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18 Attorneys for Plaintiffs

19 **UNITED STATES DISTRICT COURT**

20 **DISTRICT OF ARIZONA**

21 Puente Human Rights Movement;  
22 Chicanos Por La Causa, Inc.;

23 and

24 The Florence Immigrant & Refugee Rights  
25 Project, Inc.,

26 Plaintiffs,

27 vs.

Case No. 2:21-CV-00446-JJT

**PLAINTIFFS’ REPLY IN SUPPORT  
OF MOTION TO TRANSFER CASE  
UNDER L.R. CIV. 42.1**

1 Mark Brnovich, in his official capacity as  
2 Attorney General of Arizona;

3 Alejandro Mayorkas, in his official  
4 capacity as Secretary of Homeland  
5 Security;

6 David Pekoske, in his official capacity as  
7 Senior Official Performing the Duties of  
8 Deputy Secretary of Homeland Security;

9 Tracy Renaud, in her official capacity as  
10 Senior Official Performing the Duties of  
11 the Director of U.S. Citizenship and  
12 Immigration Services;

13 Tae D. Johnson, in his official capacity as  
14 Acting Director for U.S. Immigration and  
15 Customs Enforcement;

16 Troy Miller, in his official capacity as  
17 Senior Official Performing the Duties of  
18 the Commissioner of U.S. Customs and  
19 Border Protection;

20 United States Department of Homeland  
21 Security;

United States Citizenship and Immigration  
Services;

United States Immigration and Customs  
Enforcement;

and

United States Customs and Border  
Protection,

Defendants.

22 Defendant Mark Brnovich concedes that *Puente Human Rights Movement v.*  
23 *Brnovich*, No. 2:21-CV-00446-JJT (hereinafter “the *Puente* action”), asserts claims  
24 “against all sides” to *Arizona v. United States Department of Homeland Security*, No. 2:21-  
25 CV-00186-SRB (hereinafter “the *Arizona* SAFE Agreement action”). See Brnovich Opp.  
26 to Transfer Mot. (“Brnovich Opp.”), No. 2:21-CV-00446-JJT, ECF No. 29, at 2. He  
27 further recognizes that the so-called Sanctuary for Americans First Enactment Agreement  
28 (“SAFE Agreement”) at the heart of the *Puente* action is a “part of the factual record

1 presented” in the *Arizona* SAFE Agreement action. *Id.* Either one of these circumstances  
2 is “independently sufficient” to justify transfer and reassignment under Local Civil Rule  
3 42.1, *see Smith v. Sperling*, 2011 WL 4101508, at \*1 (D. Ariz. Sept. 14, 2011), even  
4 setting aside the additional reasons—judicial economy, party economy, eliminating the  
5 risk of conflicting rulings on the same subject by two judges of the same Court—that also  
6 warrant transfer and reassignment, as the *Puente* Plaintiffs and the Federal Defendants  
7 have explained. *See* Pls.’ Mem. in Supp. of Transfer Mot., No. 2:21-CV-00446-JJT, ECF  
8 No. 13 Ex. A, at 5; Fed. Defs.’ Mem. in Supp. of Transfer Mot., No. 2:21-CV-00446-JJT,  
9 ECF No. 27, at 2-3. Defendant Brnovich’s arguments to the contrary fixate on form and  
10 miscast substance. This Court should transfer and reassign the *Puente* action to Judge  
11 Susan R. Bolton, who is already presiding over the *Arizona* SAFE Agreement action.

12         The *Puente* and *Arizona* SAFE Agreement actions “arise from substantially the  
13 same transaction or event[s]” and “call for determination of substantially the same  
14 questions of law” because they both arise from, and continue to contest the lawfulness of,  
15 the same SAFE Agreement and the same immigration policies. L.R. Civ. 42.1(a)(1), (4);  
16 *Smith*, 2011 WL 4101508, at \*3 (finding that cases arose from substantially the same event  
17 where they “ar[o]se from the same alleged actions” by the same group of defendants).  
18 Although Defendant Brnovich has (at least for now) ostensibly set aside any effort to win  
19 “specific performance of” Arizona’s SAFE Agreement, he nonetheless continues to assert  
20 in the *Arizona* SAFE Agreement action that Defendant DHS’s pause on noncitizen  
21 removals is unlawful because it “violates the [SAFE Agreements] between DHS and  
22 Plaintiffs”; that DHS’s alleged noncompliance with the SAFE Agreement’s requirements  
23 “support [Arizona’s] APA claims”; and that Arizona is entitled to a “declaration that  
24 [DHS’s] Removal Moratorium is void” because the SAFE Agreement “recognized” that  
25 such noncompliance “would cause [the parties] irreparable harm.” *See* Reply in Supp. of  
26 Pls.’ Mot. for Prelim. Inj. (“Arizona PI Reply”), *Arizona v. U.S. Dep’t of Homeland Sec.*,  
27 No. 2:21-C-V-00186-SRB, ECF No. 38, at 1, 14. These arguments presuppose the SAFE  
28 Agreement’s validity—precisely the legal issue that Plaintiffs in the *Puente* action ask this

1 Court to resolve. *See Puente* action Compl., No. 2:21-CV-00446-JJT, ECF No. 13 Ex. B,  
2 ¶¶ 1-12, 28-178. It makes no difference that the *Puente* Plaintiffs’ legal claims differ from  
3 Arizona’s claims in the *Arizona* SAFE Agreement action, or that the *Puente* Plaintiffs’  
4 precise grounds for contesting the SAFE Agreement differ from Defendant DHS’s grounds  
5 for doing the same: “Although both cases involve claims based on different theories due to  
6 who is bringing the claims, the claims are based on substantially the same facts.” *Smith*,  
7 2011 WL 4101508, at \*3.

