

No. 21-16118

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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STATE OF ARIZONA, et al.,  
Plaintiff-Appellants.

v.

U.S. DEPARTMENT OF HOMELAND SECURITY et al.,  
Defendant-Appellees,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
Case No. 2:21-cv-00186-SRB

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**PLAINTIFFS' MOTION FOR TO REINSTATE BRIEFING SCHEDULE**

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AUSTIN KNUDSEN  
ATTORNEY GENERAL

David M. Dewhirst  
*Solicitor General*  
Christian Corrigan  
*Assistant Solicitor General*  
215 N Sanders St.  
Helena, MT 59601  
Telephone: (406) 444-4145  
[David.Dewhirst@mt.gov](mailto:David.Dewhirst@mt.gov)  
*Counsel for the State of Montana*

MARK BRNOVICH  
ATTORNEY GENERAL

Joseph A. Kanefield  
*Chief Deputy & Chief of Staff*  
Brunn ("Beau") W. Roysden III  
*Solicitor General*  
Drew C. Ensign  
*Deputy Solicitor General*  
James K. Rogers  
Anthony R. Napolitano  
Robert J. Makar  
*Assistant Attorneys General*  
2005 N. Central Avenue  
Phoenix, Arizona 85004  
Telephone: (602) 542-5  
[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)  
*Counsel for the State of Arizona and Mark  
Brnovich, Arizona Attorney General*

Dated: September 2, 2021

## INTRODUCTION

Plaintiff-Appellants the States of Arizona and Montana, and Mark Brnovich, Arizona Attorney General, (hereinafter the “States”) respectfully request that this Court reinstate a briefing schedule to govern this appeal. This Court stayed the briefing schedule due to a possible jurisdictional obstacle it perceived: *i.e.*, the post-notice-of-appeal filing of a motion for reconsideration challenge the dismissal of the States’ Complaint—which did not seek reconsideration of the denial of a preliminary injunction that is the actual subject of the appeal here. *See* Doc. 18. All parties subsequently agreed that the reconsideration motion did not actually deprive this Court of jurisdiction. *See* Docs. 19 & 21. Despite this agreement, this Court did not reinstate the briefing schedule.

After the district court denied the States’ motion for reconsideration, the States moved for reconsideration asking, *inter alia*, for this Court to reinstate the briefing schedule now that the putative jurisdictional obstacle had now been cleared in any event. *See* Doc. 23. While deeming that motion a renewed motion for an injunction pending appeal, this Court did not acknowledge the States’ request to reinstate the briefing schedule or act upon that request in any way. *See* Doc. 24.

Respectfully, the States do not understand why this Court has refused to reinstate the briefing schedule now that the jurisdictional obstacle it perceived—which *all* parties agreed did not actually exist—has now been cleared and the States specifically called this fact to this Court’s attention.

To facilitate expeditious resolution of this appeal, the States have now proceeded to file their Opening Brief. (While the briefing schedule is stayed, no rule prevents the States from filing early.) In that light, the States now renew their request for this Court to reinstate the briefing schedule. The States further respectfully request that this Court make Defendants' Answering Brief due 42 days later, which would be the same 42-day period previously in force. *See* Doc. 12. That would make the Federal Defendants' Answering Brief due October 13, 2021. The States additionally request that their Reply Brief be due 21 days later, on November 3, per Circuit Rule 28-3.

### **CONCLUSION**

For the foregoing reasons, the States respectfully request that this Court unstay briefing and reinstate a briefing schedule.

Respectfully submitted,

AUSTIN KNUDSEN  
ATTORNEY GENERAL

David M. Dewhirst  
*Solicitor General*  
Christian B. Corrigan  
*Assistant Solicitor General*  
215 N Sanders St.  
Helena, MT 59601  
Telephone: (406) 444-4145  
[David.Dewhirst@mt.gov](mailto:David.Dewhirst@mt.gov)  
*Counsel for the State of Montana*

MARK BRNOVICH  
ATTORNEY GENERAL

s/ Drew C. Ensign  
Joseph A. Kanefield  
*Chief Deputy & Chief of Staff*  
Brunn (“Beau”) W. Roysden III  
*Solicitor General*  
Drew C. Ensign  
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James K. Rogers  
Anthony R. Napolitano  
Robert J. Makar  
*Assistant Attorneys General*  
2005 N. Central Avenue  
Phoenix, Arizona 85004  
Telephone: (602) 542-5  
[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)  
*Counsel for the State of Arizona and Mark  
Brnovich, Arizona Attorney General*

Dated: August 13, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of September, 2021, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

s/ Drew C. Ensign  
Drew C. Ensign