

**United States District Court
Northern District of Texas
Dallas Division**

The State of Texas, *et al.*,
Plaintiffs,

v.

Joseph R. Biden, Jr., in his official
capacity as President of the United
States, et al.,
Defendants.

Civ. Action No. 3:22-cv-00780-M

**SUPPLEMENTAL DECLARATION IN SUPPORT OF RESPONSE TO
DEFENDANTS' MOTION TO DISMISS**

The State of Texas submits the following declaration, attached hereto, in support of its
Response to Defendants' Motion to Dismiss:

Date: January 30, 2024

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on January 30, 2024, which automatically serves all counsel of record who are registered to receive notices in this case.

/s/ Susanna Dokupil
SUSANNA DOKUPIL

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**SUPPLEMENTAL DECLARATION IN SUPPORT OF RESPONSE TO
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DECLARATION OF RODNEY SCOTT

**United States District Court
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DECLARATION OF RETIRED UNITED STATES BORDER PATROL CHIEF RODNEY SCOTT

1. My name is Rodney Scott, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

2. I served as the 24th Chief of the United States Border Patrol (“USBP”). Prior to serving as Chief of the USBP, I served as the San Diego Sector Chief Patrol Agent, El Centro Sector Chief Patrol Agent, the San Diego Sector Deputy Chief Border Patrol Agent, Patrol Agent in Charge at the San Diego Sector’s Brown Field Station, Assistant Chief at the United States Customs and Border Protection (“CBP”) Office of Anti-Terrorism in Washington D.C., and Division Chief and Director for the Incident Management Operations Coordination Division at the United States Customs and Border Protection Headquarters, in addition to a variety of different positions and roles, totaling nearly thirty years with the agency.

3. After retiring from the USBP, I joined and currently serve at the Texas Public Policy Foundation as a Distinguished Senior Fellow for Border Security and Immigration.

4. When it comes to national security, ensuring that our nation effectively monitors and manages who enters our homeland remains of paramount importance. At a high level, the term border security means knowing and controlling who and what enters our nation. Effective border security would be achieved through immigration and customs laws, which set the legal entrance

criterion. These goals would be achieved through proper implementation and enforcement of federal laws and through compliance with agency rule-making protocols.

5. Based on my experience, when managing immigration, there are two key factors: push factors and pull factors. Push factors are generally considered factors that encourage a population to leave its home; alternatively, pull factors are alternatively those factors that draw a population to another area or place. Examples of push factors are poverty, violence, political issues, or dissatisfaction with one's life at home. In an environment with strong push factors, managing the pull factors is extremely critical.

6. While running the USBP, I observed the United States begin to release migrants into the nation within days, and sometimes within hours of being interdicted. As a result of this process, few families are sent back to their home countries, despite a lack of valid claims to remain. The United States created an intricate system of pull factors for illegal migration due to a decreased enforcement of immigration laws.

7. Another one of these pull factors is an increase in processing speed. Anything that results in people being processed very quickly results in increased flow of migration.

8. Anything that results in people being released into the United States before their immigration case is completely and fully adjudicated directly results in more people coming to the southwest border to try to get into the country.

9. One of the reasons why this occurs is due to human nature. Individuals who have been released into the United States may not be aware of the laws they need to follow, but they are aware that they have been released. As a result, they often inform their friends and acquaintances about their release, which creates a significant pull factor.

10. Whenever someone is released into the United States for whatever reason, it unquestionably increases the flow of migration. This has been true for decades. Every single rule, regulation, or measure that results in immigrants being released into the United States instead of being detained or deported creates a pull factor that will increase illegal immigration as a whole.

11. In my experience, the number one pull factor that increases illegal migration is the probability of release into the United States. Probability of release is also the number one factor that the government can control to decrease illegal migration. My staff and I advised the Biden Administration of this fact on several occasions.

12. As Chief, I assigned personnel to provide informational and educational briefings for the Biden transition teams. A key point made in numerous briefings highlighted the fact that releasing any specific class, group, or nationality of illegal aliens into the United States has historically resulted in an increase of illegal entries of the respective class, group, or nationality. This point was emphasized to explain the objectives of various enforcement programs to include, but not limited to, the Migrant Protection Protocols (MPP), targeted prosecution initiatives, and detention requirements. Preventing the release of aliens into the US through rapid removal, detention, or MPP consistently resulted in a decrease in illegal entries associated with the affected class, group, or nationality.

13. When the United States implements toughened enforcement protocols and avoids expediting processing, there are fewer unauthorized entries. While working for the USBP, under the Biden Administration, I observed the USBP shift its focus from border security to immigration processing. This means that border patrol agents are severely limited in their ability to patrol the border. Agents have been directed to prioritize transportation and processing, reducing the total time that an alien is in custody, instead of maintaining situational awareness and physically patrolling the border. The result is that the majority of agent hours are spent at the border patrol station, or transporting migrants to processing centers, or back and forth from hospitals.

14. When the flow of immigration increases, and at the same time agents are being pulled off patrol to process people at the entry points, more illegal immigrants will simply cross the border into the United States without ever being processed because the Border Patrol is stretched too thin to catch everyone and process them according to the law.

