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20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF ARIZONA**

22 Puente Human Rights Movement, et al.,
23 Plaintiffs,

24 v.

25 Mark Brnovich, in his official capacity as
26 Attorney General of Arizona, et al.,
27 Defendants.

28 CV21-446-PHX-JJT

FEDERAL DEFENDANTS'
MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION TO
TRANSFER

1 The Federal Defendants, Alejandro Mayorkas, in his official capacity as Secretary of
2 Homeland Security; David Pekoske, in his official capacity as Senior Official Performing the
3 Duties of Deputy Secretary of Homeland Security; Tracy Renaud, in her official capacity as
4 Senior Official Performing the Duties of the Director of U.S. Citizenship and Immigration
5 Services; Tae D. Johnson, in his official capacity as Acting Director for U.S. Immigration and
6 Customs Enforcement; Troy Miller, in his official capacity as Senior Official Performing the
7 Duties of the Commissioner of U.S. Customs and Border Protection; United States
8 Department of Homeland Security; United States Citizenship and Immigration Services;
9 United States Immigration and Customs Enforcement; and United States Customs and Border
10 Protection, respectfully submit this memorandum in support of Plaintiffs' motion pursuant to
11 Local Rule ("LRCiv") 42.1(a) to transfer this action to District Judge Susan R. Bolton.

12 BACKGROUND

13 In *Arizona v. DHS*, No. CV21-186-SRB (D. Ariz.), Arizona and Montana have alleged
14 that DHS's exercise of its long-recognized enforcement discretion by pausing certain removals
15 for 100 days was unlawful because, *inter alia*, DHS breached a purported commitment under
16 "SAFE Agreements" to consult with the States before enacting various immigration policies.
17 *Arizona* Am. Compl. (ECF No. 12). For the SAFE Agreement with Arizona, Kenneth
18 Cuccinelli, then the Senior Official Performing the Duties of Deputy Secretary of Homeland
19 Security, signed the document, ostensibly on behalf of Federal Defendants, and Arizona
20 Attorney General Mark Brnovich signed on behalf of the Arizona Attorney General's Office
21 and the Arizona Department of Law.¹ *Arizona* Ex. C (ECF No. 12-1)

22 Arizona and Montana (the States) filed their Complaint on February 3, 2021, and have
23 since filed an Amended Complaint and motion for a preliminary injunction on March 8, 2021.
24 *Arizona* Am. Compl. (ECF No. 12); *Arizona* PI Mot. (ECF No. 17). Their motion for
25 preliminary injunction relies, in part, on their argument that DHS violated the Arizona SAFE
26 Agreement. *Arizona* PI Mot. at 14. In opposing the States' motion, Federal Defendants argued
27

28 ¹ DHS also purportedly entered similar agreements with Montana and numerous other states
and localities.

1 that the SAFE Agreement is void and unenforceable, and that Cuccinelli lacked the authority
2 to enter into the agreement. *Arizona* Defs.’ Opp’n at 20-22 (ECF No. 26). The States’ suit is
3 currently pending before Judge Bolton and oral argument is scheduled for April 8, 2021.

4 Plaintiffs in the instant action—*Puente Human Rights v. Brnovich*, No. CV21-446-JJT (D.
5 Ariz.)—are three non-profits that allege that Arizona’s SAFE Agreement violates various
6 statutory and constitutional provisions. *Puente Human Rights* Compl. (ECF No. 1). Plaintiffs
7 also allege that Cuccinelli lacked the authority to enter into the SAFE Agreement. Plaintiffs
8 repeatedly cite *Arizona v. DHS* as evidence of the harm they believe the SAFE Agreement is
9 causing the organizations and their clients. *E.g.*, *Puente* Compl. ¶¶ 3, 8, 18, 80-81. Plaintiffs filed
10 their Complaint on March 16, 2021; there are no pending motions other than the motion to
11 transfer, and the case was assigned to Judge Tuchi on March 31, 2021.

