

1 **MARK BRNOVICH**  
2 **ATTORNEY GENERAL**  
(Firm State Bar No. 14000)

3 Joseph A. Kanefield (No. 15838)  
4 Brunn (Beau) W. Roysden III (No. 28698)  
5 Drew C. Ensign (No. 25463)  
6 Anthony R. Napolitano (No. 34586)  
7 Robert Makar (No. 33579)  
8 2005 N. Central Ave  
9 Phoenix, AZ 85004-1592  
10 Phone: (602) 542-8958  
11 [Joe.Kanefield@azag.gov](mailto:Joe.Kanefield@azag.gov)  
12 [Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)  
13 [Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)  
14 [Anthony.Napolitano@azag.gov](mailto:Anthony.Napolitano@azag.gov)  
15 [Robert.Makar@azag.gov](mailto:Robert.Makar@azag.gov)

*Attorneys for Plaintiffs State of Arizona and  
Mark Brnovich in his official capacity*

14 **UNITED STATES DISTRICT COURT**  
15 **DISTRICT OF ARIZONA**

16 State of Arizona; State of Montana; and  
17 Mark Brnovich, in his official capacity as  
Attorney General of Arizona,

18 Plaintiffs,

19 v.

20 United States Department of Homeland  
21 Security; United States of America;  
22 Alejandro Mayorkas, in his official  
23 capacity as Secretary of Homeland  
24 Security; Troy Miller, in his official  
25 capacity as Acting Commissioner of  
26 United States Customs and Border  
27 Protection; Tae Johnson, in his official  
28 capacity as Acting Director of United  
States Immigration and Customs  
Enforcement; and Tracy Renaud, in her  
official capacity as Acting Director of U.S.  
Citizenship and Immigration Services,

Defendants.

No. 2:21-cv-00186-SRB

**MARK BRNOVICH'S RESPONSE  
IN OPPOSITION TO PUENTE  
PLAINTIFFS' MOTION TO  
TRANSFER**

1 Mark Brnovich, Attorney General of the State of Arizona (“Brnovich”), hereby  
2 responds in opposition to the Motion to Transfer *Puente v. Brnovich*, 2:21-cv-446-JJT (D.  
3 Ariz.), to the Honorable Susan R. Bolton (Doc. 33). A transfer is inappropriate under Local  
4 Rule of Civil Procedure (“Local Rule”) 42.1 as the *Puente* Plaintiffs lack standing and the  
5 alleged facts, questions of law, and parties in are not sufficiently similar to those in this  
6 case, *Arizona v. DHS*, 2:21-cv-186-SRB (D. Ariz.).

7  
8 First, the *Puente* Plaintiffs lack standing as they cannot point to any injury from the  
9 implementation of the Memorandum of Understanding (“MOU”, also referred to by *Puente*  
10 Plaintiffs as the “SAFE Agreement”) between Brnovich and the Department of Homeland  
11 Security (“DHS”). *E.g.*, *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160 (2016) (U.S.  
12 CONST., art. III, § 2 “demand[s] that an actual controversy ... be extant at all stages” of  
13 litigation) (internal quotation marks omitted). The MOU has never been operationalized  
14 and DHS has taken steps to terminate the MOU on February 2, 2021, prior to the filing of  
15 the *Puente* Complaint on March 16, 2021. *Compare* DHS Termination Letter, Ex. F, Doc.  
16 12-1 at 37-38, with Compl., *Puente v. Brnovich*, No. 2:21-cv-446-JJT (D. Ariz. Mar. 16,  
17 2021), ECF No. 1 (“*Puente* Complaint”). The *Puente* Plaintiffs’ allegations are limited to  
18 potential future injuries should the MOU be enforced, but the MOU has already been  
19 terminated and Brnovich is not seeking enforcement of the MOU through specific  
20 performance in his case against DHS. *See* Reply in Support of Preliminary Injunction,  
21 Doc. 38 at 14. Therefore, there is no chance for *Puente* Plaintiffs’ alleged harms to ever  
22 become realized through enforcement of the MOU. Brnovich intends to file a motion to  
23 dismiss the *Puente* Complaint within the time set by the Court, but issues of the *Puente*  
24 Plaintiffs’ standing here are a threshold question separate from the issues presented in  
25 *Arizona v. DHS*. *See* Order Granting Motion for Extension of Time, *Puente v. Brnovich*,  
26 No. 2:21-cv-446-JHT (D. Ariz. Mar. 29, 2021), ECF No. 12.