15. The massive increase in illegal immigration has created a crisis in which cartels can essentially control where the Border Patrol agents will be by sending an influx of migrants to one location to draw all the enforcement authority, allowing cartels to conduct whatever nefarious activities they may be up to in the now-unguarded sections of the border while the agents are pulled away to deal with the influx.

16. As a result of the change from enforcement to processing, the Biden Administration has now implemented the new Central American Minors Program ("CAM 3.0"), developed while I worked for USBP. The original Central American Minors Program enabled some Central Americans to bring their children to the United States, in a system that required that the individual initially in the country be lawfully present. As I understand it, this has been interpreted to mean that

individuals already in the United States with Permanent Resident Status, Temporary Protected Status, Parole, Deferred Action, Deferred Enforced Departure, or Withdrawal of Removal could seek to have their children join them.

17. This rendition of CAM, CAM 3.0, provides eligibility for the Central American Minors Program to individuals who have a pending asylum application or a pending U-Visa petition filed before May 15, 2021. Under this new program, eligibility to petition has been expanded to allow children to enter the United States if a parent or legal guardian has a pending application or petition as referenced above.

18. CAM 3.0 appears to have been developed while I was still Chief of the USBP without USBP input. I was unable to participate in the development and implementation of the program pursuant to the standard protocols that my leadership team and I would normally utilize. Specifically, when the Department of Homeland Security develops a new rule, it includes an Executive Secretariat, which is an administrative process across the executive branch including the Department of Homeland Security, that allows for proper input. For example, when the Department of Homeland Security Secretariat suggests policy development, the policy or plan would begin in the Secretariat and ultimately be passed to the United States Customs and Border Protection Executive Secretariat where key department stakeholders, such as the Chief of the USBP would provide proper input. Within the United States Customs and Border Protection, there is also a "Bluesheet," process which is a sheet that has sections for the Chief, Executive Commissioner, Field Operations, and key leadership, amongst others, to review and provide input on the proposed policy or plan.

19. Overall, the process, which would be considered a very systematic, administrative system, includes the opportunity for input from a Chief and other leadership, due to the important nature of receiving critical feedback from those who would be directly impacted by a major development, such as CAM 3.0.

20. However, I did not have the opportunity to participate in the process, which was irregular.

21. If provided with the opportunity, I would have advised leadership of the following key flaws with the program. First, while the program considers migrants for refugee status, I have noticed that it almost guarantees parole if the government decides a migrant is not eligible for refugee status. This means that the status of parole, which federal law requires to be evaluated on

a case-by-case basis, has now become a presumption. In particular, 8 CFR § 212.5, the Immigration and Nationality Act requires that “[t]he parole of aliens within the following groups who have been or are detained . . . would generally be justified only on a case-by-case basis for ‘urgent humanitarian reasons’ or ‘significant public benefit.’”¹ Notably, those individuals are not considered admitted, although they are lawfully present.

22. Specifically, under CAM 3.0, statistics in the records in this case indicate to me that the DHS has not evaluated parole eligibility on a case-by-case basis; the CAM PRM Press Guidance from November 5, 2015 noted that of the first set of applications for the program, 96% of applications were approved for either refugee status or parole. Particularly, while only 14% were approved for refugee status, the government then considered and approved 82% for parole. This resulted in only a few applications being denied or undergoing additional review.²

23. The USCIS, in its CAM Parole Communications Plan and Materials indicated that as of July 13, 2017, prior to termination, statistics showed that 69% of applications were approved, with only 1% of applications denied refugee status and parole.³

24. As I understand it, the Trump Administration has admitted that this program was categorically allowing those who applied for CAM to enter the country, through its presumption of eligibility for parole. As a result, USCIS had to reevaluate the program to determine if an avenue existed to assess migrants on a case-by-case basis.⁴

25. Based on my knowledge, under the CAM 3.0, a presumption of parole eligibility has been provided for migrants, who are now allowed into the country while not being evaluated on a case-by-case basis, despite federal law requiring otherwise, in order to obtain this status.

26. DHS has a process that allows paroled aliens whose parole will soon expire to apply for re-parole and continue to remain in the United States. My understanding is that such applications are routinely approved and that, for nearly the vast majority of aliens paroled into the United States through programs such as CAM 3.0, the aliens do not stay in the United States only temporarily. Rather, the majority of the time, their stays are long-term or permanent.

¹ 8 CFR § 212.5, the Immigration and Nationality Act.

² PRM Press Guidance: Central American Minors Program, PRM (November 5, 2015), at 3.

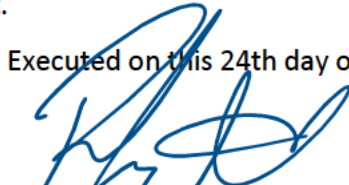
³ USCIS RTQ: Termination of CAM Parole Program, Central American Minors (CAM) Parole Communications Plan and Materials, USCIS, at 4.

⁴ Public Affairs Guidance, U.S. Citizenship and Immigration Services: Office of Public Affairs, USCIS, at 2.

27. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of January 2024.



RODNEY SCOTT