

Snell & Wilmer  
LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202  
602.382.6000

1 Brett W. Johnson (#021527)  
2 Colin P. Ahler (#023879)  
3 Ryan J. Regula (#028037)  
4 Charlene A. Warner (#037169)  
5 SNELL & WILMER L.L.P.  
6 1 E. Washington St., Suite 2700  
7 Phoenix, Arizona 85004  
8 Telephone: 602.382.6000  
9 Facsimile: 602.382.6070  
10 E-Mail: [bwjohnson@swlaw.com](mailto:bwjohnson@swlaw.com)  
11 [cahler@swlaw.com](mailto:cahler@swlaw.com)  
12 [rregula@swlaw.com](mailto:rregula@swlaw.com)  
13 [cwarner@swlaw.com](mailto:cwarner@swlaw.com)

14 Anni L. Foster (#023643)  
15 General Counsel  
16 Office of Arizona Governor Douglas A. Ducey  
17 1700 West Washington Street  
18 Phoenix, Arizona 85007  
19 Telephone: 602-542-4331  
20 E-Mail: [afoster@az.gov](mailto:afoster@az.gov)

21 *Attorneys for Plaintiff Douglas A. Ducey,*  
22 *Governor of the State of Arizona*

23 IN THE UNITED STATES DISTRICT COURT  
24 FOR THE DISTRICT OF ARIZONA

25 Douglas A. Ducey, Governor of the State of  
26 Arizona, in his official capacity,

No.

27 Plaintiff,

**COMPLAINT**

28 v.

29 Randy Moore, Chief of the United States  
30 Forest Service, in his official capacity;  
31 Camille Calimlim Touton, Commissioner of  
32 the United States Bureau of Reclamation, in  
33 her official capacity; Thomas J. Vilsack,  
34 United States Secretary of Agriculture, in  
35 his official capacity; United States Forest  
36 Service; and United States Bureau of  
37 Reclamation,

38 Defendants.

1 Plaintiff Douglas A. Ducey (“Plaintiff”), for his Complaint against Randy Moore,  
2 Camille Calimlim Touton, Thomas J. Vilsack, the United States Forest Service, and the  
3 United States Bureau of Reclamation (collectively, “Defendants”), allege as follows:

#### 4 **INTRODUCTION**

5 1. An unprecedented crisis has arisen in the State of Arizona that is the creation  
6 of the federal government. Countless migrants are crossing unsecured areas of the border  
7 illegally. The result is a mix of drug, crime, and humanitarian issues the State has never  
8 experienced at such a significant magnitude, resulting in the State bearing the burden of the  
9 federal government’s inaction. Arizona has pleaded with the federal government to act  
10 many times, but such pleas have been either ignored, dismissed, or unreasonably delayed.  
11 Rather than cooperate and work together with Arizona, the federal government has taken a  
12 bureaucratic and adversarial role.

13 2. As a result, Governor Ducey took action to defend the State of Arizona and  
14 its citizens, under the inherent authority of the U.S. Constitution and his authority as  
15 Governor of Arizona, by directing that the gaps in the border wall be filled. Following that  
16 direction and subsequent action to secure Arizona’s border and protect its citizens, the  
17 federal government has asserted that Arizona and Governor Ducey do not have the authority  
18 to take these protective actions. Thus, Governor Ducey files this lawsuit for the Court to  
19 determine important questions of law regarding jurisdiction over land within the State of  
20 Arizona and a state’s interests in protecting itself. If these questions are unresolved, the  
21 federal government will continue to delay, infringe on the Governor’s state of emergency  
22 powers, and endanger the lives and welfare of Arizona citizens and their property.

#### 23 **PARTIES, JURISDICTION, AND VENUE**

24 3. Plaintiff Ducey is the Governor of the State of Arizona. Under Arizona law,  
25 Governor Ducey is the official authorized to declare and respond to states of emergency  
26 within the State. *See* Ariz. Rev. Stat. § 26-303(D). Pursuant to this authority, Governor  
27 Ducey has declared a state of emergency due to the illegal influx of migrants across  
28 Arizona’s southern border that has and continues to overwhelm private, local, and state

1 resources. Defendants’ unlawful overreach by ordering a state agency to cease operations,  
2 which only Governor Ducey has lawful authority to direct under his emergency powers,  
3 regulates and injures Governor Ducey by substantially and immediately restricting his  
4 authority and discretion. In particular, Defendants are attempting to prevent Governor  
5 Ducey from enforcing Executive Order 2022-04, as he is entitled pursuant to A.R.S. § 26-  
6 303(E)(1) and (2), to protect the health and safety of Arizona citizens at the southern border  
7 and throughout the State.

