID-19 into the US population. As highlighted in discussions with CDC when the original orders were issued, any voluntary deviations from that order place U.S. citizens, our personnel and the migrants themselves at increased risk of contracting COVID-19. Additionally, this decision will increase the pressure placed on the limited medical capability in the local communities along the border.

11. To date, I have not been provided any medical rationale or scientific evidence to justify excluding any specific group or class of individuals from Title 42.
12. This is a significant departure from well-established practices and protocols. In my experience, USBP leadership, and specifically the Chief of the USBP or his or her delegate, has been included in detailed briefings and deliberations to facilitate informed decision-making prior to implementing a significant policy decision such as this.
13. Based on my experience, knowledge, and previous briefings from CDC, I believe that this decision was arbitrary and lacked any factual or evidentiary basis.
14. Furthermore, based on previous briefings provided by CDC and exposure modeling conducted by CBP, I believe this arbitrary decision and the associated public statements that followed directly attributed to a significant

surge in illegal entries by unaccompanied alien children and significantly increased the risk of introducing COVID-19 and its variants into the U.S. population.

15. I am also familiar with CBP's processing of aliens who were encountered as members of family units.

16. Acting under the CDC's Order, prior to the January of 2021, members of family units were largely expelled from the United States under Title 42 or put into an alternate pathway that prevented their release into the interior of the United States.

17. Since approximately January of 2021, CBP has encountered an increasing number of members of family units along the southwest border.

18. In addition to the policy exception for UAC, I believe that a series of political decisions resulted in a significant number of illegal aliens, classified as family units, being granted exemption from Title 42 expulsions.

19. For example, after the change in administrations and during my service as the Chief of the Border Patrol, the Government of Mexico began refusing to accept the return of certain aliens at certain ports of entry, to include family units.

20. In my opinion, during prior administrations, the Department of State would have been engaged to assert political pressure on Mexico to encourage them to find a joint solution. To my knowledge the Biden Administration did not apply such pressure here, and the United States Government accepted Mexico's unilateral decision and allowed them to control the situation. This directly

resulted in a significant increase in aliens being processed under Title 8 and then released into the United States.

21. For example, in October 2020, over 91% of total encounters by USBP were processed under Title 42 and expelled in an average of 90 minutes. As of August 1, 2021, nearly 53% are being granted exemptions from Title 42 with the majority ultimately being released into the United States.

22. As a routine process, CBP seeks to quickly transfer all aliens—other than UAC—to U.S. Immigration and Customs Enforcement (ICE) who cannot be immediately removed or expelled.

23. However, ICE accepts a small fraction of the total alien family units apprehended by CBP and processes them for detention that normally will not exceed 20 days or for alternatives to detention and then release the family units into the United States.

24. When ICE is unable or unwilling to assume custody of any alien, CBP will process the alien for a Notice to Appear or a Notice to Report and then release the alien at a local transportation hub or to a non-governmental organization that provides assistance to migrant populations.

25. Today, the vast majority of family unit aliens are apprehended, processed, and then released into the United States. They are not tested for COVID-19 prior to their release from CBP custody.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief, as of the time of signature.

Executed this 23rd day of August 2021.



Rodney S. Scott
Retired Chief, U.S. Border Patrol