27  
28 Second, these cases do not meet the criteria for related cases set out in Local Rule  
42.1(a) as they do not “(1) arise from substantially the same transaction or event; (2)

1 involve substantially the same parties or property; ... (4) call for determination of  
2 substantially the same questions of law; or (5) [provide] any other reason [that] would  
3 entail substantial duplication of labor if heard by different judges.”<sup>1</sup> The *Puente* Plaintiffs  
4 are alleging legal violations stemming from Brnovich and DHS signing an MOU in January  
5 2021. *Puente* Complaint at ¶¶ 114-178. *Arizona v. DHS* involves substantial questions of  
6 administrative law, and this Court’s recent order has narrowed the currently active  
7 questions to violations of the Administrative Procedure Act (“APA”) and 8 U.S.C. § 1231  
8 by DHS in issuing the Interim Guidance of February 18, 2021. Minute Entry of Apr. 8,  
9 2021, Doc. 42. The MOU is only a small part of the factual record presented by the *Arizona*  
10 Plaintiffs, and its direct enforcement is not being sought in *Arizona v. DHS*. The Interim  
11 Guidance was issued after DHS gave notice of termination of its involvement in the MOU,  
12 and so the *Puente* Plaintiffs’ claims of injuries stemming from the MOU cannot be said to  
13 “arise from substantially the same transaction or event” as the active issues in *Arizona v.*  
14 *DHS*.

15  
16 Further, the addition of private plaintiffs alleging separate claims against all sides  
17 to *Arizona v. DHS* fundamentally changes the nature and focus of the case, and so *Puente*  
18 *v. Brnovich* cannot be said to have “substantially the same parties” as *Arizona v. DHS*. This  
19 also brings about wholly separate issues of law. *Arizona v. DHS* is a challenge to the  
20 legality of the 100-day pause in removals of individuals with final orders of removal set  
21 out in the January 20, 2021, Memorandum and February 18, 2021, Interim Guidance. The  
22 *Puente* Plaintiffs bring claims based on constitutional and statutory provisions not involved  
23 in *Arizona v. Brnovich* at all. *Puente Complaint* at ¶¶ 114-178 (asserting causes of action  
24 under 5 U.S.C. § 3348(d)(1), U.S. CONST. art. VI, cl. 2, U.S. CONST. art. I, § 8, cl. 4, U.S.  
25 CONST. amend. XIV, 42 U.S.C. § 1983, and 28 U.S.C. § 2201 *et seq.*). Even the APA  
26 claims brought by the *Puente* Plaintiffs challenge the validity of the MOU, not either one  
27

---

28 <sup>1</sup> The third parameter of Local Rule 42.1(a) is also inapplicable as this case does not involve a “patent, trademark, or copyright.”

1 of the policies challenged in *Arizona v. Brnovich*. At best, one of six of the *Puente*  
2 Plaintiffs’ causes of action arises under the same statute—the APA—as the causes of action  
3 in *Arizona v. Brnovich*, but the cases seek to prove APA violations in relation to the  
4 issuance of different documents by different administrations. Therefore, none of the  
5 parameters for “related cases” in Local Rule 42.1(a)(1)-(4) apply. With these great  
6 incongruities between the two cases, trying them before different judges would not produce  
7 duplicative efforts, and in fact consolidation would result in very few—if any—efficiencies  
8 at all.

9  
10 Accordingly, this case does not meet the standard for transfer under Local Rule 42.1  
11 and this Court should deny the *Puente* Plaintiffs’ Motion to Transfer.

12 RESPECTFULLY SUBMITTED this 13th day of April, 2021.

13  
14 **MARK BRNOVICH**  
15 **ATTORNEY GENERAL**

16 By /s/ Anthony R. Napolitano

17 Joseph A. Kanefield (No. 15838)

18 Brunn W. Roysden III (No. 28698)

19 Drew C. Ensign (No. 25463)

20 Anthony R. Napolitano (No. 34586)

21 Robert J. Makar (No. 33579)

22 *Assistant Attorneys General*

23 *Attorneys for Plaintiffs Arizona and Arizona*  
24 *Attorney General Mark Brnovich*  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of April, 2021, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF system, which will send a notice of filing to all counsel of record.

/s/ Anthony R. Napolitano