8 4. Governor Ducey is injured further by Defendant United States Forest Service  
9 (“Forest Service”) asserting that, in acting on his emergency powers to enforce Executive  
10 Order 2022-04, the Governor is subject to the federal regulatory approval process that  
11 governs Forest Service land use and occupancy. As stated below, Governor Ducey and the  
12 emergency powers provided to him by A.R.S. § 26-303(D) and (E) are not subject to any  
13 such federal regulations (including the federal Administrative Procedures Act) for the land  
14 in question here because, among other reasons: (a) the land is not federal; and (b) even if it  
15 was, the State—and Governor Ducey by virtue of his emergency powers—has concurrent  
16 jurisdiction. *See Sierra Club v. E.P.A.*, 292 F.3d 895, 899–900 (D.C. Cir. 2002) (“In many  
17 if not most cases the petitioner’s standing to seek review of administrative action is self-  
18 evident.”)

19 5. In addition, standing has routinely been found in pre-enforcement situations  
20 involving the federal government, and those cases are applicable here. *See United Food &*  
21 *Com. Workers Int’l Union, AFL-CIO, CLC v. IBP, Inc.*, 857 F.2d 422, 428 (8th Cir. 1988)  
22 (holding that a plaintiff that would be injured by enforcement of a regulatory statute has  
23 standing to challenge that statute, regardless of whether enforcement threats have  
24 transpired); *Owner-Operator Indep. Drivers Ass’n, Inc. v. Fed. Motor Carrier Safety*  
25 *Admin.*, 656 F.3d 580, 585–87 (7th Cir. 2011) (holding that regulated party had standing to  
26 bring pre-enforcement challenge to rule); *Brackeen v. Haaland*, 994 F.3d 249, 296 (5th Cir.  
27 2021) (“If, as State Plaintiffs alleged, the Secretary promulgated a rule binding on states  
28 without the authority to do so, then State Plaintiffs have suffered a concrete injury to their

1 sovereign interest in controlling child custody proceedings that was caused by the Final  
2 Rule.”).

3 6. Additionally, Governor Ducey serves as the sole State official responsible for  
4 communications between the State of Arizona and the federal government. *See* Ariz. Rev.  
5 Stat. § 41-101(A)(4).

6 7. Defendant Randy Moore is the Chief of the United States Forest Service and  
7 is named in his official capacity.

8 8. Defendant Camille Calimlim Touton is the Commissioner of the U.S. Bureau  
9 of Reclamation and is named in her official capacity.

10 9. Defendant Thomas J. Vilsack is the Secretary of Agriculture and is named in  
11 his official capacity. In this role, Secretary Vilsack oversees the Forest Service and Bureau  
12 of Reclamation and is responsible for enacting rules and regulations and establishing  
13 services that insure the objects of national forests—namely, to regulate their occupancy and  
14 use and preserve the forests from destruction. 16 U.S.C. § 551.

15 10. Defendant Forest Service is a subdivision of the U.S. Department of  
16 Agriculture (“USDA”), an agency of the United States of America. The Forest Service is  
17 generally responsible for managing the United States’ natural resources, including National  
18 Forest System lands, and claims jurisdiction over the land that is the subject of this  
19 litigation.

20 11. Defendant U.S. Bureau of Reclamation (“BOR”) is a subdivision of the  
21 Department of the Interior (“DOI”), an agency of the United States of America. BOR is  
22 responsible for reviewing and issuing use permits on Reclamation land, facilities, or  
23 waterbodies. *See* 43 C.F.R. § 429 *et seq*; Reclamation Manual LND 08-01 at 7 (Sept. 16,  
24 2021).

25 12. This Court has jurisdiction under 28 U.S.C. §§ 1331, and 2201-02.

26 13. Venue in the District of Arizona is proper under 28 U.S.C. § 1391(e) because  
27 (a) a substantial part of the events and omissions giving rise to the claim occurred in this  
28 district—namely, the crisis at the Arizona southern border and issuance of Executive Order

1 2022-04, and (b) a substantial part of property that is the subject of the action—the  
2 Roosevelt Reservation—is situated in the district.