8 Brnovich’s representations that the SAFE Agreement is “only a small part of the  
9 factual record presented by” the *Arizona* SAFE Agreement action and that Arizona  
10 currently is not seeking the Agreement’s “direct enforcement,” Brnovich Opp. at 2, are  
11 nothing more than wordplay. Arizona asserted only days ago in the *Arizona* SAFE  
12 Agreement action that the SAFE Agreement “support[s] [its] APA claims”—an  
13 acknowledgment that the Agreement is one basis upon which it seeks to invalidate the  
14 January 20, 2021 interim immigration policies issued by Acting Secretary of Homeland  
15 Security David Pekoske (the “DHS Memo”) and the (supposedly) “nearly identical Interim  
16 Guidance” issued by Defendant Tae D. Johnson on February 18, 2021.<sup>1</sup> Arizona PI Reply  
17 at 1, 14. That effort, in turn, is the source of at least some of the injuries that Plaintiffs  
18 seek to remedy in the *Puente* action. *See Puente* action Compl., No. 2:21-CV-00446-JJT,  
19 ECF No. 13 Ex. B, ¶¶ 1-12, 83-93.

20 Moreover, precisely because the *Puente* and *Arizona* SAFE Agreement actions arise  
21 from the same SAFE Agreement and immigration policies, and because the *Puente*  
22 Plaintiffs have sued “all sides” of the *Arizona* SAFE Agreement action, Brnovich Opp. at  
23 3, both cases “involve substantially the same parties,” L.R. Civ. 42.1(a)(2), and transfer  
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25 <sup>1</sup> To be clear, Defendant Brnovich still relies on the SAFE Agreement in seeking a  
26 preliminary injunction against Defendant Johnson’s Interim Guidance, notwithstanding  
27 Judge Bolton’s denial of an injunction as to Part C of the separate DHS Memo. *See*  
28 *Arizona* PI Reply at 1, 14; *see also* Minute Entry of Apr. 8, 2021, *Arizona v. U.S. Dep’t of*  
*Homeland Sec.*, No. 2:21-C-V-00186-SRB, ECF No. 42.

1 and reassignment of the *Puente* action to Judge Bolton will not “fundamentally change[]  
 2 the nature and focus” of Arizona’s lawsuit, Brnovich Opp. at 3. It is immaterial that the  
 3 *Puente* Plaintiffs are not also parties to the *Arizona* SAFE Agreement action; Local Civil  
 4 Rule 42.1(a) “does not require the parties to be identical in identity, number and position.”  
 5 *Smith*, 2011 WL 4101508, at \*3. And it is certainly practicable—not to mention more  
 6 efficient—for a single judge of this Court to resolve the central issues common to both  
 7 actions while also addressing any substantive or procedural matters unique to each.<sup>2</sup>

8 Finally, Defendant Brnovich’s argument that the *Puente* Plaintiffs lack standing is  
 9 irrelevant to whether the *Puente* action is sufficiently related to the *Arizona* SAFE  
 10 Agreement action to warrant transfer and adjudication by one judge rather than two. In  
 11 any event, the argument rests on Brnovich’s artful but (as explained above) incorrect  
 12 contention that he is no longer relying on the SAFE Agreement to prosecute the *Arizona*  
 13 SAFE Agreement action and invalidate Defendant DHS’s pause on removals, which is one  
 14 source of the injuries being suffered by the *Puente* Plaintiffs.<sup>3</sup> If anything, Brnovich’s  
 15 argument illustrates the degree to which the facts and legal issues underlying the *Puente*  
 16 and *Arizona* SAFE Agreement actions are intertwined.

17 For the foregoing reasons, the *Puente* Plaintiffs’ motion should be granted and the  
 18 *Puente* action transferred and assigned to Judge Bolton.

21 \_\_\_\_\_  
 22 <sup>2</sup> Contrary to Defendant Brnovich’s suggestion, the *Puente* Plaintiffs seek only transfer and  
 23 reassignment of the *Puente* action to the same judge presiding over the *Arizona* SAFE  
 24 Agreement action—not consolidation of the two cases. *See* Brnovich Opp. at 3  
 25 (contending that “consolidation would result in very few—if any—efficiencies”).

26 <sup>3</sup> Defendant Brnovich’s curious contention that the SAFE Agreement “has already been  
 27 terminated,” Brnovich Opp. at 1, is at odds both with Arizona’s recent reliance on the  
 28 Agreement in pressing its preliminary-injunction motion in the *Arizona* SAFE Agreement  
 action, *see* Arizona PI Reply at 1, 14, and with the fact that Arizona has not withdrawn its  
 claim in that action asserting that Defendant DHS’s pause on removals violates the  
 Agreement, *see* *Arizona* SAFE Agreement action Am. Compl., No. 2:21-CV-00446-JJT,  
 ECF No. 13 Ex. C, at 10 & ¶¶ 9, 19-39.

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Respectfully submitted,  
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