12 ARGUMENT

13 I. Plaintiffs Have Satisfied the Factors in Local Rule 42.1(a) for Transfer.

14 As relevant to Plaintiffs’ motion, Local Rule 42.1(a) provides that a party may move to
15 transfer two or more different cases to a single judge when the party believes that the cases
16 (1) “arise from substantially the same transaction or event;” (2) “involve substantially the same
17 parties or property;” (3) “call for determination of substantially the same questions of law;” or
18 (4) “for any other reason would entail substantial duplication of labor if heard by different
19 Judges.” LRCiv 42.1(a). When considering a motion under Local Rule 42.1(a), “[a] principal
20 factor is whether party economy or judicial economy is substantially served by transfer to
21 another judge.” *City of Phoenix v. First State Ins. Co.*, No. CV-15-00511-PHX-NVW, 2016 WL
22 4591906, at *20 (D. Ariz. Sept. 2, 2016), *aff’d*, No. 16-16767, 2018 WL 1616011 (9th Cir. Apr.
23 4, 2018).

24 Because plaintiffs have demonstrated that all of the factors set forth in Local Rule
25 42.1(a) support transfer here, the Court should grant Plaintiffs’ motion. Most significantly,
26 both *Arizona* and *Puente Human Rights* call for the Court to determine substantially the same
27 question of law: whether the SAFE Agreement is invalid and unenforceable. One of Federal
28 Defendants’ arguments in *Arizona* is that the SAFE Agreement was entered without valid

1 authority. *Arizona* Defs.’ Opp’n at 20. The *Puente* Plaintiffs relatedly argue that the SAFE
2 Agreement is void because Cuccinelli lacked the authority to bind Federal Defendants. *Puente*
3 Compl. ¶¶ 114-138. In addition, Federal Defendants have argued in *Arizona* that the SAFE
4 Agreement is void because it purports to contract away and subdelegate to the States the
5 federal government’s sovereign power to regulate immigration. *See Arizona* Defs.’ Opp’n at
6 21-22. The *Puente* Plaintiffs make the related argument that the SAFE Agreement violates the
7 Supremacy Clause by interfering with the federal immigration power. *Puente* Compl. ¶¶ 139-
8 52; *see also id.* ¶¶ 153-162 (alleging the SAFE Agreement “deprives [certain] persons of their
9 right to a uniform system of laws, regulations and policies determined by the federal
10 government,” ¶ 160). Moreover, the Federal Defendants are parties to both cases, as is
11 Arizona or its Attorney General.

12 Transferring this action, *Puente Human Rights*, to Judge Bolton would substantially serve
13 both judicial economy and party economy. *First*, transfer would eliminate the prospect of two
14 district judges issuing conflicting rulings about Federal Defendants’ obligations under the
15 SAFE Agreements. In both *Arizona* and *Puente Human Rights*, the Court with jurisdiction may
16 find it necessary to decide whether the Arizona SAFE Agreement is valid. Were the Court to
17 invalidate the SAFE Agreement in *Puente Human Rights*, that would in effect erase Arizona’s
18 claim that is based on its SAFE Agreement in *Arizona*. *Second*, these issues were pending before
19 Judge Bolton prior to the filing of this case. The *Arizona* motion for a preliminary injunction
20 has been pending before Judge Bolton since March 8, 2021, and that Court scheduled oral
21 argument for this week. By contrast, *Puente* was assigned to Judge Tuchi only last week.

22 Defendant Brnovich will not be prejudiced by a transfer. Both cases name all Federal
23 Defendants and either the State of Arizona or its Attorney General. The validity of the SAFE
24 Agreement is an issue that has been raised in both suits. If anything, party economy would be
25 substantially served by streamlining proceedings by transferring this action to Judge Bolton.

26 CONCLUSION

27 For these reasons, the Court should grant the motion to transfer.
28

1 RESPECTFULLY SUBMITTED this 6th day of April, 2021.
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