### 3 FACTUAL ALLEGATIONS

4 14. The citizens of Arizona are experiencing an unprecedented crisis at the State’s  
5 southern border, caused in large part by the federal government’s complete abdication of  
6 responsibility with respect to immigration and national security policy.

7 15. In 2017, the United States government initiated construction of an effective  
8 border wall between the United States and Mexico, including along the southern border of  
9 Arizona. However, the federal government abandoned the effort in 2021, leaving states  
10 without the means or support to continue construction.

11 16. With construction halted, the abandonment of the project left numerous gaps  
12 in the border wall that fail to provide a meaningful barrier across the State, making it  
13 significantly easier for foreign nationals to cross illegally into Arizona. Indeed, the crisis at  
14 the southern border is characterized by a massive, multifold influx of migrants, drugs, and  
15 crime that only continues to increase alongside the federal government’s neglect. The gaps  
16 in the border wall have also created a humanitarian crisis within Arizona as migrants flood  
17 through the border wall gaps and into Arizona’s border towns, which quickly became  
18 overwhelmed.

19 17. In the federal government’s own words, “[t]he last decades have yielded a  
20 dramatic increase in encounters at the [southwest border]” in which “border encounters  
21 more than doubled between 2017 and 2019, and— following a steep drop in the first months  
22 of the COVID-19 pandemic—continued to increase at a similar pace in 2021 and 2022.”  
23 *Implementation of a Parole Process for Venezuelans*, 87 Fed. Reg. 63507 (October 19,  
24 2022).

25 18. The influx of migrants “has been particularly acute in certain border sectors”  
26 in Texas and Arizona, “all of which are at risk of operating, or are currently operating, over  
27 capacity.” *Id.* In Fiscal Year (“FY”) 2022, “the Del Rio, El Paso, and Yuma sectors  
28 encountered almost double the number of migrants as compared to FY 2021 (an 87 percent

1 increase), and a ten-fold increase over the average for FY 2014 - FY 2019.” *Id.*

2 19. This increase in migration “has put a strain on domestic resources, which is  
3 felt most acutely by border communities.” *Id.* Indeed, “local communities have reported  
4 strain on their ability to provide needed social services. Local officials and NGOs report  
5 that the temporary shelters that house migrants are quickly reaching capacity due to the high  
6 number of arrivals, and stakeholders in the border region have expressed concern that  
7 shelters will eventually reach full bed space capacity and not be able to host any new  
8 arrivals.” *Id.*

9 20. Further compounding the crisis, in 2021, the federal government also  
10 terminated the “Remain in Mexico” policy that protected Arizona border towns from floods  
11 of illegal border crossings.

12 21. In addition to this unsustainable humanitarian crisis, the lackluster security at  
13 the border allows bad actors to exploit the crisis through drug and human trafficking and  
14 other crime.

15 22. According to data from the United States Customs and Border Protection, the  
16 Tucson Sector recorded 169 events involving Fentanyl in just the first eight months of 2022,  
17 compared with just 14 events in all of 2019. This represents an 828% increase.

18 23. The Tucson Sector has also seized 561 pounds of Fentanyl in the first eight  
19 months of 2022, which is more than 2019 through 2021 combined.

20 24. According to data from the Federal Bureau of Investigation, Arizona has  
21 significantly outpaced the national average each year for violent crime offenses between  
22 2011 and 2020. These offenses include homicide, rape, robbery, and aggravated assault.

23 25. Moreover, the Tucson Sector has already recorded the highest number of  
24 weapon and ammunition seizure events in 2022 than in the previous four years.

25 26. The county lines of Cochise County include part of Arizona’s southern  
26 border. According to data from the eight largest law enforcement agencies in Cochise  
27 County—consisting of Benson, Bisbee, Douglas, Huachuca City, Sierra Vista, Tombstone,  
28 and Willcox Police Departments and the Cochise County Sheriff’s Office—Cochise County

1 experienced a double-digit percentage rise (18%) in violent crime offenses between 2020  
2 and 2021.

3 27. In Huachuca City (which is located in Cochise County), reports of aggravated  
4 assaults in 2021 were at their highest level since 2011.

5 28. In Sierra Vista (which is located in Cochise County), reports of violent crimes  
6 increased by over 20% between 2020 and 2021. In 2021, homicides in Sierra Vista were  
7 also at their highest level in ten years.

8 29. According to the Cochise County Sheriff's Department, homicides in Cochise  
9 County are on the rise. In fact, more homicides were reported in the past two years than in  
10 the nine previous years combined.

11 30. These statistics are just mere samples of the unprecedented wave of crime and  
12 drugs that plague Arizona communities, and especially the State's border towns, due to the  
13 unresolved border crisis.

14 31. Due to the worsening conditions on Arizona's southern border and the crush  
15 of demand on private, local, and state resources, Governor Ducey was left with no choice  
16 but to step in for the federal government to protect the citizens of Arizona.

17 32. Pursuant to his authority under A.R.S. § 26-303, on April 20, 2021, Governor  
18 Ducey declared a state of emergency designed to address the failed policies of the federal  
19 government that have encouraged foreign nationals and criminal organizations to take  
20 advantage of the conditions at the southern border.

21 33. Consistent with that declaration, Governor Ducey deployed the Arizona  
22 National Guard to the Arizona southern border to assist border towns and local law  
23 enforcement with the crisis.

24 34. However, despite their best efforts, simply increasing the number of  
25 personnel was not enough for these small border towns, who bore the brunt of the federal  
26 government's neglect.

27 35. As the crisis became more unsustainable, on September 20, 2021, Governor  
28 Ducey and 25 other Governors requested a meeting with President Biden to collaborate on



1 solutions. No response to that request was ever received. [*See* Ex. 1, Joint Letter on the  
2 Border.]

3 36. The following month, a number of governors joined together and developed  
4 a ten-point plan to address the border crisis. A response was not sent until more than six  
5 weeks later on November 24, 2021, and it did not include a solution that involved securing  
6 the border. [Ex. 2, Letter from DHS Secretary to Ducey.]

7 37. Following continued pleas by government officials at the state and local  
8 levels, in December 2021, DHS offered border towns a small glimmer of hope by  
9 authorizing the U.S. Customs and Border Protection (CBP) to address life, safety,  
10 environmental, and remediation requirements for border barrier projects located within the  
11 Boarder Patrol's Yuma and Tucson Sectors.

12 38. However, as of this filing, more than ten months later, the federal  
13 government's empty promise has yet again gone unfulfilled, as construction on this project  
14 has not begun.

15 39. As crime and drugs continued to pour through gaps in the border wall,  
16 Governor Ducey again exercised his authority by establishing the American Governors'  
17 Border Strike Force with 25 other Governors. This initiative provided a mechanism for  
18 collaboration with other state law enforcement agencies to target criminal activity by those  
19 who exploit Arizona's border to expand their criminal enterprises.

20 40. Even with these actions, the situation on Arizona's border continued to  
21 overwhelm the resources within the state.

22 41. Arizona communities could no longer wait for the federal government to  
23 employ a solution.

24 42. As part of a comprehensive strategy to address the ongoing crises, the Arizona  
25 State Legislature authorized and appropriated almost \$400 million for Fiscal Year 2023 to  
26 fill the gaps in the border wall. The spending authority for this funding was effective on  
27 July 1, 2022.

28 43. Accordingly, on August 12, 2022, Governor Ducey issued Executive Order



1 2022-04 directing the Director of Emergency Management to immediately close the gaps  
2 in Arizona’s southern border wall. [See Ex. 3, Executive Order 2022-04.]

3 44. Shortly after issuing the Executive Order, Governor Ducey authorized the  
4 Arizona Department of Emergency and Military Affairs (“DEMA”) to use the funding  
5 appropriated by the legislature to employ a creative solution that involved closing the gaps  
6 in the border wall, which would relieve the criminal activity and humanitarian crisis that  
7 such gaps allow. Specifically, part of the plan involved double-stacking multi-ton shipping  
8 containers between the gaps in an effort to create a solid, sustainable barrier until the federal  
9 government erected a permanent solution.

10 45. Parts of this barrier at the border are located in a sixty-foot-wide swath of  
11 State land running parallel with the southern border known as the Roosevelt Reservation.

12 46. Upon information and belief, on May 27, 1907, President Theodore Roosevelt  
13 issued Proclamation 758, entitled “Setting Apart As Public Lands A Strip of Land On The  
14 Mexican Frontier.” [See Ex. 4, Roosevelt Proclamation.] The Proclamation “reserved from  
15 entry, settlement or other form of appropriation under the public land laws and set apart as  
16 a reservation, all public lands within sixty feet of the international boundary between the  
17 United States and the Republic of Mexico, within the . . . Territor[y] of Arizona.” [Id.]

18 47. This Proclamation did not cite any statutory authority upon which it relied.  
19 Instead, the Roosevelt Reservation cited only that it was “necessary for the public welfare,”  
20 to reserve the above-described land from “the operation of public land laws and kept free  
21 from obstruction as a protection against the smuggling of goods between the United States  
22 and [the] Republic [of Mexico].” [See *id.*]; see also Ariz. Const. art. I, § 1.

23 48. The shipping containers have proven to be an effective temporary solution, as  
24 nearly 3,820 feet of previously open border near the overwhelmed community in Yuma is  
25 now closed. Indeed, John Modlin, chief of the Border Patrol’s Tucson Sector, explained  
26 that closing these gaps is a helpful strategy because “[i]f Yuma has 10 gaps and people were  
27 crossing all 10 gaps, it’s much more difficult for us to deal with than if Yuma has one or  
28

1 two gaps and the majority of traffic is crossing through those gaps.”<sup>1</sup>

2 49. But rather than allowing Arizona to deal with the crisis the federal  
3 government created, the federal government has not only proven uncooperative, but has  
4 actually taken action to *block* the State from helping its own people.

5 50. For example, on July 7, 2022, the Arizona State Land Department and  
6 Arizona Department of Agriculture requested approval from BOR “for the placement of  
7 fencing materials along the former Yuma Valley Railroad line area,” to assist in keeping  
8 produce safe from contamination by following the protocols established to guard against  
9 another E. coli outbreak following the crippling contamination in 2018.

10 51. On August 9, 2022, BOR responded, *inter alia*, that although it would  
11 “continue to work” with various agencies on “various border barrier and related projects to  
12 address and mitigate current gaps in the border barrier located on Reclamation lands which  
13 contribute to the increased migrant crossings,” a “cultural report assessing the potential  
14 effect of the fence installation on federal lands and within the[] historic feature [of the Yuma  
15 Valley Railroad] will be required.” *See Letter from United States Department of the Interior*  
16 (Aug. 9, 2022).

17 52. Additionally, on September 16, 2022, DEMA notified Coronado National  
18 Forest personnel that it was seeking authorization to place barriers on National Forest land  
19 in all areas with gaps in the border wall.

20 53. However, on October 7, 2022, the Forest Supervisor of the Coronado National  
21 Forest responded with a letter insisting that the Forest Service had not authorized the  
22 placement of any shipping containers and that the State would need to undergo a lengthy  
23 federal regulatory approval process before the State could proceed. [See Ex. 5, Letter from  
24 Coronado National Forest.] Upon information and belief, this regulatory approval process  
25 refers to BOR’s permitting process discussed below. The letter also requested DEMA to  
26 “refrain from any further activity associated with the containers on NFS lands, including

27  
28 <sup>1</sup> See <https://www.fox10phoenix.com/news/migrants-at-arizona-border-unhindered-by-shipping-container-wall>.

1 the use of any equipment, until such time as a proper authorization is secured,” which means  
2 DEMA cannot even remove the containers. [*Id.*]

3 54. However, despite participating in some fruitless phone calls with the agency,  
4 no action was taken to address the State’s concerns.

5 55. Accordingly, on October 7, 2022, DEMA notified the Forest Service that it  
6 intended to close a 10-mile gap in Cochise County—which includes land within the  
7 Roosevelt Reservation—to ensure the safety of Arizona citizens and requested cooperation  
8 from the agency in achieving this vital goal. [Ex. 6, Letter from DEMA to the Forest  
9 Service.]

10 56. After successfully repairing the border gaps in Yuma, DEMA initiated the  
11 process to add double-stacked shipping containers in the same manner to close the gap in  
12 Cochise County. However, upon information and belief, the Forest Service has threatened  
13 to arrest state employees working to close the border wall if they do not cease operations.

14 57. Through their actions and statements, the Forest Service and BOR have made  
15 clear that they claim to exercise exclusive jurisdiction over the Roosevelt Reservation.

16 58. However, even if the State were to submit to BOR’s permitting process, there  
17 is no statutory processing time in which BOR must make a determination on an application  
18 for a use permit. *See* 43 C.F.R. § 429.13(b) (“The processing time depends upon the  
19 complexity of [the] requested use, issues associated with it, and the need for additional  
20 information from [the applicant].”)

21 59. Further, BOR will only approve an application if it determines that the  
22 requested use is appropriate and “not likely to interfere with [BOR’s] project purposes or  
23 operations.” *Id.* § 429.16. Because the “issuance of a use authorization is at Reclamation’s  
24 discretion,” *id.* § 429.15, BOR is not required to issue a use authorization and may approve  
25 or deny the application after reviewing the proposed use, based upon certain enumerated  
26 criteria. *See id.* § 429.14. BOR also does not have a mechanism for a state to request an  
27 emergency exemption to the process to address health, welfare, and safety exigencies for  
28 which the federal government refuses or is unable to address.



1 currently exercised by the President with respect to national security, Article II of the U.S.  
2 Constitution does not explicitly provide for the President to exercise his executive power to  
3 secure land or property without congressional approval. Even further, Article II of the U.S.  
4 Constitution does not allow the President to exercise his executive power for the benefit of  
5 “public welfare.”

6 68. Accordingly, the Roosevelt Reservation was outside of President Roosevelt’s  
7 authority to issue, and as such is unconstitutional as a matter of law and has no force or  
8 effect.

9 69. Therefore, the Forest Service’s and BOR’s claimed jurisdiction over the  
10 Roosevelt Reservation as federal land within the State of Arizona’s borders conflicts with  
11 the State’s sovereignty over that land and is *ultra vires*.

12 70. A live controversy exists that is ripe for determination and that would be  
13 redressable through equitable relief. Through their actions and statements, the Forest  
14 Service and BOR have made clear that they claim to exercise jurisdiction over the Roosevelt  
15 Reservation.

16 71. A judicial declaration with respect to the legal and jurisdictional status of the  
17 Roosevelt Reservation would not interfere with further administrative action, as no permit  
18 application is at issue and a decision would merely clarify whether Defendants can demand  
19 that Governor Ducey undergo its regulatory process. Further, Governor Ducey seeks to  
20 resolve purely legal questions that would not benefit from further factual development.

21 72. Governor Ducey also need not go through the administrative process because  
22 he is not challenging the denial of a permitting decision, but rather the legal status of the  
23 Roosevelt Reservation and the jurisdiction of the Forestry Service and BOR. *See Darby v.*  
24 *Cisneros*, 509 U.S. 137, 154 (1993); *see also Sierra Club v. Trump*, 963 F.3d 874, 891 (9th  
25 Cir.) (discussing D.C. Circuit cases that “reaffirm that review is ordinarily available when  
26 an agency exceeds its delegation of authority”), *cert. granted*, 141 S. Ct. 618 (2020), *and*  
27 *vacated and remanded sub nom. Biden v. Sierra Club*, 142 S. Ct. 46 (2021).

28 73. Governor Ducey seeks a declaration from this Court pursuant to 28 U.S.C.

1 §§ 2201–02, that the Roosevelt Reservation is unconstitutional as a matter of law and has  
 2 no force or effect. Governor Ducey further seeks an injunction barring any federal  
 3 governmental actors, including the Forest Service and BOR, from attempting to exercise  
 4 jurisdiction over the Roosevelt Reservation in the State.

5 **SECOND CLAIM FOR RELIEF**

6 **(Declaratory Judgment in the alternative, 28 U.S.C. § 2201–02)**

7 **(*Ultra Vires Agency Action*)**

8 74. Governor Ducey incorporates and realleges the foregoing paragraphs as  
 9 though set forth here in full.

10 75. Upon information and belief, DHS, DOI, and USDA entered into a  
 11 Memorandum of Understanding on or about March 31, 2006 (“2006 MOU”). [See Ex. 7,  
 12 MOU.] The 2006 MOU states that the “Parties acknowledge that CBP operation and  
 13 construction within the sixty-foot ‘Roosevelt Reservation’ of May 27, 1907 (along the US-  
 14 Mexico border) . . . is consistent with the purpose of those reservations and that any CBP  
 15 activity (including, but not limited to, operations and construction) within the sixty-foot  
 16 reservation[] is outside the oversight or control of Federal land managers.” [Id.] The 2006  
 17 MOU also explicitly states that “DHS, through its constituent bureaus (including CBP), is  
 18 statutorily mandated to control and guard the Nation’s Borders and boundaries, including  
 19 the entirety of the northern and southern land and water borders of the United States.” [Id.  
 20 at Section II.A.] By contrast, the 2006 MOU acknowledges that DOI and USDA “have  
 21 responsibility for enforcing Federal laws relating to land management, resource protection,  
 22 and other such functions on Federal lands under their jurisdiction.” [Id. at Section III.B.]  
 23 Upon information and belief, the 2006 MOU is still in effect among these federal entities.

24 76. Upon information and belief, the Forest Service is an agency of USDA. Upon  
 25 information and belief, BOR is an agency of DOI. Accordingly, both the Forest Service and  
 26 BOR are bound by the 2006 MOU among their respective federal departments.

27 77. Furthermore, upon information and belief, DHS is the agency specifically  
 28 designated for national security determinations. DHS has fifteen components, including

1 U.S. Citizenship and Immigration Services and CBP. Because the Forest Service and BOR  
2 are not components of the fifteen enumerated DHS offices, they have no authority to make  
3 determinations that affect national security interests.

4 78. As such, the Forest Service and BOR are aware, for these and other reasons,  
5 that they do not have jurisdiction over the Roosevelt Reservation.

6 79. A live controversy exists that is ripe for determination and that would be  
7 redressable through equitable relief. Through their actions and statements, the Forest  
8 Service and BOR have made clear that they claim to exercise jurisdiction over the Roosevelt  
9 Reservation.

10 80. Alleging in the alternative and therefore assuming that the Roosevelt  
11 Reservation is constitutional, the Forest Service's and BOR's expressed claims of  
12 jurisdiction over the Roosevelt Reservation conflict with their designated authority and are  
13 therefore *ultra vires*. See e.g., *Sierra Club*, 963 F.3d at 891; *Biden*, 142 S. Ct. 46 (2021).

14 81. Accordingly, Governor Ducey seeks a declaration from this Court pursuant  
15 to 28 U.S.C. §§ 2201–02 that neither the Forest Service nor BOR have jurisdiction over the  
16 areas of the Roosevelt Reservation in the State over which they have respectively claimed  
17 jurisdiction.

### 18 **THIRD CLAIM FOR RELIEF**

#### 19 **(Declaratory Judgment in the alternative, 28 U.S.C. § 2201–02)**

#### 20 **(Concurrent State Jurisdiction)**

21 82. Governor Ducey incorporates and realleges the foregoing paragraphs as  
22 though set forth here in full.

23 83. A state generally has complete jurisdiction over the lands within its exterior  
24 boundaries. See *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2493 (2022) (citing U.S.  
25 Const. Amdt. 10). The Roosevelt Reservation is within the State's exterior boundaries.

26 84. However, even assuming that the Roosevelt Reservation is constitutional (it  
27 is not), Governor Ducey alleges further that when Arizona was admitted to the Union, the  
28 United States did not retain exclusive jurisdiction over the Roosevelt Reservation. See *State*



1 v. *Galvan-Cardenas*, 165 Ariz. 399, 402 (1990). As such, the State and the federal  
2 government have concurrent jurisdiction over the Roosevelt Reservation.

3 85. A live controversy exists that is ripe for determination and that would be  
4 redressable through legal and equitable relief. Through their actions and statements, the  
5 Forest Service and BOR have made clear that they claim to exercise exclusive jurisdiction  
6 over the respective areas of the Roosevelt Reservation, to the exclusion of the State.

7 86. Accordingly, Governor Ducey seeks a declaration from this Court pursuant  
8 to 28 U.S.C. §§ 2201–02 that the State has concurrent jurisdiction with the appropriate  
9 federal governmental entity over those parts of the Roosevelt Reservation located in the  
10 State.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Declaratory Judgment, 28 U.S.C. §§ 2201–02)**

13 **(Article I, Section 10 and Article IV, Section 4 of the United States Constitution)**

14 87. Governor Ducey incorporates and realleges the foregoing paragraphs as  
15 though set forth here in full.

16 88. Article IV, Section 4 of the United States Constitution requires that the U.S.  
17 “shall . . . protect each of the [States] against Invasion . . . .”

18 89. Article I, Section 10 of the United States Constitution allows a State, when  
19 “actually invaded, or in such imminent Danger as will not admit of delay,” to “lay any Duty  
20 of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or  
21 Compact with another State, or with a foreign Power, or engage in War,” without  
22 congressional authority.

23 90. Governor Ducey’s actions authorizing DEMA to close gaps in the border wall  
24 are a temporary response to the overwhelming emergency crises at the border. The crises  
25 place the State and its citizens in such imminent danger as will not allow delay, which is  
26 why Governor Ducey entered and seeks to enforce Executive Order 2022-04—to protect  
27 the health and safety of Arizona citizens at the southern border and throughout the State.  
28 Governor Ducey’s actions authorizing DEMA to close gaps in the border wall also result

1 from the federal government's failure to protect the State pursuant to the U.S. Constitution.

2 91. However, based upon the subject federal agency action from the Forest  
3 Service and BOR, the federal government has expressed an intent to prevent the State from  
4 protecting itself subject to Article 1, Section 10 of the U.S. Constitution, while  
5 simultaneously abdicating its duties under Article IV, Section 4 of the U.S. Constitution to  
6 protect the State from the current emergency crises at the border.

7 92. As such, a live controversy exists that is ripe for determination and that would  
8 be redressable through legal and equitable relief. Accordingly, Governor Ducey seeks a  
9 declaration from this Court pursuant to 28 U.S.C. §§ 2201–02 that the State has the  
10 constitutional authority to take immediate temporary steps as described in Paragraphs 42-  
11 45, *supra*, to stem the imminent danger of criminal and humanitarian crises related to the  
12 Arizona border.

### 13 **FIFTH CLAIM FOR RELIEF**

14 **(Declaratory Judgment in the alternative, 28 U.S.C. §§ 2201–02)**

15 **(*Ultra Vires* Agency Action)**

16 93. Governor Ducey incorporates and realleges the foregoing paragraphs as  
17 though set forth here in full.

18 94. The Forest Service has asserted that it requires the State to obtain a BOR use  
19 permit pursuant to 43 C.F.R. § 429, *et seq.*

20 95. A live controversy exists that is ripe for determination and that would be  
21 redressable through equitable relief. Through its actions and statements, Defendants have  
22 made clear that they intend to exercise jurisdiction over the Roosevelt Reservation.

23 96. Alleging in the alternative that the Roosevelt Reservation is unconstitutional,  
24 but presuming that the Forest Service and BOR has jurisdiction over its asserted areas of  
25 the Roosevelt Reservation, they at most possess an easement over the State's underlying  
26 possession of the land subject to the Roosevelt Reservation. Accordingly, its attempt to  
27 assert sole jurisdiction over the Roosevelt Reservation is outside its scope of authority and  
28 is *ultra vires*.



1 C. In the alternative, declare that neither the Forest Service nor BOR have  
2 jurisdiction over the areas of the Roosevelt Reservation in the State of Arizona over which  
3 the Forest Service and BOR have respectively claimed jurisdiction;

4 D. In the alternative, declare that the State of Arizona has concurrent jurisdiction  
5 with the appropriate federal governmental entity over those parts of the Roosevelt  
6 Reservation located in the State;

7 E. In the alternative, declare that the Forest Service and BOR have only an  
8 easement over the areas of the Roosevelt Reservation they claim jurisdiction and the land  
9 is appropriately State lands;

10 F. In the alternative, declare that the circumstances on Arizona's southern border  
11 present a public nuisance which the State is authorized to abate;

12 G. Permanently enjoin any federal governmental actors, including the Forest  
13 Service and BOR, from attempting to exercise exclusive jurisdiction over the Roosevelt  
14 Reservation in the State and allow the State to take appropriate actions, separately and in  
15 coordination with federal partners, to protect its citizens and their property;

16 H. Awarding Plaintiff the reasonable costs and expenses of this action, including  
17 attorneys' fees; and

18 I. Grant other such relief as may be just and proper.  
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DATED this 21st day of October, 2022.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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Brett W. Johnson  
Colin P. Ahler  
Ryan J. Regula  
Charlene A. Warner  
1 E. Washington St., Suite 2700  
Phoenix, AZ 85004

Anni L. Foster  
OFFICE OF ARIZONA GOVERNOR  
DOUGLAS A. DUCEY  
1700 West Washington Street  
Phoenix, Arizona 85007

*Attorneys for Plaintiff Douglas A.  
Ducey, Governor of the State of  
Arizona*

Snell & Wilmer  
L.L.P.  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202  
602.382.6000